(2010) 03 GAU CK 0062

In the Gauhati High Court

Case No : Writ Petition (C) No. 5351 of 2009

Sri Bhupen Borah APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Control and Management of Ferries Rules, 1968 — Rule 19

Citation : (2010) 2 GLD 527 : (2010) 4 GLT 400

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : D. Borgohain, D. Kalita, J. Chetry, for the Appellant; D. Bhuyan, R. Tanti, U. Saikia and S.S. Dey, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—Settlement of Nemati Kamalbari Ferry Service, pursuant to the NIT, dated 19.10.2009, issued, in this regard, by respondent No. 3, namely, Executive Engineer, Inland Water Transport Department, Dibrugarh Division, Dibrugarh, for the year 2009-2010, with respondent No. 6 herein, is the subject-matter of controversy, in this writ petition, made under Article 226 of the Constitution of India.

2. Rule 19 of the Control and Management of Ferries Rules, 1968, (hereinafter referred to ''as the Rules of 1968'') read as:

19.(i) ....

(ii) ....

(iii) ...

(iv) whether the tenderer/bidder possesses periodic Patta Land of value not less than the bid/tender money in his own name with the District/Sub-division.

19. The sale by auction/tender shall generally be to the highest bidder/tenderer.

The officer conducting the sale/calling for tender for sufficient reason recorded in writing under his hand, may refuse to accept the offer of the highest bidder/ tenderer or any bid/tender. The officer shall, in accepting the bid/tender, consider the following factors among others:

(i) whether the bidder/tender is indigenous of the State, permanent resident or outsider;

(ii) whether the bidder/tender is indigenous of the State, permanent resident or outsider;

(iii) whether the bidder/tender has periodic patta land and property of the value of not less than bid/tender money in his own name within the district of this State, can speak the regional language is financially sound of good conduct etc.

3. Clause 2(A) of the NIT, dated 19.1.2009 stipulated, inter alia, as under.

2.(A) A bid/tender must be accompanied by the following documents failing which the same will be treated as cancelled. (h) (i) Land value certificate on periodic patta land of not less than the bid/tender money in his own name within the District or Sub-Division from the Deputy Commissioner/Additional Deputy Commissioner/Sub-Divisional Officer of the District/Sub-Division concerned be enclosed

4. The petitioner, respondent No. 3 and some others had participated in the tender process, which was initiated pursuant to the NIT, dated 19.1.2009, aforementioned. The respondents, however, granted settlement, as indicated above, in favour of the respondent No. 6.

5. Aggrieved by the settlement, so made, in favour of respondent No. 6, the petitioner has filed this writ petition on the ground, inter alia, that though the terms and conditions, embodied in the NIT, require that a tenderer shall submit the land valuation certificate of the land of periodic patta of not less than the bid/ tender money, in his own name, situated within the district or the sub-division, from the Deputy Commissioner/Additional Commissioner/Sub-Divisional Officer of the district/sub-division concerned, respondent No. 6 herein submitted the land value certificate of the land standing not in his name, but in the name of two other persons, namely, Ramesh Dutta and Rima Dutta, and that the land value certificate, which respondent No. 6 so submitted, was issued by a registered value and not by the Deputy Commissioner as was required under the said NIT. Further, the land value, shown in the land value certificate, is, points out the petitioner, it less than the bid/tender value offered by respondent No. 6.

6. Thus, all the requirements of Clause 2(A) (h)(i) of the NIT, dated 19.1.2009, aforementioned had not been complied with by respondent No. 6 and yet the settlement was given in favour of the petitioner. The settlement, so made, is, according to the petitioner, wholly illegal, arbitrary and in dental of the right of equal treatment, which Article 14 guarantees. The petitioner, therefore, seeks, inter alia, issuance of appropriate writ(s) setting aside and quashing the

impugned settlement made in favour of the respondent No. 6.

7. The writ petition has been resisted by the State respondents and also by respondent No. 6. The justifications, which finally emerge, at the time of hearing of the writ petition, for granting settlement, in favour of the respondent No. 6, are that the NIT contained many more stringent provisions than what clause 2(A)(h)(i) provides and all these more stringent provisions were complied with that the conditions, embodied in Clause 2(A)(h)(i), were not mandatory in the sense that its non-compliance could not have rendered a tenderer wholly ineligible to be considered for settlement and that in the case at hand, all the tenderers, including the present petitioner, were found to have not complied with the terms and conditions of the NIT and the petitioner''s tender suffered from the same defect of non-compliance of the conditions embodied in Clause 2(A)(h)(i) as did the tender of the respondent'' No. 6, hence, in such circumstances, when all the tenderers were found to be ineligible or stood disqualified, the State respondents, in order to ensure that no inconvenience is caused to the general public, who make use of the said ferry service, had to option but to grant settlement in favour of respondent No. 6, because respondent No. 6 had, at least, offered the highest bid value and his bid value stands secured inasmuch as he has paid all the dues and his settlement would enure by the end of the month of March, 2010.

8. I have heard Ms. D. Borgohain, learned Counsel, for the petitioner, and Mr. D. Bhuyan, learned Counsel for the respondent No. 2. I have also heard Mr. U. Saikia, learned Counsel, for the respondent Nos. 1, 3 and 4, and Mr. S.S. Dey, learned Counsel, for the respondent No. 6.

9. While considering this writ petition, it needs to be noted that it is not in dispute that neither respondent No. 6 nor the present petitioner had submitted the valuation certificate in respect of a periodic patta land, which stood in his own name. Thus, both the tenderers had not, strictly speaking, complied with the provisions of Rule 19(iii) of the Rules of 1968.

