

Ram Deo Singh Vs. Executive Engineer, P.W.D. and ors.

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Court : Allahabad

Decided On : May-19-1977

Reported in : AIR1977All527

Judge : C.S.P. Singh and ;B.N. Sapru, JJ.

Acts : [Constitution of India](#) - Article 226; [Northern India Ferries Act, 1878](#) - Sections 8 and 12

Appeal No. : Civil Misc. Writ No. 3413 of 1976

Appellant : Ram Deo Singh

Respondent : Executive Engineer, P.W.D. and ors.

Advocate for Def. : Standing Counsel, ;S.N. Pandey and ;G.P. Bhargava, Advs.

Advocate for Pet/Ap. : R.A. Sharma, Adv.

Disposition : Petition dismissed

Judgement :

C.S.P. Singh, J.

1. The dispute in the present petition relates to the opening of a tender submitted by the petitioner in connection with auction of the ferry Ghat over the Ganges river known as Qazi Tola Ferry Ghat. This Ghat has been declared as a public ferry of

Class I by the State Government under [Northern India Ferries Act, 1878](#) (hereinafter referred to as the Act). The Executive Engineer P. W. D. Ghazipur published a notice in the local news paper inviting tenders for letting out of the right to collect tolls over the Ghat for a period of three years. The tender notice apart from requiring the tenderer to comply with a condition imposed by para. 16 of the notice that the tenderer should own a power barge fitted with two engines in a working condition with a capacity of 400 passengers duly registered and a certificate of the District Magistrate or Executive Engineer of these facts should be filed along with tender stating the size, seating capacity, loading capacity and the Horse power of the engines, and the fact that it was in working condition (Annexure '2' to the rejoinder-affidavit of Brij Narain Singh). The tenders had to be submitted in a prescribed form which consisted of two parts. Part I of the prescribed tender form laid down the essential condition to be fulfilled by the tenderer before his tender could be opened. Condition No. 3 and Condition No. 6 were to the following effect:

'3. Certificate issued after February 8, 1976 from the District Magistrate of the district of which the tenderer is a resident about good character.

6. Certificate of ownership of one power barge not less than 300 capacity with double engines in good running condition clearly specifying its seating and loading capacity dimensions and Horse power of its engines and their number from District Magistrate or Executive Engineer, P. W. D. concerned as the charge of the ferry will be handed over to successful tenderer in the mid of rainy seasons. The petitioner and respondent No. 6 along with a number of other persons filed their tenders before the Executive Engineer respondent No. 1. It is alleged by the petitioner that his tender was for a sum of Rs. 2,39,600/- per year while that of respondent No. 6 was for Rupees 1,25,191/51 paise per year only. The petitioner along with his tender filed a certificate of good character issued by the District Magistrate and also a certificate of ownership of a steamer having a capacity of 400 passengers with double Boiler Engine. As the tender of the petitioner has not been opened on account of the alleged failure of the petitioner to comply with conditions Nos. 3 and 6 of the tender form and condition No. 16 of the tender notice, which lays down conditions which are identical to that of condition No. 6 of

the tender form Part II, the certificates filed by the petitioner along with his tender may be referred to at this stage. In order to comply with condition No. 3 of the tender form i. e. a certificate of good character from the District Magistrate of the district in which the petitioner was a resident, the petitioner had moved an application before, the District Magistrate Ghazipur on 5th 1976 (sic?) for a good character certificate to be issued in his favour (Annexure '3' to the rejoinder affidavit of Brij Narain Singh). On this, it appears that a report was called for from the Police Station Dildarnagar District Ghazipur and the police reported that the petitioner was not a previous convict (Annexure '4' to the rejoinder-affidavit of Brij Narain Singh). After receiving this report, the Additional District Magistrate, Ghazipur issued a certificate to the effect that the petitioner had not been convicted of any offence (An-nexure '5' to the rejoinder-affidavit of Brij Narain Singh).

