

(1996) 12 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8901 of 1996

Tadi Tata Rao

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 23-12-1996

Acts Referred:

Andhra Pradesh (Andhra Area) Canals and Public Ferries Act, 1890 — Section 12
Andhra Pradesh (Andhra Area) Canals and Public Ferries Rules — Rule 1, 2, 9

Citation : (1997) 1 ALD 702 : (1997) 1 ALT 565

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy, for the Appellant; Govt. Pleader for Respondent Nos. 1 and 2, E. Manohar for E.V.S.S. Acharyulu, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—This Writ Petition has been filed questioning G.O.Rt.No. 1206, Transport, Roads and Buildings (R.IV) Department, dated 6-12-1994 as being arbitrary and violative of the statutory rules framed under the Andhra Pradesh (Andhra Area) Canals and Public Ferries Act (for short "the Act").

2. The dispute revolves around the grant of leasehold rights of Yedurulanka ferry for the years 1995-96 and 1996-97 at a sum of Rs. 16,58,000/- per year to the 3rd respondent. Previous to this, there was a litigation and two writ petitions - W.P.Nos. 6352 and 7171 of 1995 - were filed by the Fishermen Co-operative Society Limited, represented by its President R. Govinda Rao, 3rd respondent herein. While W.P. No. 6352 of 1995 was filed questioning the Memo No. 15/R.IV(2)/95-1, Transport, Roads and Buildings Department, dated 25-1-1995, W.P.No. 7171 of 1995 was filed questioning the Lr.No. 15/R.IV(2)/95, dated 30-3-1995 issued by the 1st respondent.

3. By Memo dated 25-1-1995, the extension of lease granted in G.O.Rt.No. 1206, dated 6-12-1994 was kept in abeyance and by subsequent proceedings dated 30-3-1995, a show cause notice was issued to explain why the order passed in

G.O.Rt.No. 1206, dated 6-12-1994 should not be withdrawn. The said society obtained lease over Yedurulanka ferry for the year 1994-95 commencing from 1-4-1994 and expiring on 31-3-1995 by virtue of G.O.Rt.No. 321, Transport, Roads and Buildings (R.IV) Department, dated 24-3-1994 for an amount of Rs. 15,62,000/-. On 16-8-1994, the said society had filed a representation before the Government for renewal of the lease period for two years, i.e., for 1995-96 and 1996-97 expiring on 31-3-1997 by enhancing the rental by 10% and making it to Rs. 16,58,000/- per annum for the two years -1995-96 and 1996-97. The lease has been extended in G.O.Rt.No. 1206, dated 6-12-1994. The reason for issuing the Memo dated 25-1-1995 and the show cause notice dated 30-3-1995 seems to be that the extension was not in accordance with law and also a loss to the exchequer as the petitioner herein had even offered Rs. 26,58,000/- per annum and also submitted a demand draft for Rs. 2,60,000/-. The present writ petitioner had filed W.P.M.P.No. 7908 of 1995 in W.P.No. 6352 of 1995 seeking to implead himself; but the same was dismissed by order dated 21-7-1995 holding that impleadment petition was not maintainable and that if the petitioner so chooses, he may have to question the same by filing a separate writ petition. Hence, this writ petition.

4. The two writ petitions mentioned above filed by the 3rd respondent-Society have been allowed by a learned single Judge of this Court on 21-7-1995 on the ground of violation of principles of natural justice and the same was also confirmed by a Division Bench of this Court and the Government is seized of the matter. But, that may not be so relevant in so far as the adjudication of the cause in this writ petition is concerned for the reasons mentioned infra.

5. The lease in question is covered by the statute and the rules framed thereunder. In the counters filed in the earlier writ petitions, the Government had contended that the extension was a mistake and was a loss to the public exchequer and supported the action" in issuing the Memo keeping G.O.Rt.No. 1206, dated 6-12-1994 in abeyance and also issuing show cause notice, but as yet, no action has been taken by the Government. The 3rd respondent was granted leasehold rights for the years 1994-95 by public auction at the highest bid of Rs. 15,62,000/-. The concerned Executive Engineer held the auction and the Engineer-in-Chief had submitted the same to the Government for the purpose of confirmation and the Government had considered the matter and confirmed the same. Consequently, the lease deed was executed for a period of one year from 1-4-1994.to 31-3-1995. As stated above, the 3rd respondent filed a representation for extension of lease for two years from 1-4-1995 to 31-3-1997 and the 1st respondent extended the lease for Rs. 16,58,000/- per year. The 3rd respondent who is the beneficiary under the extension and who was the petitioner in the earlier writ petitions takes a stand that rules nowhere state that, per force, the leasehold rights can be granted only by public auction and not by any other mode. Mr. E. Manohar, the learned counsel appearing for the 3rd respondent takes the same stand, while the Government Pleader submits that the matter is seized of by the Government. Mr. C.V. Mohan Reddy, the

