
(2018) 05 GAU CK 0238
In the Gauhati High Court
Case No : Writ Prtition (C) No.4889 of 2016

Md. Imamul Haque

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0238

Hon'ble Judges : ARUP KUMAR GOSWAMI, J

Bench : Single Bench

Advocate : R Deka, P K Bora

Final Decision : Allowed

Judgement

1. Heard Mr. B.D. Das, learned senior counsel for the petitioner. Also heard Mr. S.K. Medhi, learned Additional Advocate General, Assam,

appearing for the respondents.

2. By this writ application, the petitioner calls into question the short re-sale notice dated 09.08.2016 published on 11.08.2016 and also prays for a

direction to make settlement of Chaparmukh Kapili Nadi Sand Permit Area Part-I (B) (Rev. Portion) (for short, 'Permit Area') of 2016-18 by

bringing the tender notice dated 04.02.2016 to its logical end.

3. Pursuant to the tender notice dated 04.02.2016, the petitioner had participated and it is the pleaded case of the petitioner that his bid value of `

10,11,983/- was the highest valid bid and that 3(three) other tenderers had submitted their tender papers. The other 3(three) tenderers had quoted bid

amount of ` 9,95,199/-, ` 9,94,788/- and ` 9,92,201/-. After evaluation of the tender papers, the matter was referred to the respondent No.2 for his

approval and for necessary action. When for a considerable period of time, the

respondents did not finalize the tender process and as the grapevine had it that the respondents might go for re-tendering for settlement of the Permit Area, the petitioner approached this Court by filing a writ petition being WP(C) No.4708/2016 on 05.08.2016. After filing of the said writ petition, the respondent No.4 issued a short re-sale notice on 09.08.2016 fixing 05.09.2016 as the last date for submission of the tender. Confronted with these developments, the said writ petition was withdrawn by the petitioner, with liberty to file a fresh writ petition and accordingly, the instant writ application was filed with the prayers, which have already been noticed.

4. Affidavits had been exchanged. In the affidavit filed by the respondent No.4, it is stated that on scrutiny of tender papers, it was found that all the tenders were filled in the same handwriting but the tender papers were signed by individual tenderers and accordingly, a letter dated 08.6.2016 was written to the Additional Principal Chief Conservator of Forests (T), Upper Assam Zone by the respondent No.4 recommending settlement in favour of the highest tenderer. The Office of the Additional Principal Chief Conservator of Forests (T) & Head of the Forest Force returned all the original documents for re-verification and by a letter dated 13.07.2016, the respondent No.4 submitted his report stating that the signatures on the tender papers were observed to be genuine and accordingly, requested to settle the said sand Permit Area with the highest tenderer to avoid further loss of Government revenue and to prevent pilferage of sand. However, the Deputy Conservator of Forests, Office of the Chief Conservator of Forests & Head of Forest Force vide his letter dated 06.08.2016 directed the respondent No.4 to put the Permit Area to resale immediately and accordingly, the re-sale notice was issued.

5. In Paragraph-3 of the affidavit filed by the respondent No.2, it is stated as follows:-

â??3. That at the outset your deponent states that the writ petition has been filed without there being any cause of action. A re-sale of a sand Mahal was notified on valid and justifiable grounds inasmuch as, the 4 nos. of tenders received pursuant to the earlier NIT dated 04.02.2016 were found to be filled up with the same handwriting which included the price quoted. Further, the difference between the prices were also negligible. Thus, the formation of a cartel could not be ruled out which would be against the very

object of going for a tender process wherein competitive bidding was the essence. Further, in the re-sale, the petitioner is free to participate and there is no bar. In view of the same, no enforceable right of the petitioner has been infringed and the decision for resale is taken in the larger interest of public and for greater transparency and fairness in matters pertaining to distribution of State Largesse.â??

