

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 21947 of 2022
with
CAN 1 of 2024
Asiruddin Sk.
VS.
State of West Bengal & Ors.**

For the Petitioner	: Mr. Gangadhar Das Mr. Tanmoy Chattopadhyay	 advocates
For the State	: Ms. Anwari Quraishi Ms. Zainab Tahur	 advocates
For the Respondent No.7	: Ms. Chaitali Bhattacharyya Mr. Swarvanu Saha	 advocates
Reserved on	: 05.12.2024	
Judgment on	: 23.12.2024	

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for setting aside the order of extension issued in favour of the private respondent thereby extending the lease period for operation of the Ferry Ghat beyond 29.07.2022.
2. Pirganj Balarampur Ferry Ghat (for short the 'Ferry Ghat') is under the control of Malda Zilla Parishad. The private respondent herein was the highest bidder in the public auction held vide Auction Notice No. 02 of 2020-21 dated

13.07.2020 in respect of the said Ghat. The period of lease was for two years with effect from 30.07.2020 to 29.07.2022. The petitioner claims to have noticed that despite the fact that the lease period expired on 29.07.2022 but the private respondents were still operating the Ferry service from the said Ferry Ghat. The petitioner alleges that no public auction was conducted by the authorities of Malda Zilla Parishad for settling the Ferry Ghat for any subsequent period. The petitioner approached the Court alleging that the respondent authorities without holding public auction extended the lease period of the said Ferry Ghat in favour of the private respondent herein.

3. The writ petition came up for hearing on 27.09.2022 when the Co-ordinate Bench directed the Additional District Magistrate, Malda & Additional Executive Officer, Malda Zilla Parishad, Malda to file an affidavit extending the reasons behind the decision to allow extension at 15% enhanced rate from the previous lease value. It was further observed in the said order that after exchange of affidavit the reasonableness of the decision or the correctness thereof have to be decided. Pursuant to the said direction the Additional Executive Officer, Malda Zilla Parishad being the 5th respondent filed an affidavit-in-opposition.
4. The private respondent being the 7th respondent in the writ petition also filed an affidavit-in-opposition and a supplementary affidavit in connection with the writ petition.
5. The learned Advocate appearing for the petitioner submitted that the lease period of the said Ferry Ghat was extended for a period of three years with effect from 30.07.2022 to 29.07.2025 at the rate of 15% enhanced rate on the amount as determined in previous lease value by the Additional District Magistrate, Malda & Additional Executive Officer, Malda Zilla Parishad vide Memo dated 22.04.2022. He further submitted that after expiry of the original period of lease the authorities could not have granted an extension of such lease and the authorities ought to have granted lease for settlement of the Ferry Ghat after conducting a public auction. In support of such contention the learned Advocate placed reliance upon an order of the Co-ordinate Bench dated

13.05.2022 in **WPA 7899 of 2022** in the case of **Kausar Ali vs. The State of West Bengal & Ors.** and the decision of the Hon'ble Supreme Court in the case of **Centre for Public Interest Litigation and others vs. The Union of India and others** reported at **(2012) 3 SCC 1**.

6. The learned Advocate appearing for the State submitted that as per the recommendation of Karmadakshya of Purta Karya -O- Paribahan Sthayee Samity and Sabhadhipati of Malda Zilla Parishad, the lease for the said Ferry Ghat was extended at the rate of 15% enhanced rate per year of the previous lease value for the period from 30.07.2022 to 29.07.2025.
7. Ms. Bhattacharyya, learned advocate for the private respondent submitted that due to Covid-19 Pandemic there was restriction in operation of Ferry service for which the private respondent suffered huge loss during the period of the earlier lease. Accordingly the private respondents submitted an application for extension of lease by a letter dated 22.03.2022 and the respondent authorities after considering such prayer of the private respondent extended the lease period for a period of three years.
8. Ms. Bhattacharyya further submitted that the decision to extend the tenure of the lease for running Ferry Ghat under Malda Zilla Parishad was a policy decision. The private respondent acting upon the communication made by the authorities extending the period of lease in favour of the private respondent paid the lease rent for the period from 30.07.2022 to 29.07.2023; from 30.07.2023 to 29.07.2024 and from 30.07.2024 to 29.07.2025 and have also incurred substantial expenditure for the purpose of renovation of the Ferry Ghat and to make the same ready for running ferries. She submitted that a right accrued in favour of the private respondent and the same cannot be taken away at this stage by cancelling the lease executed in favour of the private respondent herein. Ms. Bhattacharyya placed reliance upon an order dated 21.04.2023 in **WPA 9512 of 2023** in the case of **Ustar Ali Saikh Enterprises vs. Murshidabad Zilla Parisad & Ors.**; order dated 13.07.2023 in **WPA 680 of 2022** in the case of **Mur Salim Sk. vs. The State of West Bengal & Ors.** in support of her contention that the vested right of the private respondent

