

S/L 6
13.04.2022
Court. No. 19
srn

W.P.A. No. 6136 of 2022
Sri Abhijit Chatterjee
Versus
The State of West Bengal & Ors.

Mr. Mani Sankar Chattopadhyay
... for the Petitioner.

Mr. Jahar Lal De,
Mr. Srikanta Paul
... for the State.

Affidavit of service is taken on record.

The petitioner is the existing lessee who runs a guest house, named and styled as Biharinath Aitthi Niwas. The said lease was granted by the Saltora Panchayat Samiti, District-Bankura. The initial lease was for a period of 5 years on and from January 1, 2008. The said lease was renewable after expiry of the first period of 5 years subject to the satisfaction and discretion of the panchayat samiti for periods not exceeding 5 years at a time, at the financial term which would commensurate with the market rate prevailing at the time of renewal of the lease. Provided that, the total lease period granted to the petitioner would not exceed 20 years, after which, no priority would be given to the petitioner while leasing the guest house.

The petitioner submits that the Saltora Panchayat Samiti issued a tender notice dated March 8, 2022, seeking to lease out the said guest house, by public auction. The said tender notice dated March 8, 2022 was cancelled by a notice

dated March 23, 2022. Subsequently, another tender notice dated March 31, 2022 was issued by the same panchayat samity. As per the said notice, the tender documents should be deposited within April 22, 2022. The petitioner was also directed to handover the leased property after vacating the same, within April 20, 2022.

The petitioner is aggrieved for the following reasons:

- (a) The lease agreement of the petitioner dated December 31, 2007 provided that the petitioner should have been granted the renewal up to 20 years from January 1, 2008.
- (b) The petitioner was not in a position to operate the guest house during the Covid period and as such further extensions ought to have been given to the petitioner up to 20 years from January 1, 2008, so that the petitioner was able to recover the losses suffered.
- (c) Even if it is assumed that the petitioner's lease shall not been renewed, but as the petitioner has the right to participate in the present tendering process and also has a chance of success, the petitioner should be protected to the extent that till the final decision is taken by the authority with regard to the tendering process and a decision is arrived at as to who would be the successful bidder, the petitioner should not be forced to remove all the furniture and fittings.

Mr. De, learned Advocate appearing on behalf of the State-respondents, submits that the petitioner does not have

a right of automatic renewal for 20 years and maximization of the revenue of the panchayat samiti was the only aim for holding the public auction. He further submits that the petitioner has already been allowed 20 days to vacate the guest house as the petitioner's lease ended on March 31, 2022.

Heard the learned Advocates for the respective parties.

The Court agrees with Mr. De that in terms of the deed dated December 31, 2007, the petitioner was entitled to a renewal up to December 31, 2012 for the first renewal cycle. Thereafter, such lease was renewable, subject to the satisfaction of the panchayat samiti and at the discretion of the panchayat samiti for periods not exceeding 5 years at a time and at the financial rate which would commensurate with the prevailing market rate. The total stretch of the lease agreement after renewals in respect of a particular lessee (here the petitioner) would not exceed 20 years. There is no dispute with the fact that the renewal granted to the petitioner ended on March 31, 2022 and the lease rents had been paid up to March 31, 2022 by the authority.

The contention of the petitioner that the petitioner was entitled to a renewal every 5 years up to 20 years is not correct. The initial lease was for 5 years. In case the authority was satisfied with the performance of the petitioner, the authority could have exercised its discretion to extend the said lease for further periods but not more than 5 years at a time. Such renewal was to be at a rate commensurate with

the market rate. The outer limit has been provided to be 20 years, in all, in respect of the lease granted on and from January 1, 2008. The interpretation of the petitioner that there was a mandate that the lease should be compulsorily extended upto 20 years, by virtue of consecutive renewals, is misconceived.

The authority as a policy, has decided to go for public auction for leasing the guest house. The intention of the authority has been explained in a letter issued by the Executive Officer, Saltora Panchayat Samity dated March 31, 2022 to the petitioner. Such letter was written in response to an e-mail sent by the petitioner on March 24, 2022. The authority has intimated to the petitioner that in order to maintain transparency and to procure the highest revenue, such decision had been taken.

The panchayat samiti as an authority and a public body, is within its jurisdiction to take a policy decision by holding a public auction and by allowing eligible participants to submit their bids. Such transparent and fair procedure must be adopted by any authority, for maximization of the revenue. The writ Court cannot interfere with such a policy decision.

The Court does not have any authority to either set aside the auction or hold the policy of the panchayat samiti 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 panchayat samiti. There are no allegations of unreasonableness, arbitrariness and favouritism.

c) It is settled law that the 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.

d) 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*.

e) The idea of a public auction is to ensure maximization of revenue and the panchayat samiti cannot be faulted for having taken a policy decision to go for such 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.”

In this case, the tender notice was published on March 31, 2022. The last date for the bidders for submitting their documents is April 22, 2022. The petitioner can participate. Thus, this Court does not find any illegality in the decision of the authority. There is no scope for extension of the lease in favour of the petitioner

With regard to the contention of the petitioner that the petitioner may succeed in the tender process and as such the direction to vacate may be stalled until the tender process is over, the Court is of the opinion that this issue must be decided by the authority themselves. The petitioner is at liberty to make an application before the Saltora Panchayat Samiti praying for an extension of time to vacate, and the panchayat samiti upon considering the reasons, put forward by the petitioner, shall pass necessary orders in accordance with law. Such application should be made by the petitioner within April 18, 2022 and the authority shall decide the matter within April 20, 2022s.

The petitioner shall participate in the tender by putting the bid documents in the drop box, as indicated in the tender notice. The petitioner’s bid will be considered along with all other eligible candidates.

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.)