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**(2015) 03 GAU CK 0086**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C). No. 5108 of 2014**

Tapan Chandra Daimary

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

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**Date of Decision :** 23-03-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (2015) AIR (Guw) 176 : (2015) 2 GLD 302 : (2015) 2 GLT 1106

**Hon'ble Judges :** Arup Kumar Goswami, J

**Bench :** Single Bench

**Advocate :** B.D. Goswami, for the Appellant; R.K. Bora, SC, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Arup Kumar Goswami, J—Heard Mr. B.D. Goswami, learned counsel for the petitioner. Also heard Mr. R.K. Bora, learned Standing Counsel, Forests, appearing for all the respondents.

2. By filing this writ petition, the petitioner prays for setting aside the communication dated 28.07.2014, issued by the Conservator of Forest (Legal) and to set aside and quash the decision of the respondents to put the Domoni River Sand Mahal, for short, Mahal, of Goalpara District under the Divisional Forest Officer of Goalpara Division on re-sale.

3. At the outset, relevant facts need to be noticed. The pleaded case is that the petitioner was an earlier lessee in respect of the Mahal. By a sale notice dated 02.09.2013, the Mahal was put to sale along with some other Mahals by the Divisional Forest Officer, Goalpara Division. The petitioner did not participate pursuant to the said sale notice issued though number of tenderers had submitted their tenders. One Janardan Nath had submitted his tender for Rs. 1,61,00,000/-, which appeared to be the highest bid. However, before letter of intent could be issued to him, he withdrew his bid, thereby forfeiting his security

deposit.

4. Further case as projected in the writ petition is that the respondent authorities decided to go for re-sale of the said Mahal without offering the letter of intent to the second highest bidder, and accordingly, sale notice dated 30.05.2014 was issued by the Divisional Forest Officer, Goalpara Division. Reserved price was fixed at Rs. 15,54,000/- as was fixed earlier in the sale notice dated 02.09.2013. Tenders were invited for sale of the Mahal for a period of 7 (seven) years and the sale notice was published in 2(two) daily newspapers under Section 32 of the Assam Minor Mineral Concession Rules, 2013, for short, Rules of 2013. The petitioner responded to the said sale notice by quoting a bid of Rs. 16,01,111/- and submitting all relevant documents. Another tenderer had submitted a bid for Rs. 15,95,000/- and thus, the petitioner emerged as the highest bidder. The Divisional Forest Officer, Goalpara Division, by his letter dated 27.06.2014, addressed to the Chief Conservator of Forests, Central Assam, recommended the tender of the petitioner for settlement of the Mahal. However, Office of the Principal Chief Conservator of Forests and Head of Forest Force issued a letter dated 28.07.2014 under the signature of Conservator of Forests (Legal), by which, the Additional Principal Chief Conservator of Forests was directed to put the Mahal for re-sale.

5. Being aggrieved by the decision to put the Mahal for re-sale, a representation dated 04.09.2014 was submitted by the petitioner to the Principal Chief Conservator of Forests praying for settlement of the Mahal in question in his favour.

6. The petitioner had filed an additional-affidavit enclosing a letter dated 09.07.2014 of the Divisional Forest Officer, Goalpara Division.

7. This Court, by an order dated 25.09.2014, as an interim measure, stayed the operation of the letter dated 28.07.2014 (Annexure - D to the writ petition).

8. Though no affidavit was filed by the respondents, Mr. Bora has produced the relevant records for the perusal of the Court.

9. Mr. B.D. Goswami, learned counsel for the petitioner submits that when the sale notice dated 02.09.2013 was issued, earnest money was fixed at Rs. 1,55,400/-. However, when the sale notice dated 30.05.2014 was issued, earnest money was fixed at Rs. 16,11,110/-, which is much more than Rs. 1,55,400/-, and therefore, only genuine bidders had participated pursuant to the said sale notice dated 30.05.2014. It is submitted by him that petitioner having offered a price, which is above the reserved price, there could have been no justification for not settling the Mahal in his favour and for taking a decision as communicated by the letter dated 28.07.2014 for issuance of a fresh re-sale notice.

10. Learned counsel submits that the amount quoted by the petitioner is the most reasonable amount. Placing reliance on the additional-affidavit, and more

particularly, Annexure - F thereto, learned counsel submits that in the year 2006 - 2008, the Mahal was put to sale at Rs. 2,18,000/- but the settlement-holder could not pay the amount. For the term 2008 - 2010, the Mahal was put to sale at Rs. 3,53,339/-, but the lessee became a defaulter after payment of 3 (three) kists and the Mahal was again sold after 15 (fifteen) months at Rs. 1,69,000/-. It is submitted by him that Dudhnoi River Sand Mahal No. 1 and Dudhnoi River Sand Mahal No. 2, which were put to re-sale along with the Mahal, fetched Rs. 1,000/- and Rs. 1,500/-, respectively less than what was originally quoted by the highest bidder and this indicates that the rate quoted by the petitioner is commercially viable and reasonable.

11. Mr. R.K. Bora, learned Standing Counsel, Forests has submitted that no interference with the order dated 28.07.2014 is called for as re-sale was ordered in the interest of Government revenue and in public interest. Mr. Bora submits that in response to the re-sale notice dated 30.05.2014, only 2(two) tenderers, including the petitioner, had responded. The earnest money in the said sale notice dated 30.05.2014 was fixed by the Divisional Forest Officer, Goalpara at Rs. 16,11,110/-, being 10% of the previous highest bid though in the first sale notice dated 02.09.2013, earnest money was fixed at 10% of total reserved price, thereby increasing the earnest money by almost 10 times as compared to the previous sale notice dated 02.09.2013. He submits that same restricted participation of tenderers, and therefore, while directing re-sale of the Mahal by the letter dated 28.07.2014, the Additional Principal Chief Conservator of Forests (T) was directed to decide and fix the earnest money at his end.