6. Mr. Das has submitted that it is not unusual to find some knowledgeable person filling tender papers for intending tenderers, especially in far-flung rural areas and, therefore, only on the ground that all the tender papers contained similar handwriting should not prompt the authorities to go for re-sale. It is submitted by him that the respondents are enjoined to consider host of other relevant factors. To drive his point, he submits that in

Chaparmukh Kapili Nadi Sand Permit Area Part-I(A), minimum price per cubic meter was fixed at ` 251/-, which is same in respect of the Permit

Area in question. Whereas the petitioner had quoted ` 281/- per cubic meter, the highest tenderer in respect the said Chaparmukh Kapili Nadi Sand

Permit Area Part-I(A) offered ` 252/- per cubic meter. He submits that the petitioner had offered much higher rate than his neighbouring counterpart

of Chaparmukh Kapili Nadi Sand Permit Area Part-I(A). While the respondents settled the said Chaparmukh Kapili Nadi Sand Permit Area Part-

I(A), without bringing the earlier tender process to its logical conclusion in respect of the Permit Area, the respondents issued the re-sale notice.

7. Mr. Medhi, on the other hand, submits that the fact that all the tenders contained the same handwriting is good enough reason to go for re-sale

tender. He also submits that all the tenderers quoted price more or less in the same range from which formation of cartel cannot be ruled out. He has

also submitted that the petitioner was the successful settlement holder in respect of the same Permit Area for the previous term, namely, 2014-16, and

he had quoted ` 14,12,983/- in respect of 3000 cubic meter whereas in the instant case, in respect of 3600 cubic meters, he had offered tender amount

of ` 10,11,983/- and, therefore, the authorities have rightly taken the decision to go for re-sale.

8. He has also produced the relevant records for perusal of the Court.

9. A perusal of the records go to show that no reason whatsoever was assigned as to why the decision was taken to go for re-tendering of the Permit

Area in question. A note was put up to the Principal Chief Conservator of Forests & Head of Forest Force drawing his attention to the note of the

Divisional Forest Officer, Nagaon, in which he had requested to settle the Permit Area with the highest tenderer. Below the note, the Principal Chief

Conservator of Forests & Head of Forest Force had noted as follows: "to be put to re-sale". The Principal Chief Conservator of Forests & Head

of the Forest Force can certainly differ with a recommendation of a subordinate authority for grant of settlement of a Permit Area. However, in case

of disagreement, reason for differing and charting out a course different than the one suggested, has to be assigned. No reason was given why he

wanted the Permit Area to be put on re-sale.

10. The need to record reasons in support of the order can hardly be over emphasized because reasons are the soul of the order. Recording of

reasons is an essential feature of dispensation of justice. A tenderer is entitled to know the reasons why a particular course of action was adopted.

Recording of reasons also show proper application of mind. When an order is passed, its validity must be judged by the reasons mentioned in the order

or in the file. Though some grounds have been offered for going for re-tender in the affidavit, the decision making process has to be judged on the

basis of reasoning given when the decision is taken and reasons cannot be supplemented over a period of time. Otherwise, when an order is bad in

law at the very inception, may get validated with the setting forth of grounds in the affidavit.

11. Having regard to the above discussion, the decision to go for re-sale and the re-sale notice dated 09.08.2016 (Annexure-4 of the writ petition)

issued by the Divisional Forest Officer, Nagaon Division, Nagaon for settlement of Chaparmukh Kapili Nadi Sand Permit Area Part-I (B) (Rev.

Portion) of 2016-18 are set aside and quashed. It is made clear that this Court has expressed no opinion on the merit of the submissions advanced by

the learned counsel appearing for the parties. The decision to opt for re-sale and the impugned re-sale notice dated 09.08.2016 are set aside only on

the ground that decision making process was vitiated as the decision was bereft of any reason. The Principal Chief Conservator of Forest & Head of

Forest Force is directed to consider the matter afresh and take a decision on the matter on its own merit in accordance with law within a period of

1(one) month from the date of receipt of a certified copy of this order.

12. With the above observations and direction, the writ petition is allowed. No cost.