

**(2000) 12 GAU CK 0014****Gauhati High Court****Case No:** Civil Rule No. 1164 of 1998

Vijay Kumar Jasrasaria

APPELLANT

Vs

State of Assam and Others

RESPONDENT

**Date of Decision:** Dec. 15, 2000**Acts Referred:**

- Assam Excise Rules, 1945 - Rule 93
- Constitution of India, 1950 - Article 226

**Citation:** (2000) 3 GLT 591**Hon'ble Judges:** B. Biswas, J**Bench:** Single Bench**Advocate:** R. Gogoi, G.N. Sahewalla, A.K. Goswami and P. Bora, for the Appellant; . Rekha Chakraborty, A.K. Phukan, P.K. Kalita and M. Bhuyan, for the Respondent**Final Decision:** Dismissed**Judgement**

D. Biswas, J.

This petition under Article 226 of the Constitution has been filed by the Petitioner for issue of a Writ of Mandamus to prevent the Respondents from giving effect to the order of settlement passed on 30.12.1997 and 31.12.1997 settling the Nazira Excise Warehouse in favour of Respondent No. 3 and for further direction to compensate the Petitioner to the extent of Rs. 73,55,723.45 for the loss sustained by him.

2. Petitioner's case in brief is that he was given the contract at Rs. 15.25 per LPL for the period beginning 1.5.1994 to 30.4.1997. In Clause-16 of the NIT powers were reserved with the Government either to reduce or increase proportionately the contract rate if and when the cost price of duties and other levies on portable alcohol/rectified spirit escalate or goes down in the exporting State. This term was also incorporated in the agreement and accordingly the licence was issued. In view of the increase of cost price of rectified spirit in the exporting State the Petitioner filed representation before the Respondent No. 2 for corresponding increase as he

was suffering loss. The Respondent No. 2 vide letter dated 24.5.1995 informed that enhancement of cost price could not be considered due to pendency of Civil Rule No. 1703/1994 filed by M/s NECOM Trade and Suppliers challenging the settlement. Vide order dated 29.1.1996 the said petition was rejected and the settlement of the Excise Warehouse in favour of the Petitioner was upheld. But in Writ Appeal No. 125/96, the settlement was set aside for the infirmities in the NIT and the Respondents were directed to issue fresh tender in accordance with law. It was further directed that in the intervening period the Respondents may make alternative arrangement for management of the Warehouse. The Petitioner, in the meantime, submitted a representation on 10.1.1997 and prayed for extension of the period of contract. The Respondents were reluctant to consider the loss suffered by the Petitioner. In the meantime, the Respondents vide order 21.9.97 unilaterally reduced the rate for supply of alcohol from 15.25 per LPL to Rs. 9.50 per 7 ,LPL to the great prejudice of the Petitioner. The Petitioner filed Civil Rule No. 1462/97 for a direction for consideration of his representation. In the meantime, after the judgment in Writ Appeal No. 125/96, the Government took a decision to allow the Petitioner to continue as per existing terms and conditions with effect from 1.5.97 till fresh settlement is made. But the representation submitted by the Petitioner on 10.1.97 was rejected which prompted the Petitioner to file an application on 29.4.97 requesting the Respondents to consider the loss suffered by the Petitioner. The Petitioner submitted representations on 6.5.97, 17.7.97, 19.9.97, 10.11.97, 29.11.97 and 29.12.97 for consideration of his case for fresh settlement of Nazira Excise Warehouse in its favour. All connected documents and informations were furnished along with the representations submitted by him.

3. But without considering the Petitioner's case, tender notice was issued incorporating various terms and conditions. Altogether 13 persons including the Petitioner submitted tender papers. The rate quoted by the Petitioner was Rs. 10.55 per LPL whereas the Respondent No. 3 quoted Rs. 11.05 per LPL. To the exclusion of the writ Petitioner and all Ors. , negotiation was made with the Respondent No. 3 and the Warehouse was settled with him at the rate of Rs. 10.54 per LPL. The Respondent No. 3 took over the charge of the Warehouse on 31.12.97 taking advantage of the absence of the writ Petitioner and started selling spirit from the available stock of the Petitioner without making any payment to him.

