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(1991) 06 MP CK 0005

In the Madhya Pradesh High Court

Case No : M.P. No. 985 of 1991

Mathura Lal Shankar Keer — APPELLANT

Vs

State of Madhya Pradesh and Another — RESPONDENT

Date of Decision : 10-06-1991

Acts Referred:
Northern India Ferries Act, 1878 — Section 6, 7A, 8

Citation : (1994) JLJ 257 : (1993) 38 MPLJ 814 : (1993) MPLJ 814

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : M.C. Gupta, R.D. Jain, for the Appellant; R.A. Roman, Government Advocate and S.B. Mishra, for the Respondent

Judgement

S.K. Dubey, J.

By this petition under Article 226 of the Constitution of India, the petitioner who is a Kewat and is operating the ferry, with his fellow men at ''Samarsa Ghat'', has challenged the auction notice for the year 1991-92, dated 28-4-1991 (Annexure P/1) and prayed for a rule nisi to quash the auction of plying the ferry.,

The petitioner''s case is that the respondent No. 2 collects ferry tolls by a system of arrangement between respondent No. 2 and the unregistered Society of ''Keers'' who are plying boats since generations and are getting percentage out of the tolls collected. The respondent No. 2, by a resolution . dated 30-3-1990, changed this arrangement, which was challenged by the petitioner before the Prescribed Authority (the Collector) under the provisions of the M. P. Panchayat Act 1981 (for short, the ''Act''), which was suspended by the Prescribed Authority by order dated 28-4-1990 (Annexure P/2); the Prescribed Authority for warded a copy of the order Passed u/s 78(1) to the State Government u/s 78(2) of the Act, which is still pending for consideration of the State Government; therefore, till the decision of the State Government no action could have been taken, as u/s 44 of the M. P. Panchayat Raj Adhiniyam, 1990, which repealed the Act (for short, ''the Panchayat Raj Adhiniyam''), the management of the ferries is to be made under the orders of the State Government and, therefore, the arrangement in vogue could not have been changed without prior permission of the Government. It was also averred that u/s 8 of the Northern India Ferries Act, 1878 (XVII of 1878) (for short, the ''Ferries Act'') letting of ferry tolls by auction can only be made with the prior approval of the Commissioner if the period is less than five years, and in other case, with the previous sanction of the State Government. The petitioner further averred that he and other fellowmen were running the ferry on lease, hence, the lease of the toll can only be cancelled u/s 10 of the Ferries Act after giving six months'' prior notice, and, that having not been done, no auction could have been made so as to deprive the livelihood of the petitioner and other fellowmen who are poor labourers.

The petition was presented during Summer Vacation. Learned Vacation Judge on 17-5-1991 on an interlocutory application (I. A No. 1/91) passed an order that the bid at. the auction held on 15th, 16th and 17th May 1991 pursuant to notice (Annexure P/1) shall not be finalised. The respondents Nos. 1 and 2 after notice filed their return and reply to the application for ad interim writ. One Ramlal who offered the highest bid of Rs. 11,000/- after depositing Rs. 10,000/- as earnest money prior to auction, and deposited 25% of the bid amount, i.e., Rs. 1,52,750/- moved an application on 1-6-4991 for impleading him as a party, which was allowed. The bidder adopted the return and reply filed by respondent No. 2.

With the consent of. parties the petition was heard on merits. Shri R. D. Jain, counsel for the petitioner; Shri R. A. Roman, Government Advocate for respondent No. 1; Shri S. B. Mishra, counsel for respondent No. 2 and Shri M. C. Gupta, counsel for the intervenes were heard.

To prove lease, the petitioner did not place any material on record. On the other hand, from the return filed by respondents No. 2 and, to which no rejoinder or counter was filed, it is clear that the petitioner and other fellowmen were not granted any lease by respondent No. 2 to run and ply boats at the ferry. But, the respondent No. 2 engaged the petitioner and other fellowmen as daily-rated workers to run and ply the ferry and to collect the toll. Out of the total toll collection of each worker 12% is paid to such worker. The respondent No. 2 made such arrangement as the management has been vested u/s 7A of the Ferries Act in pursuance of the Notification No. 1564/87/72 dated 24-6-1974 of the State Government u/s 7A of the Ferries Act for the management of the ferries u/s 39(1) of the M. P. Panchayat Act, 1962. Hence, the respondent No. 2 is managing the ferry since the year 1976-77; the respondent No. 2 collected the tolls under the arrangement till 1986-87 which continued thereafter, as is evident from Annexure R-1. Therefore, as no lease has been proved by the petitioner, the contention of Shri Jain that u/s 10 of the Ferries Act the cancellation of the lease of the tolls of the public ferry could not have been made before expiration of six months prior notice in writing of the intention of the respondent No. 2 to cancel the lease, has no merit. Reliance of the Apex Court decision in case of State of U.

