

PETITIONER:
STATE OF ASSAM

Vs.

RESPONDENT:
TULSI SINGH

DATE OF JUDGMENT:
01/03/1962

BENCH:

ACT:

Ferry--Settlement of by auction--Rules--Duty of officer conducting sale--Special List maintained by Assam Government of persons suspected or confirmed to be connected with smuggling activities--Nature of document--If could be relied on for settling civil rights--High Court if could decide matter entrusted to executive authorities--Indian Evidence Act, 1872 (1 of 1872). s.35--Northern India Ferries Act, 1878 (17 of 1878), ss. 4,8,12, r. 19.

HEADNOTE:

Under s. 4 of the Northern India Ferries Act, 1878, the ferry at N was declared to be a public ferry. Rule 19 framed under s. 12 of the Act provided that a sale of ferry was generally to be auctioned to the highest bidder, and the acceptance of a bid by the officer conducting the sale was subject to the approval of the Chief Engineer who had to see whether that officer had taken into consideration all the factors mentioned in r. 19. Ferry at N was put up to auction and sold to the second respondent whose bid was the lowest, Though the first respondent's bid was the highest, the officer conducting the sale, without forming an opinion about the suitability of the first respondent on his own appreciation of materials as required under r. 19, rejected first respondent's bid straight away as his name appeared in the "Special List". This "Special List" was prepared and maintained by the Government of Assam of persons suspected or confirmed to be connected with 'smuggling activities' so that no permit or license may be granted to such person is. This was in pursuance of the prohibition policy of the Government. The first respondent applied to the Chief Engineer for accepting his bid and settling the ferry on him which was rejected, whereupon he moved the High Court of Assam under Art. 226. The High Court set aside the settlement of the ferry in favour of the second respondent as being violative of s. 8 of the Act and r. 19 and further declared that the first respondent was entitled to the settlement as the highest bidder. And Government came up in appeal by special leave to the Supreme Court,

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'The question is whether a bid of a person at the auction of ferry can straightaway be rejected by the officer conducting the sale merely for the reason that his name appears in the special list and whether the High Court could decide a question was entrusted to the executive authorities under the Act and make settlement of the ferry.

Held, that the discretion conferred on the officer conducting the sale under s. 8 of the Northern Ferries Act read with r. 19 framed under the Act is wide but not

unrestricted. The discretion must be based on the material before him and relevant for his consideration and if, on a consideration thereof, he declines to exercise his discretion to accept the bid, his decision is not liable to be reversed by the courts. But where there is no material before him on basis of which he rejects a bid his action amounts to non-compliance with the provisions of r. 19 and cannot be upheld.

Held, further, that the "Special List" maintained by the Government of Assam of persons suspected or confirmed to be connected with smuggling activities is not a document falling within s. 35 of the Indian Evidence Act and while such list might serve a purpose in guiding Criminal Intelligence Department, it will be unsafe to rely on it for deciding civil rights of a person.

Held, also, that even though the order of authorities is not in accordance with law, it was for the appropriate authorities to deal with the matter and the High Court could not itself decide what is entrusted to the executive authorities.

Verappa Pillai v. Raman & Raman Ltd., [1952] S.C.R. 583, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14 of 1962. Appeal by special leave from the judgment and decree dated July 11, 1961, of the Assam High Court in Civil Rule No. 64 of 1961.

Naunit Lal, for the appellants.

The respondent did not appear.

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1962. March 1. The Judgment of the Court was delivered by VENKATARAMA AIYAR, J.-The short question that arises for our decision in this appeal is whether the settlement by the Executive Engineer, Golaghat in the State of Assam. of the ferry at Neperpatty on the second "respondent, Phuka Chandra Gohain, on January 23, 1961 was in accordance with the provisions of the Northern India Ferries Act, 1878, hereinafter referred to as "the Act", and the rules framed thereunder.

The relevant provisions of the Act bearing on this question might now be referred to. Under s.4., the State Government may, from time to time, declare what ferries shall be deemed public ferries. Section 8 of the Act is as follows

"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.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the public body under section 7 or section 7A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be,

or the officer conducting the sale on his or its behalf, may, for reasons recorded in

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writing, refuse to accept the offer of his highest bidder, and may accept any other bid, or may withdraw the tolls from auction."

Rule 19 framed under s.12 of the Act is as follows:--

"The sale shall generally be by auction to the highest bidder. The Officer conducting the sale for sufficient reason recorded in writing under his hand may refuse to accept the offer of the highest bidder or any bid. The Officer shall in accepting the bid consider the following factors among others:-

(i) Whether the bidder is a native or domicile or an outsider.

(ii) Whether the bidder has experience of the ferry business.

(iii) Whether he has landed property in his own name within the district or State, can speak the regional language, is financially sound and of good conduct, etc."

The ferry at Neparpatty has been declared to be a public ferry under s.4 of Act. On January 23, 1961, the Executive Engineer, Colaghat, put up the lease of the ferry for the year 1961-62 for public auction under s.8 of the Act. At the auction, Tulsi Singh, the first respondent, gave a bid for Rs. 4,200/-, one Indra Deo Singh for Rs. 4,050/- and Phukan Chandra Gobain, the second respondent for Rs. 3,000/-. The Executive Engineer then made the following Order :-

"Sold to Shri Phukan Chandra Gohain at Rs. 3,000/- (Rupees Three thousand' only as the two other highest bidders fall in special List."

