

(2021) 01 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (C) No. 1707, 2060 Of 2020

Ranjit Das

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Assam Municipal Act, 1956 — Section 147, 148, 301
Constitution Of India, 1950 — Article 12, 226

Citation : (2021) 01 GAU CK 0003

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : P J Saikia

Final Decision : Dismissed

Judgement

1. This Court vide order dated 17.11.2020, after hearing the interlocutory applications at some length, had observed that instead of deciding the

application for modification of the interim order, both the writ petitions can be taken up for disposal at the admission stage. Accordingly, the same are

taken up for disposal.

2. I have heard Shri PJ Saikia, learned counsel for the petitioner. I have also heard Shri G Pegu, learned Government Advocate, Assam; Shri TJ

Mahanta, learned Senior Counsel assisted by Shri PP Dutta, learned counsel for the Sivasagar Municipal Board as well as Shri P Bora, learned

counsel for the applicant in IA(C) No.1594/2020.

3. For better appreciation of the rival contentions, a brief narration of the facts of the case would be beneficial.

4. The petitioner was the settlement holder of the Central Market of Ward No. 8 of the Sivasagar Municipal Board (hereafter the Board) and his term

was up to 31.03.2020. Being aggrieved by the inaction to consider his prayer for extension of the lease by one year, the petitioner had filed the first writ petition before this Court, being WP(C) No.1707/2020. It was the case of the petitioner that his prayer for extension was duly recommended by the Board and the said recommendation was awaiting approval of the competent authority, namely, the Director of Municipal Administration. In the course of hearing, the Board produced two letters of the authorities, namely, 28.06.2019 and 29.02.2020 whereby and wherefrom the petitioner came to know that his prayer for extension was rejected. The same led to filing of the second writ petition, being WP(C) No.2060/2020 whereby the principal grounds are that the Rules framed under the Assam Municipal Act, 1956 cannot be superseded or nullified by any Executive Instructions and that the subsequent letter dated 28.06.2019 had no manner of application in the matter of the extension prayer. The petitioner had also prayed for a direction for considering his representation dated 18.01.2020.

5. Shri Saikia, learned counsel for the petitioner submits that the impugned decision to reject the application for extension is absolutely unreasonable, arbitrary and in gross violation of the statute holding the field. Drawing the attention of this Court to the first communication dated 28.06.2019, it has been submitted that the instructions not to extend market settlement beyond the period of one year would not be applicable inasmuch, as the period of settlement had commenced from 17.07.2019. As regards the second impugned communication dated 29.02.2020, the rejection of the prayer appears to be based on the earlier communication dated 28.06.2019 and therefore, there was no application of independent mind of the Director.

6. Attention of this Court has been drawn to the Rules for Procedure for the Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam, which were framed under Sections 147, 148 and 301 of the Assam Municipal Act, 1956. Rule 2 thereof which has been pressed into service reads as follows:

“The period of lease for a pound or market shall be one year; provided that the Board may, if it thinks fit, with previous approval of the Director of Municipal Administration extend the period of lease for a total period of two years but not exceeding one year at a time.”

7. It is submitted that the Rule casts an obligation upon the respective

authorities to consider the prayer for extension which in the instant case has been argued to be supported by good reasons as the petitioner had suffered loss in the lease period. However, it has been submitted that the said obligation has not been discharged in accordance with law. The consideration of the representation has not made with due application of mind from the Director who has simply relied upon an earlier communication dated 28.06.2019 which was not relevant at all. It is argued that the impugned action suffers from total non-application of mind whereby the relevant factors have been ignored and overlooked and the same is based on irrelevant and extraneous considerations. It is further submitted that it is a settled law that a notification cannot override the Rules which were statutory in nature and therefore, the present is a fit case for intervention by directing fresh consideration of the representation.

