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**(2001) 04 GAU CK 0036**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 2115 of 2001**

Sidhartha Kalita and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 12-04-2001

**Acts Referred:**

Assam Financial Rules — Rule 254

**Citation :** AIR 2002 Guw 27 : (2001) 2 GLT 607

**Hon'ble Judges :** J.N. Sharma, J

**Bench :** Single Bench

**Advocate :** K.N. Choudhury, N. Saikia and R. Goswami, for the Appellant; G.A. Assam, A.K. Phookan and J. Roy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

J.N. Sarma, J.—This is a fight between the petitioners and the respondent Nos. 4, 5 and 6 with regard to allotment of some road repairing works. The brief factual matrix is as follows: Some money was sanctioned by the Central Government i.e. Ministry of Surface Transport, Union of India for improvement of road. The Administrative approval for improvement of Kamalpur-Morrowa road was accorded by the authority vide letter dated 9.2.2001 and accordingly the Chief Engineer, PWD directed the Executive Engineer, PWD. Rangia Road Division to invite tenders for allotment of works. Thereafter tender notice was issued on 15.2.2001 and the copy of this tender notice was sent to the Director of Information and Public Relation, Assam for arranging publication in two regional Newspaper (one in English and other in Assamese) on or before 8.3.2001 and there was a further request that the bill may be sent to the Executive Engineer for payment. Copy of the tender notice was also sent to the Chief Engineer, PWD, Roads, Assam, Chandmari for information. It was also sent to the Superintending Engineer, PWD, Nalbari Road Circle. A copy of the tender notice was also placed in the Notice Board on the date of issue i.e. on 15.2.2001. In terms of the request made by the Executive Engineer for publication of the tender notice, the

Director of information and Public Relation did not arrange for publication of the notice in the two regional Newspaper one in English and other in Assamese, but it was published only in one issue of News Front on 4.3.2001. Thereafter tenders were received and a comparative statement was prepared by the Executive Engineer and along with the comparative statement the tenders received were sent to the Chief Engineer and work was allotted to five persons i.e. respondent Nos. 4, 5 and 6 and other two persons who are not made parties in this writ application. The work was divided amongst five persons groupwise. Thereafter work orders were issued in favour of these five persons and 30% of the work by now is claimed to be completed.

2. This Writ application was filed on 26.3.2001 and was moved on 29.3.2001. No interim order was passed. As against the refusal to pass any interim order a Writ appeal was filed being Writ Appeal No. 109/2001 and the Writ appeal was dismissed with the observation that the learned Single Judge is requested to finally dispose of the writ petition in the week commencing 9th April, 2001. Though I was not inclined to take up the matter as it is a case of 2001 and it is a fight between two private parties, yet, at the request of the learned counsel for the parties I decided to take up the matter. I have heard Mr. K.N. Choudhury, learned Advocate (or the petitioners, Mr. A.K. Phookan, learned Advocate for the respondents No. 4, 5 and 6 and Mr. TC Chutia, for the respondents No. 1, 2 and 3. Mr. Chutia has produced before me the photocopies of the record and they are placed in the case file.

3. Mr. K.M. Choudhury, learned Advocate for the petitioners makes the following submissions. (1) that there was no due publication of the notice inviting tenders and it was not placed in the Notice board or in Newspaper as required under Rule 254 of the Assam Financial Rules and as such, the allotment of the work is illegal. (2) that the Executive Engineer, PWD, Rangia Road Division allotted the work arbitrarily without following any procedure. This contention requires no discussion inasmuch as from the record it is found that the Executive Engineer did not allot the work. The work was allotted by the Chief Engineer and that is within his power and competency. The 3rd submission of Mr. Choudhury is that the Executive Engineer had no jurisdiction to invite or accept tenders beyond Rs.2 lakhs. As I have indicated above, this is also factually incorrect inasmuch as tender was invited by the Executive Engineer and it was accepted by the Chief Engineer and he invited tender only as instructed/authorised by the Chief Engineer as is seen from the record of the case. He did not invite tender on his own behalf. The 4th submission of Mr. Choudhury is that the whole action of the authority is arbitrary and as such the same are liable to be quashed.

4. On the other hand, it is contended on behalf of the State of Assam that non-publication of the tender notice in daily vernacular is not so fatal and is not sufficient to quash the whole tender process and allotment of work Order (2) that the quashing of work order shall not serve any public interest, rather, it will cause a huge loss to the State exchequer and that aspect of the matter also

must be kept in mind.