2. One of the grounds on which the tender of the petitioner has not been opened by the Executive Engineer, is that the certificate issued by the Additional District Magistrate is not a certificate which complies with the requirement of condition No. 3 of the tender form. In order to fulfil the requirement of condition No. 6 of Part II of the tender form and para. 16 of the tender notice, the petitioner had filed a letter by one N. P. Singh, a partner of N. P. Singh and others, Swasthik Bhawan, Patna addressed to the Executive Engineer, P. W. D. Ghazipur to the effect that the petitioner had approached them to let out one of their steamers with a carrying capacity of 400 passengers with their personal luggage for service in Qazi Tola Ferry Ghat for three years during the monsoon season and that they had agreed to give their steamer S. W. Hebe. The letter went on to state further that the steamer would be entirely at the disposal of the petitioner and no action would be taken by them to withdraw it during the period of its working. The signature of the partners was attested by the Executive Engineer, P. W. D. Patna Division, Patna. This was filed by the petitioner to establish that he was the owner of the steamer. As regards the other requirement of condition No. 6 and para. 16 of the tender notice, a certificate issued by Surveying Officer of the Government of Bihar/Chief Surveyor of Inland Steam Vessels Bihar dated 5-6-1976 was filed in respect of the steamer. This certificate was issued under the provisions of Inland Steam and Motor Passengers Vessels Act (Act I of 1917) and Rule 11-91 in Form No. 10-A, and stated the plying limit of the vessel was smooth water only by day and by

night. The respondents have taken exception to this certificate on the ground, firstly that the letter issued by N. P. Singh and others did not confer ownership rights on the petitioner and further that the certificate issued under the Inland Steam Vessels Act 1917 was not a certificate as required by condition No. 6 and para. 16 of the tender notice. The controversy in the present petition is as to whether the petitioner has complied with condition No. 3 and condition 6 of the tender form and para. 16 of the tender notice.

3. Before we resolve this controversy, it is necessary to clear the deck by disposing of a preliminary objection raised by the respondents. It was contended by the respondents that inasmuch as the petitioner had only submitted a tender, he had no vested right to the acceptance of his tender and as such no locus standi to approach this Court. It is settled that a bidder at an auction has no vested right and cannot claim that his bid be accepted (See the State of Orissa v. Harinarayan Jaiswal, : [1972]3SCR784 ; and Purushottam Ramanata v. Makan Kalyan Tandel. : [1974]3SCR64 . But the petitioner at this stage does not claim, that the tender offered by him be accepted. All that he claims is that his tender be opened and the respondents be directed by a mandamus not to give effect to the tender of respondent No. 6 and not to allow respondent No, 6 to collect tolls on the ferry,

4. The ferry is a public ferry and governed by the provisions of the [Northern India Ferries Act, 1878](#) and rules framed thereunder. The relevant authorities invited tenders for the franchise of collecting tolls of the ferry. In the invitation inviting tenders, the tenderers were required to fulfil certain conditions before their tender could be opened. In case a tenderer fulfilled those conditions, as has been averred by the petitioner, the authorities would be bound to open the tender. In case the authorities refused to open the tender even though a tenderer complies with the conditions contained in the tender notice or Part I of the tender form, the will be aggrieved by the action of public authorities and can ask for a mandamus directing them to open the tender in accordance with the tender notice. A somewhat similar question came up before the Supreme Court in K. N. Guruswamy v. State of Mysore : [1955]1SCR305 and it was held that where a bid of a person in a public auction had been wrongly rejected, he would have sufficient interest to maintain a petition. The preliminary objection, therefore, fails.