8. Representing the Board, Shri Mahanta, learned Senior Counsel, per contra, submits that the writ petition suffers from suppression of material facts and is liable to be dismissed on that score alone. It is submitted that in fact, on 18.03.2020, a Notice Inviting Tender (NIT) was issued for settlement of the Market in question for the year 2020-21. This Court vide order dated 20.03.2020 had directed that before coming to any logical conclusion by the authorities, leave from the Court had to be taken by the Board. However, in the meantime, various restrictions came along with the spread of pandemic COVID 19. Subsequently, after relaxation of the lockdown, a fresh NIT was issued on 19.06.2020 which was in continuation of the earlier NIT. It is on record that the said NIT dated 19.06.2020 was challenged before this Court by one Shri Suman Das by filing WP(C) No. 2796/2020 on the ground of violation of Rule 3, in which this Court vide order dated 26.06.2020 had issued notice and also stayed the operation of the NIT dated 19.06.2020. The Board after due consideration of the matter had cancelled the tender process, including the NIT dated 19.06.2020 and issued a fresh NIT dated 01.07.2020 slating 03.08.2020 as the date of opening of the bids. The tender were duly opened on 03.08.2020 and on preparation of the comparative statement, it was found that the bid of the writ petitioner was not the highest. Thereafter, IA(C) No. 1463/2020 was filed in the present writ petition seeking leave in compliance of the order dated 20.03.2020. This was followed by filing of another writ petition by the said Shri Suman

Das on 15.09.2020 wherein the NIT dated 01.07.2020 was put to challenge with a further prayer not to issue any fresh NIT during the pendency of

WP(C) No.2796/2020. However, the same was dismissed as infructuous. Shri Mahanta submits that the present Market, namely, Kendriya Bazar in

Ward No. 8 of the Board was the principal source of revenue and overwhelming public interest was in support of allowing the Board to go ahead and

finalize the present settlement process. It is submitted that the rate received in the present NIT is much more and the petitioner is still running the

Market at the rate of Rs. 55,00,000/-.

9. Shri G Pegu, learned State Counsel submits that the understanding of the petitioner regarding the notifications dated 28.06.2019 and 29.02.2020 is

apparently fallacious. The learned State Counsel submits that the notification dated 28.06.2019 is a general notification and encompassing the entire

State of Assam and the same being issued even prior to the lease period of the petitioner, it cannot be said that it will not have any application in so far

as consideration of the representation of the petitioner is concerned. The representation for extension though recommended by the Board has to be

examined by the Director from the perspective of the existing laws and therefore, the communication dated 29.02.2020 does not suffer from any

infirmity. It has been vehemently argued that there is no question of the impugned notifications being in derogation of the statutory Rules and rather,

there has been full compliance of the Rules at the time of consideration of the representation of the petitioner. The requirement of previous approval

of the Director of Municipal Administration is the mandate of the Rule and such approval is a matter of discretion which has been judiciously

exercised by the Director by taking into consideration the facts and circumstances, including the existing notification dated 28.06.2019.

10. Shri P Bora, learned counsel has appeared for the applicant Shri Dipul Das, who has filed IA(C) No.1594 / 2020 for impleadment as party

respondent no. 8 in WP(C) 2060 / 2020. It is argued that though the applicant was the third highest bidder, due to the fact that highest bidder did not

submit necessary documents, the applicant becomes the second highest bidder and is a necessary party. He has raised questions on the conduct of the

petitioner. He submitted that in the impugned tender process, the son of the petitioner is himself a tenderer. It is contended that it becomes apparent

that the petitioner took a chance in the process and having failed is continuing with the present writ petition.

11. Replying to the submissions of the respondents, Shri Saikia, learned counsel for the petitioner submits that the process does not appear to be transparent. He further submits that participation by his son in the impugned tender process is not at all relevant inasmuch, as his son is a distinct legal entity having his separate business.

12. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

13. There is no dispute with regard to due completion of the tenure for which the lease was granted, namely, 17.07.2019 to 31.03.2020 and it is not a

case of discontinuation or cancellation of the lease prior to its completion. That being the case, this Court is of the opinion that the writ petitioner

cannot claim that any of its fundamental rights have been violated or the principles of natural justice not being followed. The admitted case is that the

petitioner had submitted a representation for extension of the lease period which requires consideration as per Rule 2 of the Rules. A reading of the

said Rule does not lead to a conclusion that the incumbent is vested with any indefeasible right for extension of the lease. The Rules only lay down

that in case of such representation for extension, the same can be done by the concerned Board with previous approval of the Director of Municipal

