
(2004) 05 GAU CK 0053
In the Gauhati High Court
Case No : WP (C) No. 5188 of 2003

Rajkumar Pukhrel and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Citation : (2004) 3 GLR 683

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : B.K. Mahajan, B. Ahmed and A. Choudhury, for the Appellant; G.A., for the Respondent

Judgement

Ranjan Gogoi, J.—Heard Dr. B. Ahmed, learned counsel for the petitioner and Mr. T.J. Mahanta, learned counsel appearing for the respondent No. 5. Also heard Mr. R.K. Bora, learned Govt. Advocate, Assam.

2. A tender notice was published on 28.10.2002 inviting tenders for sale of the Jakhalabadha Sand and Pea Gravel Mahal for the year 2002-2004. Though six tenders were received pursuant to the aforesaid notice, the authority having found certain irregularities in all tenders received, decided to cancel the tender process. Thereafter, a notice for re-sale of the said Mahal was published on 29.3.2003 and in response thereto, two tenderers including the respondent No. 5 herein, submitted their tenders. The respondent No. 5, it may be noticed, was the highest tenderer. Thereafter, it appears that without cancelling the sale notice/N.I.T. dated 29.3.2003; a fresh tender notice were again issued on 28.5.2003 which, on a representation filed by the respondent No. 5, was initially kept in abeyance by order dated 25.6.2003 and it was subsequently cancelled by order dated 7.7.2003. In the meantime, on 4.7.2003 the said Mahal was settled in favour of the respondent No. 5 on the basis of the tender submitted by him pursuant to the N.I.T. dated 29.3.2003.

3. Against the order dated 25.6.2003 keeping the second tender notice dated

28.5.2003 in abeyance but before the same was cancelled by order dated 7.7.2003 and the settlement in favour of the respondent No. 5 was made on 4.7.2003, the writ petitioner filed the instant writ application calling into question the order dated 25.6.2003 keeping the tender notice dated 28.5.2003 in abeyance. In the aforesaid writ petition, an interim order was passed by this court on 9.7.2003 to the effect that the Mahal in question shall not be settled with any person except on the basis of the tender notice dated 28.5.2003 which was published in the newspaper on 11.6.2003.

4. While Dr. Ahmed, learned counsel for the petitioner would like to assail the action impugned, including the subsequent action of the respondent authority in settling the Mahal in favour of the respondent No. 5, by contending that publication of the tender notice dated 28.5.2003 must be understood by the Court to be amounting to cancellation of the tender notice dated 29.3.2003 and further that the impugned settlement was made on the basis of a non-existent tender process, Mr. Mahanta, learned counsel for the respondent No. 5 has urged that the tender notice dated 29.3.2003 has not been specifically cancelled and the authority having subsequently cancelled the tender notice dated 28.05.2003, the settlement made with the respondent No. 5 is valid in law.

5. This court has noticed that as on date neither the respondent No. 5 nor the writ petitioner or any other person is in possession of the said Mahal and the Mahal continues to remain unexploited thereby causing substantial loss of public revenue and public interest. The rights of the respondent No. 5 to operate the Mahal on the strength of the tender submitted in response to the tender notice dated 29.3.2003 has got somewhat blurred in view of the publication of the subsequent tender notice dated 28.5.2003. Viewed from the aforesaid perspective, the validity of the settlement made with the respondent No. 4 by order dated 4.7.2003, is not free from doubt. On the other hand, the order dated 4.7.2003 has not been put to challenge by the writ petitioner. Besides, though the tender notice dated 28.5.2003 was subsequently cancelled by order dated 7.7.2003, the aforesaid cancellation has also not been impugned in the present writ application. The process of rectification of the aforesaid formal defects in the writ petition, to enable the Court to adjudicate on the rival contentions on their respective merits, will further delay the adjudication process and public interest will further suffer. As neither of the contesting parties have yet been able to operate the Mahal in question and both the tender processes. were initiated over a year back, I am of the considered view that the public interest will be best served by requiring the authority to settle the Jakhalabandha Sand and Pea Gravel Mahal by publishing a fresh tender notice as contemplated by the Rules in force and thereafter complete the process of settlement within a period of 30 days from the date of publication of the tender notice in terms of the present order.

6. The writ petition shall stand closed in terms of the above direction.