

**(2007) 02 GAU CK 0026**

**Gauhati High Court**

**Case No:** None

Ajit Barman

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision:** Feb. 20, 2007

**Citation:** (2007) 2 CTLJ 390 : (2007) 3 GLT 530

**Hon'ble Judges:** Amitava Roy, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Amitava Roy, J.

The tender process for awarding the contract to run the catering restaurant in the Gauhati Medical College Hospital, Guwahati is the subject matter of challenge in the instant proceeding. Pending decision of the assailment, this Court permitted the petitioner to run the said canteen.

2. I have heard Mr. A.M. Bujarbaruah, learned Counsel for the petitioner and Mr. K.N. Choudhury, learned Additional Advocate General, Assam for the official respondents.

3. The petitioner has averred that on being asked to start the canteen for the pressing need of the Gauhati Medical College Hospital (hereinafter referred to as the "GMCH"), he did so and the arrangement was approved by the Superintendent, Gauhati Medical College on 14.6.1990. As required, he deposited the running water and the electric charges with effect from 1.7.1990. He was in the year 2002 asked to shift the canteen to another room within the hospital campus as the earlier room was required to open the Blood Bank. The new room had no infrastructure for running the canteen and being assured that the petitioner would be allowed to conduct his business for a reasonable period of time so as to enable him to recover the investments made, he spent huge amount of money therefor.

4. While the petitioner was continuing as such to the satisfaction of all concerned including the doctors and nurses of the hospital by providing good quality food and services, the respondent authorities by a tender notice dated 2.2.2005 and re-tender notice dated 28.3.2005 invited tenders from experienced caterers for running the said canteen. This move, according to the petitioner, was in breach of the promise to permit him to operate the canteen without any time limit. The petitioner has assailed the process on the ground of promissory estoppel. Apart therefrom, according to him, the stipulations in the NIT are deficient in material particulars inasmuch as, the same do not disclose the procedure for opening the tenders or the mode of making the security deposit. Additionally, the NIT had not been widely published and the time allowed for submission of tenders was insufficient. The petitioner, however grudgingly participated in the process. His grievance is that, though he was the most suitable tender, on extraneous considerations and without resorting to any comparative assessment the respondent No. 5 has been picked up to be settled with the canteen. Having been asked to vacate the canteen by letter dated 29.9.2005, he submitted a representation amongst others before the Principal, GMCH Guwahati. The same having failed to evoke any positive response, he turned to this Court for redress.

5. The respondent No. 4, Superintendent, GMCH in his affidavit, while admitting that the petitioner was allowed to run the canteen in the year 1990, contended that it was on the basis of a tender process and for a period of one year. Though, he was required to shift the canteen from the original room, no assurance had been given to him about the term for which he would be allowed to continue. As inspite thereof, the petitioner ran the canteen for several years, it was decided to resort to the tender process as per the rules. Some anomalies with regard to the first tender notice having been identified, a fresh notice was issued. The answering respondents affirmed that after receipt of the tenders, a comparative statement was prepared and the petitioner not being selected was asked to vacate the premises. While asserting that the NIT was sufficiently informative and self contained, it has been pleaded that the canteen was allotted to the lowest tenderer as per the terms and conditions thereof.

6. The respondent No. 5 though had not filed any counter, in his application for vacating the interim order, has maintained that in response to the NIT, he submitted his tender and on the completion of the process, he was informed by the official memo dated 3.11.2005 issued by the Superintendent of GMCH that his tender had been accepted. On being asked to deposit the security money of Rs. 10,000/-, he did so on 17.11.2005. However, before execution of the agreement and delivery of possession, the interim order passed by this Court was served on the respondent authority. According to him, he was a bonafide tenderer and having been selected has a right to initiate his business in the canteen. The answering respondent dismissed the challenge to the tender process as visibly untenable, the petitioner having participated therein.

7. Mr. Bujarbaruah has urged that the petitioner having been settled with the canteen without any fixed term, the initiation of a tender process to settle the same even after being led to make huge investments on the assurance that he would be allowed to continue, is apparently arbitrary, unreasonable and unjust. The petitioner having altered his position to his disadvantages acting on the promise, the respondent authorities are estopped in law in pursuing the tender process. Without prejudice to the above, the learned Counsel has urged that no uniform yardstick to evaluate the offers made by the tenderers having been applied, the rates of food items offered being varying, the selection of the respondent No. 5 is per se unsustainable in law. Mr. Bujarbaruah thus argued that the tender process ought to be adjudged null and void.

