(1999) 09 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (C) No. 2019 of 1999

Muhiram Panging — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:
Control and Management of Ferries Rules, 1968 — Rule 16(2), 19

Citation : (2000) 1 GLT 195

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : G.N. Sahewalla, A.K. Goswami and P. Bora, for the Appellant; G.A., N.S. Deka and B.P. Bora, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—Heard Mr. G.N. Sahewalla learned Advocate for the Petitioner and Mr. B.P. Bora, learned advocate for the Respondent No. 6.

2. This matter relates to the settlement of Desangmukh Matmara Ferry Service for the period of 1999 to 2002. The settlement is governed by control and Management of Ferries Rules, 1968. The order of settlement is annexed as Annexure (ii) to the writ application and that order is quoted below:

I am directed to state that as per provisions of Rule 19(b) of Central and Management of Ferry Rules, 1968, as amended the Government is pleased to settle the Desangmukh Matmara Ferry service with Prafulla Mili at the proportionate amount of the highest bid value of Rs. 7,53,300 (Rupees Seven lakhs fifty-three thousand three hundred) only, for the period from 01.04.99 to 31.03.2002 for the actual lease period from the date of taking over to charge 31.03.2000 while the values for the years 2000-2001 & 2001 & 2002 will remained unchanged.

In addition to the bid value, the lease will have to deposit the actual quantum of staff salary for the lease period with P.O.L. cost subject to the condition that in case of subsequent hike in rates/tolls etc. by the Government proportionate increase of the bid amount (based on the proportionate increase in the estimated amount) will have to be accepted by the lessee on usual terms and conditions and also subject to the fulfilment of requirement as mentioned below taking over the ferry service by the lessee for the remaining period of 1999-2002 that is year with effect from the date taking over charge to 31.3.2002.

The required Earnest Money, Security Money and Vessel Security as deposited by die above lessee should be retained for the entire period for which the ferry is settled. In case the lessee fails to take over or run the ferry for the period for which the ferry is settled, the Earnest Money and Security money deposited by the lessee will be forfeited. In case the lessee does not submit the required landed property documents for 3(three) years and submits only for 1(one) year, the landed property documents as required as per NIT/Ferry Rules are to be obtained from the concerned lessee on or before 1st March of each of die subsequent years or lease.

If die landed property does not cover the bid money at which the ferry is settled, the difference should be covered either by cash or by equal amount of collateral property or security for which mortgage deed should also be executed.

The charge of die ferry is to be given to the proposed lessee with immediate effect 1999 morning without fail after observing all formalities as required under the rules and realising the required kist money and necessary security deposit. The lease agreement may be executed accordingly before handing over charge of die ferry service.

You are requested to make all the relevant rules/conditions of die lease etc. known to die lessee concerned so that all the rules/conditions could be strictly followed.

3. But Mr. Bora, learned Advocate for the Respondents submits that this is not the order of settlement. By suppressing the real order of settlement, this order of settlement has been annexed to the writ application. Mr. Bora produced before me the real order of settlement which is quoted below:

I am directed to state that as per provision of Rule 19(b) of control and Management of Ferry Rules, 1968, as amended the Government is pleased to settle the Desangmukh-Mahmora Ferry Service with Sri Prafulla Kr. Mili at die proportionate amount of the highest bid value of Rs. 7,53,300/-(Rupees Seven Lakhs fifty three thousand three hundred) only for die period from 01.04.99 to 31.03.2002 is to be proportioned for die actual lease period from me date of taking over to 31.03.2002.

In addition to the bid value, the lessee will have to deposit the actual quantum of staff salary for the lease period with P.O. L. Cost subject to the condition that in case of subsequent hike in rates/tolls etc. by the Government proportionate increase of the bid amount (based on the proportionate increase in the estimate amount) will have to be accepted by the lessee on usual terms and conditions and also subject to the fulfilment of requirement as mentioned below before taking over the ferry service by the lease for the remaining period of 1999-2002 i.e. with effect from the date of taking over charge to 31.03.2002.

(i) The Earnest money has been deposited for validity of 6 (Six) months only is to be retained for the entire lease period up to 31.03.2002. The validity being got extended upto 31.03.2002

(ii) Shri Mili will have to deposit all the outstanding dues before taking over the above ferry.

(iii) He will also submit the required land valuation certificate alongwith other landed property documents as per NIT or to deposit the difference money before taking over the above ferry.

The required Earnest Money, Security Money and Vessel security as deposited by the above lease should be retained for the entire period for which the ferry is settled. In case the lessee fails to take over or run the ferry for the period for which the ferry is settled, the Earnest money and Security Money deposited by the lessee will be forfeited. The lessee has not submitted the required landed property documents for 3(three) years hence the landed property document as required as per NIT/Ferry Rules are to be obtained from the concerned lessee before handing over the ferry and 1st March of each of the subsequent years of lease.

If the landed property does not cover the bid money at which the ferry is settled, the difference should be covered either by cash or by equal amount of collateral property or security for which mortgage deed should also be executed.

The charge of the ferry is to be given to the proposed lessee with immediate effect without fail after observing all formalities as required under the rules and realising the required kist money and necessary security deposit. The lease agreement may be executed accordingly before handing over charge of the ferry service.

You are requested to make all the relevant rules/conditions of the lease etc. known to the concerned so that all the rules/conditions could be strictly followed.

