

MANU/BH/0015/1987

Equivalent Citation: AIR1987Pat138, 1987(35)BLJR522, 1987PLJR230

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

Civil Writ Jurn. Case No. 4881 of 1985

Decided On: 07.01.1987

Appellants: **Ranjit Singh**  
**Vs.**

Respondent: **State of Bihar and Ors.**

**Hon'ble Judges/Coram:**

*S.S. Sandhawalia , C.J., S. Ali Ahmad and Birendra Prasad Verma , JJ.*

**Counsel:**

*For Appellant/Petitioner/Plaintiff: Chandra Shekhar Prasad Singh and Akhileshwar Kumar Pandey, Advs.*

*For Respondents/Defendant: J.N.P. Sinha, Subhas Prasad, Advs. and Anjani Kumar Sinha, Jr. Counsel, Tara Kant Jha and Chittaranjan Prasad Sinha, Advs.*

**JUDGMENT**

**S.S. Sandhawalia, C.J.**

**1.** Issues of some significance which finally emerge for adjudication in this reference to the Full Bench may well be precisely formulated in the terms following:

- i) Whether a composite settlement of a public ferry declared under Section 6, Bengal Ferries Act, 1885, and a ferry vested in the State under Section 4, Bihar Land Reforms Act, is permissible in law?
- ii) If so, whether such a composite settlement is to be governed by the provisions of the Bengal Ferries Act or by the purely administrative instructions for the settlement of sairats?
- iii) Whether the Division Bench judgment in Ganesh Prasad v. State of Bihar, Civil Writ Jurisdiction Case No. 277 of 1967 -- decided on 18-8-1967 lays down the law correctly?

**2.** The facts giving rise to the questions aforesaid may be noticed with the relative brevity. On 25-1-1985, public notice was issued under the authority of the District Magistrate of Bhojpur for a composite settlement of a group of ferry ghats including Telpa-Ekauna, Gangi Keshopur, Alekhitola and Sinha Bora Ghat, to be held by open public auction on 4-2-1985, for a term of three years from 1985-86 to 1987-88. The firm stand of the petitioner is that Telepa-Ekauna is a public ferry so declared under Section 6 Bengal Ferries Act, 1885, (hereinafter called 'the Act'). It would, however, appear that the said public auction could not be held and fresh notices were issued for the settlement of the aforesaid ghats by a public auction on 20-2-1985, but apparently the terms were changed for only one year, i.e., 1-4-1985 to 31-3-1986 (vide Annexure 2 to the petition). The petitioner avers that it was only on the 5th of

March, 1985 that he came to know that the District Magistrate of Bhojpur had settled the aforesaid ferries in favour of respondents 4 and 5 for a period of three years and vide Case No. 9 of 1985-86 sent the same for approval of the learned Commissioner, Patna Division. Thereupon the petitioner filed a petition before the Commissioner aforesaid for the cancellation of the settlement, inter alia, on the ground that there was no sufficient public notice. The matter was heard at some length by the learned Commissioner and by his detailed order dated the 26th of March, 1985 (Annexure 3) running into twelve typed pages he concluded as under :

"Furthermore, there is a possibility that in case this group of ferries is auctioned for the years 1986-87, they may fetch a much higher amount than the present bid. Hence the present settlement may be made for a period of one year only w.e.f. 1-4-1985."

It is the petitioner's case that for the purposes of the settlement of public ferries the Commissioner is the final authority and he cannot abdicate his statutory functions in this regard, and under some erroneous impression he forwarded the case to the State Government for its approval that the proposed settlement should be finalised for a period of one year only. The petitioner even challenged the order of the Commissioner by way of Civil Writ Jurisdiction Case No. 1721 of 1985, Ranjit Singh v. State of Bihar which, however, was dismissed as withdrawn on the 24th of April, 1985. However, later by a cryptic order dated the 10th of April, 1985 the State Government extended the term of the settlement of the ferries in question from one to three years -- vide the impugned order contained in Annexure 5 -- which when translated is in the following terms :

"The Government, after considering the original records, has accorded approval to the settlement of the said ghats for a period of three years i.e. from 1-4-85 to 31-3-88 under special circumstances vide memo No. 948 of the Deputy Secretary to the Government, Revenue and Land Reforms Department, Bihar, Patna.

Accordingly, issue notice to the contractor to obtain Parwana on executing a registered deed of agreement."

Aggrieved by the above, the present writ petition has been filed for quashing the same and for upholding the order of the Commissioner sanctioning the settlement for a period of one year only.

**3.** In the counter-affidavits filed on behalf of the respondent State and the private respondents 4 and 5 the broad factual position is not seriously controverted. However, the stand sought to be taken on behalf of the private respondents is that the ferry in question is governed by the Sairat Manual and the provisions of the Act have little or no application to a composite settlement of this kind. It is the stand that the State Government is fully empowered under the Sairat Manual to pass the impugned order (Annexure 5) for a period of three years. Both the State and the private respondents further attempt to raise a cloud that Telpa-Ekauna is not a public ferry under Section 6 of the Act, and it is sought to be stated that the long standing admissions in this regard were due to a mistake of fact. A somewhat curious stand sought to be taken on behalf of the respondents is that though Telpa-Ekauna is not a public ferry under Section 6 of the Act, it is nevertheless an undeclared public ferry which admittedly has since long been settled earlier by the local authorities of Chapra Municipality and since 1964 by the District Magistrate of Shahabad (now Bhojpur).

