Dilbahadur Karki Chetri Vs State of Assam and Others

Court: Gauhati High Court

Date of Decision: Aug. 6, 1985

Acts Referred: Assam Panchayati Raj Act, 1959 â€" Section 138, 138(2)
Constitution of India, 1950 â€" Article 226

Citation: (1985) 2 GLR 306

Hon'ble Judges: K. Lahiri, Acting C.J.; K.N. Saikia, J

Bench: Division Bench

Advocate: P.K. Goswami, P. Prasad and P.C. Goswami, for the Appellant; A.S. Bhattacharjee and R.P. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

K. Lahiri, A.C.J.

1. Something is surely wrong somewhere with the settlement of hats and bazars by the Gaon Panchayats and Mahkuma Parishads under the

Assam Panchayati Raj Act and the Rules framed there under. In almost every case the unsuccessful tendered prefer appeal to the State

Government u/s 138(2) of the Act and thereafter institute writ petitions in the High Court, notwithstanding the fact that the terms of settlement are

as short-lived as ephemeras just for one year. To get a settlement for a year or less than a year so much energy and money are marshaled by the

tenderers. One can easily realize the weight age of gain or the volume of profit in such settlements. The question that plagues us is whether the rate

of minimum offer should be doubled or trebled.

2. In the instant case for an ordinary and small hat known as Nagrijuli Bi-weekly" Bazer, the tenderers offered on the average Rs. 1,50,000/-. For

that bazar in question Government estimated bid was at Rs. 78,706,00 for the previous settlement (1984-85). In pursuance to the tender notice

Respondent No. 3 Shri Birendra Barman offered over Rs. 2,53,000/- , Nabin Phayal ran neck to neck and offered over Rs. 1,78,000/- also ran

Shri Pradip Sarkar who offered Rs. 1,65,000/-, and odd, Shri Babul Das offered over Rs. 1.65,000/- Shri Garga Ram Tudu offered over Rs.

1,32,000/- Shri Ramen Boro offered over Rs. 1,22,000/-. The Petitioner Shri Dil Bahadur Karki Chetri was almost last but for the lowest offer of

Khan Bahadur Chetri at Rs. 1,01,100/-and odd. The standing of the Petitioner in so far at the rate offered was 7th out of 8(eight) tenderers. He

offered Rs. 1,21,222,22. The Nalbari Mahkuma Parishad, who invited the tenders scrutinized them and found the first six tenders defective for one

reason or the other and accepted the offer of the Petitioner, the 7th offerer. The unsuccessful tenderers appealed to the State Government u/s 138

of ""the Act"". The appellate authority set aside the order of settlement of the Mohkuma Parishad in favour of the Petitioner. The Mohkuma

Parishad held that the offer of Respondent No. 3 at Rs. 2,53,000/- was on the high side so much so that it was considered by the Mohkuma

Parishad as ""reckless"". The reasons for rejecting the tender of Respondent No. 3, Shri Birendra Barman, are extracted below:

1. Shri Birendra Barman-This tender is rejected on the ground that (1) the bid money of this tender is reckless one as the amount of the bid is more

than twice of the amount of the last settlement. In this connection the judgment of Gauhati High Court (1983) 2 GLR 41 in Civil Rule Nos. 1106

and 1169 of 1982 decided on 38-3-83.

(ii) Zamindar is black listed.

3. It is, therefore, seen that the highest tender of Respondent No. 3 was rejected on two fold grounds which were interlinked. The Zaminder was

black listed and, therefore, the Mohkuma Parishad could not have recovered any arrear Kist money in the event of default by Respondent No. 3.

Indeed if there was no adequate security to ensure recovery of the Kist amounts or tendered amount there was a risk involved in settling the bazar

to Respondent No. 3, more so when be offered over Rs. 2,53,000/-, It was rational for the Mohkuma Parishad to reach the conclusion, However,

by a stroke of pen the Mohkuma Parishad held that the offer made by Respondent No. 3 was reckless. Why was it careless and why it should be

treated as heedless ? We do not gather anything from the order. Indeed, there is no material to show that Respondent No. 3 was careless,

negligent or heedless in offering the tendered amount. The only ground on which inference has been drawn is that the offer made by the Petitioner

was more than double the amount of the previous settlement The price of everything is going up and the offer of more than double the amount of

the last settlement by itself cannot be a reckless action. To hold action of a person as reckless and to disqualify him needs strong and cogent

reasons. However, if the high offer made by Respondent No. 3 is taken into consideration along with the fact that he had no adequate security or

surety, the conclusion of the Mohkuma Parishad might be justified as it would have been reckless act on the part of the Mohkuma Parisbad as well

to accept the offer without the backing of proper and adequate security to fall back upon to realize the arrear Kist amount in the event of default by

Respondent No. 3. In that sense only the Mohkuma Parishad was justified in holding that the acceptance of the offer of Respondent No. 3 without

any surety and/or with, a surety who was "black listed" would be a careless and negligent act on the part of the Mohkuma Parishad.

