
(2012) 03 GAU CK 0114
In the Gauhati High Court
Case No : Writ Petition (C) No. 5140 of 2011

Shri Khagen Panging

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Assam Panchayat Act, 1994 — Section 105, 105(1), 106, 106(1), 109

Citation : (2012) 3 GLD 111 : (2013) 2 GLT 753

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : S. Banik, Ms. B. Sarma, Mr. U. Dutta, Mr. P. Deka, Mr. H. Rahman, Mr. B.P. Sinha, Mr. J. Deka, Ms. T. Som, Mr. H. Das and Ms. B. Bhuyan, for the Appellant; H. Rahman, G.N. Sahewalla, P. Bora, Md. Aslam and Mr. D. Senapati, for the Respondent

Judgement

A.K. Goswami, J.—Heard Ms. D. Sinha, Ms. B. Sarma, Mr. U. Dutta and Mr. J. Deka, learned counsel for the petitioners. Also heard Mr. Md. Aslam, learned counsel appearing for the settlement holder and Mr. H. Rahman, learned State counsel for the State respondents as well as for the Chief Executive Officer, Lakhimpur Zilla Parishad. None appears for the President, Lakhimpur Zilla Parishad. As all the writ petitions raise common questions of law and facts, as agreed to by the learned counsel for the parties, the writ petitions have been heard together and are disposed of by this common judgment.

2. In all these writ petitions, the writ petitioners have prayed for setting aside and quashing the order of settlement dated 28/6/2011 issued in favour of Mr. Anjan Taye, settling Tekiliphuta Desangmukh Ferry Ghat, for short, Ferry Ghat issued by the Chief Executive Officer, Lakhimpur Zilla Parishad, for the period 1/7/2011 to 30/6/2012 at Rs. 6,78,600.00. In W.P. (C) 3849/11 and W.P. (C) 5140/11, prayer has also been made for a writ of mandamus directing the respondent authorities to grant settlement of the Ferry Ghat to the respective petitioners.

3. All the writ petitioners had submitted tenders in response to the Notice Inviting Tender, for short, NIT, dated 19/5/2011 for settlement of, amongst others, the settlement of Tekiliphuta Desangmukh Ferry Ghat, issued by the Chief Executive Officer, Lakhimpur Zilla Parishad for the year 2011-2012. The petitioner in W.P. (C) 3849/11 submitted a bid of Rs. 8,79,500.00; petitioner in W.P. (C) 4611/11 had submitted a bid of Rs. 11,09,999.00; petitioner in W.P. (C) 3654/11 submitted a bid of Rs. 7,95,551.00 and the petitioner in W.P. (C) 5140/11 submitted a bid of Rs. 13,79,700.00. Settlement was offered to Anjan Taye at Rs. 6,78,600.00. All the writ petitioners claim that they had submitted their respective valid tenders.

4. In W.P. (C) 3849/11, W.P. (C) 5140/11 and W.P. (C) 3654/11, affidavit-in-opposition had been filed by the Chief Executive Officer, Lakhimpur Zilla Parishad. In the affidavits, the settlement offered is sought to be justified by stating that the General Standing Committee, Lakhimpur Zilla Parishad, by taking into consideration historical background and condition of the road leading to Ferry Ghat, decided to settle the Ferry Ghat at the rate of Rs. 6,78,000.00, offered by Mr. Anjan Taye. It is also stated that settlement of the Ferry Ghat at higher rate would burden the passengers as fare may be raised by the lessee.

5. The learned counsel for the petitioners submit that, admittedly, the settlement holder is not the highest tenderer. It has been canvassed before this Court that if any settlement is offered to a tenderer who is not the highest tenderer, under the provision of Rule 47 (10) of the Assam Panchayat (Financial) Rules, 2002, for short, the Rules, prior and formal approval of the State Government must be obtained. In this connection, decisions rendered by this Court in the case of Nagaon Zilla Parishad and Others Vs. Rezia Begum and Others, , Abdul Jalil and Others Vs. State of Assam and Others, as well as in the case of Apurba Das Vs. State of Assam and Others, , have been placed for consideration of the Court.

6. Mr. Md. Islam, learned counsel for the settlement holder, by referring to the reasoning of the General Standing Committee in the comparative statement, submits that the Committee decided to settle the Ferry Ghat in favour of the settlement holder on the ground that there was a possibility of collection of higher tolls/taxes from the public in case the settlement was offered to a higher bidder than the settlement holder.

7. Mr. H. Rahman, learned State counsel, has produced relevant records. He submits that no formal and prior approval was obtained before settling the Ferry Ghat to the lower bidder even though there were higher valid tenderers. No approval was taken subsequent to passing of the settlement order also. Mr. Rahman has also submitted that subsequent to the order, dated 22/7/2011, passed by this Court in W.P. (C) No. 3654/11, staying the order dated 28/6/2011 granting settlement of the Ferry Ghat that if no approval was taken as required under Rules 47 (10) of the Rules, the Ferry Ghat has not been run by anybody and the passengers are availing ferry service from a nearby Ghat.