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P. v. Satya Narain AIR 1970 SC 1119 in the circumstances has no application.

The respondent No. 2 vide resolution dated 30-3-1990 changed the existing arrangement, which, on being challenged, was suspended by the Additional Collector vide Annexure P/2 on the ground that the President of respondent No. 2 cannot be authorised to run or manage the ferry. This order (Annexure P/2) does not say that the letting of ferry tolls cannot be by public auction. Section 44 of the Panchayat Raj Adhiniyam is clear and unambiguous in terms, which states that subject to the Provisions of the Act and the Rules made thereunder, and subject to general or special orders, as may be issued by the State Government, from time to time, it shall be the duty of the Janapad Panchayat, so far as the Janapad Panchayat funds allows, to make reasonable provision in the block for the matters enumerated u/s 44(1)(a) to (g). Sub-Clause (d) relates to management of public ferries. Learned counsel has not pointed out any impediment either under the provisions of the Panchayat Raj Adhiniyam or the rules framed thereunder, that the management of the public ferries and collection of tolls could not be by letting of the ferry by public auction. The only prohibition contained is the one u/s 103 of the Panchayat Raj Adhiniyam, Sub-section (1) of which speaks that no member or servant of a Panchayat or any officer having only duty to perform in connection with the sale of movable or immovable property under the Act shall directly or indirectly bid for or acquire interest in any property sold at such sale. The contravention of Sub-section (1) has been made a punishable offence under Sub-section (2) of Section 103.

Shri Jain took this Court through various provisions contained in Sections, 6, 7, 7A and 8 of the Ferries Act, and contended that the power is vested with the State Government and not with the respondent No. 2. Without prior approval of the Commissioner, if the period of public auction is for a term not exceeding five years, the auction cannot be made, as the regulation of ferries vests in the State Government under the Ferries Act, which has been extended to the State of Madhya Pradesh vide M. P. Extension of Laws Act, 1958. Therefore, it was also contended that the respondent No. 2 has only been given management, while the power of superintendence rests with the State Government.

To deal with the contentions raised, the provisions of Sections 6, 7, 7A and 8 of the Ferries Act have to be looked into. The Ferries Act deals with two kinds of ferries: public ferries and private ferries. The provisions as to the former are contained in Chapter II and those of the latter in Chapter ID. Section 6 reads:

"6. Superintendence of public ferries. --The immediate superintendence of every public ferry shall, except as provided in Section 7 and Section 7A be vested in the Magistrate of the district in which such ferry is situate or in such other officer as the State Government may from time to time appoint by name or in virtue of his office in his behalf;

and such Magistrate or Officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry,

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and for the collection of the authorised tolls leviable thereat."

Sections 7 and 7A permits the transfer of the management of the public ferry to a municipality or to District Council or District or Local board within those jurisdiction the ferry is situate. Section 7 is not relevant for the present petition, as it is not a case of municipality. Section 7A is relevant which reads:--

"7-A. Management may be vested in District Council or Distritt or Local Board. --The State Government may direct that any public ferry wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the State be managed by that council or Board, and thereupon that ferry shall be managed accordingly."

Section 8 is also relevant which speaks of letting ferry tolls by auction and, hence, is quoted in extenso:

"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 body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, 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."

It cannot be disputed that a Janpad Panchayat falls within the expression of ''Local Board,'' as a Division Bench of this Court in case of Janpad Panchayat, Hoshangabad v. State of M. P. 1982 JLJN 42, has held that the expression "Local Board" as contained u/s 7A of the Ferries Act is to be understood in a liberal sense to include Janpad Panchayat under the Panchayat Act.

Shri Jain''s reliance on a Single Bench decision of the Allahabad High Court in case of Bheem Thakur Vs. District Board, Ballia and Another, wherein the dispute was with respect to the recovery of arrears from a lessee, the learned Judge after referring to the provisions of Sections 6, 7, 7A, 8 and 9, in para 11 observed that the Act contemplates different arrangements for the management of public ferries. A District Magistrate may manage public ferries directly, or a District Board may manage public ferries u/s 7A of the Act. After comparing the language and the expressions used in Sections 6 and 7 it was observed that the arrangement u/s 7A is somewhat different from that u/s 6 of the Act. The Legislature used two different words "Superintendence" and "managed" in the

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two sections. The word "Vested" appears in Section 6 of the Act, which does not appear in Section 7A; hence, it was observed that the rights of a District Board u/s 7A of the Act are not of the same nature as the rights of the Magistrate u/s 6 of the Act.

