(2017) 02 GAU CK 0050

In the Gauhati High Court

Case No : 5572, 5575, 5599, 5707 and 6236 of 2016

Sri Achintya Das and others APPELLANT

Vs

The State of Assam RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Constitution of India, Article 12 - Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam
<a href=867>Assam Munic

Citation : (2017) 02 GAU CK 0050

Hon'ble Judges : Arup Kumar Goswami

Bench : SINGLE BENCH

Advocate : N. Deka, T. C. Chutia, Y. Doloi, D. Nath, H. K. Sarma, G. Alam, B. K. Das, R. Sarma, S. J. Abdullah

Judgement

1. Heard Mr. N. Deka, learned counsel for the petitioner in WP(C) 5572/2016, WP(C) 5575/2016 and WP(C) 5599/2016, Mr. B. K. Das, learned counsel for the petitioner in WP(C) 5707/2016 and Mr. R. Sarma, learned counsel for the petitioner in 6236/2016. Also heard Mr. Y. Doloi, learned Additional Advocate General, Assam, appearing for the Jorhat Municipal Board, for respondent Nos. 3 and 4 in WP(C) 5572/2016, WP(C) 5575/2016, WP(C) 5599/2016 and WP(C) 6236/2016, and for respondent Nos. 4 and 5 in WP(C) 5707/2016, Mr. T. C. Chutia, learned State counsel, appearing for respondent Nos. 1 and 2 in WP(C) 5572/2016, WP(C) 5575/2016, WP(C) 5599/2016 and WP(C) 6236/2016, and for respondent Nos. 1, 2 and 3 in WP(C) 5707/2016, as well as Mr. D. Nath, learned counsel for respondent No. 5 in WP(C) 5572/2016, Mr. H. K. Sarma, learned counsel for respondent No. 5 and for respondent No. 6 in WP(C) 5575/2016 and WP(C) 5707/2016, respectively, Mr. G. Alam, learned counsel for respondent No. 5 in WP(C) 5599/2016 as well as Mr. S. J. Abdullah, learned counsel for respondent No. 5 in WP(C) 6236/2016.

2. The Jorhat Municipal Board (for short, ''the Board'') issued a Notice Inviting

Tender (NIT) dated 30.05.2016 for settlement of various markets/parking stands falling within the Jorhat Municipality area. Pursuant to the said NIT, the petitioner in WP(C) 5707/2016 had submitted his tender in respect of B.B. Hall Market, Jorhat, offering his bid at Rs. 8,65,200.00 and the respondent No. 6 in the said writ petition had offered his bid at Rs. 6,75,937.00. While the petitioner was the highest valid tenderer, the respondent No. 6, in the ranking, had emerged as the fourth highest tenderer. However, by order dated 31.08.2016, the settlement was offered to the respondent No. 6 at his bid value of Rs. 6,75,937.00.

3. The petitioner in WP(C) 5599/2016 had submitted his tender for truck stand offering his bid at Rs. 13,75,312.50. The respondent No. 5 therein had submitted his tender offering his bid at Rs. 7,34,844.00 Apart from the petitioner, there are two other valid tenderers who had quoted Rs. 6,84,600.00 and Rs. 6,73,130.00, respectively. The petitioner was the highest valid tenderer. However, by order dated 31.08.2016, the settlement was given in favour of respondent No. 5 at his offered bid value.

4. The petitioner in WP(C) 5575/2016 had submitted his tender in respect of Tarajan Bazar, Jorhat, offering his bid at Rs. 2,70,000.00 and the respondent No. 5 therein had offered his bid at Rs. 1,03,491.37. The petitioner emerged as the highest valid tenderer. However, by order dated 31.08.2016, the said market was settled in favour of respondent No. 5.

5. The petitioner in WP(C) 5572/2016 had submitted his bid in respect of Public Bus Stand at Rs. 7,32,375.00 and the respondent No. 5 in the writ petition had offered his bid at Rs. 2,51,000.00. While the petitioner was the highest valid tenderer, the respondent No. 5 emerged as the sixth highest tenderer. However, by order dated 31.08.2016, the Public Bus Stand was settled with the respondent No. 5.

6. The petitioner in WP(C) 6236/2016 had submitted tender in respect of Cycle Stand No. 1 in front of Chowk Bazar, Jorhat, offering his bid at Rs. 78,600.00. The respondent No. 5 had submitted his tender for Rs. 48,750.00. The petitioner emerged as the highest valid tenderer while the respondent No. 5 was the second highest tenderer. However, by order dated 31.08.2016, the Cycle Stand was settled with the respondent No. 5.

7. Except in WP(C) 6236/2016, in the other writ petitions the settlement orders were stayed by the Court giving liberty to the Board to run the Tarajan Bazar, Public Bus Stand, Truck stand, and B.B. Hall Market by the Board without engaging any third party.

