

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION APPELLATE SIDE

Present: Hon'ble Justice Shampa Sarkar

WPA No. 26138 of 2022

Joragachi Lohadaha Ferighat Yatri O Nou Paribahan Samabay Samity Limited &
Anr.

VS. State of West Bengal & Ors.

For the petitioner : Mr. Abhratosh Majumder, Sr. Adv., Mr. Samim Ahmmed,
Ms. Saloni Bhattacharjee, Ms. Gulsanwara Pervin.

For the State-respondents : Mr. Raja Saha, Mr. S.P. Lahiri

For the Respondent No.5: Mr. Pratip Kumar Chatterjee,

Hearing concluded on:03.01.2023 Judgment on:18.01.2023

Shampa Sarkar, J.:

1. The Petitioner No.1 is a Co-operative society registered under West Bengal Co-operative Societies Act, 2006. The petitioner NO. 2 is the secretary of the petitioner No.1. The members of the Co-operative society are local boatmen or hereditary patnis.

The petitioner No.1 was registered as a co-operative society sometime in December 2021. The petitioners have inter alia, prayed for a direction upon the Amlai Gram Panchayat to settle Lohadaha ferry ghat in their favour in terms of sub-paragraph (iii) of paragraph 281 of the West Bengal Land Reforms Manual, 1991 (hereinafter referred to as the 'said Manual'). Declaration that the petitioner No.1 as the sole Boatman's Co-operative society in Bharatpur- I block, was entitled to the settlement of the ferry ghat without participating in any public auction, had also been prayed for.

2. According to Mr. Majumder, learned senior Advocate, the claim of the petitioner was based on paragraph 281 (iii) of the said Manual. Learned Advocate contended that the said manual was a special piece of legislation and should be given a precedence over the provisions of The West Bengal Panchayat Act, 1973 (hereinafter referred to as the 'said Act'). An exception to Article 14 of the Constitution of India had been culled out to uplift the conditions of local boatmen/hereditary patnis who were usually members of the Schedule Caste community. Such class was created and a reasonable classification was made as an affirmative action in consonance with the provisions of Article 15 (4) of the Constitution of India. The State of West Bengal intended to extend a protective umbrella over the members of the schedule caste community who earned their living as boatmen.

3. It was further stated that the members of the Co-operative society were assisting the existing lease holder in running the ferry ghat since January 1, 2022. By letters dated August 22, 2022 and September 7, 2022, the petitioners made representations for handing over the settlement of the ferry ghat in favour of the co-operative society as per the provision of the said Manual. Such representation, was lastly made on November 9, 2022.

Despite such representation, the petitioners were not handed over the operation of the ferry ghat and they received information that the gram panchayat had decided to invite a public auction for the said purpose.

4. The Secretary-in-Charge, Amlai gram panchayat published a notice dated November 12, 2022 proposing to hold the aforesaid meeting. The agenda of the said meeting was to discuss and settle the terms and conditions for the auction of the concerned ferry ghat. Aggrieved by the afore-mentioned action of the panchayat authority, this writ petition was filed.

5. Mr. Majumder drew the attention of the court to Paragraph 281 (i) of the said manual and submitted that those ferries which were declared as public ferries under the Bengal Ferries Act, 1885 would be exclusively under the control of District Magistrate subject to the direction of the Commissioner and the administrative control would rest on the Public Works Department (PWD). All other vested or khasmahal ferries including the ferry in the case in hand, would be subject to sub paragraphs (ii) to (viii) of paragraph 281 of the said manual.

6. According to sub-paragraph (ii) of paragraph 281, ferries should be settled by the District Land & Land Reforms Officer by way of public auction to be held at least before three months from the date when the settlement was to take effect. Public auction was to be restricted among co-operative societies or partnership firms as per paragraph 266A of the ' said Manual '.

7. According to Mr. Majumder, sub-paragraph (iii) of paragraph 281 of the ' said Manual ' was an exception to the general procedure laid in paragraph 281 (ii) by which, preference was to be given for settlement of such ferries to local Boatman's Co-operative Societies or partnership concerns formed by local boatmen and hereditary patnis.

