

(1986) 04 CAL CK 0004
In the Calcutta High Court
Case No : Order No. 3226 of 1985

Sasanka Sekhar Panda

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-04-1986

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 109, 128, 133, 159, 175

Citation : 90 CWN 924

Hon'ble Judges : S. Ahmed, J; Mookherjee, J

Bench : Division Bench

Advocate : B.C. Dutt, A. Mallick and M. Bhattacharyya, for the Appellant; A.N. Banerjee and D. Bera for Respondent No. 1, Bikash Ranjan Bhattacharyya for Respondent No. 7, S. Gupta, Addl. Advocate Genl. and G. Bhattacharjee and C. Alam, for the Respondent

Judgement

Mookerjee, J.—On 20th September, 1985 we had passed an interim order inter-alia, directing 24-Parganas Zilla Parishad to hold a fresh auction in accordance with law for settlement of Kachuberia - Kakdwip Ferry subject to the decision in this appeal and without prejudice to the rights and contentions of the parties therein. Holding of the said auction and acceptance of the highest bid by the Zilla Parishad were made subject to the final approval by this Court. Pursuant to the said order the President of the 24-Parganas Zilla Parishad by Memo No. 1076 (60) 20/Revenue issued notices for holding of auction for settlement of the said ferry on 15th November, 1985. In the Memo the terms and conditions for offering bids in the said auction and for acceptance thereof were set out. On 15th November, 1985 bid of Rs. 785/-per day tendered by Sri Aditya Kumar Jana, Sabhapati, Sagar Panchayat Samity being the highest one, was accepted on behalf of the 24 Parganas Zilla Parishad.

2. Sasanka Sekhar Panda, Chairman, Mazhi-Malla Samabaya Paribhan Samity Ltd., the appellant who had participated in the said auction held on 15th November, 1985, has made an application before this Court for inter-alia

directing the respondents 1 to 6 not to give effect to the bid of Aditya Kumar Jana, Chairman, Sagar Panchayat Samity for settlement of lease and licence of Kachuberia-Kakdwip Ferryghat. The respondents have also used affidavits including supplementary ones. The Chairman of the Sagar Panchayat Samity has also entered appearance in the appeal and on his behalf submissions have been made.

3. In terms of our aforesaid order dated 20th September, 1985 holding of the said auction for settlement of Kachuberia-Kakdwip Ferry and the acceptance of highest bid by the Sabhapati of Sagar Panchayat Samity are subject to the final approval of this Court. We regret to note that without obtaining final approval thereof, the 24-Parganas Zilla Parishad purported to execute an agreement with Sabhapati, Sagar Panchayat Samity for the settlement of the said ferry. But clearly the same cannot create any equity either in favour of 24-Parganas Zilla Parishad or of Sabhapati, Sagar Panchayat Samity. We proceed to consider whether or not the approval should be given to the said holding of the auction, acceptance of the bid offered to Sabhapati Sagar Panchayat Samity and to the settlement made in favour of the said authority. Having heard the parties and also having considered the facts and circumstances of the case, we are unable to grant such approval.

4. At the said auction held on 15th November, 1985 Aditya Kumar Jana, Chairman, Sagar Panchayat Samity had offered highest bid of Rs. 785/ per day whereas bid of Rs. 784/ per day offered by the appellant was second highest. In the Memo dated 31st October, 1985 one of the conditions was that unless subject to the approval the highest bidder deposits the entire bid money, his earnest money would be forfeited and the second highest bidder or next to him would be called upon to deposit the entire money. Admittedly, on 15th November, 1985, Sabhapati Sagar Panchayat Samity did not deposit the entire bid money and the present appellant had prayed before the respondent no. 4 to allow him to deposit the requisite bid money in accordance with the aforesaid terms. On 25th November, 1985, 24-Parganas Zilla Parishad had accepted the deposit of requisite bid money made by Sabhapati, Sagar Panchayat Samity. The same deposit did not represent six month's rent. We are not satisfied with the explanation offered on behalf of the Zilla Parishad for disregarding the terms and conditions of the auction notices.