8. In WP(C) 5599/2016, WP(C) 5575/2016, WP(C) 5572/2016 and WP(C) 6236/2016, affidavit is filed by the Board. In the affidavit filed in WP(C) 5599/2016, it is stated that the bid of the petitioner was 125% above the estimated tender value. In the affidavit filed in WP(C) 6236/2016, it is stated that the bid of the petitioner was 101.5% above the estimated tender value. Likewise, in the affidavit filed in WP(C) 5572/2016, it is stated by the Board that

the bid of the petitioner was 250% above the estimated tender value and, in the affidavit filed in WP(C) 5575/2016, it is stated that the bid of the petitioner was 140% above the estimated tender value. In response to the allegations made by the petitioners that while the Board had rejected the bids of the petitioners on the ground of the bids being exorbitantly above the estimated value, it had settled the Natun Bazar at a bid value which is 777% above the estimated value, it is stated in the affidavit(s) that the Board had run the Natun Bazar by itself and from such experience, the Board was of the opinion that tolls can be collected above 777% of the estimated tender value and, therefore, the said market was settled with such tenderer.

9. Mr. N. Deka, learned counsel appearing for the petitioner in WP(C) 5572/2016, WP(C) 5575/2016 and WP(C) 5599/2016 has submitted that in the NIT, no viability range was prescribed and, therefore, the grant of settlement to lower bidders treating the tender amount of the petitioners to be exorbitant is not tenable in law. It is submitted by him that the plea raised that the rate quoted by the petitioners is excessive is a mere ruse only to defeat the claim of the petitioners and to defend the grant of settlement to the undeserving lower bidders. It is submitted by him that the Board has, ex facie, resorted to pick and choose policy while granting settlement. It is also submitted that the plea taken by the Board justifying the settlement of Natun Bazar at 777% above the estimated rate goes to show the hollowness of the stand of the Board that the bids of the petitioners are exorbitant. It is further submitted by him that the NIT indicated that the tender was invited for the period up to 31.03.2017, i.e., for a period of nine months and, therefore, in the event of the writ petitions being allowed, the petitioners would be entitled to run the markets/stands, etc. for a period of nine months from the date of settlement and not for the period up to 31.03.2017. In support of his submission, he has also relied on the decision of the Supreme Court rendered in the cases of (i) Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd. and Others reported in (1997) 1 SCC 53, (ii) Jespari Slong v. State of Meghalaya and Others, reported in 2004 (3) GLT (SC) 12 and (iii) Harminder Singh Arora v. Union of India and Others, reported in (1986) 3 SCC 247.

10. The submissions made by Mr. Deka is adopted by Mr. B. K. Das, learned counsel, and Mr. R. Sarma, learned counsel for the petitioner in WP(C) 5707/2016 and WP(C) 6236/2016, respectively.

11. Mr. Doloi has submitted that in view of the interim orders passed by the Court, except in WP(C) 6236/2016, the markets, stands etc., are being run by the Board without engaging any third party. He has also submitted that pursuant to the resolution taken by the Board on 18.01.2017, tenders will be issued on 01.02.2017 for the year commencing from 01.04.2017. It is contended by him that the submission advanced by Mr. Deka that the tender having been issued for a period of nine months, the petitioners should be allowed to run the markets/ stands, etc. for nine months is not tenable in law as the tender had been issued

for the period from 01.07.2016 to 31.03.2017. Accordingly, it is submitted by him that even if the Court holds that the orders of settlement issued in respect of the markets, stands, etc., involved in these writ petitions are not sustainable in law, then also the Court may not issue any direction for settlement of such markets, stands, etc., at this stage, for a period till 31.03.2017 as no useful purpose will be served by passing such order. On merits, Mr. Doloi has submitted that as the Board had run the Natun Bazar by itself, the Board realized the potential of collection of toll from the said market and, therefore, found the rate 777% above the estimated rate to be not exorbitant and, accordingly, decided to settle the said market as an exceptional case and the said parameter cannot be applied in respect of other markets/stands, etc.

12. Mr. Chutia submits that the State respondents has got no role to play in the present batch of writ petitions as the matter pertains to settlement of markets/ parking stands, etc. by the Board.

13. Section 148(2) of the Assam Municipal Act, 1956 Act (for short, "1956 Act") provides that the Board may levy rent, toll and fees at such rates as it may think proper for the right to expose goods for sale in a municipal market and for the use of shops, stalls and standings therein and also in respect of parking lots and may also regulate such rates in respect of private markets or places used or declared by the Board as a market place, parking lot, by public notice in the locality. In exercise of powers conferred by Sections 147, 148 and 301 of the 1956 Act, Rules for Procedure for the Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam were framed vide Notification dated 24.06.1958. Rule 3 thereof provides that sale by public auction of the right to levy fines and charges in respect of any pound and to collect the authorised fees in respect of any market shall be held by giving a public notice of 1(one) month, not later than 14th day of February in the financial year preceding that in which the lease is to take effect. Though parking lot is not specifically mentioned in the Rule, it is noticed that Section 148 speaks about parking lots and, therefore, it will not be incongruous to hold that even for a parking lot NIT has to be issued by the same yardstick as in the case of pounds and markets.