Under Rule 19(a), the acceptance of the bid by the

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conducting Officer is subject to the approval of the Chief Engineer, and Rule 19(b) provides that he must, in doing so, "consider among others whether the Officer conducting the sale has taken into account and considered all the factors mentioned in Rule 19 above." The Chief Engineer approved of the decision of the executive Engineer dated January 23, 1961, and the sale to the second respondent was confirmed. Thereupon, on February 6, 1961, the first respondent applied to the Chief Engineer for accepting his bid and settling the ferry on him. By his Order dated April 7, 1961, the Chief Engineer rejected this petition. On May 9, 1961, the first respondent filed in the High Court of Assam a writ Petition under Art. 226 attacking the Order of the Executive Engineer dated January 23, 1961, settling the lease in favour of the second respondent as contrary to the Act and the Rules, and praying that it might be settled on him. The learned Judges accepted this contention and set aside the settlement in favour of the second respondent as violative of s.8 and Rule 19, and further declared that the first respondent was entitled to the settlement under Rule 19 as the highest bidder. It is against this Judgment that this appeal by special leave is directed.

The power of the Executive Engineer to settle public ferries is derived from s.8 of the Act and the Rules framed thereunder, and it has therefore to be exercised in accordance therewith. Under Rule 19, the sale should generally be by auction to the highest bidder and under this

provision the ferry should normally have been settled with the first respondent, who gave the highest bid. Section 8, provides that the Officer conducting the sale may, for reasons recorded in writing, refuse to accept the offer of the highest bidder and accept any other bid. The discretion thus conferred on the Officer, is wide but not indefinite or unrestricted. Rule 19 provides that in accepting the bid, he has to take into

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account certain factors; and under Rule 19(b), the Chief Engineer has to satisfy himself that these factors have been taken into consideration by the conducting Officer when he accepted the bid. It is contended for the appellant that, if there are materials before a conducting officer on which he could refuse to accept the highest bid and he on a consideration, thereof declines, in the exercise of his discretion, to accept it, his decision is not one which is liable to be reviewed by the Court. That is undoubtedly so but when there are no materials before him on which he could act under Rule 19, then that is a case not of exercise of discretion but of want of authority to settle under the Act. Now the only ground given in the Order dated January 23, 1961, for rejecting the bid of the first respondent which was the highest, is that his name is in the "special list". It appears from the affidavit of the Chief Engineer that in pursuance of the policy of prohibition followed in the State of Assam, the Government or Officers of the Government have prepared, -lists of persons suspected or confirmed to be connected with smuggling activities", and that it was "the policy of the Government not to grant taxi permit, stage carrier permit, fisheries, ferries etc. to persons who are listed to be suspected or confirmed opium smugglers". It is this list that if; referred to as the, 'special list" in the order of the Executive Engineer. It is argued for the appellant that if a person is a smuggler, then he is not a person of good conduct, and the rejection of his bid would be justified under Rule 19(iii). The contention is perfectly sound, and the authorities would be exercising their discretion properly in refusing to accept the bid of a smuggler, because, to put such a person in charge of ferries must help to evade the prohibition laws, and that would be a relevant factor under Rule 19(iii). But the difficulty of the appellant is that there are no materials on which the first respondent' could be held to

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be a smuggler. It appears that he was prosecuted under s. 4 of the Assam Ganja and Bhang Prohibition Act but that ended 'in his discharge. It is argued that though the materials available might have been insufficient to sustain a conviction under the Act, they might be sufficient for the authorities to take action under Rule 19. That is possible but that is not the position in this case. The Executive Engineer did not form any opinion about the first respondent on his own appreciation of the materials. He found his name in the ",special list" and straightaway rejected his bid. Now the question is whether on this material an Order rejecting the highest bid could be made under Rule 19. It is not and cannot be argued that the "-special list" is a document falling within s. 35 of the Evidence Act. It is said to be a confidential document. It does not appear on what information it is prepared or from what sources the information is received. Nor is anything disclosed as to the procedure adopted by the Government Officers in preparing the list. While such lists might serve a purpose in guiding Criminal Intelligence Department, it will be

unsafe to rely solely on them for deciding civil rights of persons. If the "special list" is thus ruled out as not material on which an opinion could be formed, then there was nothing else on which the conducting Officer could have rejected the offer of the highest bidder under Rule 19. We are accordingly of opinion that the decision of the learned Judges of the High Court that the rejection of the offer of the highest bidder is not in accordance with s. 8 or Rule 19 is correct.

The result of this conclusion is that the authorities under the Act would have to be directed to consider the matter afresh and give a decision in accordance with law, but the learned Judge, have proceeded further and observed that under Rule 19, the offer of the first respondent, being the

515 highest, should be accepted. The appellant contends that even on the view that the Order of the Executive Engineer dated January 23, 1961, is not in accordance with law, it was for the appropriate authorities to deal with the matter and make a fresh settlement and that the Court could not itself decide what is entrusted to the executive authorities under the Act. This, in our opinion, is correct. In *Verappa Pillai v. Raman & Raman Ltd.* (1) the question arose with, reference to the grant of permits under the Motor Vehicles Act. The authorities constituted under the Act had made an Order granting permits to one Verappa Pillai, and its validity was disputed by a rival applicant M/s Raman and Raman Ltd., in an application under Art. 226.. The High Court of Madras had hold that the title of the applicant would prevail over that of Verappa Pillai and accordingly set aside the order of the authorities and direct grant of the permits to the applicants. On appeal to this Court, it was held that such a direction was clearly in excess of the powers and jurisdiction of the High Court. We must accordingly hold that the order of the High Court, in so far as it declared the rights of the highest bidder, is erroneous. But, in view of the fact, that the lease was only for the period 1961-62 and that would shortly be expiring, there is no need to direct a fresh consideration of the matter by the authorities. In the result, the appeal is dismissed. Appeal dismissed.

(1) [1921] S.C.R. 583,
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