

Govt. Of State Of Bihar & Ors vs Ram Bharosa Singh & Anr on 17 February, 1956

Equivalent citations: AIR 1956 SUPREME COURT 640

Bench: V. Bose, B. Jagannadhadas, B.P. Sinha, S.J. Imam

CASE NO. :

Appeal (civil) 113 of 1954

PETITIONER:

GOVT. OF STATE OF BIHAR & ORS.

RESPONDENT:

RAM BHAROSA SINGH & ANR.

DATE OF JUDGMENT: 17/02/1956

BENCH:

V. BOSE & B. JAGANNADHADAS & B.P. SINHA & S.J. IMAM & N.C. AIYAR

JUDGMENT:

JUDGMENT 1956 AIR (SC) 640 The Judgment was delivered by : CHANDRASEKHARA AIYAR
CHANDRASEKHARA AIYAR J. - This appeal has come before us on a certificate granted by High Court at Patna.

2. What is known as ' the Patna Ganges Ferries ' governed by the Bengal Ferries Act, 1885 (Bengal Act 1 of 1885), was the subject-matter of a dispute between respondent 1 Ram Bharosa Singh on the one hand, and the Government of the State of Bihar, and Nagendra Narain Singh, respondent 2, on the other. The District Magistrate, Patna, notified that a public auction of the ferries would be held on 22-12-1952, for the grant of a lease for a period of three years with effect from 1-4-1953, to 31-3-1956.

But later, he withdrew the tolls from public auction, as it was decided to extend the term of the already existing lease of the ferries in favour of respondent 2 for a further period of two years with effect from 1-4-1953. A fresh lease deed was executed on 20-12-1952 for a period of two years and it was also registered. Complaints to the District Magistrate, the Commissioner and to the Government by respondent 1 proved of no. avail and therefore he moved the High Court of Patna under Art. 226 for a writ of mandamus.

The High Court granted the petition, holding that the action of the District Magistrate in withdrawing the public auction under orders of the State Government was not lawful, as it was not on his own initiative, which is what is required by the statute, and that there was no. right under the Act or the rules to extend the term of a subsisting lease. A writ was, therefore, issued canceling the

order of the Direct Magistrate, Patna, withdrawing the public auction and commanding him to issue a fresh notification for holding a public auction.

3. After the expiry of the two years term on 20-12-1954, there was a fresh auction in which both respondents 1 and 2 became lessees.

4. So, we are not now concerned, therefore, with any rights inter se between the two respondents. The Government of the State of Bihar is interested only in the question of the correctness of the construction placed upon the Act and the Rules by the High Court. The learned Advocate General for the State invited us to express our view on the question whether the District Magistrate has any power to extend the term of a lease granted as the result of a public auction. This he wanted for the future guidance of the State.

5. We are in full agreement with the view taken by the High Court. Sections 7, 8, and 9 of the Bengal Ferries Act run thus : --

"7. The control of all public ferries shall be vested in the magistrate of the district, subject to the direction of the Commissioner."

" 8. The immediate superintendence of every public ferry shall be vested in the Magistrate of the district in which such ferry is situated, or in such other officer as the State Government may, from time to time, either by name or by official designation, appoint.

Any such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat."

" 9. The tolls of any public ferry may, from time to time, be leased by public auction for such term as the Magistrate of the district in which such ferry is situated may, with the approval of the Commissioner, direct. The Magistrate of the district or the officer authorised by him to conduct such auction may, for sufficient reason to be recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction. The lessee of the tolls of every ferry which have been leased under this section shall execute a contract setting forth the conditions on which the tolls of such ferry are to be held, and shall give security for its due fulfillment,"

6. The rule making power is conferred on the District Magistrate by Section 15 and it is sufficient for our present purposes to set out only the earlier part of the section in these terms : --

"The Magistrate of the district, with the approval of the Commissioner may from time to time make rules consistent with this Act : -- (a) for the management of all public ferries within such district, and for regulating the traffic at such ferries; (b) for

regulating the time and manner at and in which the terms in which and the person by whom, the tolls of such ferries may be leased by auction ; (c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for ; and (d) generally to carry out the purposes of this Act : "

Rule 2 says : -

" Every Patna - Ganges ferry shall either be held khas by the Magistrate or be leased by public auction . "

Rule 7 (d) on which the learned Advocate General relied provides : --

"The maximum period for which a lease may be granted shall not exceed three years at a time."

7. The intendment or the scheme of the Act and the rules is either to have khas possession of the ferries in the District Magistrate or to hold a public auction for the grant of a lease. There is no power express or implied for extension of a term of lease already granted. It is no doubt true that the Magistrate is empowered to refuse to accept the highest bid and accept another bid or even withdraw the tolls from auction, but this does not mean that the process of holding an auction and ascertaining the bids could be abandoned altogether and that it is open to the District Magistrate to extend the term indefinitely and at his sweet will and pleasure.

The maximum term cannot exceed three years and at the end of it there has to be a public auction to ascertain the bids, the reason for insistence on a public auction can be guessed. As is pointed out in *The State of Assam v. Keshab Prasad Singh*, 1953 SCR 865 : 1955 AIR(SC) 309) (A) it is probably a statutory safeguard against arbitrary executive action

8. With this expression of opinion, we dismiss this appeal but in the circumstances without costs.