4. A bare perusal of this order will show that the Govt. took necessary precaution to recover the arrears if any, by inserting a specific clause in the order to the following effect:

Sri Mili will have to deposit all the outstanding dues before taking over the ferry.

5. Rule 19(v) of the aforesaid Rules provides as follows:

whether the tenderer/bidder has sufficient experience to run the ferry efficiently.

6. The Rule itself provides that the authority has the power to refuse to accept the offer of the highest bid of the tenderer and it has to consider the five things

mentioned in the Rules itself and one of the condition is that whether the tenderer/bidder has sufficient experience to run the ferry efficiently. In paragraph 7 of the writ application it is stated as follows:

That the Petitioner states that his bid/tender on reopening was not rejected and the said tender was entertained. It is further stated that the Petitioner submitted tender for Rs. 7,53,300/- for a period of three years. One Shri Mangilal Mili submitted tender for Rs. 6,55,000.00 Shri Ratneswar Taye for Rs. 6,51,500/- Gopal Taye for Rs. 5,58,600/- and Sri Prafulla Mili for Rs. 4,86,000/- Respondent No. 5 recommended the case of the Petitioner for settlement of the ferry in question in his favour and the Petitioner being the highest tenderer was also reasonably expecting that he would granted settlement of the said ferry service as the Rules also envisaged that the settlement should be granted to the highest bidder/tenderer.

7. It appears from the affidavit-in-opposition filed by the authority as follows:

Para 4:

That with regard to the statements made in paragraph 7 to the writ petition, the deponent says that as per Rule 16(2) of Central and Management of Ferries Rules, 1968 as amended, the Director, Inland Water Transport recommended for settlement of the Disangmukh Matmora Ferry Service at the highest bid amount of Rs. 7,53,300/- for 1999-2002 with Sri Prafulla Mili the then sitting lessee, in consideration of his past experience and in running the ferry service to the satisfaction of the Department.

Para 5:

That with regard to the statements made in paragraph 8 of the writ petition, the deponent states that after opening tender on 12.3.99, the Executive Engineer concerned examined and prepared comparative statement and sent the proposal to the Director, IWT who is turn sent the proposal to the Govt. with his recommendation under Rule 16(2) The settlement was finalised and orders issued by the Govt. in favour of Sri Prafulla Mili on 26.4.99 which took time due to observing necessary official formalities.

8. So, the Govt. in making the settlement took into consideration the experience of the Respondent as required under the Rule quoted above. Sri G N Sahewalla, learned Advocate for the Petitioner submits that he also has the experience and in support of it he draws my attention to paragraph 2 of the writ application. That is quoted below:

That the Petitioner is a businessman and he also has experience in running ''Ghats'' having been earlier settled by the Demow Anchalik Panchayat a ghat on the Bank of Brahmaputra. In addition, the Petitioner has got wide and varied experience of running and managing different types of businesses.

9. This paragraph is not sufficient to show that this Petitioner had experience as

required under the rule as quoted above. It speaks of settlement of a ghat. The settlement of ghat may be for the collection of tolls as is commonly known. Nowhere in the writ application there is any pleading to the effect that he has sufficient experience to run the ferry efficiently which is the requirement of the Rule as will be seen from the Rule itself. Sri Sahewalla further submits that this Respondent is a defaulter in the payment of dues of the earlier settlement as well as in the settlement of Ghat by Panchayat. Regarding the question of default it will not be relevant in the case of Ghat but in case of settlement of ferry the question of default is relevant and mat aspect of the matter has been taken case of by the authority. In the order itself it has been indicated that all the outstanding dues must be deposited before taking over the ferry. Regarding default, there is another aspect of the matter, it must be borne in mind that the ferry in question is always supplied by the authority but in the last settlement made to the Respondent the ferry which was supplied by the department went out of order. The department took time to repair the ferry and in that process the Respondent had to hire private boat to run the ghat and in that process he has suffered loss as contended by the learned Advocate for the Respondent No. 6 and accordingly he filed an application before the authority to remit some portion of the dues. Be that as it may, that aspect of the matter will not be relevant in quashing the settlement in favour of the Respondent. This matter has also received judicial interpretation in the court as reported in Amar Hazarka Vs. State of Assam and Others, wherein by considering the provisions of the Rule and decisions of the Apex Court in paragraph 21 laid down the law as follows:

It is on the background of this law that the action of the authority in the present case must be judged, a indicated above, in the present case, there is absolutely no arbitrariness. The authority adhered to the rules, took appropriate action to protect its revenue, the deal was fair and accordingly, I do not find any illegality and/or infirmity in the action of the authority.

10. In this particular case also, there is no question of loss of revenue to the State inasmuch as the Petitioner was asked to accept the bid of the highest value quoted in the tender process. The authority found that the Respondent No. 6 to be only duly experienced person as will be evident from the affidavit-in-opposition. That being the position, there is no infirmity and/or illegality in the impugned order and this writ application shall stand rejected on the following grounds:

(i) That the real order of settlement was not produced before this Court and the order of settlement annexed in this writ application is not the real order of settlement.

(ii) The authority adhered to the Rules and in a fair and transparent manner the settlement was made in favour of the Respondent No. 6 protecting the revenue. There is no denial of the fact that the authority has the power to make the direct settlement.

11. Accordingly this writ application shall stand dismissed and the stay order passed earlier shall stand vacated.

