

S/L 4  
23.03.2022  
Court. No. 19  
GB

W.P.A. 5017 of 2022

Sukhendu Maity  
VS  
The State of West Bengal & Ors.

*Mr. Animesh Mukherjee.*

*...for the Petitioner.*

*Mr. Jahar Lal De,  
Mr. Shamim-Ul-Bari.*

*...for the State.*

The writ petition has been filed challenging a tender notice dated March 14, 2022, issued by the Executive Officer of the Namkhana Panchayat Samity, that is the respondent no.5.

The petitioner is aggrieved by the said tender notice on the ground that the same was issued prior to consideration of the petitioner's prayer for extension of his contract, instead of holding a public auction. The petitioner is the existing operator of the ferry ghat operating from Kusumtala to Rajnagar under Namkahana Panchayat Samity.

The only allegation is that the authorities could not have decided to go for a public auction of the said ferry ghat without considering the fact that the petitioner had suffered losses during his subsisting contract, that is, from April 1, 2021 to March 31, 2022.

There are no further challenges to the legality of the tender notice no.225(24) dated March 14, 2022. Neither have the clauses of the said tender notice nor have the procedure

of holding the public auction, been challenged before this Court.

The panchayat samity as an authority and public body has the power to take a policy decision to call for an auction for settlement of the ferry ghat by allowing eligible participants to submit their bids. Such transparent and fair procedure must be adopted by the authority for maximization of the revenue, it can earn. The writ court cannot interfere with a policy decision in this regard.

The court does not have any authority to either set aside the auction or hold the policy of the panchayat samity 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. There are no allegations of unreasonableness, arbitrariness and favouritism. The petitioner was himself awarded the settlement through a public auction which was held when the pandemic was in the rise.

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 is 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 panchayat samity 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 subserving 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.”

In this case, the tender notice was published on March 14, 2022. The last date for the bidders in the process for submitting their documents was March 22, 2022. The list of eligible applicants has already been published on March 22, 2022. The auction will be held today at 3 p.m. Third party rights have been created at least, insofar as, the eligibility of

the candidates to participate is concerned. Thus, this Court does not find any illegality in the decision of the authority.

Accordingly, the writ petition is dismissed without any orders.

At this stage, even a direction upon the authorities to consider the representation of the petitioner would affect the entire process.

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.)**