



GAHC010237182025



2025:GAU-AS:15212

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

Case No. : WP(C)/6324/2025

SHRI HEMENTA KUMAR NATH AND ANR
SON OF BANAMALI NATH RESIDENT OF BALISATRA PO AND PS
BALISATRA NAGAON DISTRICT NAGAON ASSAM

2: MRS HIMA DEKA BHARALI
WIFE OF MRIDUL BHARALI RESIDENT OF BALISATRA PS BATADRABA
DISTRICT NAGAON ASSA

VERSUS

THE STATE OF ASSAM AND ORS
RERESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMDENT DISPUR
GUWAHATI

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM PANCHAYAT AND RURAL DEVELOPMENT
DEPARTMENT DISPUR GUWAHATI

3:THE DISTRICT COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT NAGAON
DISTRICT

4:THE CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD NAGAON

5:MD MAJAHARUL ISLAM
SON OF NURUL HOQUE RESIDENT OF UPAR DUMARIA PS BATADRABA
DISTRICT NAGAO



B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the petitioner(s) : Mr. KN Choudhury,
Senior Advocate
Ms. RR Kakati

Advocates for the respondent(s) : Ms. N Bora, Standing Counsel,
P & RD Department
Mr. S Dutta, Senior Advocate
Mr. DA Kaiyyum

Date on which Judgment is reserved: NA

Date of Pronouncement of Judgment : **10.11.2025**

Whether the Pronouncement is of the : NA
Operative Part of the Judgment

Whether the Full Judgment has been : Yes
Pronounced

JUDGMENT & ORDER(ORAL)

Heard Mr. KN Choudhury, the learned Senior Counsel, assisted by Ms. RR Kakati, the learned counsel appearing on behalf of the petitioners. Ms. N Bora, the learned counsel appears on behalf of the P & RD Department and Mr. Surajit Dutta, the learned Senior Counsel assisted by Mr. DA Kaiyyum, the learned counsel appears on behalf of the private respondent No.5.

2. The petitioners herein are aggrieved by the settlement made in respect of Balisatra Half weekly market dated 22.09.2025 in favour of the respondent No.5 at an amount of Rs.66,23,866/- on the ground that the rate at which the respondent No.5 have been granted the settlement is contrary to Clause 12 of the Tender Notice dated 07.06.2025 and the continuation Notice dated 16.06.2025.

3. Taking into account that the dispute involved relates to interpretation of the terms of the Tender Notice and Rule 47(1) of the *Assam Panchayat (Financial) Rules 2002*, (for short, 'the Rules of 2002'), this Court issues Rule, returnable forthwith as all the respondents are duly represented.

4. The Chief Executive Officer, Nagaon Zilla Parishad had issued a Tender Notice dated 07.06.2025 for settlement of various markets under the Nagaon Zilla Parishad for a period of one year i.e. from 2025-26 with effect from 01.07.2025 to 30.06.2026. The market, in question, which is the subject matter of present adjudication is Balisatra Half-weekly market (for short, hereinafter to be referred to as 'the market in question'), wherein the Government value of the said market in question was mentioned as Rs.83,00,410.00p and the earnest money deposit to be Rs.8,30,041.00p. The term of the said Tender Notice which has led to the present dispute in question is Clause 12. The translated portion of the same as certified by the petitioners' counsel to be the true translation reads as under:

"12. In respect of tender for all Bazar/Ghat, the tender offering highest value at the rate of the average of settlement value of previous three years along with an increase within the cap of 10% on three years average value

will be accepted for consideration."

5. Pursuant to the said Tender Notice, a Continuation Notice was issued on 16.06.2025. In terms with the said Continuation Notice, the three years settlement value as well as the average of the three years settled value of all the markets, to be settled by the Tender Notice dated 07.06.2025 by the Office of the Nagaon Zilla Parishad were mentioned. In addition to that the 10% increase thereon was also mentioned. The said Continuation Notice being relevant is reproduced hereinunder. The below reproduction of the Continuation Notice is the translated copy which was certified to be the correct translation by the petitioners' counsel is as under:

"Notice

34. It is hereby notified that the three-years average of the government value of the markets for which tender for settlement has been invited by the office of Nagaon Zilla Parishad vide Notice No.NZP-708/Hat/Beel/2025-26/2345-35 dated 07/06/2025, and 10% increase thereon are as follows for the purpose of inviting tenders from interested bidders:

Name of the market	2022-23	2023-24	2024-25	Average value	10% increase
1	2	3	4	5	6
Kothiatoll Half-weekly market	1400999	2599999.00	2599999.00	2200332.00	2420366.00
Juria Half-weekly	1215000.00	1338000.00	1338000.00	1297000.00	1426700.00

market					
Shantijan Half-weekly market	7321103.00	8700000.00	8700000.00	8240368.00	9064404.00
Balisatra Half-weekly market	1,40,01,050	15200000.00	15200000.00	14800350.00	16280385.00
Rupahi weekly market	4671999.00	4661111.00	4661111.00	4664740.00	5131214.00

It is mentioned here that the tenders offering value more than the ones mentioned in Column 6 will not be acceptable as per Clause 12 of the tender notice."

