
(1987) 03 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 1354 of 1985

Joy Kanta Hira

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-03-1987

Acts Referred:

Constitution of India, 1950 — Article 39, 46

Citation : AIR 1988 Guw 24

Hon'ble Judges : K.N. Saikia, Acting C.J.; S. Haque, J

Bench : Division Bench

Advocate : B.K. Das and R.P. Sarma, for the Appellant; P. Prasad, Sr. Govt. Advocate and A.C. Buragohaim, for the Respondent

Final Decision : Allowed

Judgement

Saikia, Actg. C.J.

1. The petitioner impugns the appellate order of the State Government dated 12-12-86 rejecting his appeal and cancelling the settlement of Nagrijuli Bazar in his favour.

2. The petitioner is member of the Hira Community and thus belongs to the Scheduled Caste Community of Assam. Pursuant to a tender notice for settlement of the Nagrijuli Bazar for the year 1986-87 the petitioner, the Respondent No. 3 and five others submitted tenders and the Administrator of the Nalbari Mahkuma Parishad settled the Bazar with the Respondent No. 3 at his bid of Rs. 2,49,331,00. Against that settlement Shri Birendra Barman and the petitioner appealed to State Government. The appeal of Shri Birendra Barman was heard on 25-7-86. The appeal was rejected and the settlement with Respondent No. 3 was upheld. Meanwhile, on 30-7-86 the petitioner filed his appeal and 11-8-86 was fixed for its hearing but the Respondent No. 3 was not present. It is stated that a judgment was passed on 18-8-86 but before the judgment was formally issued, the Respondent No. 3 submitted a prayer dated

21-8-86 for giving him an opportunity of hearing. His prayer was granted and 2-9-86 was fixed. Meanwhile, the Respondent No. 3 obtained an order from the High Court dated 1-9-86 and the Respondent No. 3 submitted a petition to the State Government on the same date enclosing a copy of the High Court's order in Misc. Case No. 1134 of 1986 in Civil Rule No. 918 of 1986 for interim stay of rehearing of the appeal on 2-9-86 and hence the hearing was adjourned. By a subsequent order in Misc. Case No. 1207 of 1986 the High Court suspended the impugned order passed on 9-9-86 setting the Bazar with the petitioner and in consequence the Mahkuma Parishad was allowed to run the Bazar. By order dated 8-11-86 the High Court sent back the appeal whereafter the appeal was heard on 26-11-86. By the impugned order, as has already been stated, the settlement in favour of the petitioner was set aside and the Bazar was settled with the Respondent No. 3 at his bid of Rs. 2,49,331/-. Hence, this petition.

3. A notice of motion was issued on 23-12-86. Although the State has not filed any affidavit-in-opposition, the learned Senior Government Advocate, Assam has made his submissions.

4. Mr. B. K. Das, the learned counsel for the petitioner submits that the petitioner having been a member of the Scheduled Castes and his bid having been within the range of 71/2% of the highest bid, he was within the range of preferential treatment and he has been wrongfully deprived of it by the appellate authority on an erroneous interpretation of the law as to preferential treatment Mr. Prasad submits that the matter may be sent back to the appellate authority for consideration in accordance with the provisions of law. Mr. A.C. Buragohain, the learned counsel for the Respondent No. 3 submits that the question of preferential treatment did not arise in the instant case as the bids were much above the limit of Rs. 50,000/- upto which alone preferential treatment could be considered.

5. For correct appreciation of the rival contentions the bids of the different tenderers may be noted.

1. Sri Lil Bahadur Chauhan - Rs.3,21,999.99.
2. Sri Chandan Baskey. - Rs.2,83,860.00
3. Sri Tek Bahadur Bhandari Chetri. - Rs.2,81,001.21.
4. Sri Nani Gopal Sil - Rs.2,66,666.99.
5. SriKhitish Ch.Das (Respondent No. 3) - Rs.2,49,331.00
6. Sri Joy Kanta Hira (Petitioner) - Rs.2,31,525.50
7. Sri Birendra Barman. - Rs.1,95,731.75.

It would thus appear that the bid of Respondent No. 3 was the fourth highest and that of the petitioner was next to him. There was a difference of Rs. 17,805.50 between them. The tenders of both the Respondent No. 3 as well as the

petitioner were found to be in order. It may be noted that the other tenderers except Birendra Barman did not appeal. Birendra Barman also did not come to this court after his appeal was rejected by the State Government and the ultimate contest remained between the petitioner and" the Respondent No. 3.

