

BEFORE

HON'BLE MR. JUSTICE H.N. SARMA

Challenging the legality, validity and justifiability of the settlement of Barsola weekly market by Sonitpur Zilla Parishad in favour of Respondent No.7 for the period of 2008-09 ending by 30/6/09, the petitioner has approached this Court by filing this writ petition.

I have heard Mr. PP Sarma, learned counsel for the petitioner and Mr. N. Upadhyaya, learned counsel for the Respondent No.7 and Ms. VL Singh, learned State counsel appearing on behalf of the official respondents.

Barsola weekly market falls within the territorial jurisdiction of Barsola Anchalik Panchayat. The market being a market within the panchayat area, is required to be settled as set out in the Chapter -VII of the Assam Panchayat Act and the Rules framed thereunder.

The minimum value of the market having been fixed at Rs.1,86,084/- as per provision of Section 109(6) of the Panchayat Act. The market is to be settled by Sonitpur Zilla Parishad under whose jurisdiction the Anchalik Panchayat falls. Accordingly for the period 2008-09 (1/10/08 to 30/6/09) the Sonitpur Zilla Parishad, Respondent No.4 issued a NIT inviting tender for settlement of the aforesaid market along with certain other markets falling within the jurisdiction of the Zilla Parishad vide NIT dated 8/8/08. In pursuance to the said NIT along with the petitioner and the Respondent No.7, two other tenderers also submitted their bids. The petitioner have offered Rs.2,57,401/- as highest bidder whereas the Respondent No.7 in the second position has offered his bid at Rs. 2,42,101/- and submitted for the purpose of the scrutiny of the tenders before the tender committee, on which the tender committee rejected the offer of the petitioner although the petitioner was the highest bidder on the count that there was no similarity in the name of the petitioner as reflected in the tender and affidavit, further 'no dues certificate' from the Anchalik Panchayat has not been annexed with. These are the two grounds on which the tender of the petitioner was rejected. However, the tender committee was of the opinion that Respondent No.7 was the second highest bidder and having been found correct and proper in all aspect, his tender was accepted. Ultimately the competent authority accepting the view of the tender committee settled the market in question with the Respondent No.7.

Challenging the impugned order of settlement, Mr. Sarma submits that the Zilla Parishad rejected the tender of the petitioner on non-existing ground, in fact there was no anomaly in the name and signature of the petitioner nor the petitioner failed to submit 'no dues certificate' as required. Accordingly, the learned counsel submits that the petitioner being the highest bidder is entitled to be settled with the market in question in terms of the provision of Rule 47(10) of the Assam Panchayat (Financial) Rules, 2002.

The learned State counsel Ms. VL Singh does not dispute anything whatever reflected from the record of the case.

Mr. Upadhaya, learned counsel for Respondent No.7 submits that in terms of the settlement he has paid the necessary 'Kist Money' and running the market to the satisfaction of all concerned and also submits that there is only two months left in coming to an end of settlement period and for the remaining period in absence of any allegations from any quarter against him, the Respondent No.7 should not be disturbed.

The learned State counsel has produced the relevant record containing the tender papers and documents of the respective parties.

On perusal of the tender submitted by the petitioner and the documents annexed therewith disclosed that the petitioner has stated his name in the tender as 'Srikanta Thakur' and said name has also been found to be written in other papers and documents submitted by the petitioner. There is no discrepancy at all in the name of the petitioner as reflected in the tender notice and other documents. The signature of the petitioner may be in short form and may not disclose the full name but that does not invalidate his tender on that count, if there is any discrepancy found in the identity of the person concern.

Regarding the other objection as to non-furnishing of 'no dues certificate' from

Anchalik Panchayat, which was also taken one of the ground for rejection of the tender of the petitioner, it is found that submission of such certificate is an alternative measure along with the submission of such certificate to the Zilla Parishad. In fact in the comparative statement, the authorities have recorded the fulfillment of this condition by the petitioner. While the tender papers were scrutinized, a form was filled up by the authority disclosing therein that the documents submitted by each of the tenderers. So far the documents submitted by the petitioner in the said form, the petitioner has submitted fulfillment of an d submission of said 'no dues certificate'. In fact, the Tezpur Zilla Parishad issued such 'no dues certificate' in favour of the petitioner vide its certificate dated 16/4/08.

In view of the aforesaid facts as disclosed from records, the ground for rejection of the tender of the petitioner cannot be said to be justified under the law.

Admittedly, the petitioner offered the highest bid and his bid is more than 15 thousands above than that of Respondent No.7.

The purpose of settlement of hats and markets is to earn revenue for the Government and which are distributed to the Zilla Parishad, Anchalik Panchayat and Gaon

Panchayat for the purpose of implementing the development schemes by the Government.

Rule 47(10) of the Assam Panchayat Act(Financial) Rules, 2002 make it obligatory that the tender of the highest bidder shall be accepted for settlement and if otherwise for settlement with other lowest bidder, the provision requires the Government's prior and formal approval in this regard.

In the instant case, the petitioner having been highest bidder as mandated in the aforesaid Rule, prior and formal approval from the Govt. for settling the market in question to a lowest bidder i.e. Respondent No.7 was not done.

Upon consideration of the entire facts and circumstances as disclosed above, I have no hesitation in mind to hold that the respondent authorities particularly, Respondent No.4, the President, Sonitpur Zilla Parishad committed grave error in a decision making process to settle the aforesaid weekly market for the period 2008-09. In fact, the authority has taken into consideration certain non-existing ground while rejecting the offer of the petitioner and also ignored the mandate of the requirement of Rule 47 (10) of the Assam Panchayat (Financial) Rules, 2002.

Accordingly, the order passed in favour of the Respondent No.7 settling the market in question is liable to be set aside and quashed, which I hereby do.

The petitioner having the highest bidder and no other infirmities found in his tender, there is only few weeks left to come to an end of the period of settlement, it is hereby directed to the respondent authorities, more particularly, Respondent No.4 to settle the Barsola weekly market in favour of the petitioner forthwith for the remaining period.

As indicated above, the settlement made in favour of the Respondent No.7 stands set aside and quashed.

The writ petition stands allowed.