12. When only 2(two) tenderers had participated, and when the highest tenderer had offered barely Rs. 47,111/- above the reserved price, decision to go for re-sale cannot be termed as arbitrary and unreasonable. It is also submitted by him that the very fixation of the reserved price at Rs. 15,54,000/- goes to show that illustrations cited by the petitioner with regard to settlement amount for the years 2006 - 2008 or 2008 - 2010 and that Mahaldar or lessee could not pay the kist, cannot be the index of the value of the Mahal.

13. I have considered the submission of the learned counsel for the parties and have perused the materials on records. I have also perused the records produced by Mr. Bora.

14. At the outset, it will be appropriate to take note of the contours of the power of judicial review under Article 226 of the Constitution of India.

15. In *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, AIR 1996 SC 51 : (1993) 1 JT 187 : (1993) 1 SCALE 36 : (1993) 1 SCC 445, the Apex Court held that the power of judicial review in respect of contracts entered into on behalf of the State primarily involves examination of the question whether there was any infirmity in the decision-making process, and if such process was reasonable, rational and non-arbitrary, the Court would not interfere with the decision.

16. In *Air India Ltd. v. Cochin International Airport Ltd. & Ors*, reported in (2000) 2 SCC 617, the Apex Court held as follows:

"7.....The award of contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. Even when some defect is found in the decision-making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

17. In *Jagdish Mandal Vs. State of Orissa and Others*, (2008) 2 CTLJ 538 : (2007) 14 SCC 517 : (2006) 10 SCR 606 Supp, the Apex Court stated as follows:

"19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold

up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say : "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached."

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

18. Law is more or less crystallized by now that the principles of judicial review applies to the exercise of contractual powers by Government authorities in order to prevent arbitrariness, favouritism, irrationality, unreasonableness, bias and malafides. However, there are inherent limitations in exercise of power of judicial review. While exercising the power of judicial review, the Court is primarily concerned as to whether there has been any infirmity in the decision-making process. Judicial review is not reviewing the merits of the decision but the decision-making process. Power of judicial review is different from appeal, where Court is concerned with the merits of the decision under appeal. If the decision-making process is reasonable, rational, not arbitrary and not violative of Article 14 of the Constitution of India, Court will not interfere with such a decision-making process. Discretionary power under Article 226 of the Constitution of India should be exercised with caution and only for the purpose of furtherance of public interest. If the decision is taken bonafide and in public interest, Courts will not, in exercise of power under judicial review interfere with such decision, even if, some procedural aberration or error in assessment or prejudice to a tenderer is made out. The Court dealing with the exercise of power of judicial review does not substitute its judgment for that of the Legislature or Executive or their agents in matters falling within their province.

19. It is to be noticed that the petitioner had not responded to the first sale notice dated 02.09.2013. The dates mentioned in the letter of the Divisional Forest Officer, Goalpara Division is 09.07.2014 (Annexure - F to the additional-affidavit) are not correct. Mahal was not put to sale under Rules of 2013 on 04.10.2013 but the sale notice was issued on 02.09.2013. Re-sale notice was not issued on 06.05.2014 as noted therein but on 30.05.2014. What was the settlement amount for the period after 20.02.2011 is also not mentioned in the letter dated 09.07.2014. Though by the aforesaid letter dated 09.07.2014, the

Divisional Forest Officer, Goalpara Division suggested that settlement could be offered to the petitioner at his bid, the higher authorities of the Department recommended to issue sale notice for re-sale of the Mahal, which was affirmed by the Principal Chief Conservator of Forests with an observation that earnest money is to be decided by the Additional Chief Conservator of Forests (T), Lower Assam Zone vide his note dated 17.07.2014.

20. The records reveal that in response to the first sale notice dated 02.09.2013, 13 (thirteen) tenders were received and there were 4 (four) bids above Rs. 1,00,00,000/- and 2(two) bids above Rs. 90,00,000/-. The last of the bid was Rs. 15,55,111.99. There is no explanation whatsoever why settlement was not offered to the next higher bidder after withdrawal of the bid by the highest tenderer. Be that as it may, the authorities noted participation of only 2(two) tenderers in response to the said notice dated 30.05.2014 as against participation by 13 (thirteen) tenderers in respect of sale notice dated 02.09.2013. It was also felt by the authorities that enhancement of deposit of earnest money from Rs. 1,55,400/- to Rs. 16,11,110/- could have resulted in lesser participation.

21. Government is the guardian of the finances of the State. It is expected to protect the financial interests of the State. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down.

22. On the basis of the materials on record, I am of the considered opinion that the decision of the authorities to decide to go for re-sale cannot be said to be arbitrary or unreasonable or perverse or actuated by biasness or malafides or that the decision is such that no responsible authority acting reasonably, could have reached. The authorities have taken into consideration relevant considerations and taken a conscious decision to issue a fresh re-sale notice. The grounds on which decision to issue re-sale notice were taken cannot be said to be not germane to the question.

23. In view of the above discussions, I find no merit in this writ application, and accordingly, the same is dismissed. No cost.