cannot be taken away. Ms. Bhattacharyya also placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **Rajeev Suri vs. Delhi Development Authorities** reported at **(2022) 11 SCC 1**; **Reepak Kansal vs. Union of India** reported at **(2021) 9 SCC 251**; **Small Scale Industrial Manufactures Association (Registered) vs. Union of India and Ors.** reported at **(2021) 8 SCC 511** and **Tata Cellular vs. Union of India** reported at **(1994) 6 SCC 651** in support of her contention that the High Court in exercise of powers of judicial review cannot interfere with the policy decision. Ms. Bhattacharyya, learned advocate appearing for the private respondent referred to the decision of the Hon'ble Supreme Court in the case of **National High Speed Rail Corporation Limited vs. Montecarlo Limited and Anr.** reported at **(2022) 6 SCC 401** on the scope of judicial review in contractual matters.

9. Heard the learned advocates for the parties and perused the materials placed.
10. Record reveals that the Additional District Magistrate, Malda & Additional Executive Officer, Malda Zilla Parishad, Malda issued an Auction Notice No. 02 of 2020-21 dated 13.07.2020 notifying that the Balarampur Ghat (erstwhile Pirganj Ghat) will be settled for the period of two years with effect from 30.07.2020 to 29.07.2022 at the rate of highest acceptable amount of the bid offered in the public auction to be held on 23.07.2020.
11. Pursuant to the said public auction, the private respondent became the successful bidder and was granted a lease in respect of the said Ferry service for the period from 30.07.2020 to 29.07.2022.
12. It further appears from the record that the Additional District Magistrate & Additional Executive Officer, Malda Zilla Parishad, Malda by a Memo being no. 436/NZP/2022 dated 22.04.2022 extended the lease period of Balarampur Ghat for a period of three years with effect from 30.07.2022 to 29.07.2025 at the rate of 15% enhanced on the amount as determined in the previous lease value. The previous lease amount as well as the lease amount after enhancement for the period 30.07.2022 to 29.07.2023; from 30.07.2023 to 29.07.2024 and from 30.07.2024 to 29.07.2025 have been specifically

indicated in the said Memo. In the said Memo it has been further indicated that the private respondent was to deposit the total amount of Rs. 41,93,044/- within three months of the receipt of the said letter.

13. Ms. Bhattacharyya would vehemently contend that considering the prayer of the private respondent for extension of the lease period, the authorities allowed such extension.
14. The 5th respondent in the affidavit-in-opposition have admitted that the Malda Zilla Parishad cannot extend the lease period of the Ferry Ghat at the cost of public exchequer and without resorting to any public auction. The object behind holding public auction for settling the Ferry Ghat is to ensure maximization of revenue. The 5th respondent in the affidavit has further stated that as per the recommendation of Karmadakshya of Purta Karya -O- Paribahan Sthayee Samity and Sabhadhipati of Malda Zilla Parishad, the lease period of Balarampur Ghat was extended at 15% enhanced rate per year of the previous lease value for the period from 30.07.2022 to 29.07.2027. The said affidavit further states that the extension of lease in respect of Ferry Ghats under Malda Zilla Parishad have been approved in the meeting of the Paribahan Sthayee Samity held on 09.06.2022. From the minutes of the meeting of the Ortho, Sangstha Unnayan dated 09.06.2022 it appears that Agenda No. 5 deals with extension of lease in respect of Ferry Ghats for which the lease period had already expired. It appears from the minutes of the said meeting under Agenda No. 5 that on the basis of the recommendation of the Additional District Magistrate and Additional Executive Officer, decision was taken to extend the lease at an enhanced rate of 15% over the previous lease value.
15. The 5th respondent in its affidavit-in-opposition has not disclosed any document to show that recommendation was made by the Additional District Magistrate, Malda & Additional Executive Officer, Malda Zilla Parishad to grant extension of lease at an enhanced rate.
16. No evidence/ materials have been produced before this Court to show that the lease period in favour of the private respondent was extended considering the