6. From a perusal of the above, it is seen that for the year 2022-23, the Balisatra Half-weekly market was settled at Rs.1,40,01,050/-; for the year 2023-24, it is Rs.1,52,00,000/- and for the year 2024-25, the settled rate was Rs.1,52,00,000/-. The average of the three years was also mentioned as Rs.1,48,00,350/- and the 10% increase value was put at Rs.1,62,80,385/-. It is apposite to mention that in the said Continuation Notice further it was stipulated that if a bidder quoted a rate beyond the 10% increase of the average three years settlement rate, such tender would not be accepted.

7. It is the case of the petitioners that the petitioners taking into account the average value which has been mentioned in the Continuation Notice dated 16.06.2025 and the 10% increase thereof did not participate in the said tender

process. However, the petitioners came to learn that on 22.09.2025, the said market in question being the Balisatra Half-weekly market, was settled in favour of the respondent No.5 for the period from 22.09.2025 to 30.06.2026 at an annual value of Rs.66,23,866/- after proportionately deducting the amount so quoted by the respondent No.5 being Rs.84,01,001/- for the period from 01.07.2015 to 30.06.2026. The petitioners, thereupon, submitted a representation dated 03.10.2025 and the respondent authorities, however, having not acted thereupon, the petitioners have approached this Court by filing the present writ petition.

8. Mr. KN Choudhury, the learned Senior Counsel appearing on behalf of the petitioners submitted that the petitioners were the settlement holders in respect to the market in question for the year 2012-13 and the petitioners were interested to participate in the said tender process initiated on the basis of the Tender Notice dated 07.06.2025. However, the petitioners on account of the Continuation Notice issued on 16.06.2025, did not participate, assuming that the value at which, the said market would be settled would be between Rs.1,48,00,350/- and Rs.1,62,80,385/-. However, the petitioners were surprised when they came to learn that the rate at which the respondent authorities have accepted the tender of the respondent No.5 and settled the same for the period from 22.09.2025 to 30.06.2025, which was far below the average of the last three settlement years.

9. The learned Senior Counsel appearing on behalf of the petitioners further submitted that the implication of Clause 12 of the Tender Notice is that the

settlement could have been made between the average of the last three years and 10% increase of the average of the last three years and definitely not below the average of the last three years settlement. He, therefore, submitted that not only the public interest had been harmed, but also the petitioners have lost the valuable right to participate. The learned Senior Counsel also submitted that in fact by virtue of the Continuation Notice dated 16.06.2025, the Tender Value of the market in question was modified by the Continuation Notice which is actually in the form of a Corrigendum.

10. *Per contra*, Ms. N Bora, the learned counsel appearing on behalf of the Panchayat and Rural Development Department, submitted that the petitioners herein having not participated in the said tender process, the petitioners cannot challenge the settlement order which have been made in favour of the respondent No.5. She further submitted that Clause 12 of the Tender Notice dated 07.06.2025, makes it absolutely clear that the highest viable rate had been stipulated, but there is nothing which has been mentioned as regards the lowest viable rate which could have been quoted, except the fact it could not have been below the tender value. She, therefore, submitted that the petitioners herein are merely interlopers.

11. Mr. Surajit Dutta, the learned Senior Counsel, assisted by Mr. DA Kaiyyum, the learned counsel appearing on behalf of the private respondent No.5 submitted that Clause 12 of the Tender Notice was incorporated pursuant to the amendment made to the *Assam Panchayat (Financial) Rules 2002*, (for short, 'the Rules of 2002') by the *Assam Panchayat (Financial) (Amendment) Rules*,

2025, vide Notification No.ECF-637392/2 dated 02.04.2025 whereby Rule 47(1) was amended. He, therefore, submitted that a perusal of the amended Rule 47(1) of the Rules of 2002 would make it clear that there cannot be a settlement of a tender in respect to hats or ferries or fisheries or ponds beyond 10% of the average settled value of the last three years for the respective hats, ferries and fisheries or ponds. The learned Senior Counsel for the private respondent submitted that nowhere in the Tender Notice or in the Rules of 2002 there is a mention of a lowest viable rate. But obviously, the rate so quoted by the bidder cannot be below the Tender value provided in the Tender Notice. The learned Senior Counsel also submitted that the Notice dated 16.06.2025 is in continuation to the original Tender Notice and not a Corrigendum. He submitted that when the Notice dated 16.06.2025 is a continuation of the Tender Notice, it is issued in furtherance of the Tender Notice, but not modifying the Tender Notice.