4. The challenge to the settlement orders dated 30.12.97 and 31.12.97 is primarily on the ground that the Warehouse was settled with the Respondent No. 3 at a negotiated price to the exclusion of all other tenderers. A careful scrutiny of the writ petition shows that apart from the above contention there is virtually no effective challenge to the selection process. The other grounds that the Petitioner sustained loss and submitted representation after representation are irrelevant for the purpose of scrutiny and examination of the selection process undertaken after the tender notice was issued on 31.3.97.

5. It would appear from the order dated 31st December, 1997 (Annexure-XIV) that the contract for wholesale supply of Potable Alcohol/rectified spirit to the Nazira Warehouse was settled with the Respondent No. 3 for a period of three years ending on 30th December, 2000. Only a few days are left for the contract to expire. Therefore, discussion on the question of validity of the settlement order will be more or less academic. The NIT issued on 31.3.1997 apart from price bid provides for various other eligibility criteria. In so far as the price bid is concerned, it would appear that the Petitioner quoted Rs. 10.55 paise per LPL whereas the Respondent No. 3 quoted Rs. 11.05 paise per LPL. However, there was a negotiation with the Respondent No. 3 and it was settled at Rs. 10.54 paise per LPL. The office file relating to the settlement has been examined by me. The reasons for rejecting the tender of the Petitioner is available in the report dated 30.12.97 given by the Commissioner and Secretary to the Government of Assam, Excise Department. It would appear from the Said report available in the office file that the cases of all the tenderers have been dealt with separately and have been rejected with reasons. In so far as the writ Petitioner is concerned, it is observed by the Commissioner that the tender papers were without any relevant documents. The Commissioner found that the Bakijai Certificate submitted by the tenderer was without any date and the rate quoted by the tenderer does not show any break-up on the basis of which the rate was quoted. The tenderer also did not produce the relevant documents to prove his financial soundness. It would be better to quote hereinbelow the relevant excerpts from the report of the Commissioner to appreciate the reasons for rejection of the Petitioner's tender:

After the tenderers are once opened nobody can submit any document as that put other tenderers at a disadvantage.

The bakijai certificate submitted by the tenderer has no date. Hence such undated bakijai certificate cannot be accepted as it is vague. The bakijai officer while signing the certificate has not put any date under his/her signature. Therefore, it is not known if the tenderer is a defaulter of any Govt. dues....

The tenderer's rate of Rs. 10.55p per LPL does not show any break-up on the basis of which this rate is arrived at. Another analysis of the break-up in the same tender shows a rate of Rs. 9.70p per LPL based on the cost price of Bihar Distilleries. As the tenderer did not submit the relevant documents to prove his financial soundness along with the tender before the last date of submission of tenders, the tender cannot be accepted as valid. Hence this tender is fit to be rejected....

It is a matter of great concern whether one individual can have two GIR numbers and show different incomes for the same period. This needs to be referred to Income Tax Authority, in our opinion. Therefore, in our opinion, the documents submitted by the tenderer that too at a date after the tenderers were opened cannot be accepted as proof of tenderer's financial soundness. Therefore, this tender is rejected.

6. The NIT contains the Clause that the Government reserves the right under provisions of Rule 93 of the Assam Excise Rules to reject or accept any tender with justifiable reason. In my opinion the reason given by the Commissioner in his report are good enough for rejection of a tender. I am of the considered opinion that the settlement of the Excise Warehouse with the Respondent No. 3 needs no interference for reasons indicated above.

7. Before a final conclusion is drawn, it would be pertinent to mention here that the Petitioner's claim for compensation for the loss sustained by him on account of variation in the price by the State Government cannot be a ground for interference with the subsequent settlement made in favour of the Respondent No. 3. It would appear that in Clause 16 of the tender notice it was clearly mentioned that the Government reserves to itself the right to reduce or increase proportionately the contract rate during the contract period if and when the cost price or duties increases or decreases in the exporting States. From that point of view, the Government is not bound to make good such losses. The claim raised by the Petitioner for compensation was also belated since it was made after the period of contract was over.

8. In the result, the writ petition is dismissed. The State shall be at liberty to manage the affairs of the Warehouse between the period after expiry of the term of the present contract and till new settlement is made in the manner as they choose in the best interest of the revenue.

No order as to costs.