prayer of the private respondent for extension of the lease period. On the other hand from the minutes of the meeting held on 09.06.2022 it is evident that a decision was taken by the authorities to extend the lease period in respect of Ferry Ghats for which the lease period has expired under Malda Zilla Parisad at 15% enhanced rate from the previous lease value. In the minutes of the said meeting the reasons for not holding public auction has not been stated.

17. The co-ordinate bench in the case of **Kausar Ali** (supra) took note of the decision in the case of **Kaljani Group Samiti and ors. vs. State of West Bengal & ors.** in **WP No. 2851(W) of 2005** wherein it was held that the prayer for renewal of lease and extension of period of lease could not be granted as it was opposed to public policy and the selection should be made either by auction or by tender. In **Ustar Ali Saikh** (supra) the concerned Zilla Parisad took a decision to allow existing operators to operate the Ferry service to make good the losses as the Ferry service was inoperative for a long time. In **Mur Salim Sk.** (supra) the concerned Zilla Parisad took a policy decision to allow existing operators to make good the losses as the Ferry service was inoperative for a long time. In the case on hand no policy decision of like nature has been produced before this Court. The aforesaid decisions are thus distinguishable on facts and, therefore, cannot come to the aid of the private respondents.
18. In **Small Scale Industrial Manufactures Association** (supra) the Covid-19 regulatory package notified by RBI vide notification dated 27.03.2020 was challenged by contending that the said package in so far as the term loan working capital facilities and restructuring of stressed account is inadequate, ineffective and does not offer any substantial relief, aid or assistance to the industries particularly MSMEs. The Hon'ble Supreme Court held that no writ of mandamus can be issued directing the Government/RBI to announce/declare particular relief packages and/or to declare a particular policy and the same shall be left to the Government and the RBI with regard to the relief sought for waiver of interest during the moratorium period. The Hon'ble Supreme Court

held that when a conscious decision have been taken not to waive the interest during the moratorium period and a policy decision has been taken to give relief to the borrowers by deferring the payment of installments, the interference of the Court is not called for.

19. In the case on hand nothing has been produced before this Court to show that the Government has taken a policy decision to extend the lease period in favour of the existing lessees as and by way of some concession to them.
20. In **Monte Carlo Limited** (supra), the question that fell for consideration was whether with respect to a foreign funded project, the High Court was justified in interfering with the tender process in the absence of any specific allegations of mala fides and/or favouritism. The Hon'ble Supreme Court held that where the bid submitted by a bidder suffers from any material deviation and/or any substantial deviation should be left to the author of the bid document and normally, the High Courts in exercise of the powers under Article 226 of the Constitution, should not interfere with the same unless a decision is found to be *mala fide* and/or there are allegations or favouritism and/or such a decision is arbitrary. The said decision being distinguishable on facts cannot come to the aid of the private respondent in the case on hand.
21. In **Tata Cellular** (supra) it was held that the right to refuse the lowest or any other tenderer is always available to the Government but the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to an arbitrary power.
22. In the case on hand, the writ petitioner has questioned the action of the authority to settle a Ferry Ghat by extending the lease period without holding any public auction. **Tata Cellular** (supra) being distinguishable on facts cannot also come to the aid of the private respondent.
23. In **Reepak Kansal** (supra) it has been held that it is neither within the domain of the courts in the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be

evolved. Nor are the courts inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are not ordinarily amenable to judicial review. **Reepak Kansal** (supra) writ petitions were filed in public interest seeking directions upon the Central/State Governments to provide ex gratia monetary compensation to the families of the deceased who has succumbed to the pandemic of Covid-19. In the light of the aforesaid relief claimed, the Hon'ble Supreme Court made the aforesaid observations. In the case on hand the writ petitioners have not prayed for a mandamus commanding the authorities to frame a policy in a particular manner. The petitioners have challenged the action of the respondent authorities in extending the lease period without conducting public auction. The said decision being distinguishable on facts does not have any manner of application to the case on hand.