**4.** In the present case after a number of adjournments at the motion stage itself, firm reliance was placed on behalf of the respondents on the case of Ganesh Prasad v. State of Bihar, Civil Writ Jurisdiction Case No. 277 of 1967. The Division Bench noticed that therein it was held that the order of the State Government could not be invalidated on the ground that both public ferries and Sairat ferries had been clubbed together and settled. Doubting such a view, the matter was referred to a Full Bench and that is how it is before us now.

**5.** Perhaps, at the very outset it is necessary for terminological exactitude that the phraseology to be applied to different classes of ferries should be coined out with some precision. In the definition clause itself the Act makes a broad division of public and private ferries. In Section 5 the terms 'ferry' and 'private ferries' are defined as under :

" 'Ferry' includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge, a temporary bridge and a landing stage."

" 'Private ferries' includes all ferries other than those declared to be public ferries or established as such, under Section 6 of this Act."

However, within the State by the passage of time another class of ferries has also come into existence which though not being public ferries under the Act are nevertheless vested free from all encumbrances in the Government. This results from Section 4(a), Bihar Land Reforms Act, which is in the following terms:

"Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars, (mela) and ferries and all other sairati interests as also his, interest in all sub-soil including any rights in mines and minerals, whether discovered or undiscovered, or whether been worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyate or underaiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or other than the interests expressly saved by or under the provisions of this Act."

It appears to me that now it would be somewhat anomalous to label the ferries vested in the Government under the aforesaid section as private ferries. As the later part of the section indicates, such ferries are deemed to be within the broad sweep of sairati rights. Therefore, it would be apt to label this class of ferries vested in the Government under Section 4 as a sairat ferry. This terminology appears to me as having the further merit of being earlier so employed by the Division Bench in Ganesh Prasad v. State of Bihar (supra). It may thus be clarified that the term 'sairat ferry' is hereafter being employed for all such ferries vested in the Government by virtue of Section 4 Bihar Land Reforms Act, whilst 'public ferry' denotes the ferries declared or established under Section 6 of the Act; the residue continue in the generic label of private ferries.

**6.** Ere one proceeds further it appears somewhat apt to have a bird's eye view of the long history of the law governing the ferries in the region. It would appear that as early as the beginning of the nineteenth century provisions had been made in

Regulation VI of 1819 with regard to ferries in the then widespread province of Bengal in British India. However, it was only in 1885 that the Bengal Ferries Act was promulgated to regulate ferries within the territory subject to the Lieutenant-Government of Bengal and it came into force on the 1st of August, 1885, thereby the earlier provisions regulating the ferries were repealed by Section 3 in the terms following :

"Regulation VI of 1819 and Bengal Act I of 1866 are hereby repealed; but ' all determinations, declarations, orders and rules made, engagements entered into and securities taken under such Regulation and Act, shall be deemed to be respectively made, entered into, and taken under this Act."

The plain language above leaves no manner of doubt that all earlier declarations, Orders and Rules made under Regulation VI of 1819 were continued and deemed to have been made under this Act. It is not in dispute that the Act continued to hold sway over the province of Bengal which included the present State of Bihar and even now continues to be so applicable. Later, as has been noticed earlier, by virtue of Section 4, Bihar Land Reforms Act, ferries and all other sairati interests owned by proprietors or tenure-holders came to be vested in State free from all encumbrances. Such sairat ferries thereafter came to be governed by a host of circulars and orders concerning the settlement of sairats in the khas mahal and vested estates which are collated in the Sairat Compendium authoritatively issued by the Revenue Department of the Government of Bihar. It is against this historical legislative background that the issue falls for examination herein.

**7.** Yet again, another threshold issue may be first resolved. The respondent State attempted to scuttle the merits of the case by attempting to take the stand that Telpa-Ekauna was not a public ferry under the Act. It was sought to be contended that because the petitioner had not placed on the record the relevant notification declaring this ferry as a public one either under the Act or under Regulation VI of 1819 or any law even prior to that, it must be presumed that the said ferry is not a public ferry. Taking the cue from the State the private respondents have also sought to buttress this patently untenable stand.

**8.** One cannot but express some surprise over the specious plea taken even by the State that the long standing Telpa-Ekauna ferry was not a public one. The lie direct to such a stand is given by the Bihar Ferries Manual authoritatively published by the Local Self-Government Department of the Government of Bihar. There is no dispute that this is an authoritative Government publication declaring it to be an authentic collection-containing the Bengal Ferries Act, 1885 and the Rules made thereunder with important Government Order, etc. As the introduction to this Manual would indicate, this itself is merely reprint of an earlier publication and the Rules made thereunder. It is indicated that opportunity has been taken to add notifications and orders issued by the Government from time to time on the subject. This Manual is divided into four parts, namely, (1) The Bengal Ferries Act, (2) Rules made under the Act, (3) Important circulars and notifications thereunder and (4) Part IV containing an authentic list of public ferries in the State of Bihar given district wise. In the said list in Part IV at serial No. 1 in the Saran district Telpa-Ekauna (Combined ferry) is expressly shown as a public ferry in the State of Bihar. Learned counsel for the respondent State could not possibly and indeed did not assail the authenticity of the official publication of the Bihar Ferries Manual. Thus, the State's own authoritative document clearly declares Telpa-Ekauna to be a public ferry and this, to my mind, would be nearly conclusive unless it was unequivocally rebutted which has not even

remotely been done.