5. Coming now to the merits, counsel for the petitioner began by challenging the procedure for the auction of the ferry. He contended firstly that the ferry could not be auctioned by the tender system as it was an auction for less than five years and had to be settled by public auction. It was urged that there is an essential difference between a public auction and a settlement by tender, and as Section 8 of the Northern India Ferries Act contemplates settlement of ferries for a period of less than five years only by public auction, resort to the system of tender was uncalled for. We will begin by extracting Section 8 of the Northern India Ferries Act; the relevant part of Section 8 of the Act runs :--

'8. 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"

Now, there is undoubtedly a difference between a sale by auction and invitation to tender, as has been adopted in the present case. An auction has been described as proceedings at which people are invited to compete for the purchase of property by successive offers of advancing sums and a sale by auction is a means of ascertaining what the thing is worth viz. its fair market price (see *Ramrap Jankiram v. State of Bombay* 0043/1962 : [1963]48ITR108(SC) , while an invitation to tender is a mere attempt to ascertain whether an offer can be obtained within such margin as the building owner, or employer is willing to adopt, or in other words is an offer to negotiate, an offer to receive offers, an offer to chaffer (See *Purushottam Ramanata v. Makan Kalyan Tandel* : [1974]3SCR64 , These cases clearly establish that there is a difference between an auction and invitation for tender. Thus in case the ferry in question could not be let out by tender, but had to be sold by public auction, the procedure adopted for selling the ferry would be invalid, Under the first part of Section 8 of the Act, tolls of public ferry may be let out for a period not exceeding five years by public auction with the approval of the Commissioner, while under the later part for any term by public auction or otherwise with the previous sanction of the State Government, Counsel for the petitioner contended that the latter part of Section 8 applies only to those cases where the ferry is let out for a term exceeding five years and not for any term of

less than five years. He supports this contention by authority. The case of *Orin Moyong v. Secy. to Govt. of Assam* (AIR 1974 Gau 27) of the Assam High Court supports this contention. The same Court however took a contrary view in the case of *Purna Kanta Saika v. State of Assam*. So far as this Court is concerned, cases under the Northern India Ferries Act are rare, for we do not have a net work of water ways with which the State of Assam is blessed. There is, however, a Single Judge authority in the case of *Bajinath Prasad v. State of U. P.* : AIR 1968 All 288 where the view has been taken that in case the State Government approves, tolls of ferries, can be let out for any term by system other than by public auction. We may look into the question ourselves. So far as the first part of Section 8 of the Act is concerned, i. e. in a case where the Commissioner grants approval, the letting has to be by public auction, and for a term not exceeding five years. The second part of Section 8 which deals with the power of the State Government is couched in very wide language. It permits letting of a public ferry by public auction or other than public auction and for any term. In interpreting the second part of Section 8 we have to keep in mind the fact that ultimately it is the State Government which is the governing authority so far as public ferries are concerned. Section 4 makes this amply clear, for under that provision, the State Government can declare what ferries will be public ferries, and empowers it to take possession of the private ferries and declare them to be public ferries, and further to establish new public ferries, or change the course of any public ferry or to discontinue any public ferry. It is also empowered to define the limits of any public ferry. The control of the State Government is not whittled down by the provisions of Section 6 of the Act. Our attention has been drawn to Section 6 which vests the immediate superintendence of a public ferry in the District Magistrate. It has however, to be remembered that the District Magistrate is an officer of the State Government, and further, the State Government by this very section is empowered to vest the superintendence of any public ferry in any officer that it desires. Keeping the wide powers that the State Government enjoys in respect of public ferries under the Act in mind, it is unreasonable to put any restriction on the powers of the State Government to direct that a ferry be let out by tender system for a period of less than five years. The period for which a public ferry can be let out by any system, i. e. by a public auction or otherwise, is not

curtailed by the latter part of Section 8 of the Act, for the words used there qua the time limit is 'any term'. The word 'any term' would include, unless the context indicates to the contrary, a period of less than five years. We are unable to read any limitation on the power of the State Government to direct an auction of public ferry by tender system for a period less than five years, merely because the first part of Section 8 contemplates public auction of ferry for a term upto five years. The limitation of letting out by public auction is in cases where the Commissioner is the approving authority and in view of wide phraseology used in the latter part of Section 8, we cannot interpret the words 'any term' as being a term of more than five years. Counsel contended that as specific provision has been made for auction upto five years in the first part of Section 8 of the Act, the words 'any term' occurring in the latter part of section, must in the context refer to a period of more than five years. This argument overlooks the fact that while the first part of Section 8 provides for settlement with the approval of the Commissioner, the latter part deals with a separate authority i. e. the State Government. We are thus of the view that in case where the State Government sanctions letting by a system other than public auction, it can provide for the letting to be of any period including a period of less than five years.

