

WP(C) 3244/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI

Heard Mr RP Sarmah, learned counsel for the petitioners and Mr TJ Mahanta, learned counsel for the respondent No.4 in both the writ petitions. Also heard Ms VL Sinha, learned Govt. Advocate, Assam. Further reference to the respondent No.4 in the present order will be understood to be reference to respondent No. 4 in both the cases.

The challenge in both the writ petitions is against the appellate order dated 19.1.2007 affirming the order of the primary authority settling the Borali gaon Sand Mahal and the Bamuni Sand Mahal in favour of the respondent No.4. It may be noticed at this stage that WP(C) No. 3244/07 pertains to Boraligaon Sand Mahal while WP(C) No. 3245/07 pertains to Bamuni Sand Mahal.

The sole ground on which the challenge in both the writ petitions under consideration is founded is that the respondent No.4 i.e. the highest bidder with whom the Sand Mahals were settled and such settlement was affirmed by the appellate order dated 19.1.2007, had submitted defective tenders on account of which the same could not have been legitimately taken into consideration. The petitioner contends that the aforesaid defect in the tender submitted by the respondent No.4 in both the writ petitions is pertaining to the requirement of submission of Income Tax Clearance certificate and Sales Tax Clearance certificate. The aforesaid requirement is enjoined by Rule 7(2) of the Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 and Clause 11 of the NIT issued. It is the contention of the petitioner that the aforesaid requirements spelt out by the provisions of the statute and the NIT are mandatory and a tender which does not conform to the said requirements would be invalid. Reliance in this regard has been placed, apart from the expressed language of the Act and the NIT on a decision of this Court in *Bikash Bora vs- State of Assam & Ors.*, reported in 2003 (3) GLJ 71.

The respondent No.4 in both the writ petitions as well as the official respondents have filed their respective affidavits. The contention of the respondents, which is largely common, is that by a notification dated 13.2.2003 issued by the Under Secretary (TPL-III), Ministry of Finance & Company Affairs, information was conveyed to all the Chief Commissioners of Income-Tax and the Directors General of Income-Tax that henceforth the scheme of furnishing Income Tax Clearance certificate for the purpose of obtaining commercial contracts is being discontinued and the contractors will not be required to submit Income Tax Clearance certificate from the department along with their tenders. The aforesaid decision of the Govt. of India in turn was communicated by the Govt. of Assam to all the concerned officials of the Forest Department for due compliance by Memo dated 27.5.2003. In the aforesaid facts, according to the respondents, the practice of issuing Income Tax Clearance certificate had been discontinued by the Income Tax department and, therefore, the requirement of the Act is to be understood in the above context. In so far as insertion of Clause 11 in the NIT imposing the requirement of submission of Income Tax Clearance certificate is concerned, the same has been sought to be explained as an oversight. In the affidavit filed the official respondents have further stated that after the aforesaid decision of the Govt. of India was arrived at, the Forest Department had been resorting to the practice of requiring the tenderers to submit their Permanent Account Number, which requirement the respondent No.4 in both the writ petitions had complied with. On the other hand, the petitioner while submitting his tender for the Sand Mahals in question had merely enclosed his Income Tax Return without disclosing and/or mentioning his Permanent Account Number. In any case, as the offers made by the petitioners in respect of both the Sand Mahals were lower, the settlement was rightly made with the respondent No.4 in both the cases, being the highest tenderers. Accordingly and on that basis, the appellate order dated 19.1.2007 ha

s been sought to be justified.

The rival submissions advanced on behalf of the contesting parties have received the due and anxious consideration of the Court. The requirement of documents to be enclosed with a tender submitted for a commercial contract whether spelt out by the statute or by a condition of the NIT issued in so far its mandatory nature is concerned, depends on the surrounding facts and circumstances. In the present cases, the Income Tax Department by issuing the notification dated 13.2.2003 had made it clear that henceforth for the purpose of commercial contracts, submission of Income Tax Clearance certificate is not required. There is an inbuilt decision contained in the aforesaid notification dated 13.2.2003 that henceforth Income Tax Clearance certificate for the purpose of commercial contracts will not be issued. If the authority who is competent to issue the necessary certificate has taken the above decision and had discontinued the practice of issuing clearance certificate, there will be little justification and/or basis for the Court to hold that the said requirements as spelt out in the Act and the NIT are mandatory requirements, for violation of which, a tender has to be treated as invalid. If the authority itself had discontinued the practice of issuing Income Tax Certificate, it is inconceivable as to how any tenderer can obtain such a certificate to comply with the terms of the statute or the NIT. In such a situation, the requirement imposed has to be understood to be not mandatory in the changed circumstances.

In so far the submission of Sales Tax Clearance certificate is concerned, in the affidavit filed by the official respondents, it has been clearly averred that the respondent No.4 in both the cases had submitted the requisite Sales Tax Clearance certificate. The objection of the petitioner on the aforesaid score, therefore, is without any substance.

The decision of this Court in Bikash Bora (supra) relied upon turns on its own facts. The requirement of submission of Loan Clearance certificate and Sales Tax Clearance certificate along with the tender which came under scrutiny in the aforesaid case, was held by the Court to be mandatory requirements as there were no disabling factors which stood in the way of the eligible tenderers from obtaining such certificates as in the present cases.

In both the writ petitions, the respondent No.4 is the highest tenderer. For reasons already alluded to, the Court has held that non-submission of Income Tax Clearance certificate does not invalidate the tender submitted by the respondent No.4. In such circumstances, the Court fails to find any infirmity in the appellate order dated 19.1.2007 so as to justify interference.

Both the writ petitions consequently are held to be without any merit and/or substance. They are accordingly dismissed.

However, in the facts and circumstances, I make no order as to costs.