In case there was only one such boatman's co-operative society or partnership concern or hereditary patni in the locality, settlement was to be made with such boatman's co-operative society or partnership concern or hereditary patni on the basis of economic rent to be determined by the Collector, being 25% of the average of the net income of preceding three years. In such event, no tender should be invited.

8. Thus, Mr. Majumder urged that the petitioner No.1, being the only existing boatman's co-operative society whose members were local boatmen or hereditary patnis, should be granted settlement of the ferry ghat upon payment of the economic rent as to be determined by the Collector and calculated in terms of sub-paragraph (iii) of paragraph 281 of the said Manual. Mr. Majumder contented that only if the petitioner No.1 was not able to pay the economic rent so determined by the Collector in terms of the said sub-paragraph (iii), the question of holding a public auction would arise in terms of paragraph 266A of the said Manual. As the Lohadaha ferry was not a public ferry in terms of the Bengal Ferries Act, 1885, but a private ferry in the class of vested and khasmahal ferries, settlement of the ferry service should be made in favour of the petitioner No. 1.

9. Referring to Sections 33, 42, 110 and 155 of the said Act, Mr. Majumder went on to submit that although the gram panchayat was vested with the powers to manage all estates, properties, ferries and perform functions and duties connected with the management and control thereof, the said provisions of law must be read in harmony with paragraphs 281 (iii) and 266A of the said Manual. A harmonious reading of the said provisions of the said Act with the relevant

paragraphs of the said Manual, would lead to the only conclusion that the panchayat authorities, before holding a public auction ought to have complied with paragraph 281 (iii) of the said Manual and settled the ferry in favour of the Petitioner No.1.No other plausible interpretation of the provisions of the said Manual read with the provisions of the said Act was possible. If the panchayat authorities were allowed to hold the public auction by permitting other private players to participate in the public auction, paragraph 281 (iii) of the said Manual would remain a dead letter in the statute book. The intention of the legislature was to promote a particular community and to uplift their economic condition. The said Manual had a statutory flavour and should be followed by the panchayat authorities.

10. Mr. Lahiri learned Advocate appearing on behalf of the State of West Bengal submits that paragraph 266 of the said Manual dealt with handing over management of ferries to panchayat institutions with certain exceptions. Rule 266A was incorporated in the said Manual which provided that ferries should be settled through public auction amongst local self-help groups, co-operative societies or partnership firms, having at least 2/3rd of its members from families living below the poverty line. The said provision declared that the policy of the state government was to generate maximum self-employment through optimum use of resources at its disposal. Such provision was incorporated in keeping with the declared policy of the government to generate maximum employment by optimum use of resources.

6 11. Mr. Lahiri submitted that if the number of participants in the first notice of auction fell short of three or the highest offers received fell short of the accepted amount of reserved price, a second notice for auction would be issued where individual entrepreneurs would also be allowed to participate. Thus, learned Advocate urged that in this case as the petitioner was admittedly the only Boatman's co-operative society and the participants would thus fall short of three, even as per the said Manual, the authorities were entitled to hold a public auction and allow individual entrepreneurs to participate. The sole motive of the authorities was maximization of revenue. He relied on the decision of Nabadwip Jalapath Paribahan Co-operative Society Ltd. vs. The State of West Bengal & Others. reported in (2018) 1 CLJ 612 and Kausar Ali Vs. The State of West Bengal & Ors. decided in WPA 7899 of 2022.12. Learned Advocate further submitted that from 2016 onwards, the concerned ferry had been

settled by public auction and there was no change in the circumstances in the present year which would call into operation paragraph 281 (iii) of the said Manual. He further urged that the Manual states that preference should be given to local co-operative societies and hereditary patnis, but did not mandate compulsory settlement of the ferries in favour of any boatman's co-operative society.¹³ Mr. Chatterjee, learned Advocate appearing on behalf of the panchayat authorities submits that provisions of transferring certain powers at the local level to the Panchayati Raj institutions, including the power to manage and control ferries and ferry ghats was brought in by the 73rd Amendment of the Constitution of India in 1992.

