

09.03.2022
Court No. 19
Item no.06
CP

WPA 3839 of 2022

Dipak Kumar Das
Vs.
The State of West Bengal & Ors.

Mr. Samarendra Nath Biswas

..for the petitioner.

Mr. Amitava Chaudhuri
Mrs. M. Chaudhuri
Mr. N. Roy

....for the Nadia Zilla Parishad.

Mr. Jahar Datta
Mrs. Tanusri Pal Chowdhuri

....for the State.

The petitioner is the existing operator of the Tehatta-Chak Behari Ferry Ghat, Nadia (hereinafter referred to as 'the ferry ghat'). The petitioner was granted the lease to operate the ferry ghat for the first time, for the period March 15, 2019 to March 14, 2020. Thereafter, the lease was extended for the period from March 15, 2020 to March 14, 2021 and, further extended from March 15, 2021 to March 14, 2022. His lease expires on March 14, 2022. For the subsequent two rounds of extension, 10% enhancement of the lease rent was claimed from the petitioner. These were reduced rates.

However, Mr. Chaudhuri, learned advocate appearing on behalf of the Nadia Zilla Parishad

(hereinafter referred to as 'the zilla parishad'), submits that the enhanced 10% of the lease rent was subsequently reduced upon taking note of the pandemic situation, on the prayer of the petitioner. A document to that effect has been produced before this court.

The challenge in this writ petition, is the decision of the zilla parishad to hold an open auction for lease of the said ferry ghat for the period March 15, 2022 to March 14, 2023. An auction notice was published on February 28, 2022 and the date of the auction has been fixed on March 11, 2022.

The petitioner submits that the authorities must be restrained from holding the auction and a further extension must be given to the petitioner, keeping in mind the losses suffered by the petitioner during the entire pandemic period.

Mr. Chaudhuri submits that two extensions have already been granted to the petitioner by taking into consideration the losses suffered by the petitioner, during the pandemic situation. Rates were also reduced and the petitioner was required to pay the lease amount at a much reduced rate. He submits that as the pandemic situation has now improved and normalcy has resumed, the zilla parishad has taken a decision to go for open auction for leasing out the ferry ghat, so that wide

participation of the public can be ensured and the revenue to be earned by the zilla parishad, can be maximized.

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 had decided to extend the benefit of further extensions to the lease granted to the petitioner at reduced rates on two occasions. Thereafter, the said zilla parishad has taken a policy decision not to extend any further concession to the ferry operator, but 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. This court finds that sympathetic consideration had already been taken in favour of the petitioner and two extensions have been given. The agreements entered into by the petitioner have been

produced before the court. It appears that the rates were reduced and the petitioner continued to operate for two extended terms without paying the lease rent which would be ordinarily payable.

The decision of the Gauhati High Court cited by the petitioner in the matter of Nipen Das vs. The State of Assam & ors. in WP(C) 3168/2021, does not help the petitioner in the fact situation of this case. His Lordship in the said judgment, directed that in view of the financial losses suffered by the existing lessee, the tender process must be cancelled and the lease must be extended. This privilege has already been given in the case of the petitioner by the authorities, when the two extensions were given.

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

This court has not made any observations with regard to the amount due and payable by the petitioner and the said demand shall be enforced by the authorities, in accordance with law.

The writ petition is, thus, disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)