

Asiruddin Sk Vs State Of West Bengal & Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Feb. 5, 2025

Acts Referred: Constitution of India, 1950 " Article 14

Hon'ble Judges: Debangsu Basak, J; Md. Shabbar Rashidi, J

Bench: Division Bench

Advocate: Gangadhar Das, Tanmoy Chattopadhyay, Anwari Quraishi, Mohim Chowdhury, Chaitali Bhattacharyya, Swarvanu Saha, Nitin Singhania, D.M. Malda

Final Decision: Disposed Of

Judgement

Debangsu Basak, J

1. Appeal is at the behest of the appellant and directed against the judgment and order dated December 5, 2024 passed in WPA 21947 of 2022.

2. Learned advocate appearing for the appellant submits that, contract for running and operating Pirganj Balarampur Ferry Ghat (for the sake of

convenience referred to as the "Ferry Ghat") was awarded to the private respondent in a public auction held in terms of the auction notice dated

July 13, 2020. He submits that, the contract was for a period of two years. However, subsequently, the contract should extend unilaterally for another

period of three years. He submits that, extension is beyond the initial contract and is violative of Article 14 of the Constitution of India.

3. Learned advocate appearing for the appellant submits that, appellant filed a writ petition challenging the grant of such extension. He submits that,

the learned Single Judge erred in allowing the extension to continue since, the extension itself was bad in law.

4. State and the private respondent are represented.

5. In course of hearing of the appeal, we called upon the Zilla Parishad under which, the Ferry Ghat was operating as also the State to submit report

as to the process of auction in respect of the Ferry Ghat since, the extended period was also scheduled to expire in the month of July 25.

6. Initially, we were not receiving any appropriate response from authority. Consequently, by our order dated January 27, 2025, we called upon the

District Magistrate to be present on the virtual platform on the date of hearing to assist the Court with regard to the queries of the Court relating to the

tender process.

7. Pursuant to our direction dated January 27, 2025, a report is submitted in Court on behalf of the State which be taken on record.

8. District Magistrate appears in the virtual platform and apprises the Court of the tender process in terms of the impugned order of the learned Single

Judge.

9. District Magistrate stated that, E auction notice for the Ferry Ghat was issued on January 18, 2025 and the end date for participation of the E

auction is fixed on February 11, 2025. The start and end date of the E auction is scheduled on February 18, 2025 and that finalization of the tenderer

will be done immediately on February 18, 2025.

10. In response to a query of the Court, District Magistrate stated that, the new bidder will be given charge of the Ferry Ghat with effect from July 30,

2025 since, the present contract stands extend till July 29, 2025. In response to a further query of the Court, District Magistrate submits that, the E

auction notice dated January 18, 2025 does not specify the commencement date of the tender that may be awarded in respect of the Ferry Ghat

pursuant to such tender process.

11. Learned advocate appearing for the private respondent submits that, although, the initial tender was for a period of two years, it was extended for

subsequent period of three years pursuant to a policy decision taken by the authorities. She refers to the resolution of the Zilla Parishad in this regard.

She submits that, other Ferry Ghats are operating on the same parameters. Therefore, according to her, there was no mala fide in her client getting the

extension of the contract for the Ferry Ghat.

12. Learned advocate appearing for the private respondent relies upon (2010) 15 Supreme Court Cases 65 (Garib Nawaz Corporation versus

State of Maharashtra and Others.) and submits that, extension or renewal of a contract is permissible. Moreover, there is a policy decision on the

subject by the authorities with such policy decision was not challenged by the appellant as writ petitioner. She also relies upon two unreported

decisions of Single Judges dated April 21, 2023 passed in WPA No. 9512 of 2023 (Ustar Ali Saikh Enterprises vs. Murshidabad Zilla Parishad &

ors.) and order dated July 13, 2023 (Mur Salim Sk. Vs. The State of West Bengal & Ors.). She submits that, in both such situation the learned Single

Judges of this Hon'ble Court allowed the extension of the running of the Ferry Ghat.

13. Private respondent was awarded contract operating the Ferry Ghat in 2020. Contract was for a period of two years. Covid occurred within this

period. Contract was extended for a period of three years. Extension granted was on the basis of a resolution taken by the Zilla Parishad. Grant of

extension of provides an increase of 15% than the last payable lease rental.

14. There is an issue of loss of revenue involved. This also is an issue of the contract period involved. Private respondent before us cannot obtain

extension of a contract indefinitely. Grant of such extension would be violative of Article 14 of the Constitution of India.

15. There is no material on record suggesting that the Zilla Parishad was prevented by sufficient cause from undertaking a fresh selection process.

16. Tender process in respect of the subject Ferry Ghat already commenced from January 18, 2025 as submitted by the District Magistrate. The end

date of such E auction process is February 18, 2025. There is no earthly reason as to why the finalization of the tender and the commencement of the

new contract in favour of the heighest bidder cannot be commenced on and from March 1, 2025 if not earlier.

17. Garib Nawaz Corporation (Supra) was rendered in the factual matrix that, there was no material to show any loss caused to the State

exchequer by the order of extension. Here, the factual situation is different since, the appellant before us is agreeable to bid twice the amount of the

present bid amount after allowing for the 15% enhancement. Therefore, there is an issue of loss of revenue involved.

18. Learned Single Judges in Ustar Ali Saikh Enterprises and Mur Salim Sk (Supra) proceeded on the basis of extension. Factual scenario are

different in the facts and circumstances of the present case.

19. It is contended on the behalf of the private respondent that, private respondent incurred expenditure in running of the Ferry Ghat. Private

respondent also deposited the entirety of the lease rental till the extended period of July 2025.

20. We are unable to accept such contention on behalf of the private respondent primarily for the reason that, the issue of revenue loss to the

authorities is involved. Moreover, an indefinite extension of an existing contract is violative of Article 14 of the Constitution of India.

21. So-called policy decision taken by the Zilla Parishad allowing extension, again with deepest respect, is violative of Article 14 of the Constitution of

India. Moreover, again, there is an issue of revenue loss. Furthermore a person cannot be allowed to continue with a lease indefinitely on the ground

that Zilla Parishad or other Zilla Parishad allowed such extension.

22. In such circumstances, we allow the appeal and modify the impugned order by directing the authorities to finalize the tender by February 18, 2025

and award a new contract effective from March 1, 2025.

23. It is the contention of the private respondent that private respondent is entitled to claim refund of the proportionate lease remtal for the period of

March 1, 2025 till July 28, 2025. That apart, private respondent is entitled to claim refund of the expenditure made in running the Ferry Ghat.

24. Claim made on behalf of the private respondent is not admitted by the Zilla Parishad.

25. The parties are at liberty to agitate their respective claims before the appropriate forum in accordance with law.

26. FMA 77 of 2025 along with connected application are disposed of without any order as to costs.