**9.** Apart from the above, what is equally significant is the fact that in *Ganesh Prasad v. State of Bihar*, Civil Writ Jurisdiction Case No. 277 of 1967, decided way back 18-8-1967, the Division Bench had recorded as under :

"It is not disputed that Telpa Ekauna is a public ferry under the Bengal Ferries Act, 1885 (hereinafter referred to as the Act). The other ferries, Gangi Keshopur, Alekhitola and Sinha Bora Ghat (hereinafter referred to as the Suirah ferries) belonged to the erstwhile landlord and vested in the State of Bihar under the Bihar Land Reforms Act. Telpa falls within the jurisdiction of the Chapra Municipality, while Ekauna falls within the jurisdiction of the District Board of Shahabad."

Learned counsel for the petitioner rightly pointed out that the aforesaid finding was given on the express pleadings of the respondent State itself that Telpa-Ekauna was a public ferry even way back in 1967. It is common ground that the State of Bihar was not only a party to the said case but was well represented and it is admitted that no further appeal was carried against the said judgment. The matter in a way has thus achieved finality and the issue that Telpa-Ekauna is a public ferry under the Act or not would even come within the wide ranging principles of constructive res judicata between the parties. Equally Mr. J.N.P. Sinha, learned counsel for the respondent State, was at least fair enough to concede that ever since the said judgment the said ferry has been treated as a public ferry. Not only so but apparently from much earlier than the judgment, the admitted position was that it had always been so treated for the purposes of settlement, etc. In the present proceedings again what is equally conclusive is Annexure 6, dated 8-2-1979, which is a letter of the Collector of Bhojpur addressed to the State Government giving the details regarding settlement, etc., of Telpa-Ekauna ferry, Annexure 6 was placed on the record on behalf of the writ petitioner and its authenticity is not even remotely questioned. Therein the official stand of the then Collector of Bhojpur was in the terms following :

"So far as the question of Telpa, Ekauna Ghats is concerned, Telpa is situated in Saran district and Ekauna is situated in Bhojpur district. The settlement of the ferries of these ghats used to be done jointly by the Chapra Municipality and the District Board, Shahabad, till 1964. These ghats were also declared as Public Ghats under the Bengal Ferries Act, 1885.

Prior to 1964, the settlement of Bora ghat of the Revenue Department, Sinha ghat of the Bhojpur District Board, Telpa ghat of Saran Municipality and Ekauna ghat of Bhojpur district used to be done separately, as a result of which differences used to crop up amongst the three contractors and serious law and order problem used to appear before the administration which was solved by the State Government in the year 1964 and since then the settlement of the said Bora ghat and ferry ghat is done jointly and the income is proportionately divided.

Therefore, in the light of the aforesaid facts, the question of declaring the Arrah Gangi Keshopur, Alekhi Tola, Sinha Bora ghats as Public Ghats does not arise. Sinha, Telpa, Ekauna, which are ferry ghats, have already been declared as Public Ghats since long before. Its full details can be known from the concerned department."

Yet again the public nature of Telpa-Ekauna ferry is evidenced by reference to the

Shahabad Gazetteer at page 396 wherein Telpa-Ekauna is expressly mentioned. Similarly, in the gazetteer for the Saran district Telpa-Ekauna finds express mention as a conspicuous public ferry. In the light of all the aforesaid factors it does not lie in the mouth of the respondent State that Telpa-Ekauna is not a public ferry.

**10.** In a last ditch attempt, and indeed what appears to me as an argument of desperation, Mr. Tara Kant Jha on behalf of the private respondents, had attempted to contend that because this ferry had earlier been settled either alternately or jointly by the Chapra Municipality and the District Board of Shahabad, this should be taken out of the ambit of a public ferry. Reliance was sought to be placed on the observations in Ganesh Prasad's case (supra) that there had been differences betwixt the two local authorities which had led to a conference on 12-11-1962, in the Patna Secretariat in which it was resolved that the Telpa-Ekauna (Combined ferry) and the other Sairat ferries should be settled together by the Collector of Shahabad. Assuming this to be true, this would not in any way denude the ferry of its public nature, it having been so declared under Section 6 of the Act. Reference herein may be made to Section 35 of the Act which is in the term following :

"35. Management may be vested in District Board. -- It shall be lawful for the Lieutenant Governor to order that any public ferry situated in any district in which a District Board has been established under the provisions of the Bengal Local Self-Government Act of 1885, or situated, within or adjacent to the limits of any Municipality, shall be managed by such District Board or by the Commissioners of such Municipality as the case may be; and such District Board shall have all the powers vested in the Magistrate of the district under this Act, except the powers specified in Sections 7, 17 and 32 and thereupon such ferry shall be managed accordingly.

