

GAHC010115262022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Writ Petition (Civil) no. 3941/2022

Sri Babul Das
Aged about 47 years
S/o Late Gopal Das
R/o Village - Saikiapara
P.O. Menapara, District – Darrang,
Assam, PIN – 784146

.....Petitioner

-Versus-

1. The State of Assam
represented by the Secretary to the Government of Assam,
Urban Development Department
Guwahati – 6
2. The Director of Municipal Administration Assam, Dispur,
Guwahati - 6
3. The Deputy Commissioner, Darrang,
District – Darrang, Assam
4. The Mangaldoi Municipal Board
Mangaldoi, represented by its Chairperson,
P.O. Mangaldoi, District – Darrang, Assam
5. The Chief Executive Officer
Mangaldoi Municipal Board,
P.O. Mangaldoi, District – Darrang
Assam, PIN – 784215
6. Sri Ganesh Sarkar

S/o Naduram Sarkar
Ward no. 2 of Mangaldoi Municipal Board
P.O. Mangaldoi, District – Darrang, Assam

.....Respondents

Advocates :

Petitioner : Mr. B. Rahman, Advocate
Respondent nos. 1 – 5 : Mr. Mr. M. Chetia, Jr. Government Advocate

Respondent no. 6 : Mr. M. Nath, Senior Advocate
Mr. A. Bhattacharya, Advocate

Date of Hearing and Judgment & Order : 28.02.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER

This writ petition under Article 226 of the Constitution of India has been preferred by the petitioner assailing the action on the part of the respondent Mangaldoi Municipal Board authorities in settling the Fish Market in favour of the respondent no. 6 *inter alia* on the ground that the bid of the petitioner was found to be a valid one; the petitioner's offered bid value was a higher one than that of the respondent no. 6 and there was infraction of Rule 7 of "the Rules for Procedure for the Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam", on the part of the respondent Mangaldoi Municipal Board authorities in granting the settlement.

2. The facts which are necessary for adjudication of the issue raised in this writ petition, can be delineated, in brief, as follows:-

2.1 A Tender Notice dated 27.04.2022 [the Tender Notice] for settlement of markets/parking stands/fisheries, etc. was published by the Chairman, Mangaldoi Municipal Board inviting sealed bids from intending bidders for settlement of a number of markets. By the said Tender Notice, a number of markets/parking stands/fisheries, etc. were sought to be

settled. One such market was 'the Fish Market' within the territorial jurisdiction of the respondent Mangaldoi Municipal Board for the year : 2022-2023. The last date of submission of bids was upto 01-00 p.m., 23.05.2022. As per the Tender Notice, the minimum value of the Fish Market was fixed @ Rs. 6,59,962/- and the successful bidder had to deposit 2% of Rs. 6,59,962/- as the earnest money deposit.

2.2 It is an admitted position, as revealed from the records of settlement, that in response to the Tender Notice for settlement of Fish Market, a total of 6 [six] nos. of bids were received from the bidders quoting different bid values. The bid values, in descending order, quoted by the 6 [six] nos. of bidders were as under :-

Sl. No.	Bidder number	Bid value offered
1	Bidder no. 1	Rs. 15,82,900/-
2	Bidder no. 2 [the petitioner]	Rs. 13,53,600/-
3	Bidder no. 3 [the respondent no. 6]	Rs. 12,25,000/-
4	Bidder no. 4	Rs.12,01,111/-
5	Bidder no. 5	Rs. 11,00,500/-
6	Bidder no. 6	Rs. 9,10,111/-

2.3 When the Chairman, Mangaldoi Municipal Board issued an order of settlement dated 30.05.2022 settling the Fish Market in favour of the respondent no. 6 at his offered bid value of Rs. 12,25,000/-, the petitioner has approached this Court by this writ petition challenging the said action of the respondent Municipal Board authorities in settling the Fish Market in favour of the respondent no. 6.

3. Heard Mr. B. Rahman, learned counsel for the petitioner; Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 1 – 5; and Mr. M. Nath, learned senior counsel assisted by Mr. A. Bhattacharya, learned counsel for the respondent no. 6

4. Mr. Rahman, learned counsel for the petitioner has submitted that the bid of the petitioner was found to be a valid one by the respondent Municipal Board authorities and the

petitioner's offered bid value was higher than the respondent no. 6. Mr. Rahman has further submitted that after passing of the order of settlement on 30.05.2022, the 1st highest bidder viz. Tarapad Das by writing a letter dated 04.06.2022, addressed to the Chairman, Mangaldoi Municipal Board, had sought refund of his earnest money deposit as he could not get the settlement of the Fish Market. But the petitioner has not sought refund of his earnest money deposit and challenged the arbitrary action on the part of the respondent Municipal Board authorities in settling the Fish Market in favour of the respondent no. 6, who had offered a lesser bid value than the petitioner. Mr. Rahman has further submitted that Rule 7 of 'the Rules for Procedure for the Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam' ['the Rules', for short] has provided that though the Settling Authority in the respondent Municipal Board is not bound to accept the highest or any bid but if he does not accept the highest or any bid, he shall record his reasons in writing. Thus, there is clear infraction of the statutory prescription contained in Rule 7 of the Rules in the case in hand.