6. It was then contended that the Executive Engineer or the Commissioner could not have let out the ferry by the tender system, as it was only the State Government which could have granted approval, and that further, before auction could be resorted to by any system other than by public auction, approval of letting out by tender system had to be granted in advance before tenders were invited. This argument brings us to Section 35 of the Act which is in the following terms:--

'The State Government may, from time to time, delegate under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any Commissioner of a Division or Magistrate or a district or to such other officer as it thinks fit, by name or by virtue of his office.'

This provision empowers the State Government to delegate its powers under the Act to any Commissioner or a Magistrate of the District with such restriction as it deems fit. The State Government by a notification dated 9-11-1908 (Annexure A-1

to the supplementary counter-affidavit of Sri Prem Bhusan) in exercise of powers under Section 35 of the Act, delegated to the Commissioner of the Division, the power of sanctioning the letting of ferry tolls by public auction for a term exceeding five years or otherwise than by public auction for any term. Thus after this delegation of power, the Commissioners of the Division could let out public ferries for any term by a process other than that of public auction i. e, they could let out by the tender system, as has been done in the present case. On the 23rd July 1940, another order was issued by the Government which modified the earlier order (Annexure A-11 to the supplementary counter-affidavit). Paragraph 2 (i) and (iii) of this order is relevant and may be extracted:--

'2. Government are now pleased to modify these orders as follows:--

(i) Commissioners may sanction lease of ferries managed by or under the control of the Public Works Department for a period not exceeding five years, after tenders have been invited publicly by the Public Works Department.

(ii) When a tender or bid which is not the highest be proposed to be accepted, Government sanction shall be obtained.' This modification entitled the Public Works Department to invite tenders for ferries under their control by the tender system provided that the Commissioner approved of such a system. Clause 2 (ii) and (iii) of the order required Government sanction to be sought in case it was proposed to accept a tender or a bid which was not the highest. By another letter dated 21-12-1965, a further direction was issued by the State Government purportedly under Section 35 of the Act that tenders would be called in two parts, one containing the bid and solvency certificate, and the other containing other details, and that the bid part of the tender should be opened only in case the main tender was found to be complete. To complete the factual narrative before considering the argument noticed earlier, it appears that a representation was made by the petitioner to the State Government on 16-6-1976. The State Government on receipt of the representation sent a telegraphic order dated 19-6-1976 staying proceedings of letting out of the public ferry. The Commissioner Vara-nasi Division appears to have considered the respective claims of the tenderers, and held that as the petitioner was not the owner of the steamer and as

