
(1991) 10 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 3908 of 1991

Tarwn Bharali

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-10-1991

Acts Referred:

Citation : (1991) 2 GLR 296

Hon'ble Judges : U.L. Bhatt, C.J;B.P. Saraf, J

Bench : Division Bench

Advocate : D.P. Chaliha and D. Das, for the Appellant; A.S. Choudhury, P.B. Mazvmdar, M. Dev. Govt. Advs. and S. Deka, for the Respondent

Judgement

U.L. Bhat, C.J.—Anniguri Sand and Stone Mahal was settled with the Petitioner in 1986 for a period of three years which was later extended to 27.9.91. For the period from 1991-93 the authority competent published tender notice inviting tenders. The notice was published on 2.7.91, the last date of receipt of tender was fixed as 18.7.91. On 18.7.91 the Minister of State, Govt. of Assam dealing with Forest sent W.T. Message (Annexure C) to the Officer concerned directing stay of the tender process in this case until further orders. Annexure-D dated 24.7.91 is a W.T. Message sent by the Commissioner and Secretary of the Govt. of Assam to all Forest officers suspending settlement of forest mahal on account of foul play and the flood situation. On 27.9.91 the fourth Respondent submitted an application to the Government requesting for private settlement of this quarry to him. By Annexure-E letter dated 3.8.91 the Government forwarded the same to the Officer concerned for a detailed report. These developments persuaded the Petitioner to file this writ petition praying for a writ of Mandamus quashing Annexures-C, D and E,

2. We have heard the learned Counsel for the Petitioner, the fourth Respondent and the learned Govt. Advocate.

3. We think it unnecessary to go into the question of mala fides raised in the writ

petition or the defense raised on behalf of the fourth Respondent. It is agreed at the Bar that settlement can be effected by tender/auction or by direct negotiation. The tender process that commenced earlier has become infructuous since no one has submitted tender, or as now urged before us, the authority concerned did not receive tenders and ordinarily the tender process has to be commenced afresh. Direct settlement can be resorted to only if the circumstances justify it. While it may be open to any one to apply for private settlement, the authority concerned can consider it only if the circumstances justify abandonment of the tender or auction process.

4. While providing for settlement by tender or direct negotiation no guidelines are expressly laid down as to when one method is to be preferred over the other. However, the scheme of the settlements, the purpose sought to be achieved by such settlements clearly spell out certain broad guidelines. The Government or any subordinate authority has no unguided or arbitrary discretion in choosing one method over the other. In the matter of a settlement which earns revenue for the Government, the paramount factor to be taken into consideration is public interest. In appropriate cases such processes as may ensure protection of such Sections of people or institution AS may require protection, may have to be adopted. In so far as settlements like sand mahal (quarry) are concerned, besides public interest, State has also to take note of ecological factor. It should first be deeded if the right to operate a quarry is to be a settled. If there is to be a settlement, it should next be considered whether It should be settled by tender process or by direct negotiations or otherwise. Though alternate methods are admittedly contemplated, direct settlement cannot be resorted to as the normal procedure. The normal procedure must necessarily be the tender process or public auction for only they safeguard public interest and prevent arbitrary conferment of largesse on chosen favourites. There may be cases where tender or auction process fails to lead to just or proper settlement on account of various reasons; the situation in a given case or area may be such that such process is impracticable or cannot otherwise be resorted to. Only when there is sufficient ground not to effect settlement on the basis of tender or auction, Government or authority concerned could think of effecting direct settlement. These are the general guidelines that the State or authority concerned has to bear in mind before taking appropriate decision in this regard.

5. We dispose of the Civil Rule directing the State of Assam to decide whether the quarry in question in this case is to be settled at all and if so, apply their mind in regard to the questions detailed above. If the Government decide to effect settlement by tender process, that should be done without any delay. If the Government decide to effect settlement by direct negotiation, that should be done by passing an order containing specific reasons therefore and a copy of such order shall be sent to the writ Petitioner.