
(2005) 06 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition (C) No. 242 (SH) of 2003

Nela Niangti

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 17-06-2005

Acts Referred:

Citation : (2006) 3 GLT 380

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.P. Mahanta, A.K. Agarwal, M. Wahlong and A. Chakraborty, for the Appellant; N.D. Chullai and B.K. Debroy, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The grievance raised in this writ petition is in respect of settlement of Jowai Country Spirit shop with the Respondent No. 6 for the period from 25.8.2003 to 24.8.2006.

2. A notice of sale of licence for the aforesaid excise liquor shop by auction by teder cum lump sum system was issued on 10.7.2003 for the period from 25.8.2003 to 24.8.2006. The last date of submission of tenders was fixed as 12.8.2003 at 1 P.M. The tenders were to be submitted to the Deputy Commissioner, Jaintia Hills, Jowai. Be it stated here that the maximum rate was fixed at Rs. 42,750/- and the minimum at Rs. 36,675/- for settlement of the country spirit shop.

3. In response to the said notice, altogether 13 tenders were submitted including the one submitted by the Petitioner. According to the Petitioner, she along with other tenderers appeared before the Tender Committee on 12.8.2003 and the tender box was opened in their presence. However, after counting of the same, the Committee directed the tenderers to leave the room and they were not allowed to see and record the rates quoted by different tenderers. According to her, she awaited till 5 P.M. along with other tenderers and at around 5.15 P.M.,

the Respondent No. 6, who was also a tenderer was invited inside the room by the Committee and after sometime, he came out from the room and left the office premises. The Petitioner and other tenderers after waiting for sometime and without knowing anything left the office premises.

4. Further averments made in the writ petition is that on 21.8.2003, the Petitioner could come to know that the aforesaid shop had been settled with the Respondent No. 6. Immediately, thereafter she applied for the copy of the proceedings of the Tender/Advisory Committee and she was supplied with the same which has been annexed as Annexure-2 to the writ petition.

5. The basic ground on which the settlement made in favour of the Respondent No. 6 has been assailed is that there was no transparency in the matter of tender process inasmuch as according to the Petitioner she and other tenderers were not allowed to participate in the tender opening process and to know the rates quoted by different tenderers. According to the Petitioner, the rate quoted by the Respondent No. 6 being just within the maximum limit, he was favoured by the Respondents by leaking out the rates quoted by others. The Petitioner asserts that the maximum/minimum rate for settlement having been fixed by a communication dated 11.8.2003 issued by the Respondent No. 3, the same might have been leaked out to the Respondent No. 6 enabling him to quote the exact rate falling within the maximum limit.

6. The Respondents have filed their counter affidavit denying the contentions raised in the writ petition. They have taken the specific stand of opening the tender box in presence of all the tenderers and allowing them to examine the tenders submitted by different tenderers. They have stated that the formalities were completed in presence of the tenderers and it was only thereafter they were requested to leave the room so as to complete the other process. According to them, the Tender/Advisory Committee found the Respondent No. 6 to be suitable for settlement of the country spirit shop and the decision arrived at by the members of the committee was unanimous. In paragraph 6 of the affidavit, the Respondents have indicated the rates quoted by the 13 tenderers. As regards the plea of the Petitioner that the contents of the letter dated 11.8.2003 indicating maximum and minimum rates, was received by the committee only at 1 P.M. of 12.8.2003, on which date the committee met and thus there was no occasion to make known the contents of the said letter to the Respondent No. 6.

7. I have heard Mr. S.P. Mahanta, learned Counsel for the Petitioner and Mr. N.D. Chullai, learned Sr. Government Advocate, Meghalaya on behalf of the State Respondents. Mr. Mahanta, referring to the averments made in the writ petition submitted that the rate quoted by the Respondent No. 6 creates doubt inasmuch as the same is just within the maximum rate fixed by the aforesaid letter dated 11.8.2003. He also submitted that it was incumbent on the part of the Tender/Advisory Committee to allow the tenderers to know the rates quoted by different tenderers, but instead, the tenderers were directed to leave the room just after opening of the tenders. According to him, there was lack of transparency and fair

play in the entire process. Putting emphasis on the rate quoted by one of the tenderers namely Shri Girison Lamare, which is just above the rate quoted by the Respondent No. 6 and the ground assigned by the committee in not accepting the tender of said Shri Lamare, Mr. Mahanta submitted that on the face of it the reason assigned for settlement of the shop with the Respondent No. 6 is not tenable.

8. Countering the above arguments, the learned Sr. Government Advocate, Mr. N.D. Chullai submitted that the allegation made by the Petitioner is not correct. He submitted that the tenders were opened in presence of all the tenderers giving them the opportunity to see the rates quoted by different tenderers. As regards the comparison made by the Petitioner in respect of the Respondent No. 6 and the said Shri Lamare, Mr. Chullai, submitted that the rate quoted by Shri Lamare having crossed the maximum limit fixed by the Government, the Tender Committee rightly did not settle the shop with him.

9. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and the materials on records. At the very outset I would like to point out that the Petitioner has not made any grievance in respect of fixation of minimum and maximum rate towards settlement of the country spirit shop by the letter dated 11.8.2003 issued by the Government. Her grievance is that the maximum rate fixed by the said letter being the rate quoted by the Respondent No. 6, there is possibility of making the Respondent No. 6 known about the same. It is not the definite case of the Petitioner that the contents of the letter dated 11.8.2003 was made known to the Respondent No. 6. She has only expressed the possibility of the same with the averments made in paragraph 6 of the writ petition quoted below:

It is also pertinent to state here that the letter under Memo No. ERTS (E) 46/76/Pt/97-A dated Shillong 11.8.2003 where by the maximum/minimum rate for settlement of Jowai country spirit shop was fixed by the Respondent No. 3 and the said letter might have been leaked from the very fact that the above named two tenderers could quite the exact rate by guarding the Respondent No. 6 by Re 1 only and the deprived the Petitioner and other tenderers from the getting the settlement as such the entire process of settlement is unfair, unreasonable and illegal and the same is liable to be set aside and quashed.

10. Thus, from the above statement made in the writ petition, it is the speculation on which the Petitioner has based her claim. As regards the plea of asking the tenderers to leave the room immediately after opening of the tender box without allowing them to take down the different rates quoted by the tenderers, it is the definite case of the Respondents that the tenderers were allowed to examine the tender papers and it was only after the due formalities were observed, the tenderers requested to leave the room to complete the selection process. It is the further stand of the Respondents that the members of the committee after examining and scrutiny of the tenders found the tender of the Respondent No. 6 at the rate of Rs. 47,025/-per month i.e. yearly Rs. 5,64,

300/- to be suitable and the members were unanimous in their decision. It is the case of the Respondents that although the rate offered by the tenderer namely Shri G. Lamare, was just above the rate offered by the Respondent No. 6, the same being above the maximum limit fixed by the aforesaid letter dated 11.8.2003, his tender could not be accepted.

11. Although, learned Counsel for the Petitioner referring to the minutes of the Tender/Advisory Committee submitted that the aforesaid plea of the Petitioner is substantiated, I am of the considered opinion that the same is only speculative. The Tender Committee minutes reveal that the box was opened in the presence of the tenderers and thereafter they were requested to leave the room. Merely because the minutes of the Tender Committee do not say anything about examining the tender papers by the tenderers, that by itself cannot indicate that it was in fact so. When the tender papers were opened in presence of the tenderers, it was but natural for the tenderers to examine the tenders, which fact has been clearly highlighted in the counter affidavit. Nowhere in the writ petition, the Petitioner has stated that the tenderers although allegedly were not allowed to see and record the rate quoted by different tenderers, they made any demand for the same. In the case, in absence of any allegation of tempering with the tender documents subsequently, such a plea of the Petitioner is otherwise also not sustainable.

12. It is the Petitioner who has made a grievance in respect of said Shri G. Lamare and the person concerned himself is not before this Court. Similarly, the other tenderers for whom the Petitioner has stated in the writ petition are also not before this Court. As noticed and pointed out above, the Petitioner has not made any grievance in respect of the letter dated 11.8.2003 issued by the Respondent No. 3 indicating the minimum and maximum of the acceptable rate. Her only grievance, apart from not allowing her and others to examine the tender papers, is that the way in which the Respondent No. 6 quoted the rate conforming to the requirement of the said letter dated 11.8.2003, gives rise to the doubt that the Respondent No. 6 was informed of the same beforehand. There is no definite stand in this regard. No materials have been placed to bring home the point. It is only the speculation of the Petitioner, which has been made the foundation to make a grievance in that manner. As noticed above, the Respondents have clearly explained the circumstances as to how the contents of the said letter became known to the members of the tender committee only at 1 PM on the date of opening of the tenders and thus there was no occasion to leak out the same to the Respondent No. 6.

13. No allegation has been made against anyone of the members of the Tender/Advisory Committee. None of the members is also party to this proceeding.

14. In view of the above, the grounds on which the writ petition is based, in absence of any clinching materials, cannot be made the foundation to grant the relief as has been prayed for in the writ petition. The settlement period is for three years of which almost two years have already elapsed.

15. For the foregoing reasons and discussions, I am of the considered opinion that the writ Petitioner has not been able to substantiate her claim made in the writ petition and

consequently, the writ petition fails.

16. The writ petition stands dismissed leaving the parties to bear their own costs.