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W.P.A. 6633 of 2022

Azizur Rahaman

Vs.

The State of West Bengal & ors.

Mr. Gazi Faruque Hossain

Mr. Debasish Kundu

Ms. Priyanka Mondal

... for the petitioner

Mr. Lalit Mohan Mahata

Mr. Prasanta Behari Mahata

... for the State

Mr. Sufi Kamal

... for the respondent no.8

This writ petition has been filed for a direction upon the respondent nos.7 and 8 to cancel and/or quash the notice dated April 6, 2022 with regard to handing over the possession of the ferryghat to the Pradhan of the Mahanandatola Gram Panchayat, upon expiry of the lease of the petitioner.

The petitioner was the operator of Kosi Passengers Ferry Ghat. Lease period of the petitioner had been ended on March 31, 2022.

The petitioner submits that until the ferry ghat is settled by way of an open tender, the petitioner must be allowed to operate.

This Court does not find that the rules with regard to settlement of the ferry ghat and the circulars issued in this behalf permits continuation

after expiry of the lease. It may so happen that under emergent situation a stop-gap arrangement is made by the authority. However, this Court sitting in judicial review under Article 226 of the Constitution of India, cannot direct the authorities to allow the petitioner to operate until the open tender is finalised.

This Court also does not find from the records that the authorities have decided to settle the ferry ghat by way of open tender/public auction.

The petitioner also submits that the Pradhan did not have any right to ask the petitioner to hand over possession of the concerned ferry ghat as the water body over which the ferry services were carried on, spread over more than 5 acres and such settlement cannot be made by the concerned Gram Panchayat.

Mr. Sufi Kamal, learned Advocate appearing on behalf of the Pradhan, submits that the Gram Panchayat has approached the Block Development Officer to permit a public auction of the said ferry ghat. However, he submits that no decision has been taken with regard to operation of the ferry ghat in the interim period.

Mr. Mahata, learned Senior Government Advocate submits that the ferry ghat was settled in favour of the petitioner by the concerned Gram Panchayat, which means that the area of the water

body must not have exceeded 5 acres. He next submits that the petitioner does not have a right of extension in view of the decision of the Panchayat authorities to go for public auction.

Under such circumstances, the writ petition is disposed of. The Court is of the view that, when the panchayat authorities themselves, have decided that the ferry ghat should be settled by public auction, such a policy decision cannot be interfered with under Article 226 of the Constitution of India.

Transparency and maximisation of the revenue by allowing all eligible persons to participate in such tender is the correct method.

The court does not have any authority to either set aside the auction or to hold the policy of the authority 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 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, as the panchayat authorities have decided to go for a public auction, the competent authority under the law, shall go for a public auction, at the earliest, and all eligible bidders including the petitioner shall be entitled to participate. The prayer for extension of the lease of the petitioner during the stop gap period cannot be granted by the court. The authorities are free to take such decisions in accordance with law.

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 advocate's communication.

(Shampa Sarkar, J.)