5. On the other hand, Mr. A.K. Phookan, learned Advocate for the respondents No.4, 5 and 6 contends as follows:-

(1) that the notice inviting tender was placed on the Notice Board on the date of the issue i.e. on 15.2.2001. (2) that tender notice was published in the Newspaper on 4.3.2001 as will be evident from Annexure-B in the affidavit-in-opposition. (3) failure to publish notice in the Vernacular daily is not fatal and it is not the requirement of law/rules, (4) that it is not a case where there was no publicity. Due publicity was there and it is because of that a large number of tenders were submitted and ultimately the work was divided amongst five contractors and out of it two have not been made parties and no relief can be granted in the absence of necessary parties.

6. The Chief Engineer, PWD (Roads), Assam, Guwahati issued preliminary work order on 19.3.2001 as will be evident from Annexures-C, D and E to the affidavit-in-opposition. On 23.3.2001 Security money was deposited by five allotted tenderers and formal tender documents were signed. On 26.3.2001 the Chief Engineer issued formal work order vide Annexures-I, J and K. The work is to be completed within a period of sixty days from the date of issue of formal work order and till today 30% of the work has been completed.

7. Necessary parties i.e. other two Contractors are not before this Court and this Court cannot quash the order in the absence of necessary parties. There is no arbitrariness and/or highhandedness in the whole process. The whole process is quite transparent. There is no need to interfere with the tender process by this Court.

8. On this background we must now decide the case. Before we go further, let us quote Rule 254 of the Assam Financial Rules.

"254. Sealed tenders should invariably be invited in the most open and public manner possible, by advertisement in the Government Gazette or the Press, or by public notice in English and the vernacular; tenders should have free access to the contract documents. The notice should state-

(1) the place where, the time when, the contract documents can be seen, and blank forms of tender obtained;

(2) the place where, and the time and date on which, tenders are to be submitted and are to be opened;

(3) the amount of earnest money to accompany the tenders and the amount and nature of the security deposit required in the case of the accepted tender. The earnest money required should either be forwarded with the tender in currency notes or deposited in the treasury, the duplicate copy of the challan being attached to the tender; cheques on banks should not be accepted for this purposes; (National Savings Certificates standing in the name of the tenderer

and duly endorsed in favour of competent authority for acceptance of tender may also be accepted as earnest money);

(4) with whom, or with what authority the acceptance of the tender will rest.

Mr. K.N. Choudhury places reliance on Rule 254. A bare reading of Rule 254 which is quoted above will show that there is no mandate that the tender notice should be published in the Newspapers. All the methods/manners are disjunctive in nature, the only necessity is that it should have due publicity. But Mr. Phookan submits that similar provision is there in the PWD Manual. In the PWD Manual it is Rule 285 and it provides as follows:

"285. Sealed tenders should invariably be invited in the most open manner possible, by advertisement in the Government Gazette or the Press, or by public notice in English and the Vernacular" tenderers should have free access to the contract documents. The notice should state-

(1) the place where, and the time when, the contract documents can be seen, and blank forms of tender obtained.

(2) the place where, and the time and date on which, tenders are to be submitted and are to be opened.

(3) the amount of earnest money to accompany the tenders and the amount and nature of the security deposit required in the case of the accepted tender. The earnest money required should either be forwarded with the tender in currency notes or deposited in the treasury, the duplicate copy of the challan being attached to the tender; cheques on Banks should not be accepted for this purpose.

(4) With whom, or with what authority, the acceptance of the tender will rest.

Rules 254 and 285 are verbatim same. There is no mandate that tender notice should be published by way of advertisement in the Press. That is only one mode. All these modes are disjunctive in nature. What is requirement is that there should be a notice of issuing of the tender notice in a fashion or manner or method which will bring it to the notice of the public and that is the requirement of Rule 285 of PWD Manual and Rule 254 of the Assam Financial Rules. It should be published and nothing should be done below the table. It cannot be urged that always it should be by way of publication in newspaper. The contention that as the tender notice was not published by way of advertisement in the Press it is fatal and this contention must fall through. Publicity is the requirement of Rules 254 and 285 of the PWD Manual, and it prohibits the authority from making any allotment of work in a hush hush manner. This is for the purpose to maintain transparency and fairness in dealing with the public. In that view of the matter, the submission of Mr. Choudhury that as there was no compliance with Rule 254 of the Assam Financial Rules and Rule 285 of PWD Manual as quoted above, it shall fall through cannot be accepted because, 1 find that it was published in Newspaper and it was also placed in the Notice Board as found from the record,

there was due publicity which is the requirement/ touchstone/yardstick. Publication in Newspaper is one mode and that was done in the case in hand. Otherwise also it was published as required.