6. The appellate authority considered the submissions of the petitioner that his bid was within the range of 71/2% for preferential treatment but observed that the highest valid bid was Rs. 2,81,001,21 given by one Sri Tak Bahadur Bhandari Chetri and as such, the petitioners bid of Rs. 2,31,525.50 did not come within the range of 71/2% of that highest valid bid and as such, the petitioner could not be preferred. The question that falls for determination therefore is -- what is the meaning of the "highest bid" for the purpose of giving preferential treatment? By Notification No. ABM 70/61/Pt.II/70 dated 20-2-1968 in the matter of general concessions and grant of preferential treatment in matters of settlement of contracts, permits, fisheries, ferries, toll bridges, forest mahals, excise shop etc. for Sub-clause (ii) of Clause 4 of Office Memorandum No. ABM.70/61/Pt. II/67; dated 4th November 1967, the following was substituted : "With reference to Clause 3 of Appointment Department Office Memorandum No. APM 70/61/Pt. It/67, dated 4th November, 1967 it has been said that while it has already been envisaged that in the event of the highest bid being offered either by an individual member of a protected Community or by a Co-operative formed by the members of such community/Communities, the contract should be settled at the highest bid offered without any rebate, it is clarified for information and guidance of the authorities concerned that in the event of a tender/bidder of a Protected Community not offering the highest bid but a bid within seven and half per cent or ten per cent as the case may be, of the highest bid, the contract shall be settled with him at his own bid and in that case the rebate of either seven and half per cent or ten per cent as the case may be will not be admissible. Whether the expression highest bid should be strictly construed so as to mean the mathematically highest bid or it should mean the highest bid that has been acted upon ? It is common knowledge that sometimes the highest bid is rejected as exorbitant, excessive or reckless. Should such bid be treated as highest bid for the purpose of preferential treatment ? A bid which cannot be considered for the purpose of making settlement should not also be considered for the purpose of giving preferential treatment If that is not done simply by giving an exorbitant, excessive or reckless bid and thus keeping the highest bid beyond the preferential range of the bids given by the members of the Backward classes, they would be deprived of the preferential treatment The purpose of the rule to give preference to the Backward Classes would thus be frustrated. There can, therefore, be no doubt that for the purpose of giving preferential treatment bids which have been rejected as exorbitant, excessive or reckless must not be counted. Then the question arises what should be the highest bid ? Should it mean the bid actually acted upon ? If a bid was given but the person either abandoned his bid or was not interested at all in obtaining a settlement should that bid be counted as the highest bid ? If the purpose of preferential treatment

is borne in mind such a bid not being a serious bid for the purpose of obtaining a settlement may not also be counted for the purpose of giving preferential treatment. The next principle is that the highest bid acted upon will be that bid on which the settlement is considered irrespective of whether settlement is given to the bidder or not. In such a case if the bid of a member of the Backward Classes is within the range of seven and half per cent, then keeping in mind the principle of distributive justice, the bids of the preferred classes within that range have to be considered. The principle of compensatory discrimination has been adopted keeping in mind the disparities between the different social strata in the country and it requires that the Backward classes should be compensated and if that be called a discrimination, it must be tolerated as compensatory discrimination.

7. In *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, their Lordships of the Supreme Court dealing with the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975 (14 of 1975) which related to transfers of agricultural lands by members of Scheduled Tribes to persons not belonging to Scheduled Tribes observed : " That the legislation is a typical illustration of the concept of distributive justice, as modern jurists know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle, namely, from each according to his capacity, to each according to his need." The relevant directive principle is contained in Articles 39 and 46 of the Constitution. Article 39 enjoins that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and Article 46 enjoins promotion of educational and economic interests of the Scheduled Castes and Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. In consonance with the above directive principles, the State has issued appropriate directives in the aforesaid Notification. While interpreting their provisions the directive principles have to be borne in mind.

8. For the foregoing reasons we set aside the impugned order dated 12-12-86 and remand the case to the State Government to decide it in accordance with law in the light of the observations made hereinabove after giving notice and hearing to the parties. Let the parties appear before the State Government within a fortnight from today. Let the status quo as regards possession of the Bazar as of today be maintained till then. It would be open for the parties to pray for any interim order before the appellate authority.

9. In the result, the petition is allowed and the Rule is made absolute. Let the parties bear their own costs.