5. Mr. Chetia, learned Junior Government Advocate, Assam has produced the records of settlement. Mr. Chetia has submitted that from the records/ proceedings of settlement of the Fish Market, it has transpired that the decision to settle the Fish Market in favour of the respondent no. 6 was taken in an emergent meeting of the respondent Municipal Board held on 27.05.2022. In the Resolution no. 2 adopted in the said meeting, it was observed that during the bidding process undertaken in the previous year, the bidders had quoted high bid values against the markets, etc., but after being offered settlement, those bidders could not deposit the requisite amount asked for the settlement.

6. Mr. Nath, learned senior counsel appearing for the respondent no. 6 has submitted that the respondent Municipal Board authorities had taken the decision to settle the Fish Market in favour of the respondent no. 6 after having regard to the experience faced by the respondent Municipal Board during the previous year of settlement. As the bid value offered by the respondent no. 6 was found to be a reasonable one in conformity with the minimum value fixed for the Fish Market, the decision settle the Fish Market in favour of the respondent

no. 6 was a reasonable one. It is submitted by Mr. Nath that after the order of settlement dated 30.05.2022, the respondent no. 6 had duly deposited all the installment amounts and there is hardly a month left for the period of settlement to be over on 31.03.2023.

7. I have considered the submissions of the learned counsel for the parties and also perused the materials brought on record. I have also gone through the records of settlement, produced by Mr. Chetia, learned Junior Government Advocate, Assam.

8. It is settled that a bidder who has participated in a competitive bidding process at least has a right to equality and fair treatment in the matter of evaluation of competitive bid offered by him in response to a notice inviting tender in a transparent manner and free from any hidden agenda and in that respect, he is entitled to be treated in a fair, equal and non-discriminatory manner in the matter of evaluation of his bid. A bidder has an enforceable right to that limited extent before the Court and the Court can examine the issue as to whether the petitioner has been treated unfairly or discriminated against. An obligation is also cast on the tendering authority to proceed with the matter in fair, just and transparent manner by undertaking the exercise in accordance with law.

9. As have been noted above, 6 [six] bidders responded to the Tender Notice dated 27.04.2022. After receipt of the bids from the 6 [six] bidders, a Comparative Statement was prepared under the signatures and seals of the Chairman, Mangaldoi Municipal Board and the Executive Officer, Mangaldoi Municipal Board. In the Comparative Statement so prepared, remarks were put in the respective columns as to whether the bidders had submitted the requisite documents and/or complied with the terms and conditions of the Tender. From a perusal of the Comparative Statement, it is noticed that the bid of one Sri Tarapad Das who had offered the highest bid value of Rs. 15,82,900/-, was found responsive and compliant to the terms and conditions of the Tender Notice. Similarly, the bid of the petitioner who had offered the 2nd highest bid value of Rs. 13,53,600/-, and the bid of the respondent no. 6 who had offered the 3rd highest bid value of Rs. 12,25,000/-, were also found compliant and responsive to the Tender Notice.

10. Rule 1 of the Rules, framed in exercise of the powers conferred by Section 147, Section 148 and Section 301 of the Assam Municipal Act, 1956, has prescribed that all the markets which the Municipal Board decides to lease, are to be settled by way of a tender process, provided the Municipal Board may, in its discretion and for reason to be recorded, reserve any market from lease and administer it directly. As per Rule 2, the period of lease for a market shall be 1 [one] year, provided that the Municipal Board may if it thinks fit, with previous approval of the Director of Municipal Administration, extend the period of lease for a total period of 2 [two] years but not exceeding 1 [one] year at a time. Rule 7 of the Rules has *inter alia* provided that every bid shall be recorded in writing by the officer conducting the tender process but he is not bound to accept the highest or any bid but in case he does not accept the highest or any bid, he shall record his reasons in writing.

