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Court : Guwahati

Decided On : Nov-28-1958

Judge : H. Deka and G. Mehrotra, JJ.

Acts : [Northern India Ferries Act, 1878](#) - Sections 8; [Constitution of India](#) - Article 226; Northern India Ferries Rules - Rule 19

Appeal No. : Civil Rule No. 127 of 1958

Appellant : Biswanath Singh

Respondent : Additional Chief Engineer (R. and B.) Wing P.W.D. and ors.

Advocate for Def. : K.M. Lahiri, Adv. (for No. 4) and R.K. Goswami, Jr. Govt. Adv. (for Nos. 1 to 3)

Advocate for Pet/Ap. : B. Islam, Adv.

Disposition : Petition dismissed

Judgement :

G. Mehrotra, J.

1. This Rule was issued on an application under Article 226 of the Constitution. By this application the petitioner prayed for a writ in the nature of mandamus and certiorari directing the opposite party No. 1 and 2 to settle the right of collection-of tolls of the Silonipam ferry with the petitioner and further prayed mat the order of settlement passed by respondent No. 3--The State of Assam--be quashed.

The facts which are necessary for disposal of this petition are that the petitioner is a resident of village Chaibari Charali under Sootea Police Station in the district of Darrang. By a notification issued by the Deputy Commissioner of Darrang, tenders were invited for collection of tolls of the Silonipam P.W.D. ferry on the Jiabhoroli river in. the district of Darrang for a period of one year with effect from 1-4-58 upto 31st March, 1959.'

Tenders were however, received but ultimately public auction was held on the 15th of April, 1958 by the Deputy Commissioner, Darrang in his office premises. The petitioner Biswanath Singh gave the highest bid of Rs. 87,020/-, and the Deputy Commissioner by his order dated 15-4-58 settled the ferry with the petitioner. Thereafter, the necessary one-fourth amount was deposited by the petitioner into the Government treasury as required under the rules.

Respondent No. 1--The Additional Chief Engineer (R. and B.) Wing P.W.D., Assam, however, by his order dated 26th of April, 1958, without giving any reasons refused to accept the petitioner's highest bid and settled the ferry with the respondent No. 4--Pulin Chandra Chowdhury, at Rs. 97,020/-, Thereupon a petition was filed by the petitioner in this Court challenging the validity of the order of the Additional Chief Engineer by which settlement of the right to collect tolls was made with the respondent No. 4 Pulin Chandra Chowdhury.

That petition was numbered as Civil Rule No. 72 of 1958. This Court by its decision dated the 2nd June, 1958 set aside the order of settlement with the respondent No. 4 and directed the Additional Chief Engineer to consider the whole matter and pass his order in accordance with Rule 19 (b) of the Rules framed under the Northern India Ferries Act. The Additional Chief Engineer was directed to apply his own mind to the whole question and if he so thought to give his reasons in writing for rejecting the highest bid or for accepting any other bid.

It appears that thereafter the Additional Chief Engineer felt some difficulty in passing an order under the directions of this Court and referred the matter to the State Government. The State Government on the 21st August, 1958 passed the following order : --

'The Government after reviewing the whole matter consequent on the Hon'ble High Court's order No. 2998-99 dated 1/-6-58 orders that the proposal for settling the above rights after public auction be dropped and that the said rights be resettled with Sri P.C. Choudhury and partners in the same terms and conditions as before till 30-4-59.'

2. It is this order of the Government which has been impugned under Article 226 of the Constitution. The further relief claimed by the petitioner is that the direction in the nature of mandamus be passed against the opposite parties Nos. 1 and 2 directing them to settle the right of collection of tolls of the ferry in question with the petitioner. Whatever may be our decision on this writ petition, the procedure adopted by the Government was highly objectionable.

The Government by circumventing the order of this Court directed settlement of the right to collect tolls with the opposite party No. 4 which was not proper. There was a direction issued by this Court directing the Additional Chief Engineer to consider the whole question on merits and to give his reasons for not accepting the highest bid and for suggesting the other person. The Additional Chief Engineer therefore ought to have considered the, whole matter and pass the orders according to the directions of this Court.

The Government in the meantime stepped in and passed the impugned order. The entire proceedings of settlement as such was not proper. The contention of the petitioner is that apart from the propriety of the order passed by the Government, it was without jurisdiction and unjustified and should be quashed by this Court. The contention is that even if it be accepted that under Section 8 of the Northern India Ferries Act the Government could choose either to appoint an agent or resort to auction sale, the Government once having adopted the procedure to settle the right to collect toll by auction, could not change its mind subsequently and make direct settlement with any party.

The contention is that such a procedure was not warranted by the provisions of Section 8 of the Northern India Ferries Act. The next point urged is that the opposite parties Nos. 1 and 2, the Chief Engineer and the Additional Chief Engineer were bound to carry out the directions of this Court and determine the matter on its merits and that they erred in referring the matter to the Government. There appears to be some force in the contentions of the petitioner.

The Government had the right initially under Section 8 of the Act to make direct settlement of the right to collect tolls, but once having adopted a particular procedure and there being a direction of this Court, it should not have been given a go-by and a new procedure adopted. It was pointed out by Mr. Goswami appearing for the State that due to peculiar circumstances of this case Government was justified in adopting a different procedure, because if the entire settlement was set aside and fresh settlement was made then complications would have arisen as regards apportionment of the auction money and other matters.

In order to avoid further complications the Government thought it proper to settle the ferry with the opposite party No. 4 for the remaining period. We do not think however, that even under those circumstances the Government was justified in circumventing the order of this Court by adopting a procedure which was not the procedure initially adopted by the Government.

It was for the Chief Engineer after applying his mind to the whole matter to give his reasons in writing for rejecting the highest bid and for directing settlement with any other party. The only difficulty, however, in granting a writ to the petitioner is that it will be ineffective if granted at this stage. Article 226 gives discretionary power to the High Court to issue directions and writs. In this case we cannot issue any direction to grant permit to the petitioner but we can only issue a direction to the Additional Chief Engineer to apply his mind to the facts of the case and pass such order as is permissible under the law.

There is hardly now four months left for the period of settlement to expire. Under these circumstances, no useful purpose will be served if the whole matter is to be considered afresh by the Additional Chief Engineer. In the case of *K.N. Guruswamy v. State of Mysore*, reported in AIR 1954 SC 592, the Supreme Court

refused to grant a writ in similar circumstances. The following observations of their Lordships of the Supreme Court will make the whole thing clear : --

'We were told that the excise year for this contract (1953-54) expires early in June. A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law.'

3. In that case the appellant offered the highest bid at a certain excise auction held by the Deputy Commissioner and his highest bid had been accepted. One of the persons who was not even a bidder approached the Excise Commissioner in his chamber and offered a higher offer, and thereafter the settlement with the appellant was cancelled and was made in favour of the stranger. A petition was filed on behalf of the person who was the highest bidder at the auction. The High Court refused to grant him a writ.

It was held by their Lordships of the Supreme Court in that case that the cancellation was irregular and improper, but as the appellant obtained no right to the licence by the mere fact that his bid was accepted subject to sanction, the first relief asked for by a mandamus could not be granted. That the cancellation of the highest bid was irregular it being without resorting to the procedure prescribed in the Excise Rules and the order of cancellation could be granted. But in that case the Supreme Court refused to grant a writ of mandamus to the appellant as the period for excise license was about to expire.

4. We, therefore, refuse to grant a writ to the petitioner as prayed for; but in the circumstances, we do not award any cost.

H. Deka, J.

5. I agree.

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