Learned counsel submitted that structurization of the Panchayati Raj institutions and enabling such institutions of local self government to function independently, were constitutional mandates under Part IX of the Constitution of India. Referring to Article 243- G (b), learned Advocate submitted that the power to implement schemes for economic development and to secure social justice at the local level were entrusted to the panchayats, in relation to matters listed in the Eleventh Schedule. Learned Advocate referred to Entry 13 of the said Schedule, by which, control and management of ferries inter alia, were vested to the panchayat authority.

14. According to learned Advocate, only those ferries, the control and management of which were not transferred to or vested with the panchayat authorities, would be governed by paragraph 281 (iii) of the said Manual. The Panchayat Act being a special statute would have an overriding effect over the said Manua. Learned Advocate referred to Sections 20, 21 (m), Section 25, Section 42 (b) and Section 47 (ix) of the said Act. According to Mr. Chatterjee, control and management of all ferries which were transferred to the gram panchayat would be as per the above provisions of the said Act. The gram panchayat had independent and complete control over the management of the said ferry ghat which included grant of settlement by holding public auction.

15. Both Mr. Lahiri and Mr. Chatterjee, learned Advocate submitted that grant of lease of the ferry ghat should only be held by public auction. Maximisation of revenue and the best interest of the panchayats were the objectives behind settlement of all immovable properties vested with the gram panchayat by public auction.

Public auction was the only means by which such objectives could be achieved as private players were likely to quote higher amounts.

16. The questions that fell for consideration in this writ petition were whether paragraph 281 (iii) of the said Manual would have an overriding effect over the provisions of the Panchayat Act and whether the Lohadaha ferry ghat should be settled in favour of the petitioner No.1 without any public auction.

17. The said Manual lays down the principles and procedure to be followed by officials and functionaries in matters relating to land and land reforms. It embodies the government policy relating to management, use, and settlement of government lands and also with matters relating to transfer of sairati interests.

18. The said Manual covers the whole spectrum of activities of officials and the functionaries at various levels of the land & land reforms and its administration in West Bengal. The West Bengal Land Reforms Act, 1955 is a social legislation which was enacted for the purpose of settling the landless and to uphold common good. It aimed at putting an end to the feudal and semi-feudal system, abolition of the zamindari and ensuring proper and consistent management of land vested to the state. The said Manual was published as a guideline or a hand book of procedure.

19. Paragraph 6 provides that the said Manual would take effect without prejudice to any of the provision of any Act or Rule made under such Act and nothing in the Manual shall be construed to limit or abridge the operation of any provision of such an Act or Rule.

20. Thus, the Manual is at best, a handbook of procedure for guidance of the land and land reforms department with regard to management of lands vested in the government. It is the policy of land management to be followed by the concerned department for smooth implementation of the land reforms which had been brought in West Bengal. The Panchayati Raj and the power conferred upon the same, emanates from the 73rd Amendment of the Constitution of India brought in 1992. The Constitution of India was amended to incorporate Part IX which deals with the creation, powers and functions of the Panchayats. Enormous powers have been vested with the gram panchayats under the provisions of the Constitution. Article 243- G (b) of the Constitution empowers the panchayats to implement schemes for economic development and to secure

social justice, in matters relating to the Eleventh Schedule. Entry 13 of the Eleventh schedule deals with ferry ghats. By order of the District Magistrate in 2015, the Amlai gram panchayat was transferred the power to control and manage the concerned ferry ghat. The fact that the settlement of the said ferry ghat was being auctioned since 2016, is not in dispute. Mr. Majumder, however, submitted that the cooperative society was formed for the first time in December 2021 and as such from the present term, preference should be given to the petitioner No. 1 without calling for a tender.

21. Although the Panchayati Raj institutions existed since long, it was observed that the institutions had not been able to acquire the status and dignity of viable and responsive public bodies due to a number of reasons including absence of regular elections, prolonged supersession, insufficient representation of the weaker section, inadequate devolution of powers and lack of financial resources.