the steamer was fit to be used only on smooth water, the Executive Engineer was right in not opening the bid part of the tender. Subsequently, the State Government asked for comments from the Commissioner and by order dated 30-7-1976 directed the Commissioner to finalise the settlement of the ferry. This order in the context means that the State Government did not accept the representation of the petitioner and accepted the proposal of the Executive Engineer and the Commissioner to settle the ferry with respondent No. 6. It also transpires that the State Government by letter dated 31-5-1976 had accepted the proposal of the Commissioner to let out the tolls for a period of three years by the tender system (Annexure A-VIII to the supplementary counter-affidavit of Prem Bhushan Mittal). In the background of these facts, the contention noticed earlier must fail, for the State Government had delegated its power under S. 8, to the Commissioner of the concerned Division and the Commissioner as such could auction public ferries 'by the tender system. Apart from this, in the present case, the Commissioner had obtained the sanction of the State Government for letting out of the ferry by tender system, and ultimately, it was the State Government which granted approval of the letting out of the ferry to the respondent No. 6 and rejected the claim of the petitioner. Thus the procedure for auction by tender system and the acceptance of the bid other than the highest in the present case was approved of by the State Government. It was contended that the Executive Engineer could not have put the ferries to auction, and it was only the District Magistrate who could have done so. Our attention was invited to Section 6 of the Act. We do not feel that it is necessary to go into this controversy for even assuming that the Executive Engineer was not entrusted with the superintendence of this particular ferry, the act of inviting tender is only a ministerial act, and as in the present case, the tenders have been accepted by the Commissioner to whom, the State Government had delegated its power, and the action of the Commissioner was later on approved by the State Government itself, the mere fact that it was advertised by the Executive Engineer did not introduce any infirmity in the impugned settlement of the ferry.

7. Counsel then contended that the view of the authorities that the petitioner had not complied with the condition as to the filing of a good character certificate from the District Magistrate, is erroneous, and further that he had also complied with

condition No. 6 and para. 16 of the tender notice as regards the ownership of a vessel having the requisite fitness certificate. We have already adverted to the nature of the certificate filed by the petitioner. Condition No. 3 requires the certificate to be that of a District Magistrate. The certificate in the present case was issued by the Additional District Magistrate, and all that it stated was that the petitioner had not been convicted of any offence. Leaving apart the question as to whether the certificate issued by the Additional District Magistrate could be equated with the certificate of a District Magistrate, we are doubtful as to whether certification to the effect that a person is not a previous convict can be equated with a certificate of good character. However, as the Commissioner while passing a detailed order rejected the representation of the petitioner has not laid much emphasis on the failure of the petitioner to comply with this condition, we may brush aside this infirmity in the tender submitted by the petitioner. The vital question, however, is as to whether the petitioner complied with condition No. 6 and para. 16 of the tender notice, Condition No. 6 required the petitioner to file a certificate of ownership of a power barge having a capacity of 300 passengers with double engine in good running condition. Certificate had to be of the District Magistrate or the Executive Engineer Public Works Department concerned. Now undisputably, the petitioner was not the proprietor of the steamer. He had filed a letter of N. p. Singh and others which purported to let out a steamer to him for service in Quzi Tola Ferry. Can the lessee of the steam vessel be said to be a owner for the purpose of satisfying condition No. 6 and para. 16 of the tender notice 'Own' according to the Law Dexion, means 'to hold as property, to possess; often used as synonymous with possess, 'owner' is 'one who has dominion of a thing, real or personal, corporeal or incorporeal, which he has the right to enjoy and to do with it as he pleases--either to spoil or destroy it as far as the law permits.' Owner includes '(a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise.' (The Law Lexicon by Ramanatha Iyer pages 930-931). This view has found approval of the Kerala High Court in the case of Ramkrishan v. Gopala Moothan : AIR1972 Ker15 . In Hughes v. Sutherland, (1881) 7 QB 160 in a case arising under the Merchants Shipping Act 1854, it has been held that the owner of a vessel need not necessarily be a

registered or even a legal owner. Lord Coleridge, C. J. observed on page 163 :--

'So in the present case, 'the owner' is not necessarily the registered or even the legal owner. It is difficult to suppose that where under a charterparty of a large and important ship for a long period the charterer has a real interest and the whole interest in the ship and crew he could be convicted under Section 147 in a penalty of 201, for every seaman and apprentice whom he engages, and Mr. Smith admitted the difficulty. That consideration seems to show that the section cannot have the meaning which has been contended for. 'Owner' must be construed largely, so as to include one who has a real and substantial interest. If the respondent had a legal interest he would be clearly owner, and an equitable owner is on the same footing as a legal.'

