

17.05.2022
Court No. 19
Item no.07
CP

WPA No. 8744 of 2022

Sk. Jamal

Vs.

The State of West Bengal & Ors.

Mr. Sobhendu Sekhar Roy
Mr. Amarendra Chakraborty
Mr. Tonmoy Chatterjee

..for the petitioner.

Ms. Tuli Sinha

....for the State respondents.

The writ petition has been filed by an existing ferry ghat operator. The ferry ghat is known as Gobra Ghat situated within the jurisdiction of Malda Zilla Parishad.

The contention of the petitioner is that the petitioner was granted lease of the ferry ghat by a public auction for the financial years 2014-2015, which was extended upto the financial year 2021-2022 @ Rs.8,00,000/- per year. That the petitioner could not make up the financial losses which he had suffered due to the pandemic and accordingly prays for extension of the lease. It appears from the records that the petitioner had fallen in arrears in respect of payment of the lease rent and by a notice dated March 8, 2019, the petitioner was asked to deposit the entire amount of arrears. The petitioner submits

that the amount was paid. As the tenure of the lease lastly extended by the authorities expires on May 31, 2022, the petitioner requested the Savadhipati, Malda Zilla Parishad by a representation dated May 5, 2022 to extend the lease for a period of further three years upon payment of lease rent 15% above the last rent payable.

In the meantime, the Malda Zilla Parishad had already issued an auction notice for settlement of the ferry ghat from June 1, 2022 to May 31, 2023 at the highest rate acceptable in the public auction.

Such decision of the authority has been challenged in the writ petition on the ground that the bid could not be opened until the prayer of the petitioner for extension is considered. That the auction notice must be set aside and quashed accordingly, as the same did not conform to the regulations.

The auction notice was issued on April 26, 2022. The petitioner filed the representation praying for extension on May 5, 2022 when the auction notice had already been issued. Thereafter, challenging the non-consideration of the representation the writ petition was filed on May 12, 2022. The last date and time for dropping the bid is May 17, 2022 at 2 pm and the last date and time for opening the tender box is May 17, 2022 at 3.30 pm.

The court finds that the authority had taken a policy decision to go for a public auction for settlement of the ferry ghat from June 1, 2022 to May 31, 2023 at the highest rate acceptable. The base value has been fixed at Rs.10,00,000/-. The representation of the petitioner was made after such policy decision had been taken. As such, the situation cannot be reversed and no further purpose would be served by directing the authorities to consider the representation of the petitioner.

It is also not in dispute that the petitioner himself had got the lease for the financial year 2014-2015 on the basis of a public auction. Such lease was extended from time to time and the petitioner has been permitted to continue upto May 31, 2022. The records reveal that the lease amount which was payable by the petitioner for the financial year 2019-2020, 2020-2021 and 2021-2022 remained static at Rs.8,00,000/- per year. It also appears that the petitioner was in arrears at a particular point of time with regard to payment of lease rent. That the authorities have been sympathetic to the petitioner during the pandemic period and allowed the petitioner to continue at the old rate of Rs.8,00,000/- for a couple of financial years.

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. The petitioner does not have a vested right for extension of the lease. The auction notices do not permit such extensions. The petitioner had been granted the lease for a long time. The authorities have a right to go for public auction by raising the base price, for maximization of revenue.

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*.

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.”

Under such circumstances, there is no scope for any interference. The notification which is relied upon by the petitioner dated April 24, 2014 may not be squarely applicable in this case as the said regulation is with regard to issuance of work orders and floating of tender notices. More so, the petitioner

had already taken advantage of the public auction while he was running the ferry ghat from 2014-2015 upto 2021-2022. In the circumstances, the petitioner cannot approbate and reprobate. The public auction is also not under challenge for violation of any notification/regulations.

Under such circumstances, this court does not think it necessary to deal with the said point in the absence of pleadings and prayers. The scope of the writ petition is non-consideration of the prayer for extension of the lease.

The petitioner is permitted to participate in the public auction in accordance with the terms and conditions as per the auction notice. In view of the fact that the matter was pending before the court, the petitioner is granted time upto 3 pm today to drop his papers.

The bid shall not be opened until the petitioner drops his papers within the period as fixed by the court. Thereafter, the authority can proceed in accordance with law, by considering all the bids.

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

In view of paucity of time, the authorities are directed to comply with the order of this court on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)