

(1967) 01 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3749 of 1966

Baij Nath Prasad

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 10-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Northern India Ferries Act, 1878 — Section 8

Citation : AIR 1968 All 288

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : S.C. Khare and Rishi Ram Misra, for the Appellant; G.P. Bhargava and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The petitioner and the fourth respondent offered tenders for the lease of foils of the ferries on the river Jamuna connorting the town of Hamirpur with the village of Rampur and on the river Betwa connecting the town of Hamirpui with the village of Kuchechea in the district of Hamirpur. Both the ferries are public ferries. This was pursuant to a notice dated May 17, 1963 issued by the Executive Engineer, P. W. D., Banda inviting tenders for the collection of tolls in respect of the aforesaid two public ferries. It was stated in the notice that the period of the lease would end on October 15, 1966, "even if there is some delay in handing over at the beginning". The tender made by the fourth respondent was higher than that offered by the petitioner in respect of the two ferries. On June 19, 1963, the Commissioner accepted the tender of the fourth respondent jointly for both the ferries for Rs. 7,87,906/-and sanctioned the lease in his favour u/s 8 of the Northern India Ferries Act for collection of tolls of both the ferries for three years commencing October 16, 1963.

The lease was not executed in favour of the fourth respondent for a considerable time and the State Government continued to manage the two ferries directly

until February 28, 1966. It was only on that date that the possession of the two ferries was handed over to the fourth respondent. The State Government proposed to give the lease for three years from the date of delivery of possession and the fourth respondent accepted that proposal. The petitioner, however, requested the State Government to invite tenders for the period commencing October 16, 1966 and stated that he was ready to offer Rs. 1 lac in excess of the tender made by the fourth respondent. The State Government did not accept the request of the petitioner and executed the lease in favour of the fourth respondent for the period February 28, 1966 to February 28, 1969 on the basis of the tender offered by that respondent in 1963.

2. The petitioner now applies under Article 226 of the Constitution against the grant of the lease to the fourth respondent and prays for mandamus directing the State Government, the Commissioner and the Executive Engineer to invite tenders in respect of the two ferries for the period commencing October 16, 1966.

3. I see no merit in this petition. Section 8 of the Northern India Ferries Act provides:

"The tolls of any public ferry may, from time to time, be let by public auction for a term not exceeding five years, with the approval of the Commissioner or by public auction or otherwise than by public auction for any term with the previous sanction of the State Government".

It is apparent that where the term does not exceed five years the tolls may be let out by public auction with the approval of the Commissioner. If the State Government accords its previous sanction the tolls may be let out for any term either by public auction or otherwise.

4. The petitioner says that Section 8 contemplates the letting of the tolls in accordance with a procedure under which the members of the public generally will be permitted to offer tenders or bid or otherwise participate so that every one of them is entitled to apply for letting of the tolls in his favour. It is not open to the authorities, urges the petitioner, to let out the tolls to an individual without throwing the matter open to the public generally. According to the petitioner, letting out tolls by private negotiation with an individual is not within the contemplation of Section 8. Therefore, it is pointed out, when the State Government sanctioned a lease in favour of the fourth respondent for the period February 28, 1966 to February 28, 1969; it did so by private negotiation with a single individual and inasmuch as the procedure adopted precluded the public generally from entering upon the scene and applying also for the lease, the provisions of Section 8 were contravened. After careful consideration. I am unable to accept the contention.

5. The power to let the tolls of a public terry is confined within Section 8. How that power shall be exercised is not set out in any other provision of that Act, and my attention has not been drawn to any body of rules framed for the purpose, Section 8. which appears to be the entire repository of the power and

the manner of its exercise does not, it seems to me, limit the manner of granting the lease, where the State Government accords its sanction, to a procedure in which the public generally is entitled to participate. The language is clear. The tolls may be let by public auction or otherwise than by public auction. Where the procedure of a public auction is not accepted, any other procedure is open. There is no indication that this procedure must be of the same nature as that of a public auction.

There is nothing in Section 8 suggesting the inference that the tolls must be let under a procedure which throws the letting open to the members of the public, nor has the petitioner been able to establish that in the nature of the letting of the tolls of a public ferry (here is something which requires that every member of the public should be entitled to apply for the lease. I am not satisfied that in letting out the tolls of a public ferry u/s 8, in a case where the State Government accords its sanction, it is not open to the authority to grant the lease by private negotiation in favour of an individual.

