

(2021) 06 GAU CK 0169

Gauhati High Court

Case No: Writ Petition (Civil) No. 3153 Of 2021

Nurjamal Sheikh

APPELLANT

Vs

State Of Assam And 4
Ors

RESPONDENT

Date of Decision: June 25, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Assam Panchayat (Financial) Rules, 2002 - Rule 47(2), 47(3)

Hon'ble Judges: Kalyan Rai Surana, J

Bench: Single Bench

Advocate: M Ahmed

Final Decision: Dismissed

Judgement

1) Heard Mr. M. Ahmed, learned counsel for the petitioner. Also heard Mr. M. Nath, learned standing counsel for the P&RD Department,

respondent nos.1 and Mr. P. Nayak, learned standing counsel for BTC, respondent nos. 2 to 5.

2) On the ground that the NIT dated 07.06.2021 issued by the respondent no.5 under Memo No. MMDB-15/BTC/HG/Pt.1/2017-18 dated 07.06.2021

for settlement of Markets/Parghats/Fisheries/Cattle Pound, etc. for the year 2021-22 w.e.f. 01.07.2021 to 30.06.2022 under Mahamaya Development

Block contains absurd clause no.4 in the NIT, the said NIT process has been challenged by the writ petitioner under Article 226 of the Constitution of

India. The said clause is quoted below:

“The tenderer must have to deposit the offered rate fixed of the concerned market/ Go-hat/ parking/ parghat/ ferry/ cattle/ pound etc. in the form

of bank draft which shall be made payable in favour of the Principal Secretary, BTC, Kokrajhar at SBI Branch along with tender documents to be a valid tenderer.â€

3) The learned counsel for the petitioner has submitted that on earlier occasions the prospective tenderers were required to deposit earnest money at

the rate of 10% of the scheduled rate, but in the present case illegal, arbitrary, mala fide and discriminatory clause to pre-deposit the entire bid amount

has been imposed. It is submitted that the BTC authorities is required to follow the Assam Panchayat Act, 1994 and the Assam Panchayat (Financial)

Rules, 2002, but in the present case, due to absurd conditions, only one person is getting settlement of Salbari Hat and Go-hat from 2018-2019 till date.

It is submitted that the higher deposit is only to discourage others to bid in the NIT. It is also submitted that contrary to Rule 47(2) and 47(3) of the

Assam Panchayat (Financial) Rules, 2002, insufficient time of 23 days was given to participate in the tender, which is unsustainable. It is also

submitted that in view of the Covid-19 pandemic guidelines issued by the District Administration and the Assam State Disaster Management

Authority, the Government Offices are closed and/ or functioning with few skeleton staff, for which the petitioner could not collect documents to

submit his bid.

4) The learned departmental counsel and the learned standing counsel for BTC submit that there is nothing on record to show that as to which

document the petitioner could not collect and that before which authority he had applied. Moreover, it is submitted that if notice of motion is issued,

there would be a position to apprise the Court as to the date when the NIT was actually published and given wide publicity. Moreover, it is submitted

that during this pandemic period, the issuance of tender had got delayed and therefore, the tenders have been belatedly called and that without regular

settlement, the respondents would have no option but to go for ad-hoc arrangement, which does not help anyone.

5) It has been brought to the notice of the Court that under somewhat similar circumstances, this Court by order dated 18.06.2021 passed in WP(C)

3082/2021- Shekhar Ch. Paul & 2 Ors. Vs. the State of Assam & several others, on being agreed to by the learned counsel for the appearing parties,

had disposed of the said writ petition at the motion stage by granting 10 (ten) days time w.e.f. day of the order to the three writ petitioners to submit

their tenders with a direction to the respondents not to open the bids till 28.06.2021 so as to permit the petitioners in the said case to submit their bids.

A similar option was offered by the Court to the learned counsel for the petitioners. It may be mentioned that although both the learned State counsel

had agreed to the proposal, but the learned counsel for the petitioners that he is inclined to make his submission on the strength of the merit in his case.

6) The Court finds that there is no pleading in the writ petition as to why requirement of pay the entire bid amount as a condition of participating in the

bid is arbitrary, illegal or discriminatory. Moreover, the learned counsel for the petitioner has not been able to show from any Act, rules or notification

in force that the Assam Panchayat Act, 1994 and Assam Panchayat (Financial) Rules, 2002 is made applicable to the Bodoland Territorial Council.

Moreover, the petitioner has alleged that only one person named in paragraph 5 of the writ petition is getting settlement of Salbari Hat and Go-hat

since 2018-19, but neither any document has been annexed to the writ petition nor the said person has been arrayed as a respondent in the writ

petition. Moreover, the Court is of the considered opinion that merely by use of words like arbitrary, illegal or discriminatory and high handed exercise

of administrative power, without any foundational pleading is not sufficient to set aside and quash the tender process.

7) Therefore, the Court finds no merit in this writ petition to issue notice on the respondents. Hence, the writ petition is dismissed, having found the

same without any merit.