Manisty, J. took a similar view and observed :--

' 'Owner' there means one who is substantially the owner, having the control and management of the ship. I do not know that a stronger case could be put than that which was put of a demise by charterparty.'

In the case of the *Baumwoll Manufactur Von Carl Scheibler v. Furness* (1893 AC 8), the house of Lords under the same Act took a similar view. Lord Herschell observed on page 17 as under :--

'But there may be two persons at the same time in different senses not improperly spoken of as the owner of a ship. The person who has the absolute right to the ship, who is the registered owner, the owner (to borrow an expression from real property law) in fee simple, may be properly spoken of, no doubt, as the owner, but at the same time he may have so dealt with the vessel as to have given all the rights of ownership for a limited time to some other person, who, during that time, may equally properly be spoken of as the owner. When there is such a person, and that person appoints the master, officers, and crew of the ship, pays them, employs them and gives them the order, and deals with the vessel in the adventure, during that time all those rights which are spoken of as resting upon the owner of the vessel, rest upon that person who is, for those purposes during that time, in point of law to be regarded as the owner

(page 17 of the case *The Baumwoll Manufactur Von Carl Scheibler v. Furness*, (1893 AC 8)).

These cases indicate that the words 'owner of a vessel or a chattel' can include, in case the context does not indicate to the contrary, a person who has dominion over the vessel or the chattel. The provisions of the Northern India Ferries Act and tender notice and tender form do not indicate to the contrary. The purpose of the Act and the tender condition and tender notice is that a power barge of appropriate specification should be available with the tenderer for use on the ferry so as to ensure that no inconvenience is caused to the passengers. This may be ensured either by the tenderer being the actual owner of a power barge, or having a firm lease of it from the proprietors. Counsel for the respondents, however, urged that inasmuch as the vessel put up by the petitioner was not a power barge, the petitioner had failed to comply with these conditions. It was further urged that before the proprietors of the steamer could let out the steamer to the petitioner, necessary formalities had to be completed under the Inland Steam Vessels Act, 1973, and this not having been done, letting out of the steamer to the petitioner was invalid. We do not feel inclined to go into this aspect of the controversy for we feel that even if the petitioner could claim to be the owner of the steamer, and it be treated as a power barge, the petitioner has not complied with the condition of the requisite certificate of fitness etc. being issued by the District Magistrate or the Executive Engineer. The Standing Counsel produced the record of the case, and it transpires that the certificate issued to the petitioner and filed by him was by the Chief Surveying Officer, and not that of the District Magistrate or the Executive Engineer. We do not say that the District Magistrate or the Executive Engineer P. W. D. were more qualified than the Chief Surveying Officer to grant the certificate, but the tender condition and the tender notice insisted on the certificate being issued by the aforesaid two officers and none other. The petitioner in order to claim a right to his tender being opened, had to establish that the conditions required in the present case, were fulfilled, but has failed to do so. The Commissioner has found another flaw in the steamer made available by the petitioner, and that is that it can ply only on smooth water. He has taken the view that this would render the vessel incapable of plying during Monsoon season on the Ganges when the water is turbulent and the river is in flood. This may also be

a relevant circumstance for not opening the tender. However, there cannot be any doubt that the certificate filed by the petitioner did not comply with the requirements of condition No. 6 and para. 16 of the tender notice. As the tender containing the bid of the petitioner could only be opened in case all the conditions of Part II of the tender were fulfilled, and as the petitioner did not fulfil condition No. 6, at least as regards certification by the District Magistrate or the Executive Engineer, the authorities were right in not opening the tender of the petitioner.

8. Counsel for the petitioner also' contended that both the respondent No. 6 and another successful tenderer Kesri had given the same power barge in their tender, and no exception should have been taken in his case. This contention is wholly unjustified, as the record discloses that these two tenderers had given different power barges of different sizes along with their tenders.

9. For all the above reasons, the petition fails and is dismissed. There shall be no order as to costs.

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