5. In paragraph 9 of the affidavit-in-opposition affirmed by Sri Sambhunath Bose, on behalf of the respondent no. 4, it was admitted that such concession was made in the matter of deposit of bid money by Sagar Panchayat Samity. It was claimed that Co-operative Societies in the past had enjoyed similar concession and it was further claimed that Zilla Parishad in suitable cases could make relaxations and there was no apprehension that the financial interest of Zilla Parishad would suffer by allowing Sagar Panchayat Samity, which was a statutory body to deposit later on moneys in terms of the auction notice. In the supplementary affidavit affirmed by the Additional Executive Officer, 24-Parganas

Zilla Parishad, it was for the first time claimed that Sagar Panchayat Samity through its Sabhapati had applied on 15th November, 1985 to the Zilla Parishad and had undertaken to pay the call money on daily or week-end basis. While one may not dispute the claim made in the said affidavit on behalf of the Zilla Parishad that the said body had a right to alter the conditions of auction, we must reject the claim that it was not necessary to extend benefits of such altered conditions to other bidders and also to notify such alterations to other intending bidders. Secondly, in the instant case the auction was being held under orders of this Court and therefore, the Zilla Parishad could not claim unfettered rights. A relaxation in favour one of bidder without notifying the same to other bidders must be condemned as arbitrary and unlawful.

6. The most serious objection to the settlement by auction of the aforesaid ferry in favour of Sadhapati, Sagar Panchayat Samity was that under the provisions of West Bengal Panchayat Act, 1973, the said body was not authorised to offer bids in auction for settlement of a ferry under the management of the Zilla Parishad. It is settled law that a statutory corporation or authority like the Panchayat Samity has no power to do anything unless such power has been conferred upon it by the statute creating it (vide *Maniruddin Bepari v. Chairman of Municipal Commissioners of Dacca* 40 C.W.N. 17). D.N. Sinha, J. (as he then was) at pages 107 to 109 of his judgment in the case of *Sri Luxmi Janardan Jew and Another Vs. State of West Bengal and Others*, , reiterated the same principle that a statutory body is severely restricted to the powers granted to it and it must limit its action within four corners of such statute (vide *Manik Chand Mahata v. Corporation, of Calcutta* ILR 48 Cal. 916 and *Maniruddin Bepari v. The Chairman, Municipal Commissioners of Dacca* (supra) D.N. Sinha, J. has also referred to his judgment to *Narendra Prosad Singh Vs. State of West Bengal and Others*, , which had held that leasing of a ferry must strictly comply with the provisions of the Bengal Ferry Act. Reference may be also made to the subsequent decision of D.N. Sinha, J. in *Narendra Nath Chakravarty Vs. Corporation of Calcutta and Others*, in which the learned Judge had more elaborately considered the same question about the limits of the powers of statutory bodies. Incidentally, the learned Judge had referred to the decisions in the well-known cases of *Ashebury Railway Carriage & Iron Co. Ltd. v. Riche* (1875) L.R. 7 H.L. 653 and in the case of *Queen v. Charles Reed* (1850) 5 Q.B.D. 483 which was also relied upon by Mr. Dutta, learned advocate on behalf of the appellant in this appeal. We respectfully agree with the view expressed by D.N. Sinha, J. in the case of *Narendra Nath Chakraborty v. Corporation of Calcutta* (supra), that where the statute does not expressly or impliedly authorise the doing of a particular thing, it must be taken to have been prohibited. A statutory corporation cannot go beyond the ambit and extent of the powers which by law are given to the Corporation.