In the objects and reasons appended to the 72nd Amendment Bill, 1991 which was enacted as the 73rd Amendment Act, 1992, it has been categorically mentioned that in the light of the experience which the legislature had in the preceding 40 years and in view of the shortcomings observed, there was an imperative need to enshrine certain basic and essential features of the Panchayati Raj institutions in the Constitution, not only to impart continuity to the institutions but also to strengthen them. Accordingly, it was proposed that a new part be added to the Constitution relating to panchayats. The provisions of Article 40 of the Constitution of India relating to Directive Principles of State Policy was sought to be implemented by promulgating the 73rd Amendment Act, 1992, and to ensure peoples participation in development and democratic de centralization. Devolution of powers and responsibilities on the panchayats regarding preparation of plans for economic development, securing social justice and for implementation of developmental schemes were the main objectives of such amendment. Accordingly, the Constitution of India was amended by introducing Part-IX thereto. Article 243- G deals with powers and responsibilities of the panchayats which, includes the following:

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

22. The fact that the control and management of the concerned ferry ghat had been with the panchayat authorities for sometime past, is not in doubt or dispute. The panchayat authorities have been vested with powers under Article 243- G of the Constitution of India read with the Eleventh Schedule. The provisions of Sections 20, 21 (m), 25, 42 (b), and 47 (ix), of the said Act and Rule 13 of the West Bengal Panchayat (Gram Panchayat Accounts, Audit and Budget) Rules, 2007, empower the panchayat authorities to establish, control and manage the ferry ghats, collect tolls and maximise revenue for their best interest. These provisions are in consonance with the constitutional mandate. The Manual being a procedural handbook or a guide cannot have any overriding effect over such provisions. Paragraph 6 of the said Manual also provides the same. In any event, holding of public auction is only to maximise revenue. The same are being conducted in terms of Memo No. 3060- F (Y) dated June 11, 2014 issued by the Principal Secretary to the Government of West Bengal, Finance Department, Audit Branch and Memo No.-3103 F (Y) dated July 27, 2022 issued by Additional Chief Secretary to the Government of West Bengal, Finance Department, Audit Branch. The gram panchayat, in matters of grant of lease of immovable properties and assets of the state, are bound to ensure that no loss is incurred. Maximisation of revenue must be their goal. Paragraph 266A of the said Manual also provides circumstances under which public auction could be opened up to individual entrepreneurs and not be limited to boatmen's co-operative societies or partnership firms. Such policy of the government was also introduced by amending the earlier paragraph 266A of the manual in the year 2016. Individual entrepreneurs were allowed to participate in public auctions if there were less than three bidders. The said Manual cannot curb the power vested with the gram panchayat in terms of Section 20 of the said Act, read with the constitutional mandate.

23. Section 20 of the West Bengal Panchayat Act, 1973 deals with transferred duties of the gram panchayat. Certain duties of the State Government had been transferred to the panchayats. Provisos were incorporated to put a check on misuse of power and/or failure to perform.²⁴ Such transferred duties include performance of such functions which the state government may by order

transfer to the panchayats or entrust or devolve upon them from time to time subject to the condition that the State Government may withdraw such power in case of default in performance or inability to perform. Section 21 deals with the regulatory duties of the gram panchayat which includes establishment of ferry ghats and management and control of ferries. The state government under Section 22 is obligated to place funds at the disposal of the gram panchayat so that the functions assigned to the gram panchayat may be performed smoothly. These provisions in the said Act were incorporated by the West Bengal Panchayat (Third Amendment) Act, 2006. The title of the Principal Act of 1973 was substituted by the West Bengal Panchayat (Third Amendment) Act, 2006 as follows:

"An Act to reorganize, strengthen and expand the activities of Panchayats in rural areas of West Bengal to enable them to act as units of self-government and to strive for socio-economic development and securing social justice for the people and to provide for matters connected therewith."

25. The amendment to the title itself indicates that the West Bengal Panchayat Act was an Act to organize, expand and strengthen the activities of panchayats in rural areas of West Bengal and to enable them to act as units of self government and to strive for economic and social development.

