
(2016) 03 GAU CK 0047
In the Gauhati High Court
Case No : W.A. No. 27 of 2016

Safiquil Islam (MD).

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Citation : (2016) 3 GauLT 539

Hon'ble Judges : Mr. Ajit Singh and Mr. Manojit Bhuyan, JJ.

Bench : Division Bench

Advocate : Mr. J. Abedin, Advocate, for the Appellant; Mr. B.S. Goyal, Mr. N. Baruah, Mr. K.K. Kalita and Mr. B.D. Goswami, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Manojit Bhuyan, J.—Heard Mr. J. Abedin, learned Counsel for the appellant as well as Ms. B.S. Goyal, learned Counsel representing the State respondents. Also heard Mr. N. Baruah, learned Counsel representing the respondent No. 3 as well as Mr. K. Kalita, learned Counsel representing the respondent No. 7 and Mr. B.D. Goswami, learned Counsel representing the respondent No. 8.

2. The present writ appeal is directed against the common judgment and order dated 18.01.2016 passed in three writ petitions i.e. WP(C) No.4816/2015, WP(C) No. 5771/2015 and WP(C) No. 5096/2015. The present appellant Md. Sofiquil Islam was arrayed as respondent No. 7 in the first writ petition and as respondent No. 5 in the third writ petition.

3. The facts as appearing is that a Notice Inviting Tender dated 10.04.2015 was issued by the Office of Batadrava Anchalik Panchayat inviting applications for different hats, ghats and fisheries for the financial year of 2015-2016. The instant case concerns the settlement process made in respect of Balisatra Bi-Weekly Market. The respondent Nos. 7 & 8, so arrayed in the present appeal, along with one Md. Shiar Uddin, instituted the aforesaid three writ petitions individually challenging the Settlement Order dated 06.08.2015 made in favour

of the appellant Md. Safiqul Islam by the Nagaon Zilla Parishad at an amount of Rs.26,99,767/-. The grounds taken were that each of the writ petitioners had offered higher bids than the appellant and despite the same, their bids had been rejected on grounds other than bona fide by the settlement authority. All the three writ petitions were heard together and the learned Single Judge arrived at the finding that the settlement with the appellant had not been made in bona fide exercise of power. Interference was made with the Settlement Order dated 06.08.2015 with direction to the Standing Committee of Nagaon Zilla Parishad to treat the tenders of the three writ petitioners as valid tenders and consequently to pass a fresh settlement order in respect of the Balisatra Bi-Weekly Market by taking into account the higher bids of the writ petitioners. The required exercise was directed to be completed expeditiously and preferably by 01.02.2016.

4. While rendering the common judgment dated 18.01.2016, the learned Single Judge noticed that the Respondent No. 7 i.e. Sonti Kalita [Writ Petitioner in WP(C) No. 4816/2015] had offered a bid of Rs.50,53,551/- but the said bid was rejected on ground that Sonti Kalita had used corrective fluid to make correction in his tender document. On this aspect and after scrutiny of the tender of Sonti Kalita, the learned Single Judge found that there was no over writing/ correction in the tender document through application of correction fluid. In respect of Md. Iman Ali [Writ Petitioner in WP(C) No. 5771/2015], his bid was rejected on grounds of having quoted the bid amount differently in words and in numbers. The learned Single Judge found that the non-mentioning of 33 paise in words in the tender document of Md. Iman Ali could not have been considered as fatal. As regards Shiar Uddin [Writ Petitioner in WP(C) No. 5096/2015], whose bid was rejected on ground that the name of the tenderer was not indicated in the supporting affidavit filed by the Guarantor, the learned Single Judge held that the settling authority could have secured clarification as regards the Guarantor's affidavit instead of rejecting the higher bid at the very threshold. The additional grounds pleaded by the appellant before the learned Single Judge pointing out the other grounds of rejection of the bids of the writ petitioners did not find acceptance as the learned Single Judge held that the same were not the basis on which the bids of the higher tenderers had been rejected by the settling authority. This view was recorded on the basis of the Comparative Statement brought on-record. On the aforesaid findings, the case laid out by the writ petitioners was found to be adequate for making interference with the Settlement Order dated 06.08.2015. Consequently, the settlement order was set aside and quashed with direction to the Standing Committee of Nagaon Zilla Parishad to undertake the fresh exercise, as indicated above.

