

Heard Mr. R Ali, learned counsel for the petitioner in WP(C) No. 5230/2016 and Mr. I Hussain, learned counsel for the petitioner in WP(C) No. 6224/2016. Also heard Mr. Y Doloi, learned Additional Advocate General, Assam as well as Mr. H Ali, learned counsel appearing for respondent No. 6 in both the writ petitions.

2. The two matters are being decided by this common judgment and order as the issues in both the writ petitions pertain to the settlement of the Alipur-Gurala Beki Parghat.

3. The Mandia Anchalik Panchayat had issued a tender notice dated 23.05.2016 inviting applications for settlement of the Alipur-Gurala Beki Parghat along with others. The petitioners herein and the respondent No. 6 had submitted their tenders with respect to the tender notice in parghat. The respondent No. 6 had submitted his bid of Rs. 1 lakh, while the petitioner in WP(C) No. 5230/2016 has submitted his bid amount of Rs. 99,999.99/- and the petitioner in WP(C) No. 6224/2016 had submitted his bid value of Rs. 99,900/-.

4. The Mandia Anchalik Panchayat considered the comparative merits of the parties herein and recommended settlement of the ferry ghat in favour of the petitioner in WP(C) No. 5230/2016. The Mandia Anchalik Panchayat had rejected the bid of the respondent No. 6, on the ground that the respondent No. 6 had not submitted his tax clearance certificate.

5. The recommendation of the Anchalik Panchayat had to be approved by the Zilla Parishad for final settlement of the ferry ghat. However, instead of giving approval to the recommendation made by the Anchalik Panchayat, the Barpeta Zilla Parishad settled the ferry ghat with the respondent No. 6 @ Rs. 1 lakh vide letter dated 19.08.2016. The petitioner in WP(C) No. 5230/2016 has made a challenge to the settlement of the ferry ghat with the respondent No. 6, vide letter dated 19.08.2016 issued by the Chief Executive Officer, Barpeta Zilla Parishad, on the ground that the Zilla Parishad have the authority to settle a ferry ghat on a bid amount, which is more than Rs. 1 lakh. The bid amount of the respondent No. 6 being Rs. 1 lakh, the Zilla Parishad could not have settled the matter and the competent authorities to settle the matter was the Anchalik Panchayat.

6. Learned counsel for the petitioner in WP(C) No. 5230/2016 submits that the finding of the Anchalik Panchayat that the respondent No. 6 had not submitted his tax clearance certificate was the basis for which the bid of the respondent No. 6 was declared to be invalid.

7. Learned counsel for the petitioner in WP(C) No. 5230/2016 submits that the Zilla Parishad could not have overlooked the finding of the Anchalik Panchayat in this matter and that if it had any misgivings, it should have sought clarification for the same from the Anchalik Panchayat. He submits that the Zilla Parishad on its own could not have made a different finding than the one made by the Anchalik Panchayat, without first clarifying the matter with the Anchalik Panchayat.

8. Learned counsel for the petitioner in WP(C) No. 5230/2016 submits that there is a provision in the tender notice, which is to the effect that the authorities can relax the requirement of submitting land documents as required in term and condition No. 15 of the tender notice, if the tenderers are residents of Char areas. He submits that the documents submitted subsequently after opening of the bids cannot be taken into consideration by the authorities.

9. Mr. Y Doloi, learned Additional Advocate General, Assam has produced the records today. He submits that the respondent No. 6's tax clearance certificate is in the official records and as such, there does not seem to be any infirmity with the decision of the Zilla Parishad in settling the matter with the respondent No. 6, who is the highest bidder. He also submits that the petitioner in WP(C) No. 5230/2016 has not submitted three documents, i.e., 1. Jamanbandi, 2. Certificate of free from all encumbrances and 3. Land Valuation certificate.



along with his bid documents as required under the terms and conditions No. 15 of the tender notice.

10. Mr. H Ali, learned counsel appearing for the respondent No. 6 submits that at the time of submitting tender, the respondent No. 6 had submitted all documents as required under terms and conditions No. 15 of tender notice. However, the Anchalik Panchayat had illegally declared the bid of the respondent No. 6 as invalid on the ground of non-furnishing of the clearance certificate, though the same had been submitted.