Following the constitutional mandate of the 73rd amendment, the said Act was amended in the year 2006 and Sections 20 and 21 with regard to transferred duties of the gram panchayats and the regulatory duties of the panchayats had been incorporated by amending the earlier provisions. Therefore, after the constitutional amendment and inclusion of Part -IX and after the amendment of Sections 20 and 21 of said Act of 1973 by the amending Act of 2006, the panchayats have been enabled and empowered to independently manage and control the ferry ghats. The said Manual will not have any application and the panchayat authorities are not bound by the provisions of the paragraph 281 (iii) of the said Manual. Interpretation of the government in this regard is also in favour of grant of complete independence to the panchayats authorities to function within the four corners of the Act and Rules and in accordance with law.²⁶ The object behind incorporation of Part-IX to the Constitution was to enable the Panchayati Raj to function as units of self-government and in order to achieve such object it is essential that the gram panchayats function independently and in a de-centralized manner in terms of the provisions of the

Panchayat Act and the Rules framed thereunder. The said Manual which is merely a hand book of procedure for the land and reforms administration cannot have an overriding effect over the West Bengal Panchayat Act, 1973. The petitioners do not have a right of preference for grant of settlement of the ferry ghat.

27. In the matter of *The Goa foundation Vs. M/ s Sesa Sterlite Limited & ors*, [Special Leave to Appeal (Civil) No.32138 of 2015] the Hon'ble Apex Court held that the State was duty bound to adopt the method of auction by giving wide publicity so that all eligible persons could participate in the process.

Natural resources could not be alienated by way of largesse and there must be a reciprocal consideration either in the form of earning revenue or sub-serving the common good or both. The State's endeavour must be towards maximization of revenue returns.

28. In the matter of *Centre for Public Interest Litigation v. Union of India*, reported in (2012) 3 SCC 1, the Hon'ble Apex Court held as follows:

" 95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values.

In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all

eligible persons can participate in the process. " 29. The decisions cited by Mr. Lahiri in the matter of Nabadwip (Supra) and Kausar Ali (supra) are not required to be dealt with as these decisions did not answer the specific question raised by Mr. Majumder, as to whether paragraph 281 (iii) would have an overriding effect over the West Bengal Panchayat Act, 1973.

30. The said Manual is not a guide or handbook of procedure mandatorily applicable to the panchayats. Paragraph 281 (iii) of the said Manual deals with concessions to be granted to hereditary patnis. It provides that settlement of ferry ghats shall be made to the sole co-operative society or partnership concern without calling any tender, on the basis of economic rent to be determined by the Collector on the basis of 25% of the average of the net income of the preceding three years. This provision itself indicates that the collector would be the authority to determine the economic rent that must be payable by the sole co-operative society or partnership concern and the panchayat authorities would not have a role to play. If the argument of Mr. Majumder is accepted, in that event the provisions of Part-IX of the Constitution of India and those of the said Act, with regard to powers vested or transferred to the panchayats, including control and management of ferries would become redundant and meaningless.

31. The control and management of Lohadaha ferry ghat was transferred to the Amlai gram panchayat by order of District Magistrate dated July 17, 2015. Since then, several auctions had been held for settlement of the concerned ferry ghat on a year to year basis, with some extensions during the covid period.

There is no illegality in the action of the authority in holding the public auction.

32. It is informed that the auction has already been held, but the execution of the agreement has not been completed. No interference is called for. The prayers in the writ petition cannot be allowed. The panchayat authorities are at liberty to proceed with the auction which has been held, and to complete the formalities in accordance with law.

33. As considerable time has been consumed due to the pending litigation and the interim order passed, the time to execute the agreement with the successful bidder is extended upto February 17, 2023.

34. The writ petition is dismissed.

35. However, there will be no order as to costs.

36. Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)

Later:

Learned Advocate for the petitioner prays for stay of the operation of this judgment and order. Prayer considered and refused.

(Shampa Sarkar, J.)