8. The learned Addl. Advocate General, per contra, has argued that the induction of the petitioner initially being for a period of one year and that too following the tender process, he has no inviolable right to continue indefinitely. No representation or protest having been made/raised against the tender process at any earlier point of time and he having participated in the exercise, the challenge now made is neither tenable nor bonafide. According to Mr. Choudhury, the selection of the respondent No. 5 is based on a comparative assessment of the tenders by the canteen committee and thus, no interference therewith is called for in the exercise of powers of judicial review. In any view of the matter, the petitioner having continued with the canteen for long 17 years without any public process therefor, he cannot register a preferential claim over the respondent No. 5 in this regard.

9. Mr. Sarma while subscribing to the above contentions, has urged that the respondent No. 5 having responded to the tender process as required and his tender having been accepted on the scrutiny of all relevant aspects, the impugment thereto does not merit acceptance. Relevant records pertaining to the tender process involved have been placed for the perusal of the Court.

10. Due attention has been extended to the rival submissions. Noticeably, the petitioner has not produced any document incorporating the terms and conditions under which he had been initially inducted to run the canteen. The office order dated 17.5.2002, Annexure-2 to the writ petition demonstrates that he was allowed to run the business until further orders. The records produced also do not disclose any commitment on the part of the official respondents to permit the petitioner to continue indefinitely. No assurance or promise to the said effect is discernible therefrom. As the issue pertaining to the mode of his induction, term of business and the claimed assurance of the hospital authority to allow him to conduct the business to recover the investments made involve disputed questions of fact, having regard to the state of the pleadings and the records, I am not inclined to sustain the challenge to the tender process on the ground of estoppel.

11. A bare reading of the notices inviting tenders disclose that therein the essential informations had been provided, namely, the deadline by which the offers were to

be submitted, the term of settlement, mode of deposit of earnest money, quality of food items to be served etc. Though, the exact mode of paying the security deposit had not been set out, in my view, the same per se does not render the notices invalid. The petitioner having offered his tender pursuant thereto and there being no demur from any quarter about the insufficiency of time for submission of tenders, I do not feel persuaded to uphold the said plea as well. In other words, the institution of the tender process cannot be faulted with.

12. The records of the selection disclose that in all 12 caterers including the petitioner and the respondent No. 5 had submitted their tenders mentioning inter alia the food terms and the rates therefor. Evidently, the food items and the rates are not wholly the same. Whereas, the petitioner had quoted rates for 83 items offered, the respondent No. 5 had done so for 50 items. The comparative chart prepared by the selection committee proclaims that a list of all items offered by the tenderers had been made and the rates quoted were compared whereafter, the respondent No. 5 was selected to manage the hospital canteen for a period of one year. The records, however, do not disclose the yardstick applied for such assessment. This assumes significance in view of the varying food items and the rates quoted by the tenderers. A cursory look at the comparative chart establishes that the rates were competitive and whereas, in some food terms one tenderer had quoted higher than others, in some others, his rate was at par or lower. The affidavit also does not disclose the measure applied to evaluate the respondent No. 5 to be the most suitable amongst the tenderers.

13. As observed hereinabove, the range of food items offered by the petitioner was wider than that of the respondent No. 5. Though, understandably, having regard to the nature of the appreciation to be made, some amount of discretion is permissible, the committee ought to have recorded the determinants to adjudge the respondent No. 5 to be more acceptable than others. It being a public process, the decision has to be informed with objectivity and transparency to sustain judicial scrutiny. The records do not reveal any tangible criteria adopted by the committee in support of the selection made. Axiomatically, therefore, the decision of awarding the contract to the said respondent has to be adjudged unsustainable in law.

14. The petition therefore, succeeds. It would be open for the official respondents to initiate a fresh tender process. The hospital authority being in superintendence over the canteen meant principally for the doctors and nurses of the GMCH, it is within its jurisdiction to indicate the food items to be served therein. Being entrusted with the responsibility of ensuring the quality of food to be offered and the hygiene to be maintained in the canteen, a more practical and realistic way of settling the contract may be to fix the items of food to be served and select the best tenderer out of the rates offered/quoted depending on his experience and credibility. The hospital authority is thus expected to outline the modalities ensuring that the process is informed with necessary insight, fairness and reasonableness. As the petitioner has

been allowed to continue since long and the respondent No. 5 in the meantime has not taken over the canteen, pending the completion of the fresh tender process that may be commenced, he (petitioner) would run the canteen till then. No costs.