21.04.2023
Court No. 19
Item no.01
CP

WPA No. 9512 of 2023

Ustar Ali Saikh Enterprises
Vs.
Murshidabad Zilla Parisad & ors.

Mr. Kamalesh Bhattacharya, Sr. Advocate
Mr. Aninda Bhattacharya

....for the petitioner.

Mr. Sakya Sen
Mr. Sunil Gupta
Mr. Hasibul Islam

....for the respondent nos. 1 & 2.

The writ petition has been filed by an existing operator of Jalalpur Ferry Ghat, challenging a notice inviting e-auction dated April 10, 2023. By the said notice, the Murshidabad Zilla Parishad invited applications from the eligible bidders for grant of lease of Jalalpur Ferry Ghat under Beldanga – I.

The petitioner is the existing operator. Initially, lease was granted upto September 1, 2020 for a period of one year i.e., upto August 31, 2022. The lease in favour of the petitioner had been extended upto October 31, 2024, by the Murshidabad Zilla Parishad upon enhancement of the lease rent by 10%. Such decision was taken by the zilla parishad, taking into account the losses which the existing operator had suffered due to the pandemic situation.

Such extension was intimated by a letter dated October 8, 2021.

Challenging such extension, an interested party filed WPA No. 680 of 2022. The contention of the said operator was that settlement ought to have been made by e-auction. The Zilla Parishad could not have extended the lease. The contention of the zilla parishad was that the decision was arrived at in order to allow existing operators to make good the losses, as the ferry service was inoperative for a long time. Similar decisions were taken with regard to many existing operators.

This court did not pass any interim direction, as the court was of the opinion that the policy adopted by the zilla parishad to protect the interest of the operators who had suffered huge loss, could not be interfered with at the interim stage without hearing the matter on affidavits. Accordingly, by an order dated February 3, 2022, a direction was passed for exchange of affidavits.

The matter came up before another learned Coordinate Bench and the order passed therein is as follows:

> "Affidavit-in-opposition and affidavit-in-reply filed in Court today are taken on record.
>
> The grievance of the petitioner is that the Murshidabad Zilla Parishad has extended the period of lease without holding any e-tender. Learned counsel appearing for the

> Zilla Parishad prays for an accommodation to take instructions in this regard.
>
> List the matter in the Combined Monthly List of April, 2023 for further consideration under the heading 'Continuing Matter'."

Mr. Sen, learned advocate representing the zilla parishad, submits that in view of certain verbal observations made by the learned Coordinate Bench with regard to the extension of lease to the petitioner for a temporary period upto October 31, 2024, the e-auction notice was issued. Such observation was made in the presence of the petitioner, who was the respondent no. 7 in the writ petition and no submission had been made by the petitioner.

Although, Mr. Sen submits that the learned Coordinate Bench had made certain observations, but such observations had not been recorded in the order, it appears that the learned court only directed Mr. Sen to come back with instructions. No observations have been recorded which would indicate that the learned Coordinate Bench was of the opinion that the lease could not have been extended during the pandemic period and e-auction should be held.

Whereas, this court by an order dated February 3, 2022 upon taking note of the policy adopted by the zilla parishad to protect the interest of all operators who had suffered huge loss when the pandemic had hit and the operation of the ferry ghats had shut down for a considerable period, did not intervene at the interim stage by either staying or cancelling the extension that was granted. The order of this court was neither interfered with nor modified.

Under such circumstances, this court is of the view that in the absence of any particular direction upon the authorities to proceed with fresh e-auction by cancelling the extension given to the petitioner, the auction notice could not have been issued for a period which coincides with the period of extension already given to the petitioner.

By a policy decision, the petitioner was allowed temporary extension of the lease upto October 31, 2024. The authority was within its right to either amend such policy or take a different view after normalization of the situation. However, as a right had vested upon the petitioner on the basis of the letter dated October 8, 2021, to operate the ferry ghat upto October 31, 2024 by the Murshidabad Zilla Parishad itself, the zilla parishad could not issue an e-auction notice behind the back of the petitioner and without withdrawing the settlement made in favour of the petitioner upto October 31, 2021, for cogent reasons. Moreover, the petitioner ought to have been heard.

Once the authority had vested a right upon the petitioner, such right could not be taken away without any authority of law and for sufficient reasons, namely, failure on the part of the petitioner to pay the lease rent or failure on the part of the petitioner to operate the ferry ghat as per terms and conditions or a change in the policy and circumstances, based on the direction of a competent court of law.

Under such circumstances, the e-auction notice dated April 10, 2023 is set aside and cancelled.

As no right had accrued in favour of any third party and the end date for submission of documents is April 24, 2023, this order will not adversely affect any third party.

Mere submission of bid documents would not create any vested right in favour of the participants.

The Hon'ble Apex Court in ***State of Jharkhand v. CWE-Soma Consortium***, reported in ***(2016) 14 SCC 172*** has observed as follows:—

> "In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well-settled that so long as the bid has not been accepted,

> the highest bidder acquires no vested right to have the auction concluded in his favour."

In the decision of ***State of Punjab & Ors. vs. Mehar Din*** decided in ***Civil Appeal No. 5861 of 2009*** , the Hon'ble Apex Court held as follows:-

> "This being a settled law that the highest bidder has no vested right to have the auction concluded in his favour and in the given circumstances under the limited scope of judicial review under Article 226 of the Constitution, the High Court was not supposed to interfere in the opinion of the executive who were dealing on the subject, unless the decision is totally arbitrary or unreasonable, and it was not open for the High Court to sit like a Court of Appeal over the decision of the competent authority and particularly in the matters where the authority competent of floating the tender is the best judge of its requirements, therefore, the interference otherwise has to be very minimal."

The zilla parishad is at liberty to act and proceed, in accordance with law and take an informed decision, taking note of the right it had vested upon the petitioner upto October 31, 2024.

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 server copy of this order.

(Shampa Sarkar, J.)