6. In the instant case, the position appears to be different on facts from that envisaged by the petitioner. The Commissioner had sanctioned the lease in favour of the fourth respondent for the period commencing October 10, 1963. The lease could not be executed because, meanwhile, the petitioner had filed a writ petition (No. 3069 of 1963) praying that no lease should be executed by the State and obtained an interim order on August 16, 1963 which was affirmed on October 9, 1963. The petitioner had been the lessee in respect of the two public ferries during the immediately preceding term, and by virtue of the interim order he was permitted to continue to collect the tolls up to November 1, 1963 in the case of the Jamuna Ferry, and up to November 16, 1963 in the case of the Betwa Ferry. In the circumstances, although the lease was sanctioned in favour of the fourth respondent on July 4, 1963. he was informed by the Executive Engineer by a letter dated November 7, 1963 that on account of the order of the Court the charge of the ferries could not be handed over to him.

The fourth respondent was prepared to deposit the security amounting to Rs. 45,768/- and maintain arrangements for operating the ferries. He kept boats and employed labour and accumulated material for building the necessary pontoon bridges and pile bridges. Then, it seems there was considerable delay in the execution of the lease deed. The question as to the sufficiency of the stamp in respect of such lease deed was referred to the Collector u/s 31 of the Stamp Act on July 15, 1963 and the order was made as late as February 4, 1966. By virtue of that order, the stamp duty initially demanded at Rs. 35,505/- was reduced to Rs. 11,835/-. Meanwhile, the fourth respondent repeatedly requested the State Government to hand over charge of the ferries to him. There are letters dated June 12, 1964 and August 18, 1964 from the fourth respondent to the State Government in this behalf. The State Government, however, did not accept the request. The fourth respondent was then informed by the State Government that if he did not claim any compensation for the delay in executing the lease, the

period of three years of duration of the lease would be computed from the date on which the charge was handed over to the fourth respondent. The fourth respondent appears to have accepted this offer, and accordingly the lease deed was executed on February 22, 1966. It is clear from these facts that the lease granted to the fourth respondent was the lease in the contemplation of the State Government at the time when tenders were invited in 1963. And for circumstances beyond the control of the fourth respondent the lease which was sanctioned in his favour in 1963 could not be executed until February, 1966. It was open to the State Government to modify the period during which that lease was to operate, having regard to the circumstances in which the parties were placed, and I find nothing to preclude the Government from doing so.

The petitioner points out that the terms of the notice of May 17, 1963 inviting tenders specifically stipulated that the period of lease would end on October 15, 1966 even if there was some delay in handing over charge in the beginning. The provision regarding delay contemplated only such delay as ordinarily arises in the handing over of the charge. It could not have been intended by that stipulation that the period of the lease would end on October 15, 1966 even though the enjoyment of the lease intended for three years was reduced to a mere six months by the delay in handing over charge. In the circumstances the State Government could bona fide infer that it would be exposed to a claim for damages. To safeguard itself against such claim, it considered it appropriate to treat the period of three years as commencing from February 28, 1966.

7. Then, there is no right of the petitioner which has been infringed by the respondents. Although he submitted a tender for the lease, it was not granted to him. There is also nothing in Section 8 entitling him to require the State Government, the Commissioner and the Executive Engineer to invite tenders for the grant of a lease in respect of the tolls for any period. The petitioner relies upon *The State of Assam Vs. Keshab Prasad Singh and Another*, . In that case, however, a lease had in fact been settled in favour of the respondent Keshab Prasad Singh and he was, therefore, entitled to agitate against its cancellation and regrant to another party, particularly when the State Government contravened the statutory procedure in accordance with which the lease could be settled. The other case *K.N. Guruswamy Vs. The State of Mysore and Others*, , upon which the petitioner relies is also a case where there was a detailed statutory procedure circumscribing the grant of liquor licences. In that case the Supreme Court found that the procedure had not been followed. Neither case assists the petitioner. In the view that I have taken, no provision of Section 8 has been infringed.

8. The petition falls and is dismissed with costs.