4. When the matter came up before the appellate authority it held that the finding of the Mohkuma Parishad that the surety or Zaminder of

Respondent No. 3 was black listed was an erroneous finding. The appellate authority held that there was no material worth-the-name nor was

there any material furnished by the Mohkuma Parishad to show that the Zamindar was black listed. It held that the Mohkuma Parishad itself had

issued a clearance certificate to the surety or Zamindar of Respondent No. 3. As such, the appellate authority held that the surety was a fit person

who had-enough property to secure payment of arrear installments of the Respondent. When the Mohkuma Parishad itself had certified that the

Zamindar was a competent one, the finding that he was black listed was indeed a mysterious conclusion. The appellate authority held that when the

Zamindar or the surety was fit enough to pay the installment amount, in the event of default made by Respondent No. 3. the offer was not reckless.

It also appears to us that the offers made by at least three other tenderers were about two lakhs rupees each. As such, taking the nature and

quantum of the offers made by the other tenderers the appellate authority was justified in holding that the offer of Respondent No. 3 was not

reckless. The appellate authority held that when the surety was sound the question of refusal to accept the offer of Respondent No. 3 is reckless

did not arise. The findings of the appellate authority is supported by materials. If Respondent No. 3 fails to pay the Kist money they can be

straightway recovered from the surety in accordance with the provisions of the law. When so many persons offered tenders in the range of Rs.

1,65,000/- to Rs. 1,75,- 000/- the offer of Respondent No. 3 cannot be held to be such to term it as reckless or heedless.

5. Be that as it may, the State Government has undoubted appellate power u/s 138 of the Act, The provision, empowers the State Government to

render such order ""as may be deemed necessary"". The order of the State Government is final. It is therefore seen that the appellate authority has

co-extensive power with that of the settling authority. The order rendered u/s 138 of ""the Act"" has the touch of finality, Such is the sweep of the

power of the State Government. The appellate authority on due consideration of the facts and circumstances of the case held that the offer of

Respondent No. 3 was not reckless. Under these circumstances can we in exercise of the power under Article 226 of the Constitution interfere

with the findings of fact or re-appreciate the material ? There are various decisions within the Supreme Court wherein it has been ruled that the

High Court should not disturb the findings of fact reached by the appellate tribunals in exercise of the power under Article 226 of the Constitution,

We refer only two such decisions which went from this High Court: (1) Mukunda Bore Vs. Bangshidhar Buragohain and Others, (2) Bishnu Ram

Borah and Another Vs. Parag Saikia and Others, We also rely on a decision of a Division Bench of this Court in Jogeswar Neog v. State of

Assam, Civil Rule No. 788 of 1984 decided on 21.3.85. Therein, the appellate authority likewise held that the offer of settlement of a bazar at Rs.

1,94,000/- was reckless but no reason was given for reaching the conclusion, The Division Bench held that in the absence of any finding that the

offer made was reckless of consequences or it was rash, the appellate authority acted without jurisdiction in rejecting the tender and throwing it out

of consideration. In the instant case the Mohkuma Parishad had held that the offer was reckless without assigning any reason thereof, except the

reason that the surety was unfit. However, the finding that the surety was unfit was held to be no finding as there was no material to show that the

surety was unfit. The appellate authority held that the offer made by Respondent No. 3 was not reckless. When Respondent No. 3 had furnished

sound surety who could make good the loss, if any, to the State in the event of his failure to pay the installments, the question of recklessness of the

offer did not arise.

6. This apart, the Petitioner has no case as the appellate authority rightly held that there was no reasonable ground for holding the tenders of Nabin

Phayal, Pradip Sarkar, Babul Das, Garga Ram Tudu and Kamen Boro were defective and rejecting them. The appellate authority held that they

were valid tenders. Ail these tenderers offered at higher rate than the present Petitioner. Under these circumstances the question of settling the

bazar with the Petitioner at such a low offer made by him cannot arise at all. As alluded, this is a short-term lease, the term of which is only one

year.

7. For the foregoing reasons, we hold that the findings reached by the appellate authority are out and out findings of fact. It is difficult to hold that

the offer made by Respondent No. 3 was reckless. Further the Respondent No. 3 ensured the offer by providing a sound surety to back up his

offer. In the event of any failure on the part of Respondent No. 3 the Mohkuma Parishad can recover the loss or deficiency by realizing the money

from the surety of Respondent No. 3. The appellate authority in exercise of its appellate power has selected the most suitable tenderer after giving

cogent reasons for such selection. We are also of the opinion that the findings of fact reached by the appellate authority cannot be interfered with in

exercise of our power under Article 226 of the Constitution. In our opinion, the principles of law enunciated in Hazarat All v. The State of Assam

and Ors. (1983) 2 GLR 41 relied on by the learned Counsel for the Petitioner are not applicable in the instant case.

8. In the result, the petition is dismissed in limine.