

Dinesh Shee and ors. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Jun-16-2005

Reported in : 2005(4)CHN681

Judge : Jyotirmay Bhattacharya, J.

Acts : West Bengal Panchayat Act; ;West Bengal Panchayat Rules; ;Ferries Act; ;West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984 - Rule 31(7) and 32

Appeal No. : W.P. No. 6946(W) of 2005

Appellant : Dinesh Shee and ors.

Respondent : State of West Bengal and ors.

Advocate for Def. : Amal Baran Chatterjee, Adv. for Respondent No. 8 and ;Jayanti Dhar Quader, Adv.

Advocate for Pet/Ap. : Sardar Amjad Ali, ;Mohinoor Rahaman and ;S. Shah, Advs.;Bharati Mutsuddi and Champak Ghosh, Advs.

Judgement :

Jyotirmay Bhattacharya, J.

1. The auction for settlement of ferry ghats and hat /bazar situated within Sandeshkhali-1 Panchayat Samiti could not be held on the scheduled date, i.e., on 21st April, 2004 on account of Parliamentary election. As such, the concerned Panchayat Samiti by its letter under Memo No. 660(8) dated 13th April, 2004 being Annexure 'P-1' to this writ petition authorized the Pradhan, Nazat-II Gram Panchayat to realise toll tax from the Nazat Kalinagar Ferry Ghat and Nazat Bazar I Hat for a limited period. The Pradhan of the concerned Gram Panchayat, instead of realising the toll tax from the said ferry ghat and hat I bazar himself, authorized one Dhananjay Mahato to collect such toll tax from the said ferry ghat and hat I bazar and to look after the administration thereof through four appointed persons who are the petitioners before this Court.

2. Subsequently an auction notice was issued by the Executive Officer, Sandeshkhali-1 Panchayat Samiti for holding auction for settlement of various ferry ghats and hats I bazars under the said Panchayat Samiti for the period from 15th April, 2005 to 14th April, 2006. The petitioners have challenged the validity and legality of the said auction notice as the said auction notice was issued by not observing the extant provision of the West Bengal Panchayat Act and the rules framed thereunder.

3. By referring to Sub-rule (7)(vi) of Rule 31 of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984, Mr. Amjad Ali, learned Senior Advocate, appearing on behalf of the petitioners submitted that the management aihat, bazar, ferry ghat which was assigned by the Government to the Panchayat Samiti has been allotted to Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti.

4. By referring to Rule 32 of the said rules, Mr. Ali submitted that every Sthayee Samiti has to exercise its powers and perform its functions in relation to the subject allotted to it within its financial limits subject to any direction that may be passed by the Panchayat Samiti.

5. Mr. Ali further submitted that the said provisions unequivocally show that the decision for holding auction for settlement of ferry ghats and hats/ bazars must originate from the Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti. Mr. Ali

thus contended that neither the Panchayat Samiti nor any other Sthayee Samiti can take any decision in this regard unless it is originated from the Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti.

6. Though such a plea in definite terms has not been taken by the petitioners in this writ petition but the petitioners have challenged the validity of the notice for holding auction, issued by the Executive Officer of the Panchayat Samiti on the ground that in the absence of adoption of any resolution by Sandeshkhali-I Panchayat Samiti, the respondent No. 7 ought not to have issued any auction notice.

7. The petitioners contended that since the notice for holding auction was issued by the respondent No. 7 in excess of its jurisdiction, such notice cannot be acted upon. As such, the instant writ petition was filed challenging the validity of the said auction notice. Several other incidental reliefs such as for extension of the petitioners' authorization to collect toll tax like the previous years, release of their admissible remuneration etc. were also prayed for by the petitioners in this writ petition.

8. Mr. Amal Baran Chatterjee, learned Advocate, appearing for the concerned Panchayat Samiti, submitted before this Court that when the concerned Samiti, being a parent body, has taken a decision for holding the auction for settlement of those ferry ghats and hats I bazars, the petitioners cannot challenge the legality of the notice merely on the ground that the decision for holding such auction did not originate from one of the organs of the Panchayat Samiti, viz., Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti as per Rule 31 of the said rules.