10. In order to determine as to whether the condition of submission of valuation certificate of the periodic patta land, which stands in the name of a tenderer and covers the value, which a tenderer offers to pay, as lease money, is such as would render a tenderer ineligible, it needs to be noted that this condition, which the NIT, dated 19.1.1009, embodies, was a condition, which even the Rules of 1968 envisages. There is nothing, in the Rules of 1968, to show that this condition was relaxable. This, in itself, is sufficient to hold that non-compliance with the conditions so prescribed would render a tenderer ineligible to be considered for settlement of the lease. This apart in order to determine as to whether a condition, stipulated in an NIT, is or is not so indispensable that its non-compliance would render a tenderer ineligible, one has to examine the purpose with which the condition was imposed in the NIT.

11. A patient reading of the conditions of submission of valuation certificate of a

periodic patta land, which stands in the name of the tenderer, and is located within the district in which the ferry service operates, is obvious and the reason is to ensure that if a tenderer bids an amount as his lease money, the Government is assured that the tenderer is, on his own, capable of paying the lease money and that the Government has option of recovering such amount by proceeding against the tenderer and that the recovery process, if initiated, would not involve anyone other than the Government and the tenderer. If the valuation certificate, submitted by a tenderer is in respect of land, which does not stand in the name of the tenderer, may, in the case of default lead to multiplication of proceedings, and if the valuation of the land does not cover the value of the land, which the tenderer offers, then, the Government would not be able to recover the defaulted dues. Thus, the conditions, so imposed take care of two important factors, namely, (i) that the valuation certificate itself determines the capability of the tenderer to pay lease money and (ii) that the contract remains confined between the Government and the tenderer and it does not involve any other person as guarantor. Such conditions, with the object, which they seek, to achieve, cannot but be treated as mandatory conditions of a valid tender, more so, when the conditions so imposed, flow from the provisions of the Rules of 1968 themselves and there is no provision enabling the Government to relax compliance with these conditions.

12. Coupled with the above, it is also important to note that if tender of a person, who has given valuation certificate of a periodic patta land, which does not belong to him or if the land is of a valuation less than what the tenderer has offered as his bid, were to be accepted by the State Government then, the State Government ought to have made it clear to other tenderers as well that the failure, on the part of a tender to submit valuation certificate in respect of the land, which stands in the name of a person other than the tenderer or of a valuation, which is less than the value of the bid, the tender would not render the tenderer ineligible, or else, the guarantee, which Article 14 provides of indiscriminate treatment to every person similarly situated, would be whittled down. Nothing can survive for argument if it shakes the guarantee of nondiscrimination, which Article 14 provides.

13. Thus, because of the fact that the valuation certificate, submitted by the respondent No. 6, is of a periodic patta land which does not stand in the name of the petitioner, and also in view of the fact that the valuation certificate is of a value less than the bid/tender money, respondent No. 6 was ineligible to participate in the tender process and his tender ought to have been rejected at the threshold on the ground that he was ineligible to participate in the tender process. To such a disqualified tenderer, no settlement could have been granted even if his offer was highest, because his offer was also not secured by a periodic patta land, which stood in his own name, nor was his offer secured by land of requisite value. In short, respondent No. 6 stood on no better footing than the petitioner on this aspect of the tender process and both of them were and are still ineligible.

14. Be that as it may, the lease, granted in favour of the respondent No. 6, has almost reached the end of the period of the lease. If, in such circumstances, this Court, in exercise of its power under Article 226, sets aside and quashes the settlement, sufferer would be the general public, who use the said ferry service. This apart, respondent No. 6 has, in the meanwhile, deposited the entire lease money and the offer, which he had made, stands, in this sense, assured. There is no possibility of the Government loosing financially if the settlement is allowed to continue till the end of its term.

15. Because of what have been discussed and pointed out above, this Court restrains itself from interfering, at this belated stage, with the impugned settlement of the said ferry service made in favour of the respondent No. 6, but makes it, however, clear that the settlement, which has been made in favour of the respondent No. 6, is ex facie illegal and ought not to have been done and must not be repeated in future.

16. The term of the lease, granted in favour of respondent No. 6, shall not be extended nor the fact that the respondent No. 6 has not been able to operate the said ferry for the complete period of one year be a factor for consideration if he applies for obtaining direct settlement of the ferry service. To put it a little differently, though there is no provision in the Rules of 1968 for extension of the term of lease and though the Rules envisage granting of direct settlement by the Government of a ferry service in favour of any person, it is made clear that the on account of the fact that respondent No. 6 has not been able to run the ferry service for the complete period of settlement of one year, no direct settlement, in favour of respondent No. 6, shall be made by the Government.

17. In order to ensure that the guarantee, which Article 14 provides, and which stands, in the present case, violated by the State Government, is not flouted further, the State Government is hereby required to commence tender process for making settlement, by way of lease, within a period of three days from today. Mr. D. Bhuvan, learned Counsel for the respondent No. 2, and Mr. U. Saikia, learned Counsel for the remaining respondents, have assured this Court that settlement for the year 10-10-2011 of the said ferry services would be given by way of floating tender. The State respondents, including the respondent No. 2, is hereby directed to commence requisite tender process within a period of three days from today. Giving of direct settlement to a person such as respondent No. 6, in the facts and attending circumstances of the present case, would amount to putting premium on an illegality, which the State respondents, including the respondent No. 2, have committed.

18. With the above observations and directions, this writ petition shall stand disposed of.

19. No costs.