As the management of the ferry u/s 7A of the Ferries Act has been transferred to respondent No. 2, Section 6 does not in any way control or curtail the powers of management of respondent No. 2, and the Magistrate or Municipality or the Local Board exercises their powers of public ferry in their areas, but the question still remains whether any public auction can be made by the Local Board or the Panchayat independently without complying with the provisions of Section 8 of the Ferries Act.

A reading of Section 8 shows that the power to let the tolls of public ferry is confined within Section 8. How that power shall be exercised is not set out in any other provision of the Ferries Act. The Allahabad High Court in case of Baij Nath Prasad Vs. The State of U.P. and Others, observed that u/s 8 of the Ferries Act, 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 than public auction.

A Division Bench of Assam High Court in case of Purna Kanta Saikia Vs. State of Assam and Others, has held that the general principle laid down by Section 8 seems to be that for any period lesser than five years, the settlement of the tolls of any public ferry should normally be by public auction subject to the approval of the Commissioner or the Chief Engineer. But in case of some emergency or for special reasons, the Government might take the case out of the general rule of settlement by public auction. What is required u/s 8 is that the Government should decide earlier as to the method of the proposed settlement if they want to take the case out of the general rule and the procedure should be sanctioned by it in advance.

Again, a Division Bench of Gauhati High Court in case of OrinMovong v. Secretary to Government of Assam AIR 1974 Gau 27, while considering the scope and power of the State Government, in para 7 observed that Section 8 contains two parts. The first part relates to letting by public auction for a term not exceeding five years with the approval of the Commissioner. The second part relates to letting of tolls of any public ferry by public auction for any term, that is to say, exceeding five years or otherwise than by public auction, e.g., by tender, with the previous sanction of the State Government. While the first part provides for ''approval'' of the Commissioner, the second part provides for ''previous sanction'' of the State Government. The use of the words ''previous sanction'' clearly indicates a stage anterior to the settlement and calling for tenders when a decision has to be made with regard to letting out by a method other than public auction or even by public auction for a term exceeding five years.

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From the facts of the present case, it is clear that the respondent No. 2 passed a resolution to run the ferry efficiently in the interest of public convenience, as in the opinion of respondent No. 2 the petitioner and his fellowmen were not running the ferry efficiently and the earnings were also less, i.e., about Rs. 3 lacs per year, hence, resolved to let ferry tolls by public auction for a term of one year, for which the Prescribed Authority (the Additional Collector) vide Annexure R/4 gave sanction; thereafter, notice for public auction was issued. The minutes of auction proceedings show that the highest bid was of the intervener for Rs. 6,11,000/- which was not finalised and further steps were not taken for letting of ferry tolls because of the order of this Court passed on 17-5-1991.

Even if there would not have been any stay, in that situation too, in pursuance of the auction the letting of ferry tolls could not have been granted without the approval of the Commissioner u/s 8 of the Ferries Act. The first part of Section 8 requires that the letting by public auction for a term not exceeding five years should be with the approval of the Commissioner. Therefore, the approving authority is the Commissioner of the Revenue Division for letting ferry tolls by auction, in view of the clear language employed in the first part of Section 8. Therefore, the contention of the learned counsel for the respondents and for the intervener, that as the highest bid has been received and the management of public ferry is vested in respondent No. 2, the approval of the Commissioner is not necessary, in view of the clear language employed in Section 8, cannot be accepted. Section 7A does not in any way give any unfettered power to the respondent No. 2 after the transfer of the management of the public ferry and to collect ferry tolls by respondent No. 2 not to comply with the provisions of Section 8.

The general principle laid down by Section 8 seems to be that for any period less than five years the settlement of the tolls of any public ferry should normally be by public auction subject to the approval of the Commissioner. If the" system of letting of the public ferry by public auction is adopted, approval of the Commissioner is necessary. The underlying idea behind the approval seems to be of. exercise of the power of superintendence to see that the regulation of ferries remains efficient and is not adverse in any manner to the public. Hence, as the general principle of letting of the ferry by public auction has been adopted by respondent No. 2, the respondent No. 2 before letting of the ferry for the period from 1st June 1991 to 31st May 1992 shall seek the approval of the Commissioner of the Division, and the Commissioner shall dispose of the matter in accordance with law.

In the result, the petition is disposed of finally with the aforesaid observations and directions. The stay order passed by this Court on 17-5-1991 is vacated. No order as to Costs.

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