learned counsel for the petitioner submits that the only mode of granting leasehold rights over the ferry is by public auction and not otherwise and that the leasehold rights having been granted in public auction for one year earlier, the same was not extendable by private negotiations or representation beyond that period.

6. This matter involves interpretation of the Rules. Even though the petitioner has stated in the writ affidavit that the rules have been framed by the Government under the Act in G.CMs.No. 1144, dated 17-3-1963, a copy of the same has not been produced before me. As such, I cannot take cognizance of the alleged Governmental Order. But, the Government relies upon G.O-Ms.No. 948, Public Works Department, dated 2-4-1946 as being the rules governing the grant of leasehold rights over ferries. The same have been framed in exercise of the powers conferred by Section 12 of the Act. Rule-1 contemplates setting-forth the conditions and terms subject to which the lease will be granted. Under Rule-2 one of the conditions mentioned is the duration of the lease. The said rules, no doubt, contemplate the grant of lease for one year or in excess of the said period. The quantum of amount to be deposited in case of one year is mentioned in Rule 2(f), while that of exceeding one year is mentioned in Rule 2(i). The said conditions differ. In the instant case, the condition set forth in the auction notice was that duration of lease was one year commencing from 1-4-1994 to 31-3-1995. Auction was held on that premise and bids were made. Rule-9 mandates that when a lease deed is executed after highest bid is accepted, the tenure of lease has got to be mentioned and accordingly the tenure of lease period has been mentioned in the lease deed as one year commencing from 1-4-1994 and expiring on 31-3-1995. G.O.RtNo. 321, Transport, Roads and Buildings (Roads-IV) Department, dated 24-3-1994 under which the lease was confirmed was only for one year and consequently in the lease deed the period was mentioned as one year. This one year lease could not be extended by a negotiation or representation for the reason that G.O.Ms.No. 948, dated 2-4-1946 does not leave any doubt that the lease shall be only by public auction. The same is evident from Rule-2, which mandates that under the conditions set forth under Rule-1, it is made incumbent upon the persons intending to bid to attend in person or by duly authorised agent. Emphasis is on the word "bid" and the same cannot be construed as by private negotiations. Again, Rule 2(e) focusses light with regard to the mode of the grant of leasehold rights, which reads:

"No person or his authorised agent shall be permitted to bid at the auction unless he deposits as security such sum as shall be specified in the notice."

As such, it is crystal dear that under the statutory rules framed governing the grant of leasehold rights over a ferry, only Public auction has to be held and it cannot be granted otherwise than by public auction. That apart, when a public largesse is being sold, it is always desirable that open auction should be conducted so as to fetch the highest price to augment resources to the State,

which is in public interest and more so when this State is always fund-starved. In the circumstances, G.O.RtNo. 1206, dated 6-12-1994 is set aside. Even if the writ petitioner is ready to pay the amount of Rs. 26,58,000/- per year and also deposited Rs. 2,60,000/-, he is not entitled to have the leasehold rights. The lease beyond 31-3-1995 could be granted by public auction only and not by any other mode. Now, that legal lapse be corrected by the Government and the 1st respondent is directed to issue notification for the grant of leasehold rights in accordance with G.O.Ms.No. 948, Public Works Department, dated 2-4-1946. This action shall be taken forthwith.

7. The Writ Petition is allowed in part to the extent indicated above. No costs.

Now, it is mentioned by Mr. E. Manohar, the learned Senior Counsel appearing for the 3rd respondent that the Government has confirmed the extension of lease granted in G.O.Rt.No. 1206 T.R & B Department, dated 6-12-1994, by issuing G.O.Rt.No. 760, dated 23-7-1996 affirms G.O.Rt.No. 1206, dated 6-12-1994, the decision rendered by me needs no amendment and the judgment rendered above stands.