The Lieutenant Governor may, from time to time, vary or annul any order made under this section."

The aforesaid provision clearly empowers the Government to vest the management of public ferry, if it so chooses, in the local authority. However, this can in no way take away or affect the character of a public ferry under the Act. The vain attempt of the private respondents to raise a smoke screen over the issue is a self-serving attempt to conceal the pristine and almost self-evident fact that Telpa-Ekauna has since long been and continues to remain a public ferry governed by the provisions of the Act.

**11.** In fairness to Mr. T.K. Jha I must also notice his ingenious attempt to draw some imaginary inferences from the employment of the term 'combined ferry' with regard to Telpa-Ekauna in the list of public ferries in Part IV of the Bihar Ferries Manual. There is no meaningful pleading or any factual basis on this point at all in the present case. In a Full Bench I would not even for a moment launch on a roving enquiry of conjectures as to the meaning to be attributed to the word 'combined' cryptically employed in a solitary item of Part IV of the Manual aforesaid. To enter into any realm of fantasy as to what meaning should be first attributed to the word 'combined' and thereafter to infer a legal result therefrom appears to me as an exercise in futility which should not be indulged in. For the reasons recorded above, it must, therefore, be unhesitatingly concluded that Telpa-Ekauna is a public ferry under Section 6 of the Act.

**12.** One may now more directly advert to question (i) framed at the very outset. Learned counsel for the petitioner first took up a somewhat tall stand that a public

ferry under the Act and a sairat ferry cannot in law be clubbed together for a composite settlement thereof. It was contended somewhat vehemently that any such clubbing was inherently impermissible. Learned counsel drew our attention to Sections 7, 8 and 9 which govern the control, superintendence and settlement of public ferries as against the provisions of Sections 16 and 22 pertaining to private ferries.

**13.** Undoubtedly there is a significant line of distinction between public ferries under the Act and the sairat ferries vesting free of all encumbrances under the State under Section 4 of the Land Reforms Act. It is true that the provisions of the Act with regard to the public ferries so declared under Section 6 thereof may not *stricto sensu* be applicable to such sairat ferries. However, I am unable to detect any inflexible legal bar mandatorily prohibiting the composite settlement of a public ferry and a sairat ferry where it becomes either necessary or expedient. Since both these classes of ferries are either controlled or vested in the State Government, one cannot imaginarily induct an absolute prohibition against the State for clubbing them together for the purposes of a joint settlement if it finds it either more profitable or more convenient for any other valid reason. It would be possible and permissible for the State to jointly settle a number of ferries some of which may be public ferries *stricto sensu* whilst others are merely sairat ferries. Indeed it appears to have been so done for many a decade now as manifested from the judgment in *Ganesh Prasad v. State of Bihar C W J C No. 277 of 01967, DA 18-8-1967* (*supra*). Even prior to the sixties it would appear that the public ferry of Telpa-Ekauna had been jointly settled with the sairat ferries of Gangi Keshopur, Alekhitola, Sinha Bora Ghat etc. In the present case the auction was held for a number of ferries together and a look at the relevant annexure is indicative of the fact that a convenient clubbing together of the ferries for a composite settlement is the rule rather than the exception. I am unable to find anything in Sections 7 and 9 or any other provisions of the Act which raises a legal bar against a composite settlement. Nor can or indeed should the State be prevented if it finds it convenient to club together the public ferries which are statutorily controlled and vested in it under the Act and the sairat ferries now vested free from legal encumbrances by virtue of Section 4 of the Bihar Land Reforms Act. Therefore, the somewhat doctrinaire and extreme stand of the learned counsel for the petitioner that public ferries and sairat ferries cannot in law be compositely settled even by way of a public auction, must necessarily be rejected.

**14.** To sum up on question No. (i) the answer to the same is rendered in the affirmative and it is held that the law permits a composite settlement of a public ferry under Section 6 of the Bengal Ferries Act, 1885 and a sairat ferry vested in the State under Section 4 of the Bihar Land Reforms Act.

**15.** Moving over to question No. (ii), the stand of the learned counsel for the petitioner thereon appears to me as impeccable. He had contended in the alternative that in case a composite settlement was permissible, then at least the procedure for such composite settlement must necessarily be the statutory procedure prescribed by the Act and the Rules framed thereunder. In sum, the argument was that in the event of a clubbing together of a public ferry and a sairat ferry for making a composite settlement the only procedure permissible would be that provided under Sections 6 to 10 of the Act and the Rules framed under Section 15 for the management of public ferries prescribing the model form of agreement therefor. The firm stand was that the circulars issued from time to time by the Revenue Department contained in the Sairat Compendium can have no application whatsoever to such a composite settlement.

**16.** In order to appreciate the contention abovesaid, it is apt to notice in extenso the provisions of Sections 7, 8 and 9 of the Act which are in the terms following :

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

"8. Superintendence of public ferries.--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.

And 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 collection of the authorised tolls leviable thereat."

"9. Ferry tolls may be leased by auction. --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.