7. In the light of the aforesaid well- settled, principles, we proceed to consider the provisions of the West Bengal Panchayat Act, 1973. Section 109 of the said Act which enumerates the different powers of a Panchayat Samity authorise the Panchayat Samity to participate in a public auction for settlement of ferry. We are

also unable to read in section 128 of the said Act any provision in this behalf. Panchayat Samity u/s 128 has a power to acquire, hold and dispose of property and to enter into contract but such acquisition, holding and disposal of property and making of contract must be in furtherance of the powers and duties vested under the West Bengal Panchayat Act, 1973 upon the Panchayat Samity. Secondly, under the proviso to section 128 in all cases of acquisition or disposal of immovable property the Panchayat Samity must obtain the previous approval of the State Government. In the instant case, the respondents have not even asserted that any approval of the State Government was obtained to the acquisition of the lease and license of the ferry by the Panchayat Samity.

8. Section 133 of the said Act is totally irrelevant for deciding the present question before us because clause (b) of sub-section (1) of the said section deals with levy of toll from any ferry established by it or under its management. In the instant case, the ferry was not established by the Panchayat Samity nor is management have been transferred to the Panchayat Samity either by the State Government or by the Zilla Parishad in terms of section 159 of the said Act. In the instant case, the Zilla Parishad in exercise of its powers u/s 159 did not transfer to the Panchayat Samity the control or management of the ferry. Therefore, section 159 of the West Bengal Panchayat Act cannot be relied upon for justifying the acceptance of the bid offered by the Panchayat Samity for settlement of the ferry. In the instant case there was no transfer of management in terms of section 159 but settlement by public auction was to be made in compliance with rules and in accordance with the terms of the orders of this court dated 20th September, 1985.

9. The Learned Additional Advocate General appearing on behalf of the Zilla Parishad has drawn our attention to section 175 of the West Bengal Panchayat Act, 1973 which lays down that the Zilla Parishad shall have the power to acquire, hold and dispose of property and to enter into contract. The said provision cannot be invoked to justify the impugned auction held in an arbitrary and illegal manner. Secondly, the Zilla Parishad's power u/s 175 of the said Act to dispose of property and to enter into contract must be read subject to the proviso to section 175 of the Act which requires that in all cases of acquisition and disposal of the moveable property the Zilla Parishad shall obtain the previous approval of the State Government. In the instant case there was no prior approval by the State Government to the settlement made by the Zilla Parishad's in favour of Sabhapati, Sagar Panchayat Samity. Further the Zilla Parishad's power to acquire hold and dispose of property and enter into contract must be read in the contract of its power and duties under the West Bengal Panchayat Act, 1973 and the Zilla Parishad cannot claim that it had an unfettered right to enter into contract. We shall presently point out that the Sabhapati, Sagar Panchayat Samity had no lawful authority to enter into such contract in running of the said ferry in question. u/s 181(1)(b) of the West Bengal Panchayat Act, 1973 the Zilla Parishad has power to levy tolls in respect of ferry in question but in granting settlement of the ferry by Public auction, it was bound to observe

rules of fair-play and act in accordance with law. For the foregoing reasons, we reject the¹ report of Zilla Parishad about settlement of Kachuberia-Kakdwip Ferry and set aside the settlement of the said ferry in favour of Sabhapati, Sagar Panchayat Samity. We direct the Zilla Parishad to hold fresh auction for settlement of the said ferry in terms of our previous order dated 20th September, 1985 and the order passed today pending fresh settlement of the ferry. The Zilla Parishad will permit the Sabhapati Sagar Panchayat Samity to run the ferry but this will not confer any right upon the Sabhapati of the said samity to participate in the fresh bid or claim any right against the person who may be granted settlement after fresh auction is held. Let the appeal come up for hearing six weeks hence with further report from the Zilla Parishad. The Sabhapati, Sagar Panchayat Samity will be allowed to run the ferry till the fresh auction only on condition that within three weeks he pays up arrear dues, if any, to the Zilla Parishad and continue to pay in advance the current dues.

The application is accordingly disposed of without any order as to costs.

Susanta Chatterji, J.

I agree.