Administration. The decision to grant or not to grant is a matter of discretion and what is required to be examined in this case is as to whether such

discretion was exercised with due application of mind. It appears from the impugned communication itself that the rejection of the representation is

based upon a communication dated 28.06.2019 by which it was instructed not to extend any market settlements beyond the lease period and the

markets are to be settled only by tender by following the Rules and procedures. This Court does not find the said decision to be unreasonable, arbitrary

or unfair in any manner and rather, the same appears to be in consonance with the principles governing distribution of State largesse. The second part

of the notification dated 28.06.2019 which is also reflected in the notification dated 29.02.2020, namely, settlement to be done by tender process only,

fully adheres to the legal mandate of maintaining transparency and fairness in

distribution of State largesse. Though it is a settled position that a Writ Court exercising jurisdiction under Article 226 of the Constitution of India is not required to go into the aspect of adequacy of reasons, in the instant case, the reasons cited are not only logical but appear to be adequate. Further, in absence of any pleadings of involvement of mala fide in the decision making process, this Court would not be inclined to intervene in this matter. At the same time, though it has been submitted by the respondents that the present challenge is not maintainable because of the fact that the son of the petitioner had participated in the impugned tender process, it is made clear that the interference is not on that ground.

14. The Honâ??ble Supreme Court in the case of Caretel Infotech Ltd. Vs. Hindustan Petroleum Corporation Ltd., reported in (2019) 14 SCC 81

has laid down that in matters of interpretation, the owner is the best judge and in matters relating to distribution of State largesse, a writ Court

exercising powers under Article 226 of the Constitution of India would be loath in interfering. For ready reference, the relevant paragraphs of the said

judgment are extracted hereinbelow: -

â??37. In Afcons Infrastructure Limited v. Nagpur Metro Rail Corporation Limited & Anr.³, this Court has expounded further on this aspect, while

observing that the decision making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the

decision making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have

reached such a decision. It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative

decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision making process would not

suffice.â??

On the point of interpretation of a particular Clause of the Contract, it has been held as follows:

â??38. Another aspect emphasised is that the author of the document is the best person to understand and appreciate its requirements. In the facts of

the present case, the view, on interpreting the tender documents, of respondent No.1 must prevail. Respondent No.1 itself, appreciative of the wording

of clause 20 and the format, has taken a considered view. Respondent No.3

cannot compel its own interpretation of the contract to be thrust on respondent No.1, or ask the Court to compel respondent No.1 to accept that interpretation. In fact, the Court went on to observe in the aforesaid judgment that it is possible that the author of the tender may give an interpretation that is not acceptable to the Constitutional Court, but that itself would not be a reason for interfering with the interpretation given. We reproduce the observations in this behalf as under:

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

15. Further in the case of Silppi Constructions Contractors Vs. Union of India, reported in 2019 SCC Online 113,3 the Hon'ble Supreme Court has laid down the importance of taking into consideration the aspects of overwhelming public interest in matters relating to distribution of State largesse.

For ready reference, the relevant paragraphs are extracted hereinbelow:

18. Most recently this Court in Caretel Infotech Limited vs. Hindustan Petroleum Corporation Limited and Others¹² observed that a writ petition under Article 226 of the Constitution of India was maintainable only in view of government and public sector enterprises venturing into economic activities. This Court observed that there are various checks and balances to ensure fairness in procedure. It was observed that the window has been opened too wide as every small or big tender is challenged as a matter of routine which results in government and public sectors suffering when unnecessary, close scrutiny of minute details is done.

19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias.

However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their

powers of judicial review in contractual or commercial matters. This Court is normally loath to interfere in contractual matters unless a clearcut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give 'fair play in the joints' to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.

16. This Court had noted that the rate on which the Market in question was settled with the petitioner is Rs.55,00,000/- whereas the valid highest rate

is Rs.79,00,101/-. It is a settled position that in tender matters, the revenue should be given paramount importance and even on this score, the writ

petition does not call for any interference. It may also be mentioned that the bid of the son of the petitioner, Shri Anupal Das is Rs.33,68,000/-.

17. In view of the aforesaid facts and circumstances, this Court is of the view that no case for interference under Article 226 of the Constitution of

India is made out and accordingly, both the writ petitions are dismissed.