5. Mr. J. Abedin, learned Counsel for the appellant submits that in so far as Sonti Kalita is concerned, the rejection of his bid was not only on account of using corrective fluid to make correction in the tender document but also on grounds of not fulfilling the terms and conditions of the Notice Inviting Tender, in that, Sonti Kalita did not submit the Tax Clearance Certificates from the concerned Zilla Parishad, Anchalik Panchayat and Gaon Panchayat along with his bid application,

which is a requirement under Clause-14 of the Tender Conditions. Also the Guarantor of Sonti Kalita did submit the Tax Clearance Certificates from the Anchalik Panchayat and neither submitted the Non Encumbrance Certificate, Land Valuation Certificate and the Affidavit of the Guarantor. According to Mr. Abedin, the grounds of rejection of the tender of Sonti Kalita was not considered by the learned Single Judge in its entirety, thereby rendering the findings and the decision of the learned Single Judge as non-est in law. According to Mr. Abedin, the said grounds of rejection of the tender of Sonti Kalita were clearly mentioned in the Comparative Statement, which, however, was not considered by the learned Single Judge.

6. In so far as the tenders of the other two writ petitioners are concerned i.e. Md. Iman Ali and Shiar Uddin, Mr. Abedin fairly submits that the grounds of rejection of the bids were taken into consideration by the learned Single Judge in proper perspective and the said grounds were indicated in the Comparative Statement of the bidders.

7. Mr. K. Kalita, learned Counsel representing the Respondent No. 7 i.e. Sonti Kalita, submits that, in fact, the documents as referred to in the Comparative Statement had been duly submitted along with the bid application but same had been removed only to give advantage of settlement to the appellant. The alleged removal of the primary documents makes out a serious issue. Unfortunately, the said submission does find support from any of the pleadings made in the writ petition. Accordingly, the statement made by Mr. K. Kalita cannot be taken at its face value in the absence of any pleadings made in this regard.

8. Mr. B.D. Goswami, learned Counsel representing the Respondent No. 8, submits that the rejection of the bid of Md. Iman Ali for non-mentioning of 33 paise in words in the tender document could not have been construed to be an error warranting rejection of his bid which was higher than the bid of the appellant i.e. Md. Safiqul Islam.

9. We have heard the rival submissions made by the respective parties. At the outset we express our agreement with the findings and the decisions of learned Single Judge in respect of Md. Iman Ali and Shiar Uddin to the extent that the rejection of their bids on the grounds indicated are invalid grounds, which could not have been relied upon for rejecting their higher bids. In so far as the bid of Sonti Kalita is concerned, we regret to subscribe to the views of the learned Single Judge, inasmuch as, the available materials and more particularly the Comparative Statement itself discloses that the bid of Sonti Kalita was rejected not merely on account of using corrective fluid to make correction in the tender document but also on account of failure to comply with the terms and conditions of the tender. Apparently, the grounds of rejection of bid of Sonti Kalita were not considered by the learned Single Judge in its entirety. The express conditions of the Notice Inviting Tender having been violated in the estimation of the General Standing Committee of Nagaon Zilla Parishad, the tender of Sonti Kalita does not require to be considered afresh by the Standing Committee as per direction

made in the judgment under appeal.

10. For all the aforesaid reasons, this appeal stands disposed of by modifying the judgment and order dated 18.01.2016 of the learned Single Judge to the extent that the Standing Committee of the Nagaon Zilla Parishad while undertaking the process for issuing a fresh settlement order shall take into account the tenders submitted by Md. Iman Ali and Shiar Uddin considering the same to be valid. The tender of Sonti Kalita would not require fresh consideration by the Standing Committee as he was not a valid tenderer. The order of the learned Single Judge setting aside the Settlement Order dated 06.08.2015 stands undisturbed and the direction to the Standing Committee of Nagaon Zilla Parishad to complete the exercise for making a fresh settlement order is extended to 15.04.2016. In the meantime, the Nagaon Zilla Parishad shall make arrangement to operate the Balisatra Bi-Weekly Market through its men and resources and such arrangement shall not continue beyond 15.04.2016, by which time the Standing Committee shall invariably complete the exercise as indicated above.

11. In view of the above, the present writ appeal stands disposed of. No costs.