9. By referring to a resolution adopted by the Artha O Sanstha Sthayee Samiti, Mr. Chatterjee submitted that a resolution for holding auction of the said ferry ghats and hats I bazars was duly adopted by the said Sthayee Samiti and pursuant to the said resolution, notice of holding of auction was issued by the respondent No. 7. According to Mr. Chatterjee, since the Sabhapati of the Samiti is a member of all the Sthayee Samities, the resolution adopted with the participation of the Sabhapati of the Samiti, cannot be held to be illegal. Thus, in substance, Mr. Chatterjee submitted that when the parent body, viz., the Panchayat Samiti has

already taken a decision for holding auction for settlement of the said ferry ghats and hats I bazars, no interference can be called for with the impugned notice merely on the ground that certain procedural irregularities were committed in the process of issuance thereof.

10. Mr. Chatterjee further submitted that the other reliefs which the petitioners have claimed in this writ petition, cannot be granted under the scheme introduced under the Ferries Act which provides for settlement of such ferries only by auction and not by any private arrangement.

11. Heard the learned Advocates of the parties.

12. Undisputedly, no decision has been taken by Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti for holding auction for settlement of the said ferry ghats and hats /bazars as per sub-rule (7) (vi) of Rule 31 read with Rule 32 of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984, though under the said rules, the Management of the hat, bazar and ferry ghat which was assigned by the Government to the Panchayat Samiti, was allotted to the said Sthayee Samiti exclusively.

13. Even assuming that the validity of the notice issued pursuant to a resolution adopted by the parent body, cannot be challenged merely because of the fact that the decision for holding auction did not originate from one of the organs of the parent body, but still then the notice cannot be acted upon as here in the instant case nothing has been produced before this Court to show that any decision was even taken by the parent body, viz. the Panchayat Samiti itself for holding such auction for settlement of the said ferry ghats and hats I bazars.

14. The decision taken by Artha O Sanstha Sthayee Samiti which was produced by Mr. Chatterjee before this Court cannot be equated with the decision of Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti, as the Artha O Sanstha Sthayee Samiti was not vested with the power of administration of ferry ghats and hats /bazars. The power and function of Artha O Sanstha Sthayee Samiti has also been defined in the said rules. The resolution which was adopted by the said Sthayee Samiti is not within its domain and as such the said resolution cannot be

given effect to in the absence of a valid resolution of the Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti.:

15. In such view of the matter, this Court holds that the impugned auction notice which was issued the respondent No. 7 cannot be acted upon, as the said notice was not issued on the basis of any valid resolution of Unnayan Parikalpana O Bhumi Sanskar Sthayee Samiti as per Sub-rule (7)(vi) of Rule 31 read with Rule 32 of the West Bengal Panchayat (Panchayat Samiti Administration) Rules, 1984.

16. Accordingly, the impugned notice so far as it relates to holding of auction for settlement of Nazat Ferry Ghat and Nazat Bazar is concerned, stands quashed. I, however, make it clear that the holding of auction for settlement of other ferry ghats and hats /bazars will remain unaffected by this order, as the validity of holding auction for settlement of the other ferry ghats and hats I bazars is not under challenge in this writ petition.

17. So far as the other reliefs, viz., for extension of petitioners' authorisation for collection of toll tax as prayed for by the petitioners in the said writ petition is concerned, this Court finds that such relief cannot be granted as this Court feels that public authority should not enter into any transaction by way of any private negotiation. That apart, under the Ferries Act, settlement of ferries can only be granted by public auction. Accordingly the prayer for extension of petitioners', authorization for collection of toll tax by the petitioners, stands rejected.

18. The concerned respondents are, however, directed to release the admissible dues of the petitioners to which they are legally entitled to for discharging their duties for collection of toll tax and for management of the ferry ghats pursuant to valid authorization in this regard, within a period of eight weeks from the date of communication of this order.

19. The writ petition is, thus, disposed of. There will be, however, no order as to costs.

20. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