Execution of contract by lessee. -- 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 fulfilment."

It is equally apt to quote the provisions of Rule 5 framed under Section 15 of the Act:

"5. When it has been determined to lease the tolls of any public ferry by auction under Section 9 of the Act I (B.E) of 1885, the Magistrate shall take steps to obtain the approval of the Commissioner of the Division to the term for which the ferry is to be leased and shall, if he obtains such approval cause an advertisement of such auction to be published at least 15 days before the auction is held both in English and the vernacular, in such place and in such manner as to him shall seem expedient."

The succeeding Rules 6 to 12 then provide in considerable detail for the procedure for leasing out such public ferries. Rule 6 in its various Clauses (a) to (k) lays down the contents of the advertisement and the succeeding Rule 7, inter alia, requires that the District Magistrate shall personally hold the auction as also the methodology for conducting the same. Rule 10 then prescribes that the contract which the lessee will be required to execute under Section 9 of the Act shall be in the prescribed form appended to the Rules, whilst Rule 12 refers to the statutory terms for which the lessee shall be bound.

**17.** Now even a plain reading of Sections 7, 8 and 9 can leave little manner of doubt that the control and the leasing of public ferries have been statutorily vested in the Magistrate of the district subject to the directions and approval of the Commissioner. Section 7 in no uncertain terms declares that the control of all public ferries shall be

vested in the Magistrate of the District, subject, of course, to the direction of the Commissioner. Similarly, the superintendence of public ferries is again basically, if not entirely, laid in the hands of the Magistrate of the district. Section 9 which has particular reference to the leasing of ferry tolls mandates that this shall be done by public auction and for a period which the Magistrate with the approval of the Commissioner may prescribe or direct. What is, perhaps, of equally greater significance is the provisions of Section 15 of the Act. These even confer upon the Magistrate of the district with the approval of the Commissioner to make rules consistent with the Act for matters laid out in Clauses (a) to (h) thereof. Rules framed under this section are then required to be published in the Official Gazette in such manner as the State Government directs and shall thereupon have the force of law. As has been noticed already, model rules for the management of public ferries with the model form of agreement have been prescribed. Rule 5 quoted above and the succeeding rules confer powers on the Magistrate and the Commissioner for/the statutory procedure for leasing out of/the ferries culminating in a statutory contract of lease executed with the lessee as prescribed .

**18.** The aforesaid re'sume' makes it manifest that the relevant provisions of the Act and the statutory rules framed thereunder vest the control, leasing and management of the public ferries in the Magistrate of the district subject to the direction of the Commissioner. The State Government as such does not enter into or in any way figure in this statutory scheme. Learned counsel for the petitioner was thus on a somewhat firm footing in his submission that any frontal interference by the State Government in the control, management and the settlement of public ferries under the Act is not warranted in the eye of law.

**19.** It would bear repetition that the aforementioned provisions of the Act and the Rules framed thereunder have prescribed somewhat meticulously for the mode and procedure of the settlement of public ferries under the Act Once it is held as above that it is permissible to make a composite settlement of a public ferry and a sairat ferry, the significant question that necessarily follows is as to what would be the procedure for making such a composite settlement ? It is to be exclusively governed by the provisions of the Act or only by the administrative instructions for the settlement of sairats or a mixture of the two ? To my mind, the answer to this query is clear and categoric that if there has to be a composite settlement, then the procedure applicable to the same would be exclusively statutory as prescribed under the Act and the Rules. This flows from the basic proposition that no mere executive instruction or Governmental circulars can possibly override or erode the mandates of the Legislature itself and the subordinate legislation framed thereunder. As has been noticed already and indeed this was not disputed that so far as public ferries under the Act are concerned, they have to be exclusively governed by the statutory procedure. When such a public ferry is joined in a composite settlement with the sairat ferry the statutory procedure applicable to its settlement would continue to apply with the same rigour.

**20.** The matter also deserves examination from another refreshing angle. It is a hoary principle that when the law or the statute prescribes a particular method for doing a thing it can be done only by that method and no other. Therefore, if the Act and the Rules provide in no uncertain terms for the settlement of public ferries, this can be done only in that manner, the composite nature of the settlement notwithstanding. Negatively put, applying any other procedure would in a way be overriding and, in any case, deviating from what has been laid out by the statute itself. It is well settled that what the law prohibits directly cannot be done indirectly.

