
(2009) 02 GAU CK 0050
In the Gauhati High Court

Gautam Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Control and Management of Ferries Rules, 1968 — Rule 4(1)
Northern India Ferries Act, 1878 — Section 7, 7A, 8

Citation : (2009) 5 GLR 97 : (2011) 1 GLT 323

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Heard Mr. A.M. Mazumdar, learned senior Counsel, appearing on behalf of the petitioner, and Ms. B.S. Sinha, learned Government Advocate, appearing on behalf of respondent No. 1. Heard also Mr. A. Bhuyan, learned Counsel for respondent Nos. 2, 3 and 4.

2. By making this application under Article 226 of the Constitution of India, the petitioner has impugned the tender notice, dated 19.1.2009, whereby tenders have been invited for settlement of, amongst others, Neemati-Kamalabari Ferry Service, for the financial year 2009-2010.

3. The case of the petitioner is, in brief, thus: The petitioner is a sitting lessee in respect of the said ferry service, the settlement having been granted, on 21.7.2008, for a period of one year. The petitioner submitted a representation, on 7.1.2009, seeking extension of his lease period by another three years. This representation has been forwarded by the respondent No. 2, namely, Director, Inland Water Transport Department, Assam, to respondent No. 1, namely, Secretary to the Government of Assam, Transport Department, on 30.1.2009. As the said representation has not been disposed of, the petitioner has impugned the said tender notice, dated 19.1.2009, on two grounds, namely, (i) that since the petitioner's said representation has not been disposed of, the impugned

notice may be treated as illegal and may not be allowed to be proceeded with, and (ii) that there have been instances of the Government, in the past, granting extension of lease period; but, in the case of the petitioner, the Government's attitude is discriminatory.

4. While considering the present petition, it needs to be pointed out that the power to make settlement of public ferry flows from Section 8 of the Northern India Ferries Act, 1878 ("the Act"). Section 8 of the Act reads:

8. Letting ferry tolls by auction.- 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.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body u/s 7 or Section 7A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or the body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, or as the case may be, or the officer conducting the sale on his or its behalf may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

5. From a careful reading of Section 8, what clearly transpires is that though a public ferry may be settled by public auction, or otherwise than by public auction, the fact remains that the leasing out of a public ferry falls within the realm of public domain. The State cannot, therefore, adopt pick and choose policy, while granting lease of public ferry. Ordinarily, therefore, endeavour of the state shall be to settle public ferry by allowing all interested persons to participate in the competitive process of selection. Thus, ideally, public ferry shall be settled by public auction. It is only in exceptional circumstances, where a ferry cannot be settled by way of public auction, because, for instance, no one is willing to run a given public ferry, that the provisions of Sub-rule (1) of Rule 4 of the Control and Management of the Ferry Rules ("the rules"), 1968, may be resorted to, which empower the secretary of the department concerned to settle a public ferry directly, or by negotiation, subject to certain conditions specified therein.

6. In the present case, though the petitioner's claim that the settlement was given to the petitioner on 18.7.2008 for a period of one year, a careful reading of the order, dated 18.7.2008, whereby the settlement has been granted in favour of the petitioner, reveals that the lease was granted in favour of the petitioner, on 18.7.2008, not for one year, but for the remaining period of the financial year 2008-2009. The order of settlement, dated 18.7.2008, clearly mentions that the value of the lease would be counted on the basis of the period, which commence

from the date of taking over of the ferry service by the petitioner, until 31.3.2009. Thus, the settlement, given in favour of the petitioner, would have come to an end, ordinarily, on 31.3.2009.

7. By making the representation aforementioned, the petitioner has sought for extension of the period of settlement, granted to him, by another three years. It is pertinent to note, in this regard, that there is, admittedly, no provision for extension of the period of lease. It is, however, submitted, on the behalf of the petitioner, that, in the past, the respondents have granted direct settlement in the cases, as the one at hand. Suffice it to point out here that when the scheme of the Act and the Rules is to make settlement of lease by way of public auction, the fact that direct settlement has been granted, in the past, in favour of some of the lessess, cannot be cited as an act of discrimination to the petitioner, for, the question of a person, being discriminated against would arise only when a right, which is due to a person, is denied, while, at the same time, another person, similarly situated, is allowed to enjoy the same right.

8. In the present case, as the facts on the record reveal, there is no statutory, or even equitable right, available to the petitioner to seek extension of the said lease period. The petitioner has not even applied for direct settlement in terms of the provisions of Section 4(2) of the rules. This apart, when the respondents have already floated the impugned tender notice, and the tenders, received in response to the said notice, have already been opened, the petitioner has chosen not to participate in the new tender process, which is competitive in nature, this Court is of the view that, in the facts and attending circumstances of the present case, it would not be proper and in the interest of justice if this Court interferes with the process of selection, which has commenced with the publication of the impugned notice, dated 19.1.2009.

9. Because of what have been discussed and pointed out above, this Court finds no merit in this writ petition. This writ petition shall accordingly stand dismissed. No order as to cost.