11. From the records, it is noticed that an emergent meeting of the respondent Municipal Board authorities was called on 27.05.2022. In the said Emergent Meeting, a resolution in the form of Resolution no. 2 was adopted, whereby, it was decided to settle the markets/parking stands/fisheries, etc. for a period of 10 [ten] months for the year : 2022-2023. After examining the bid values received against the markets/parking stands/fisheries for the year : 2022-2023, and upon comparison of those rates with the rates offered during the previous year, it was observed that during the previous year, the bidders who had quoted high rates could not deposit the requisite amounts after settlements were offered to them. Having observed so, it was *inter alia* observed that in so far as the Fish Market was concerned, the same was to be settled in favour of the respondent no. 6. Though no discussion was made in respect of the bid values offered by the 1st highest bidder [Sri Tarapad Das] and the 2nd highest bidder [the petitioner] in respect of the Fish Market in question in the emergent meeting of the respondent Municipal Board authorities held on 27.05.2022 and the acceptance of the bid value of the respondent no. 6 @ Rs. 12,25,000/-, one can easily draw an inference that the bid values offered by the 1st highest bidder and the 2nd highest bidder, according to the respondent Municipal Board authorities, were not reasonable and perhaps exorbitant.

12. The decision of terming the bid values offered by the 1st highest bidder and the 2nd highest bidder in respect of the Fish Market as not reasonable ones is to be considered in the context of the nature of the settlement. Admittedly, the prime consideration for offering the Fish Market for settlement is to fetch highest revenue. The difference between the bid values offered by the 1st highest bidder and the respondent no. 6 was Rs. 3,57,900/- [=Rs. 15,82,900/- (-) Rs. 12,25,000/-] and the bid values of the 2nd highest bidder [the petitioner] and the respondent no. 6 Rs. 1,28,600/- [=Rs. 13,53,600/- (-) Rs. 12,25,000/-]. The respondent Municipal Board authorities in its Emergent Meeting held on 27.05.2022 did not discuss as to how and in what manner the amounts of Rs. 15,82,900/- and Rs. 13,53,600/- were not reasonable.

13. As per Clause 10 of the Tender Notice, the settlement holder of a markets has to collect fees/tolls at the rates fixed by the Municipal Board. Clause 14 of the Tender Notice has further prescribed that the settlement holder can collect the fess/tolls only at the rates fixed by the respondent Municipal Board. The bidders are businessmen who prepare their tenders by taking into consideration a host of factors including the terms and conditions incorporated in the tender document, the estimated amount and the quantum of profit they are likely to earn and accordingly, they arrive at their tendered bid values. One prepares his bid to the best of his estimation, by quoting his tendered bid value at a definite amount on the premise that at such amount, he would be able to perform the obligations under the contract if the tender is settled in his favour and at the same time, would also be able to earn a profit. A number of bidders participate in a tender process and the bidders tender different bid values but only one of them emerges successful. Thus, the preparation of the tendered bid value is at the risk and peril of rejection of one's bid if the same does not emerge as the highest valid one and a tender process is always competitive.

14. As per Clause 7 and Clause 12 of the Tender Notice, the bidders and their guarantors were required to submit certificates of the immovable properties at least equivalent to the extent of the bid value offered by them. Thus, it is not open for the respondent Municipal

Board authorities to say that their interests are not safeguarded only because a bidder has offered a higher bid value than their estimation, when the bidder has submitted documents regarding landed properties to safeguard and protect the interests of the Municipal Board.

15. As has been noted above, the settlement holder of a market at all times, has to follow the rates of fees/tolls prescribed by the respondent Municipal Board and the rates of fees/tolls to be collected by the lessee are fixed. Such rates of fees/tolls do not vary with the amount of bid offered by a bidder and there is no correlation between the prescribed rates of fees to be collected in the market and the bid value at which the market has been settled with. The Resolution no. 2 adopted by the respondent Municipal Board in its Emergent Meeting held on 27.05.2022 to that effect that in the previous year of settlement, some of the bidders who had offered higher bid values, could not deposit the requisite amounts when the settlements were offered to them, cannot be a ground for not accepting the higher bid values offered by the responsive bidders and with such non-acceptance, to accept a lower bid value offered by another bidder. There was no discussion in the said resolution as to why the bid value offered by the higher bidders than the respondent no. 6 in the case in hand, were not acceptable.

16. In this context, the observations made by the Hon'ble Supreme Court of India in *Jespar I. Slong vs. State of Meghalaya and others*, reported in [2004] 11 SCC 485, can be referred to. The State of Meghalaya owned a weighbridge at Morkjniange which it had decided to lease out to the contractors who were willing to take it on lease on yearly basis and for that purpose, it issued a notice inviting tender. When the tendering authority settled the weighbridge in favour of one of the bidders at Rs. 1.21 crore, the same was challenged before the High Court. It was held by the High Court that the bid, at which it was accepted, was speculative and predatory. When the matter reached the Hon'ble Supreme Court of India, the Hon'ble Supreme Court of India noticed that the income from the weighbridge was to be received from the fees charged for weighing of trucks which would pass through the route on which the weighbridge was situated. The trucks mostly used to carry coal and as per the relevant notification, the person operating the weighbridge, could only charge a sum of Rs. 30/- for a loaded truck and Rs. 10/- for an unloaded truck. In such scenario, it was observed that the fee to be collected from the transporters for weighing of their vehicle was fixed