**21.** Yet again, the anomalous results that may flow from holding that the Government circulars and instructions in the Sairat Compendium would apply to a composite settlement, may be noticed. If it were to be so held it would be possible to club a sairat ferry with a public ferry for the purposes of settlement to negate the application of the provisions of the Act. The end result can be that a surreptitious clubbing of a sairat ferry with the public ferry under the Act would take it out of the ambit and sweep of the mandatory provisions designedly prescribed by Legislature. To indirectly allow intrusion, by the State by combining a sairat ferry with a public ferry would be permitting the Executive to indirectly intrude into the field of public ferries which the Act has squarely placed in the hands of the Magistrate of the district, subject to the control of the Commissioner. Learned counsel for the petitioner carried the matter to a logical extreme by pointing out that if this were to be allowed it would be possible to surreptitiously deviate from the whole scheme of the Act by simply combining one sairat ferry with each public ferry so declared under Section 6 of the Act and thus take it out of the sweep of its salutary provisions and the Rules framed thereunder for the purpose of settlement thereof. Therefore, on larger principle also, the stand of the learned counsel for the petitioner was that even if a composite settlement of the public and the sairat ferries was permissible, then the provisions applicable thereto must be pristinely those of the Act and the Rules alone. I am unreservedly inclined to agree with this submission. Where two different procedures for the settlement of sairat ferries and those of the public ferries under the Act are applicable, then if it is sought to make a composite settlement of such ferries, it is the prescribed statutory procedure of the Act which would override the executive or administrative one. The legislative mandate and the subordinate legislation by rules framed thereunder cannot possibly be overridden or deviated from on the basis of any executive fiat issued from time to time. Therefore, though the clubbing together of a public ferry and a sairat ferry is held to be permissible, the procedure for a composite settlement thereof can only be the statutory procedure prescribed by Sections 7 to 10 of the Act and the Rules framed thereunder.

**22.** Reference in this connection may also be instructively made to the recent Full Bench case of *Chetlal Sao v. State of Bihar* (MANU/BH/0047/1986 : AIR 1986 Pat 267:1986 P LJR 149). Therein what fell for construction was the character of the administrative instructions and circulars in the Sairat Compendium applicable to the settlement of fishery rights in Jalkars. After a consideration of principles and precedents it was concluded as under :

"The answer to the question No. 1 posed at the outset is thus rendered in the negative and it is held that the administrative instructions and circulars issued from time to time for the lease of fishery rights in tanks (sairats) vested in the State are not statutory in nature and consequently not binding."

In the light of the aforesaid finding it would be somewhat plain that in the event of any conflict between a procedure expressly statutory in nature and one purely administrative and nebulous by way of instructions issued from time to time, it is the former which should be given pride of place and must prevail over the latter.

**23.** To finally conclude on this aspect the answer to question No. (ii) is rendered in the terms that in the event of a composite settlement of public and sairat ferries the same shall be governed by the provisions of the Bengal Ferries Act and the Rules framed thereunder and not by the purely administrative instructions for the settlement of sairats.

**24.** Now once it is held as above, that a composite settlement is to be governed exclusively by the provisions of the Act and the Rules, then it is somewhat plain sailing for the petitioner thereafter. Even the learned counsel for the respondent State Mr. J.N.P. Sinha had to fairly concede that in such a situation the State Government does not enter at any stage and cannot interfere with the statutory powers of the District Magistrate and the Commissioner. However, I am not in the least basing myself upon any such concession. Apart from principle which has been earlier elaborated, the identical result flows also from the binding precedent as well. This issue came up pointedly before the Division Bench in *Rambharosa Singh v. Govt. of the State of Bihar* MANU/BH/0134/1953 : AIR 1953 Pat 370 wherein it was unequivocally held as under :

".....The learned Advocate-General, therefore, argued that, since the State is a party to the agreement which the lessee has to execute, it should be inferred that the State can give directions to the District Magistrate as its agent. I cannot accede to this argument in view of the fact that the Act and the rules framed thereunder give the sole control of the ferries to the District Magistrate, subject only to the direction of the Commissioner, and I do not think that the State Government can give directions to the District Magistrate...."

The Division Bench judgment was challenged by the State of Bihar in appeal but the Constitution Bench in *Govt. of State of Bihar v. Ram Bharosa Singh* MANU/SC/0096/1956 : AIR 1956 SC 640 unreservedly recorded that they were in full agreement with the view taken by the High Court and affirmed the same.

**25.** It remains to advert to the Division Bench judgment in *Ganesh Prasad v. State of Bihar* (CWJC No. 277 of 1967 D/- 18-8-1967) (*supra*), doubts about the correctness of which had indeed necessitated this reference to the larger Bench. Learned counsel for the petitioner formally assailed the relevant part of the ratio and the reasoning therein. It was contended that even after rightly holding that the District Magistrate and the Commissioner were the final statutory authorities under the Act, the Bench thereafter seems to have slipped into the error of a patchwork decision of holding that whilst the Government had no power to interfere with the management of a public ferry, namely, Telpa-Ekauna, it had power to interfere with the matters relating to sairat ferries despite the fact that the bid and the settlement were a composite one. We were invited to clear the cobwebs and overrule the second limb of the holding in the case aforesaid. The submission of the learned counsel herein is correct. The Division Bench following the earlier view came to the conclusion that the proposition that the State Government has no power to interfere with the settlement of public ferries is beyond dispute and cannot be challenged. Nevertheless in applying the rule to a composite settlement it proceeded to hold that the State Government had the power to interfere therewith and consequently even to cancel the bid or the settlement of a public ferry as well. It appears to me that the issue was not properly projected before the Division Bench and learned counsel for the parties were somewhat remiss in not canvassing the principle and the provisions of the statute in their proper perspective. It does not seem to have been noticed that such a finding in effect implies the overriding of the Act and the statutory provisions by administrative instructions. With the deepest respect this aspect of the finding of the Division Bench in *Ganesh Prasad v. State of Bihar* (*supra*) does not lay down the law correctly and is hereby overruled. The answer to question No. (iii) is thus rendered in the negative and in the terms above.

