

S/L 6
14.03.2022
Court. No. 19
GB

W.P.A. 3738 of 2022

Anchar Sekh
VS
The State of West Bengal & Ors.

Mr. Tusher Kanti Mukherjee.

...for the Petitioner.

Mr. Tapash Kr. Mondal,
Ms. Priya Dey

...for the Zilla Parishad.

As the matter relates to settlement of a ferry ghat, opportunity is granted to the petitioner to correct the presentation form here and now.

The petitioner was granted a provisional Dakhalnama for leave and license to operate Kotakhali ferry ghat for a period of seven months, that is, from September 1, 2021 to March 31, 2022. It is the contention of the petitioner that by a representation dated January 24, 2022, the petitioner had made a prayer for settlement of the said ferry ghat for the financial year 2022-23 beginning from April 1, 2022 till March 31, 2023, as an extension of the earlier leave and licence.

Mr. Mondal, learned advocate appearing on behalf of the Zilla Parishad submits that the Zilla Parishad has taken a decision to go for public auction for settlement of the said ferry ghat and grant the same to the successful bidder, keeping in mind the larger public interest and also for maximization of revenue. Such decision was taken sometime in February 2022 and March 15, 2022 has been fixed as the date of the auction.

It is submitted that the rules and procedures do not provide that the prayer of the petitioner could be accepted. The petitioner has to participate with all other eligible participants for settlement of the ferry ghat. Under the Jaladhara scheme, there were situations when an extension could be given, but the concerned ferry ghat is not settled under the Jaladhara scheme and as such, the Zilla Parishad cannot extend the leave and licence of the ferry ghat in favour of the petitioner without calling for a public auction.

Heard the parties. Apart from the contention of the petitioner with regard to the losses suffered by him during the pandemic situation, there are no further challenges to the legality of the auction notice.

The zilla parishad as a policy has decided to go for an open auction, as per the rules. The court does not have any authority to either set aside the auction or hold the policy of the zilla parishad to be bad in law for the following reasons:-

a) Judicial review of an administrative decision is permitted only when the decision making authority does not act in accordance with law or acts arbitrarily and with mala fide intentions.

In the matter of ***Tata Cellular v. Union of India***, reported in **(1994) 6 SCC 651**, the Hon'ble Apex Court laid down the following principles with regard to judicial review of administrative action:-

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without

the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

b) The auction notice has been issued as a policy decision and the court must refrain from interfering with the policies of the Government. The auction has not yet been held. There are no allegations of unreasonableness, arbitrariness and favouritism.

It is settled law that policy decisions of the State are not to be disturbed unless they are found to be grossly arbitrary or irrational. In the case of ***Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors.***, reported in (2007) 4 SCC 737, the Hon'ble Apex Court held that the scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy nor are courts Advisors to

the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review in policy matters is no longer *res integra*.

c) The idea of open auction is to ensure maximization of revenue and the zilla parishad cannot be faulted for having taken a policy decision to go for open auction when the pandemic situation has improved considerably and normalcy has resumed in every aspect of life.

In the matter of ***The Goa foundation vs. M/s Sesa Sterlite Limited & ors, [Special Leave to Appeal (Civil) No.32138 of 2015]*** the Hon'ble Apex Court held that, the State was duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process. That natural resources could not be alienated by way of largesse and there must be a reciprocal consideration either in the form of earning revenue or sub-

serving the common good or both. The State's endeavour must be towards maximization of revenue returns.

In the matter of ***Centre for Public Interest Litigation v. Union of India***, reported in **(2012) 3 SCC 1**, the Hon'ble Apex Court held as follows:-

“95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.”

The petitioner has failed to demonstrate before the court any illegality in the said decision of the zilla parishad. The only contention of the petitioner is that a sympathetic consideration should be made in this regard.

The court does not interfere with the auction. The petitioner is at liberty to participate in the auction. Maximization of revenue must be encouraged. Fair competition and transparency must be the basis of allotment of ferry ghats.

This order shall not prevent the petitioner from participating in the auction process to be held on March 15, 2022, if the petitioner is otherwise eligible and in accordance with law.

If the petitioner tenders the earnest money with all relevant documents for participation in the auction on March 15, 2022, within 10.30 a.m., the authority shall allow the petitioner to participate. Such order is being passed in the presence of the learned advocate appearing for the Zilla Parishad. The Zilla Parishad shall permit the petitioner to pay the earnest money and submit all relevant documents as directed by this Court and participate in the tender, if otherwise found eligible, on the basis of the learned advocate's communication.

If the petitioner has paid any extra amount over and above the lease rent payable for the previous provisional settlement, the petitioner may approach the authorities for refund of the same. If such approach is made, the same shall be considered in accordance with law.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocates' communication.

(Shampa Sarkar, J.)