8. The NIT indicates that minimum yearly revenue in respect of the Ferry Ghat in question, has been fixed at Rs. 3,48,000.00. In response to the NIT dated 19/5/2011, 17 tenderers had submitted tenders. There were valid bids higher than the bid of the writ petitioners. The General Standing Committee of the Lakhimpur Zilla Parishad made the following observation in the comparative statement:-

The Committee examined the historic background in respect of the settlement of this Ferry Ghat and the rates offered at various levels and realization of kist money in the light of settlement orders given by the Zilla Parishad from time to time. Also, the Committee discussed about the probability of the road connection from Dhakuakana to Tekeliphuta to reach Tekeliphuta Ghat being hampered by perennial floods of the mighty Brahmaputra. It has been a great concern of the Zilla Parishad that no public of Lakhimpur and Sibsagar Districts, moving to and fro should be affected by means of imposing tax in the name of Ferry fare by way of settlement of the Ghat at higher rates. Considering these points in view the Committee decided to settle the Ferry Ghat at the rate offered at Rs. 6,78,600.00 (Six lakhs seventy eight thousand six hundred) only offered by Anjan Taye who had already run the Ferry Ghat from the financial year 2007- 08 and 2009-2010 by depositing the requisite amount of kist money to the Govt.

9. In *Rezia Begum (supra)*, this Court had held that the highest bidder is entitled to settlement in his favour unless a different decision is taken by the Panchayat authority with prior and formal approval of the Government. In *Rezia Begum (supra)*, in absence of prior and formal approval of the State Government, acceptance of the bid in favour of the settlement holder by the Zilla Parishad and the settlement offered was held to be illegal and was set aside.

10. In *Abdul Jalil (supra)*, this Court laid down that settlement to the highest bidder is the rule and refusal is an exception.

11. In *Apurba Das (supra)*, this Court held that Rule 47 (10) of the Rules mandates that the tender of the highest bidder shall be accepted and acceptance of tender other than the highest bid requires prior and formal approval of the Government. The settlement having been given to a lower tenderer without prior and formal approval, the order of settlement was set aside and the Panchayat authority was directed to settle the market in question in favour of the writ petitioner for the remaining period of settlement.

12. In the instant case, prior and formal approval of the Government has not been obtained.

13. In view of the above, the settlement order dated 28/6/2011 passed by the Chief Executive Officer, Lakhimpur Zilla Parishad, cannot be sustained and therefore, the same is set aside and quashed.

14. There is another aspect of the matter. As per the NTT, the settlement period is up to 30/6/2012.

15. Section 109(6) of the Assam Panchayat Act, 1994, for short, the Act, provides that 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 Rs. 1 lakh, shall be settled by 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.

16. In Harez Ali and Another etc. Vs. State of Assam and Others etc., , the Full Bench of this Court examined two questions :

(i) whether yearly sale value would mean the minimum value fixed by the Panchayat while offering the property for settlement or it is the highest value offered by the eligible highest bidder and

(ii) whether Zilla Parishad is empowered to invite tenders in respect of Hats, Ferries, Fisheries having yearly sale value of more than Rs. 1 lakh.

17. The Court, after considering the provisions of the Act, held that yearly sale value of all Ghats, Hats and Fisheries under the Anchalik Panchayat put in tender for settlement would mean the highest bid amount offered by the eligible bidder. The Full Bench on consideration of Section 105(1), 106(1) and 109(1) of the Act, held that it is the President of the Anchalik Panchayat, who has been entrusted by legislature to invite tenders for settlement of all Hats, Ferries and Fisheries falling under the Anchalik Panchayat in the manner prescribed and that Section 109(6) of the Act only empowers the Zilla Parishad to examine and finally accept such tenders, if the yearly sale value is more than Rs. 1 lakh.

18. In Harez Ali (supra), this Court further laid down as follows :

Provisions of Sections 105(1), 106(1) and 109(1) of the Act, in respect of inviting tenders of property under the control of Anchalik Panchayat, make it clear and specific that irrespective of price-tag or bid value fixed by the authority concerned in respect of the Hats, Ferries and Fisheries, the NIT is issued by the President of the Anchalik Panchayat. After having floated the tenders, if the bid value of the eligible highest bidder is less than Rs. 1 lakh, the Standing Committee of Anchalik Panchayat will examine and accept the tenders of the highest bidder and forward it to the Zilla Parishad, for confirmation in terms of the sub-sections (4) of Section 105 sub-sections (4)106 sub-sections (4) of Section 109, as the case may be. It may be clarified that irrespective of yearly sale value being less than rupees one lakh, it is mandatory on the Anchalik Panchayats to forward all such tender papers, comparative chart and other related papers to the Zilla Parishad, for confirmation of settlement made by Anchalik Panchayat. It may be pointed out that any settlement made in respect of Hats, Ferries and Fisheries without such confirmation by the Zilla Parishad, will not be a legally valid settlement.

19. Admittedly, the NIT was issued by the Chief Executive Officer of the Lakhimpur Zilla Parishad. In view of the judgment rendered in Harez AH (supra),

the NTT calling for tenders in respect Tekiliphuta Desangmukh Ferry Ghat is without any authority of law. If that be so, no directions can be given by this Court to consider the tenders received for the purpose of settlement pursuant to the said NIT. Barely 3 months remain for the end of present Panchayat Financial Year. Rule 47(2) of the Rules requires that tender notice shall be floated at least 45 days before the last date of Panchayat Financial Year. It has also been brought to the notice of this Court that the Ferry Ghat in question has not been operated after the interim order was passed. Taking into consideration all these facts, this Court is of the considered opinion that the position as is obtaining today with regard to the Ferry Ghat in question shall be maintained up to 30/6/2012.

20. For next Panchayat Financial Year, the Ferry Ghat shall be settled by issuing a Notice Inviting Tender in accordance with the provisions of the Act and the Rules and by following the law as laid down by this Court. The writ petitions are disposed of as indicated above.