**26.** In the light of the aforesaid conclusions it necessarily follows that the order of the Government (Annex. 5) must fall. It is common ground that the Commissioner in his exhaustive order (Annex. 3) held that the lease was not to extend beyond one year and his finding on this point was categorical and unequivocal. As noticed above, finality is attached to the same and his minor deviation of purportedly referring the matter for the approval of the State Government would not in the least detract from the clear cut legal position. It may also be noticed that the learned counsel for the petitioner both in the stand before us and even in the pleadings supported the order of the Commissioner that the period of the lease must be for one year only. Under the Act the Government has no jurisdiction to override the final decision of the authorities on whom the power of settlement is conferred by the statute. In varying and extending the period of the lease to three years by a cryptic order the State Government acted without jurisdiction and its impugned order (Annex. 5), therefore, must be and is hereby quashed and that of the statutory authority, namely, the Commissioner, is consequently maintained.

**27.** The writ petition is accordingly allowed, but in view of some intricate questions involved; the conflict of precedent; and the overruling of the earlier precedent, I would leave the parties to bear their own costs.

**S. Ali Ahmad, J.**

**28.** I agree with My Lord the Chief Justice.

**Birendra Prasad Verma, J.**

**29.** With profound regards for the Hon'ble the Chief Justice, I regret for my inability to agree with the findings arrived at by him on question Nos. 1 and 2 formulated by him.

**30.** The facts of the case have been so succinctly set out in the judgment of My Lord the Chief Justice that I will do better by not restating the same. On the question whether Tefpa Ekauna is a Public ferry, I entirely agree with him.

**31.** But in my view, a Public ferry governed by the provisions of the Bengal Ferries Act and a Sairat Ferry governed by the Bihar Land Reforms Act cannot be clubbed together and a composite settlement of a Public ferry and a Sairat ferry is not permissible in law. It follows, therefore, that a composite settlement can neither be governed by the Bengal Ferries Act nor by the provisions made under the Bihar Land Reforms Act.

**32.** The admitted position is that neither the Bengal Ferries Act nor the Bihar Land Reforms Act provide for clubbing together of the two types of ferries. Section 7 of the Bengal Ferries Act vests in the Magistrate of the district the control of Public ferries declared under Section 6 of the Act. The power of the Magistrate of the district is subject to the direction of the Commissioner. Such Public ferries may be leased out by a public auction by the Magistrate of the district with the approval of the Commissioner under Section 9 of the Act. It is nowhere provided that such Magistrate of the district may also lease out any Sairat ferry along with the Public ferry or for that matter club them together.

**33.** Management of the estates and tenures vested in the State under Land Reforms Act has been transferred to the State. Section 13 of the Bihar Land Reforms Act, 1950 provides that all estates and tenures vested in the State under the provisions of the

Bihar Land Reforms Act shall, as far as practicable, be managed according to the rules for the time being in force for the management of Government estates subject to such directions as may, by general or special order, be issued from time to time by the State Government in this behalf. According to the proviso to Section 13, the management of such estates and tenures including trees, forests, fisheries, jalkars, hats, bazaars and ferries, comprised in such estates and tenures within a particular area in respect of which a Gram Panchayat has been established under the Bihar Panchayat Raj Act, 1947, may be entrusted to the said Gram Panchayat on such terms and conditions, which may be fixed by the State Government and subject to such rules as may be prescribed. A special provision seems to have been made in the Land Reforms Act for the benefit of the Gram Panchayat and for the development of a local self government. No similar provision is to be found in the Bengal Ferries Act According to Section 36 of the Land Reforms Act, the State Government may by notification direct that any power which is conferred on it by the said Act shall, in such circumstances and under such conditions, if any, as may be specified in that behalf be exercised or discharged by any officer or authority subordinate to the State Government. The provisions of the Bihar Land Reforms Act shall have effect notwithstanding anything contained in any other law for the time being in force, as provided under Section 42-B of the Land Reforms Act. This clearly means that in respect of the superintendence and control of the estates and tenures vested in the State under the Land Reforms Act provision conferred in the said Act shall have to be followed and cannot be superseded by any other law for the time being in force. Rules have been made under Section 43 of the Land Reforms Act for the purpose of settlement of Hat, Bazaar, Melas etc. Rule 7P of the Bihar Land Reforms Rules, 1951 provides that the Collector or the prescribed authority shall, in the first instance, issue individual notices to the outgoing intermediaries and their heirs enquiring whether the outgoing intermediaries were prepared to forego compensation and execute a lease in the prescribed form. In respect of such Hat, Bazaar or Mela settlement will be made with the outgoing intermediaries in the event of their agreeing to forego compensation. The Collector or the prescribed authority shall also invite sealed tenders by an, appointed date and time for settlement of such Hat, Bazaar or Melas, as the case may be. Rule 7-R provides that if the intermediaries are prepared to take settlement on the terms offered by the Collector or the prescribed authority, the Hat, Bazaar etc. shall be settled with him or them. But if the Collector or the prescribed authority finds that such settlement should not be made, he should refer the matter through the Commissioner for order of Government whose decision shall be final. In case no reply in response to the notice sent to the outgoing intermediaries is received by the Collector or the prescribed authority he shall settle such hat, Bazar or Mela for the reserve Jama fixed under Rule 7-U with the registered Co- operative Society or the Gram Panchayat of the area. In the event of failure to make settlement to the Co-operative Society or the Gram Panchayat, the Collector or the prescribed authority shall settle such Hat, Bazar or Mela by public auction which shall be held on the appointed date, time and place and for which a fresh general notice shall be published in the manner provided in Rule 3-A. A detailed procedure has thus been prescribed under the rules for the settlement of the sairati interests vested in the State.