12. This Court had heard the learned counsels appearing on behalf of the parties and also perused the materials on record.

13. The facts in the instant case are not in dispute and as such the question of filing any affidavit by the respondents also do not arise. It is on the question of interpretation of Clause 12 of the Tender Notice dated 07.06.2025 read along with the Continuation Notice dated 16.06.2025 in the perspective of Rule 47(1) of the Rules of 2002.

14. From a perusal of the Tender Notice dated 07.06.2025, it is apparent that in

respect to the market in question, the tender value has been put at Rs.83,00,410/-. In terms with Clause 12 as has been already quoted in the previous segments of the instant judgment, it would appear that a tenderer offering higher value than 10% of the average of the settlement value of previous three years would not be accepted. This Court further have perused the Tender Notice dated 07.06.2025 and there is nothing to show that a lowest viable rate had been mentioned though the lowest viable rate cannot be lower than the Tender Value of the market. This Court have also perused the Notice dated 16.06.2025 which also only mentions that any rate quoted beyond what had been stipulated at Serial No.6 of the said Notice i.e. the 10% above the average settlement value of three years would not be accepted. It is also the opinion of this Court that the Notice dated 16.06.2025 is a continuation of the Tender Notice dated 07.06.2025 and does not change the terms of the Tender Notice dated 07.06.2025.

15. This Court finds it pertinent to take note of Rule 47(1) of the Rules of 2002, which is reproduced hereinunder:

"47.(1) Such markets or ferries or fisheries or pounds as are vested in or placed under the control and administration of the Panchayat under Sections 105, 106, 107, 108 and 109 of the Act shall be settled by inviting sealed tenders affixing court fee stamp for such amount as has been prevailing otherwise and earnest money not below two percent of the minimum bid-value for sale and settlement of the right to collect the authorised fees in respect of the markets or ferries or the fisheries and the pounds for a period coinciding with one Panchayats financial year.



Earnest money so received shall be entered in a Register in FORM No. 12 to the Schedule to these rules."

16. A perusal of the above quoted Rule would show that by virtue of the said Rule, the settlement of hats, ferries or fisheries by inviting sealed tender, affixing Court fee stamp has to be for such amount not exceeding 10% of the average settled value of the last three years for the respective hats, ferries, fisheries, ponds, etc. The said Rule only puts a cap on the upper limit of the value of bid, but does not mention anything on the lowest value of the bid.

17. It is also the opinion of this Court that the Tender Notice dated 07.06.2025, the Continuation Notice dated 16.06.2025 as well as Rule 47(1) of the Rules of 2002, do not mandate that the rate to be quoted should be between the average of the last three years settlement value and 10% of the last three years of the settlement value. The submission of the petitioners if allowed in the opinion of this Court would be incorporating a condition which neither is a part of the Tender conditions nor the Rules of 2002.

18. Considering the above, this Court is of the opinion that the basis on which the present writ petition has been structured appears to be misconceived, *inasmuch as*, though highest viable rate to be quoted had been fixed, but the lowest viable rate has not been fixed. It also does not mandate that the bid value should be between the average of the last three years settlement rate i.e. Rs.1,48,00,350/- and 10% increase of the average of the last three years settlement rate i.e. Rs.1,62,80,385/-.



19. This Court also takes note of that the petitioners did not participate in the said bid process. Nothing is brought to the notice of this Court that the petitioners have the capacity to participate in such tender process. The petitioners have also not sought for clarification in respect to Clause 12 of the Tender Notice and the Continuation Notice. Infact, only on 03.10.2025, the petitioners submitted a representation. The status of the petitioners are nothing, but that of interlopers and as such, it is also the opinion of this Court that the petitioners herein lack locus to challenge the bid settlement in favour of the respondent No.5.

20. Considering the above, this Court does not find any merit in the instant writ petition, for which, the writ petition stands dismissed. No costs.

JUDGE

Comparing Assistant