24. In **Rajeev Suri** (supra) the scope of public participation in policy matters fell for consideration. The Hon'ble Supreme Court held that public participation is only for inviting constructive suggestions/ objections from all stake holders for effective implementation of the policy of the Government and to serve public interest. Public participation is not to supplant the discretion of the Government or to retard the development work. It was further held that disclosure of information in public domain depicts transparency in action and the Government owes duty to keep citizens informed about its actions as prudent trustee. The said reported decision being distinguishable on facts does not have any manner of application to the case on hand.
25. The respondent authorities have admitted in their affidavit-in-opposition that settlement of Ferry Ghat has to be done by way of public auction. Though the private respondent has claimed that the extension of period of lease was made in order to compensate the loss which the existing lessees suffered during the Covid-19 Pandemic, no policy decision has been placed in support thereof.
26. In **Centre for Public Interest Litigation** (supra), the Hon'ble Supreme Court held that whenever a contract is to be awarded or a license is to be given, the

public authority must adopt a transparent and fair method for making selection so that all eligible persons get a fair opportunity of competition. It is the burden of the State to ensure that a non-discriminatory method is adopted for distribution of State largesse which would necessarily result in protection of public interest. It was observed that a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging the burden.

27. The case on hand relates to settlement of Ferry Ghats for running Ferry service. In the matter of settlement of Ferry service, the dominant consideration should be to ensure the best price which could be achieved only when there is maximum public participation and every eligible person would have an opportunity of making an offer. Public auction is one of the modes to secure the best price by inviting maximum public participation. Relevant rules for settlement of Ferry Ghats also provides for settlement by way of public auction. Extension of the lease after expiry of the lease period in favour of the existing lessees should be avoided as the public authority would be deprived of the best price for such purpose as the eligible persons do not get any opportunity to make an offer. Extension of lease should be avoided as it curtails competition. This Court holds that the respondent authorities ought to have conducted public auction for settlement of Ferry Ghat instead to granting extension to the existing lessees.
28. The Private respondent herein got settlement of the Ferry Ghat after becoming successful in the public auction and, therefore, the private respondent cannot turn around and oppose the settlement of Ferry Ghat by way of public auction. In other words, private respondents do not have any legal right to get the lease extended in his favour.
29. To the mind of this Court, the respondent authorities could not have extended the period of lease in favour of the private respondent and the settlement of the Ferry Ghat after expiry of the lease period ought to have been made by way of public auction. For such reason this Court was minded to interfere with decision of the authorities extending the lease period in favour of the private respondent.

30. However, considering the fact that the lease period was extended for a period of three years and in the meantime a substantial portion of the said period has elapsed and a reasonable time is required for the authorities to held a fresh auction and conclude the process with the execution of lease in favour of the successful party and also that interference with the order extending the lease period in favour of the private respondent at this stage would affect the public of the locality as ferry service is an important mode of communication for the local people, this Court refrains from setting aside the order extending the lease at this stage even after disapproving the action of the respondent authorities for extending the lease period.
31. For the reasons as aforesaid this Court directs the concerned respondent authorities to initiate the process for holding auction for settlement of the Ferry Ghat in question for the period commencing from July 30, 2025 well in advance and to conclude the entire process so that the successful party could operate the ferry service immediately after expiry of the aforesaid lease period. The authorities shall not extend the lease period in favour of the private respondent any further. The writ petition stands disposed of with the aforesaid directions. Consequently the application stands disposed of.
32. There shall be, however, no order as to costs.
33. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)