and it would not vary with the amount of bid offered by the contractor. The contract would not have any effect on the price of coal, since weightment charges were fixed by the Government and the contractor had no right to increase the same, thereby, to cause loss to the public. It has been held that the payment of the bid amount is purely a matter between the contractor and the State. As a matter of fact, obtaining higher revenue by accepting the eligible highest bid would only be in public interest because the State stands to gain more revenue in that way. It has also been observed that offering of the bid after knowing the commercial value of the contract is a matter left to the business acumen or prudence of the tenderer and no third party's interest is involved in such a contract. If the State decides to give its largesse to the public it has an obligation to see that it fetches the best possible value for the same, provided it does not otherwise in any manner affect the rights of other persons.

17. The respondent Municipal Board authorities have also failed to show that before initiation of the competitive bidding process by the Tender Notice any range had been ascertained and the same had been published and disclosed to the bidders so that the bidders became aware before submission of their bid documents and before finalizing their bid values that in the event they submit their bid values above a particular amount the same would entail rejection. There was no upper limit prescribed by the respondent Municipal Board authority with the condition that if anyone offers a bid value over that particular amount the same would entail rejection.

18. It is also settled that an administrative authority like a tendering authority is bound by the norms, standards and procedure laid down by it for the bidders in the tender notice and later on, non-adherence to such norms or standards or procedure, prescribed by it, on its part at the time of acceptance of the bids would invalidate its action unless such deviation is based on some valid principle which is neither irrational nor unreasonable or discriminatory. In the matter of distribution of State largesse, one of the objectives is to secure the highest revenue for the State Exchequer. If it decides to accept a bid which is not the highest bid and is likely to result in a loss to the State Exchequer, it has to be on the basis of certain valid and rational principle. The judicial review of administrative action is intended to prevent such arbitrariness, irrationality and unreasonableness. There is no whisper in the Tender Notice

dated 27.04.2022 nor in the records of settlement that the Municipal Board authorities had laid down as a condition precedent that it would only accept a bid value which is nearer to the minimum value of the Fish Market fixed at Rs. 6,59,962/-. Fairness demanded that the respondent Municipal Board authorities should have disclosed to all the bidders beforehand that the bid value above a particular amount or above a particular percentage of the minimum value so fixed, would not be accepted. It was only when the time for acceptance of the bids came the respondent Municipal Board authorities cited the reason that the bid value offered by the 1st highest bidder and the 2nd highest bidder in the case in hand, were not to be accepted.

19. It cannot be said that there was any delay on the part of the petitioner in approaching the Court as he had filed the writ petition on 09.06.2022. When the writ petition was moved, the respondents were put to notice on 15.06.2022, while observing that order of settlement would be subject to the outcome of the writ petition. The case record has revealed that the notices were duly served upon the respondent Municipal Board authorities. Yet, the respondent Municipal Board authorities have chosen not to file any counter affidavit till date traversing the statements and contentions raised in the writ petition.

20. In the light of the discussions made above, this Court is of the unhesitant view that in accepting of the bid of the respondent no. 6 whose offered bid value was the 3rd highest amongst the 6 [six] participant bidders, by the respondent Municipal Board authorities ignoring the two higher bid values offered by the other two bidders including the petitioner, whose bids were also found responsive in nature, in settling the Fish Market, the respondent authorities were guided by irrelevant factors in the decision-making process which also had a negative effect for the State Exchequer. There was no public interest found involved in the decision-making process in awarding the settlement of the Fish Market in favour of the respondent no. 6 at a lesser settlement amount. In such view of the matter, this Court is of the view that the order dated 30.05.2022 being arbitrary, is not sustainable in law and is liable to be set aside. The same are accordingly set aside.

21. At this stage, Mr. Nath, learned senior counsel appearing for the respondent no. 6 has submitted that the respondent no. 6 has already deposited the installment amount to operate the Fish Market upto 31.03.2023 and the respondent no. 6 is presently operating the market. Thus, he may be allowed to operate the market till 31.03.2023.

22. In view of the directions given above, the respondent no. 6 may be permitted to operate the market upto the date the respondent Municipal Board authorities take the decision after revisiting the matter of settlement, that is, 7 [seven] days from the date of receipt of a certified copy of this order. If any excess amount of installment for the period upto 31.03.2023 is found to be refunded to the respondent no. 6 due to deposit already made by him, the same shall be refunded by the respondent authorities forthwith thereafter.

23. With the observations made and directions given above, the writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant