(2003) 10 GAU CK 0009

In the Gauhati High Court

Case No : Writ Appeal No''s. 317 and 325 of 2002 and W.P. (C) No''s. 3037, 4776 and 5757 of 2003

Nagaon Zilla Parishad and Others — APPELLANT

Vs

Rezia Begum and Others — RESPONDENT

Date of Decision : 01-10-2003

Acts Referred:

Assam Panchayat (Financial) Rules, 2002 — Rule 47, 47(10)
Assam Panchayat Act, 1994 — Section 104, 105, 105(4), 106, 106(4)

Citation : (2006) GLT 585 Supp

Hon'ble Judges : P.P. Naolekar, C.J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : N. Dutta, M.A. Sheikh, A. Begum, M. Rahman, H.N. Sarma, B. Rahman, A.K. Bhattacharyya, S.C. Biswas, A.K. Hussain, R. Dhar, P. Biswas, Dutta, M.H. Choudhury, L.N. Choudhury, R. Chetri and R. Begum, for the Appellant; A. Hazarika, A.M. Mazumder, H.N. Sarma, A. Roshid, B.K. Sharma, P. Roy, N. Saikia, S. Sarma, R. Goswami, K. Kalita, A.K. Sarma and U.K. Nair, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, C.J.—The main question involved in these two appeals and in the batch of writ petitions is what are the powers of the Anchalik Panchayat and that of the Zilla Parishad for settlement of hats annual sale value of which is more than one lakh. The action was challenged by the Petitioner Respondents of Zilla Parishad inviting tenders of the hats the yearly sale value of which is more than rupees one lakh.

2. The learned Single Judge has allowed the writ petition holding that the primary responsibility of inviting tenders for settlement of hats, yearly sale value of which is more than rupees one lakh is that of the Anchalik Panchayat and after receipt of the tender papers from Anchalik Panchayat the Zilla Parishad shall get it examined by the General Standing Committee and thereafter issue final order of settlement. The only power under the scheme of the Act available to the Zilla

Parishad is to issue final orders of settlement after examination and scrutiny as provided in Sub-section (6) of Section 109 of the Assam Panchayat Act, 1994 in respect of hats, yearly sale value of which is more than rupees one lakh. The Court has also held that the primary duty of the Anchalik Panchayat is to issue notice inviting tender and forward the tender papers with the recommendations to the Zilla Parishad for confirmation as provided under Sub-section (4) of Section 105, Sub-section (4) of Section 106 and Sub-section (4) of Section 109 of the Act of 1994 if the yearly sale value is not more than rupees one lakh. In case of hats value is which is less than rupees one lakh the Zilla Parishad''s power are only confined to confirmation of the recommendations made by the Anchalik Panchayat.

3. The Counsels appearing for both the parties do not challenge the decision of the learned Single Judge in regard to hats yearly sale value of which is not more than rupees one lakh. The challenge to the findings and decisions of the learned Single Judge in these appeals, as already mentioned, is in regard to the hats yearly sale value of which is more than rupees one lakh. The root of controversy lies with the interpretation of Sections 109(6) and 105 of the Act of 1994 and it would be apposite to refer to certain provisions of the Assam Panchayat Act, 1994 (hereinafter for sake of convenience shall be referred to as ''Act of 1994''). Sub-section (2), (3) and (4) of Section 2 defines Gaon Panchayat, Anchalik Panchayat and Zilla Parishad. They are established under the three-tire local self-government mandated under Part-IX of the Constitution of India. Under Sub-section (1) of Section 2, ''Bazar'', ''Haat'' or ''Market'' means any place within the administrative control of the local authority, where persons assemble daily or Bi-weekly or periodically for sale or purchase of article for human or animal consumptions or of live stocks or of other merchandise. A Gaon Panchayat is to be established by the State Government u/s 5 of the Act of 1994 by notification declaring any local area comprising of revenue village or group revenue villages or forest village or a tea garden area or hamlets forming part of revenue village or Forest Village or tea garden area or other such administrative unit or part thereof to be a Gaon Panchayat. Section 31 speaks of Anchalik Panchayat which consists of a development block excluding such portion of the block as are included in a Town Committee, Municipality, Municipal Corporation, Sanitary Board or Cantonment area or a notified area constituted under any law for the time being in force. Section 104 of the Act of 1994 is in regard to establishment of a Zilla Parishad. It shall comprise of the area of the entire district concluding such portion of the district as are (sic) in a Municipality or Municipal Corporation, authority of Town Committee, Sanitary Board or Cantonment area or notified area contrary to it under any law for the time being in force. Under the Act of 1994, the Gaon Panchayat is established comprising of revenue village or group revenue village or forest village or a tea garden area or hamlets forming part of revenue village or forest village or tea garden area or other such administrative unit or part thereof. The Anchalik Panchayat is established for each development block and the Zilla Parishad is established for every district. A Zilla Parishad

consists of Anchalik Panchayat as well as Gaon Panchayat having definite territorial area and also the jurisdiction which is to be exercised by the Anchalik Panchayat and the Zilla Parishad as prescribed and laid down under the Panchayat Act of 1994.

4. Section 105 of the Act of 1994 authorises the Anchalik Panchayat to settle hats within its territorial jurisdiction in the manner prescribed for a period not more than one Panchayat financial year. A hat is to be settled by inviting tender at the office of the Anchalik Panchayat by its President. The detailed procedure for inviting and submission of tender shall be such as provided under Rule 47 of the Assam Panchayat (Financial) Rules, 2002. Relevant portion of the Rule 47 reads:

47. (1) Such markets or fairies or fisheries or pounds are vested in or placed under the control and administration of the Panchayat under Sections 105, 106, 107, 108 and 109 of the Act shall be settled by inviting sealed tenders affixing Court fee stamp for such amount as has been prevailing otherwise and earnest money not below two per cent of the minimum bid value for sale and settlement of the right to collect the authorised fees in respect of the markets or ferries or the fisheries and the pounds for a period coinciding with one Panchayat financial year.

Earnest money so received shall be entered in a Register in Form No. 12 to the schedule to these rules.

(2) Such tender notice shall be floated at least forty five days before the last day of Panchayat Financial year such tender notice shall state:

(i) The name and location of each asset to be leases.

(ii) Condition for submission of tenders including the amount of security money for the purpose.

(iii) Full details of the assets to be leased out.

(iv) The period for which the lease will be given

(v) The last date of submission.

(3) Such tender notice shall be given wide publicity and a copy thereof hanged on the Notice Board of the Deputy Commissioner, the Sub-Divisional Officer, the Public Works Department and the offices of the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad and be displayed in prominent places. A copy of the tender notice shall be enclosed to the State Government/ Directorate of Panchayat & Rural Development, Assam.

(4) Such tender shall be submitted by the intending tendency by Registered Post or personally under sealed cover.

After receipt of the tender, the power to examine and give final acceptance to such tender is vested in the Standing Committee of the Anchalik Panchayat. The settlement so made shall be subject to the confirmation of the Zilla Parishad, provided, in case or any dispute the Anchalik Panchayat shall refer the case to the Government and there is further provision of appeal to be made to the Government, whose decision in this regard shall be final. Sale proceeds of hats shall be distributed in the manner as prescribed in Sub-section (6) of Section 105. The entire amount sale proceeds shall be deposited in the Anchalik Panchayat. Thereafter the Anchalik Panchayat shall distribute it amongst the Zilla Parishad and the Gaon Panchayats and itself. An amount equivalent to 20% of the total proceeds of hats shall go to the Zilla Parishad, whereas an amount equivalent to 40% of the sale proceeds be equally distributed to all the Gaon Panchayats which fall within the territorial jurisdiction of the Anchalik Panchayat and the remaining 40% shall be retained in the Anchalik Panchayat fund. So far we read this provision there is no difficulty in reaching to the conclusion that the President of the Anchalik Panchayat shall invite tender as provided under the Rules, and the Standing Committee of the Anchalik Panchayat will examine it and accept it for settlement subject to the confirmation of the Zilla Parishad and therefore power to settle Hats vests with the Anchalik Panchayat. Opinion of right to settle Hats by Anchalik Panchayat or Zilla Parishad arises because of the provision of Section 109(6) of the Act of 1994. There is distinction between the hats, the sale proceeds of which is not more than rupees one lakh and the hats where the yearly sale proceed is more than rupees one lakh. Sub-section (5) and (6) of Section 109 reads as under:

(5) All sale proceeds, of public fisheries shall be considered in the Anchalik Panchayat fund and shall be distributed in the manner hereinafter provided:

(a) twenty percent of the total sale proceeds of Anchalik Panchayat fisheries shall be made over the Zilla Parishad funds;

(b) forty percent of the total sale proceeds of the Anchalik Panchayat fisheries shall be retained with the Anchalik Panchayat fund;

(c) forty percent of the total sale proceeds of Anchalik Panchayat fisheries shall be distributed equally among the Gaon Panchayats falling within the jurisdiction of the Anchalik Panchayat.

(6) The Hats, Ferries and Fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad, the yearly sale value of which is more than rupees one lakh shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial year as under Sections 105, 106 and 109 in the manner prescribed. The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee as u/s 81(i)(a). The distribution of sale proceeds shall be in the manner as prescribed in the manner as prescribed in the foregoing sections.

The aforesaid Section clearly indicates that all hats falling under the Anchalik Panchayat within the jurisdiction of the Zilla Parishad yearly sale value of which is more than rupees one lakh, shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat financial year as under Sections 105, 106 and 109 in the manner prescribed.

5. On plain reading of Sub-section (6) it is obvious that power to settle hats of value of more than one lakh vests in Zilla Parishad. The power is conferred on Zilla Parishad in unequivocal terms when Section says that Hats mentioned therein shall be settled by the Zilla Parishad concerned, the manner to settle would be as provided in Section 105 of the Act of 1994. The manner prescribed u/s 105 is by inviting tenders under Rule 47 of the Assam Panchayat (Financial) Rules, 2002.

6. Reference to said Section 105 in Subsection (6) of Section 109 is only for the purpose of providing mode of settlement. It has no reference to authority which shall exercise that power. When Sub-section (6) of Section 109 gives complete powers to Zilla Parishad to examine the tenders, scrutinize them and then to finally accept them and then to settle the Hats in favour of successful tenderers, it will be out of place to read merely on the basis of reference of Section 105 in Sub-section (6) that power to invite tender shall be that of Anchalik Panchayat and thereafter entire tender process is to be handled by Zilla Parishad till settlement of a Hat. We are of the view that settlement of Hats, sale value of which is more than one lakh shall be made by respective Zilla Parishad. The Zilla Parishad shall invite tenders for settlement of Hats of value more than one Lakh and proceed with the process of selection as required under Sub-section (6) of Section 109 of the Act read with Rule 47 of the Rules of 2002. After the sale proceeds are received by the Zilla Parishad in respect of sale of hats it shall be deposited with the respective Anchalik Panchayat and the Anchalik Panchayat shall distribute the amount. Sub-section (5) of Section 109 of the Act of 1994 authorizes Anchalik Panchayat to distribute the sale proceeds in the following manner. The division would be-20% of the total sale proceed would go to the Zilla Parishad, 40% of the total sale proceeds shall be retained by the Anchalik Panchayat and rest 40% shall be distributed equally among the Gaon Panchayat falling within the jurisdiction of the Anchalik Panchayat in whose jurisdiction the hat is situated.

7. For the interpretation we have given to Sub-section (6) of Section 109 of the Act of 1994, Writ Appeal No. 325/03 and 317/03 are allowed. The directions given by the learned Single Judge in W.P.(C) No. 3745/ 03 quashing the NIT dated 10.04.03 is set aside. The order of the learned Single Judge dismissing Writ Petition (C) No. 4244/03 is set aside and the tender notice dated 08.05.2003 issued by the Anchalik Panchayat is set aside. The tender notices issued by the Zilla Parishad for settlement of hat/hats are upheld and the W.P.(C) No. 4776/03, 5757/03 and 3037/03 are dismissed. However, in the circumstances of these cases, there will be no order as to costs.

W.P. (C) No. 5353/2003

In this Writ petition the Petitioner has challenged the tender notice dated

10.04.2003 issued by the Chief Executive Officer, Nagaon Zilla Parishad and the acceptance of a tender in respect of Juria Biweekly Bazar for year 2003-2004 on two counts. That the Zilla Parishad has no authority to invite tender. The authority vests with the Anchalik Panchayat and that the settlement of the tender in favour of Md. Abu Bakkar Siddique is contrary to Sub-rule (10) of Rule 47, he not being the highest bidder.

8. It is the case of the Petitioner that the highest bid submitted is of Rs. 9,15,517/- by one Sri Dulu Bora. The Petitioner also submitted bid of Rs. 6,11,211/-, whereas the bid of Respondent No. 6 tendering Rs. 3,99,853/- has been accepted without prior and formal approval of the Government and, therefore, the acceptance of the bid is illegal.

So far the first question raised by the Petitioner, we have already decided that the Zilla Parishad has a complete authority to invite tender for a hat, annual sale proceeds of which is more than appears one lakh and thus invitation of tender by the Nagaon Zilla Parishad in accordance with law and does not require any interference. It is not denied by the Respondents that the highest bid offered by Sri Dulu Bora was of Rs. 9,15,511/- for the said Bazar. Sub-rule (10) of Rule 47 requires that acceptance of the tender other than highest bid shall require prior and formal approval of the Government. On plain reading of the Rule, highest bidder is entitled to settlement of Bazar in his favour unless a different decision is taken by the Standing Committee of the Zilla Parishad with prior and formal approval of the Government. The Standing Committee of Zilla Parishad has authority to accept tender submitted by the parties, but if it is not the highest bid, then, acceptance of the lower bid would be subject to Governments prior and formal approval. It is not the case of the Respondents that the hat has been settled in favour of the Respondent No. 6 at a lower bid of amount with the prior and formal approval of the State Government. In absence of prior and formal approval of the State Government, acceptance of the bid in favour of the Respondent No. 6 by the Zilla Parishad and the settlement of the hat for an amount of Rs. 3,99,853/- is illegal and as such is set aside.

9. For the reasons stated above, this writ petition is allowed. The Zilla Parishad is directed to proceed with fresh settlement of the Bazar from the bids already offered by different parties in accordance with law. We do not make any order as to costs.