11. Mr. H Ali, learned counsel for the respondent No. 6 submits that the respondent No. 6 having made a complaint to the Zilla Parishad, the Zilla Parishad looked into the matter and after perusing the records of the case, had rightfully come to the decision to settle the ferry ghat with the respondent No. 6.

12. I have heard the learned counsels for the parties.

13. The 1st question that is going to be decided by this Court is whether the Zilla Parishad could have accepted tenders where the value of the bid was Rs. 1 lakh. Section 109(6) of the Assam Panchayat Act, 1994 states as follows:-

The Hats, Ferries and Fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad, the yearly sale value of which is more than rupees one lakh shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial year as under Section 105, 106 and 109 in the manner prescribed. The powers of examination and final acceptance as under Section 81(i)(a). The distribution of sale proceeds shall be in the manner as prescribed in the foregoing sections.

14. In the case of Harez Ali and Anr. Vs State of Assam and Ors., reported in 2009 (2) GLT 561, the Full Bench of this Court has held at paragraph 23 as follows:-

In our view, sub-section (6) of Section 109 only empowers the Zilla Parishad to examine and finally accept such tenders, if the yearly sale value is more than rupees one lakh.

15. A reading of Section 109(6) of the Assam Panchayat Act, 1994 and the interpretation of the said Section by the Full Bench makes it clear that the Zilla Parishad does not have the competence to settle the ferry ghat with the respondent No. 6, as his bid is Rs. 1 lakh only, and not more than rupees one lakh. In that view of the matter, the settlement of the ferry ghat with the respondent No. 6 by the Zilla Parishad by way of letter/order dated 19.08.2016 issued by the Chief Executive Officer, Barpeta Zilla Parishad is hereby set aside.

16. In respect of the question of whether the Zilla Parishad could have disturbed the findings of the Anchalik Panchayat with regard to the tender documents submitted by the tenderers, it would be profitable to take the support of the judgment of this Court in the case of Abdul Gani Vs State of Assam and Ors., reported in 2012

(4) GLT 1, wherein this Court has held that the decision of the General Standing Committee of the Anchalik Panchayat regarding validity of the tenders is final.

This Court, in the above case, had taken note of the fact that the General Standing Committee of the Anchalik Panchayat, on scrutiny of the tenders had declared the tender of the respondent No. 6 as invalid and settled the tender with somebody else. The settlement of the said tender was again subject to confirmation by the Zilla Parishad under sub-section (4) of Section 106 of the Assam Panchayat Act, 1994. This Court by considering the fact situation of the above case, thereafter has held as follows:

Therefore once the matter was scrutinized by the General Standing Committee of the Anchalik Panchayat and the bid of the highest valid tenderer was found to be to be less than Rs. 1 lakh, it was not open for the Barpeta Zilla Parishad to sit like an appellate authority over the said decision of the Anchalik Panchayat.

All that was required of it was to approve the decision of the Anchalik Panchayat or if it had any doubt, to have sought clarification from the Anchalik Panchayat. The course of action adopted by the Barpeta Zilla Parishad is, therefore, in the considered opinion of this Court beyond the mandate of the aforesaid provi



sions of the Act.

17. The facts of the case in Abdul Gani (supra) and the facts of this case are quite similar to each other. On a perusal of the complaint submitted by the respondent No. 6 to the Chief Executive Officer, Barpeta Zilla Parishad, it is found that the respondent No. 6 has stated that he has come to know that his tender has been rejected by throwing out the enclosed documents. The above allegation made is a bald allegation and does not name any specific person, who has allegedly thrown out the documents of the respondent No. 6. However, by some miracle, the thrown out documents have allegedly re-appeared in the official records. The question of whether the respondent No. 6 had actually submitted his tax clearance certificate could only be answered by the Anchalik Panchayat as the Zilla Parishad had not opened the bids of the tenderers. It was only the Anchalik Panchayat, who could have taken a definite decision in this matter and the Zilla Parishad should have sought for a clarification of the factual aspect of whether the respondent No. 6 had submitted the said document or not at the time bids were opened.

18. In view of the fact that this is a disputed question of fact, this Court considers it fit to send the matter back to the Anchalik Panchayat for re-considering the cases of all the tenderers, including the petitioner in WP(C) No. 6224/2016, and send its recommendation to the Zilla Parishad for approval.

19. The entire exercise should be carried out within a period of 2 (two) weeks from the date of receipt of a copy of this order.

20. Writ petitions stand disposed off.