9. Mr. Choudhury, learned Advocate for the petitioners places reliance on the following decisions.

(i) AIR 1979 SC 1628 (Ramana Dayaram Shtty, v. The International Airport Authority of India or Ors). He relies on para 12. The Supreme Court has pointed out as follows:

(a) The Government, is not and should not be as free as an individual is selecting the recipients for its largess. Whatever its activity, the Government is till the Government and will be subject to restraints, inherent in its position in a democratic society.

(b) The activities of the Government have a public element and, therefore, there should be fairness and equality.

As I have indicated above in the facts, it cannot be said that there was no fairness in this dealing and accordingly this case is of no help to the petitioners.

(ii) Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, That is a case of back listing of a firm and the learned counsel relies on paras 14 and 17. In this case the Supreme Court pointed out that as and when two persons submit tenders they should get equal treatment at the hand of the authority. The Government cannot take up somebody as blue eyed boy because, if that is allowed that will violated the principle of equality and will be violative of Article 14 of the Constitution of India. That is not the position in the case in hand. The petitioners herein did not submit tenders and when everything was completed, they come forward to cancel the action of the authority by filing this writ application. Accordingly this case also is of no help to the petitioners.

(iii) Ram and Shyam Company Vs. State of Haryana and Others,

He relies on para 18 where the Supreme Court pointed out as follows:

"that in the distribution of State property it must be for public interest, must be by such merthod as would grant an opportunity to the public at large to participate in it, the state reserving to itself the right to dispose it of as best subserve the public weal."

This case is of no help to the petitioners inasmuch as it cannot be said that the method which was adopted by the authority is shocking to the conscience or is arbitrary or unheard.

10. On the other hand, Sri Phookan, learned counsel for the respondents No. 3, 4 and 5 places reliance on the following decisions:

(1) Netai Bag and Others Vs. The State of West Bengal and Others, where the Supreme Court pointed out that it cannot be laid down as general rule that mere

violation of some statutory provisions by itself cannot spell certain things whereby that would render such action to the arbitrary in all cases. Violation of rule in certain cases may be so tangential or so insignificant that would not lead to arbitrariness and in such a situation the writ court should not touch the matter, more so in the field of contract as merely it is a dispute between two private parties. It does not serve any public interest save and except in certain cases where it is found that the State is distributing its property without adhering to any norms or any method. The Supreme Court further pointed out that in touching such a matter the court must find out whether impugned action is against public interest or was actuated by extraneous consideration or opposed to fair play or conferred undue benefit upon an undeserving party. No doubt, the Supreme Court pointed out that if the court comes to the finding that there is mala fide or arbitrary exercise of power the court can quash such an action. That is not the situation in the case in hand. As indicated above this contract work is to be completed within a period of two months. Rainy season is coming and quashing the impugned order, instead of serving public interest it will cause prejudice to public interest.

(ii) M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others, Where the Supreme Court pointed out that the Court should not interfere with the matter of administrative action or changes made therein unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

(iii) Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, Where the Supreme Court pointed out that Article 14 of the Constitution of India cannot and has not been construed as a charter of judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in Its manifold activities by stating reasons for such actions. The Supreme Court further pointed out that the court can look to the matter by way of judicial review only with regard to the following things;

(iv) the manner, the method and motive of a decision of entering or not entering into a contract, (ii) that aspect of the matter must be decided on the touchstone of relevance and reasonableness fair play, natural justice, equality and non-discrimination In the type of the transactions and nature of the dealing.

That is what I do not find in the instant case. As detailed above in stating the facts, the notice was placed in the Notice Board inviting tender and it was published in the Newspaper. In terms of the notice a large number of persons submitted tenders. Five persons were selected and works were allotted to them by the competent authority and already 30% of the work is claimed to be completed. I find no arbitrariness in the matter. Due process of law was followed.

11. Accordingly, I do not find any merit in this writ application and the same shall stand dismissed. I also dismiss this writ application on the ground of absence of necessary parties. Two other persons to whom contract works have been allotted

are not before this Court, quashing the order will cause prejudice to them. No costs.