**34.** It may be relevant here to state that apart from the rules framed under Section 43, certain directions have also been issued from time to time by the State Government for the management of the estates and tenures. Those directions and instructions are to be found in the Sairati Compendium issued by the Revenue Department in the Government of Bihar. Powers have been delegated for the settlement of Sairats vested in the State putting a financial limit within which the

Additional Collector, Collector and the Commissioner can sanction settlement of Sairats. If the limit fixed for the Commissioner exceeds then the settlement of the Sairats has to be sanctioned by the State Government (vide letter No. E-IX-10145-55-5235-LR dt. 21st Sept. 1955 from Additional Under Secretary to Government of Bihar, Revenue Department to the Commissioners and Collectors). It is not necessary to refer to the other letters and circulars in this respect showing what procedure shall be adopted by the prescribed authority in the matter of settlement of the Sairats within their financial limits.

When such a detailed provision has been made under the Bihar Land Reforms Act, the rules and various circulars and orders issued from time to time for the settlement of the Sairats by the prescribed authorities, it would be difficult to find that such Sairats can also be settled by the Magistrate of the district under the Bengal Ferries Act by merely clubbing such Sairat ferries with the Public ferries.

**35.** With great respect that would not only be against the mandate of law but shall also defeat the purpose of the Bihar Land Reforms Act. As noticed above, the settlement has to be made, in the first instance with the outgoing intermediaries, failing that with the Gram Panchayats, then with the Co-operative Societies and failing that also by public auction by the Collector or the prescribed authority.

**36.** Under the Bengal Ferries Act, the power to settle a Public ferry vests in the Magistrate of the district with the approval of the Commissioner. There is no financial limit put on him like the Sairat ferries. None of these acts provide for clubbing a Public ferry with the Sairat ferries. To concede that power to the Magistrate of the district will not only be against the mandate of law but the same may have disastrous effect. The Magistrate of the district may club together many such Sairat ferries vested in the State with the Public ferries and even though reserve Jama in respect of that Sairat ferries is much above the financial limits put on the Collector by the Land Reforms Act, settle the same along with the Public ferry and thereby usurp the powers not vested in him and defeat the provisions of the Land Reforms Act. Looking at it from another point of view, if the Magistrate of the district can club a Public ferry with the Sairat Ferries and make the settlement under the Bengal Ferries Act then the converse also must be permissible. Why then an Additional Collector or a Collector or any other prescribed authority under the Land Reforms Act not club a Public ferry with the Sairat ferries and proceed to make the settlement in accordance with the provisions contained in the Land Reforms Act? If one is permissible in the absence of any provision in either of the Acts then the other also must be permissible. The power for clubbing the two types of ferries under the two different Acts cannot, therefore, be presumed in the absence of specific provision in that regard.

**37.** It is a well-known rule that a statute should not be construed as taking away the jurisdiction of an authority or tribunal in the absence of clear and unambiguous language to that effect *Commrs. of Customs and Excise v. Vure & Deeley, Ltd.* (1962) 1 QB 340. Where clear and unequivocal language capable of only one meaning is used in an enactment, it must be enforced however harsh or absurd or contrary to common sense the result may be *Cartledge v. E. Jopling & Sons Ltd.* 1963 AC 758. The interpretation of a statute is not to be collected from any notions which may be entertained by the Court as to what is just and expedient. It is the duty of the Court to expound the law as it stands and to "leave the remedy to others" *Sutlers v. Briggs* (1922) 1 AC 1. Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature (See *Craies on Statute Law*, P. 65, 7th

Edn.).

**38.** The two types of ferries, as I have said above are controlled by two statutes each prescribing different types of procedure for settlement. Without there being any specific provision in that behalf, the two types of ferries cannot be clubbed and consequently there cannot be a composite settlement.

**39.** Needless to say that it is in the domain of the Legislature to enact two types of law and prescribe different modes of execution and the courts cannot read something which is not specifically provided therein by introducing a third procedure.

**40.** It, therefore, follows that the entire procedure for the settlement of Telpa Ekauna a Public ferry along with other Sairat ferries was without jurisdiction. The respondent-District Magistrate had no authority to club these two types of ferries and make a composite settlement.

**41.** I will, therefore, annul the entire settlement and direct the concerned authorities to make the settlement of Public ferry in accordance with the provisions contained in the Bengal Ferries Act and those of the Sairat ferries in accordance with the provisions contained in the Bihar Land Reforms Act and the rules framed there under.

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