14. The undisputed position in these writ petitions is that the petitioners in these writ petitions are the highest valid tenderers and that settlement had been offered to lower tenderers.

15. In the case of Dutta Associates (supra), the Supreme Court emphasized that in the matter of distribution of State largesse, the State and its authorities must follow the norms of openness, transparency and fair dealing. The acceptance of tender on the ground of the tender being within the viability range was negated by the Supreme Court on, amongst others, the ground that the tender notice did not specify viability range, which should have been notified in the tender notice itself as fairness demanded the same. In the context of viability range, the Supreme Court had observed that the tenderers are hard headed businessmen and they know their interest better and, therefore, there was no reason to hold

that why they will not be able to supply rectified spirit (subject-matter of contract in the said case) at the rate which they had offered.

16. In Jespari Slong (supra), the Supreme Court emphasized that obtaining higher revenue by accepting the eligible highest bid would only be in public interest because State stands to gain more revenue. The offering of the bid is a matter best left to the business acumen or prudence of the tenderer.

17. In Harminder Singh Arora (supra), the Supreme Court emphasized that the State or its instrumentalities have to act in accordance with the conditions laid down in the tender notice.

18. Tenders are generally issued to fetch highest possible price so that public exchequer is benefited to the fullest. In the NIT, it was not indicated that a viable range had been worked out within which the tenders are to be submitted and that tenders submitted beyond that range would not be accepted. As observed in Dutta Associates (supra), tenderers are hard headed businessmen and they know their interest better. The rate of toll is fixed and the same is indicated in the NIT itself. A lessee can collect toll at the rate indicated therein only. It cannot be countenanced that if the lessee collects toll at a rate more than the rate fixed, the Municipal Board will be powerless to stop such collection of tolls and to take appropriate action against the lessee. If the State or an authority within the meaning of Article 12 of the Constitution of India decides to give its largesse to general public, then it has a corresponding obligation to ensure that it fetches the best possible value for the same subject to the condition that it does not affect rights of others in any manner.

19. It is not in dispute that the Board had also settled a market at 777% above the estimated rate. Such action is sought to be defended by the Board by contending that as the Board had run the market in the past, the potential of the market was known to the Board. No materials have been placed by the Board to justify that the rates offered by the petitioners are exorbitant. Materials on record demonstrate that the tenders of the petitioners had been rejected arbitrarily to show favourtism to the selected tenderers. The action of the Board in selecting the private respondents in the instant cases is against public interest. The settlement orders have been made in favour of the private respondents for illegal and extraneous consideration.

20. In that view of the matter, the settlements orders issued in favour of respondent No. 5 in WP(C) 5572/2016, WP(C) 5575/2016, WP(C) 5599/2016 and WP(C) 6236/2016 and that of respondent No. 6 in WP(C) 5707/2016 are set aside and quashed.

21. The NIT was issued for the financial year 2016-2017 for a period from 01.07.2016 to 31.03.2017, i.e., for a period of nine months. I am unable to accept the submission of Mr. Deka that in the event of quashing of the settlement orders made in favour of the private respondents, the petitioners would be entitled to run the markets/stands for a period of nine months. The NIT was

issued on 30.05.2016 and it was categorically mentioned therein that the tenders were invited for the financial year 2016-2017, i.e., up to 31.03.2017. The mentioning of "nine months" in the NIT is only clarificatory as the settlement was to be made not for one complete financial year but for nine months only as commencement of the settlement period was from 01.07.2016.

22. It is on record that save and except the settlement holder in WP(C) 6236/2016, the markets/parking stands, which are subject matter of the other writ petitions, are being run by the Board without engaging any third party.

23. According to Mr. Doloi, NIT is to be issued by the Board on 01.02.2017 for the period from 01.04.2017 to 31.03.2018. We are almost at the fag end of the current financial year and, therefore, I am of the considered opinion that, at this point of time, no direction is called for to settle the markets/stands in favour of the successful petitioners. The Board may continue to run Tarajan Bazar, Public Bus Stand, Truck Stand and B.B. Hall Market without engaging any third party. From today onwards, the Board may also run the Cycle Stand No. 1, in front of Chowk Bazar, without engaging any third party.

24. Having regard to the facts and circumstances of the cases, this Court is of the opinion that the petitioners would be entitled to cost from the Board. The Board will pay cost of the proceeding to each of the petitioners at the rate of Rs. 10,000/- each. The Board shall also refund the earnest money deposited by the petitioners. The cost amount and the earnest money amount shall be paid/ refunded to the petitioners within a period of fifteen days from the date of receipt of a certified copy of this order by the Board.

25. The writ petitions stand disposed of in terms of the above observations and directions.

