

(1995) 08 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 848 of 1995

Adarsh Matsyodyog Sahkari Sanstha Ltd.

APPELLANT

Vs

M.P. Rajya Matsya Vikas Nigam and Others

RESPONDENT

Date of Decision : 02-08-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 21

Citation : (1995) J LJ 682

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : S.L. Garg and S.S. Garg, Vibhuti Jha, for the Appellant; A.M. Mathur, for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.—The Petitioner, a society registered under the Cooperative Societies Act, has filed this Writ Petition for quashing of auction notice dated 16.6.1995 (Ann. P/I) and alternatively for declaring that Condition No. (1) of the said notice which, inter alia provides for experience of fishing 800 M.T. of fishes from one reservior in one year during preceding three years for participating in the auction for settlement of Gandhi Sagar reservior, be declared illegal.

2. By order dated 29.6.1995, this Court allowed the M.P. Rajya Matsya Vikas Nigam (hereinafter referred to as the Nigam for brevity) and its functionary Respondents 2 and 3 to hold auction, but restrained them from finalising it.

3. All the Respondents have entered their appearance and with the consent of the parties, the writ Petition is being disposed of, at motion hearing stage itself.

4. Respondent Nigam published a notice in the news paper for settlement of fishing rights of Gandhi Sagar reservior from the date of settlement till 15.6.2000. According to the terms of the notice, the bidders were required to deposit as earnest money a sum of Rs. 66 lakhs an hour before auction to enable them to earnest money a sum of Rs. 66 lakhs an hour before auction to enable

them to participate in the auction. The auction was to be held on 30.6.1995 at 3.00 p.m.

5. As the validity of condition No. 1 of the auction notice is being assailed in the present writ petition, it is apt to reproduce the same:

uhykeh dh ?rsZ % ?1? uhykeh esa ogh cksyhnkj Hkkx ys ldrk gS ftlds }kjk fdlh ,d tyk?; ls foxr rhu o"kksZa esa fdlh ,d o"kZ dh vof/k esa de ls de 800 esa- Vu eNyh dk vka[ksV IQyrkiwoZd fd;k x;k gksA l gsrq cksyhnkj dks l{ke izkf/kdkjh dk izek.k&i= layxz djuk gksxkA izns? dh eNqvK lgdkjh lfefr;ksa ds fy, bl lhek esa 10 izfr?r dh NwV jgsxhA

It means as follows:

In the auction only those bidders can participate who has successfully fished 800 M.T. of fishes from one reservoir in one year in any of the preceding three years. From this the bidders were required to attach a certificate granted by the competent authority. The cooperative societies of the State were given relaxation upto 10% of the aforesaid limit.

6. According to this clause, condition precedent for participation in the auction was to have experience of fishing 800 M.T. of fishes from one reservoir in one year in preceding three years. Validity of this condition has been questioned in the present writ petition.

7. Shri Jha appearing on behalf of the Petitioner submitted that fixing of experience of fishing 800 M.T. is irrational and arbitrary and the same does not achieve any object. He further submitted that not only this, the experience is confined in one year in preceding three years and that too from one reservoir. In his submission this condition is "tailor made" to suit Respondent No. 4 and only to make him eligible to participate in the bid. He has further drawn my attention that present reservoir was currently settled with Respondent No. 3 and an attempt was made to extend the settlement for Anr. five years, but the same was turned down by council of Ministers, and now in round about way, the same purpose is sought to be achieved, by laying the aforesaid arbitrary condition.

8. Although the writ petition was filed when the auction was yet to be held but it is admitted that during pendency of the writ petition, new bid was held and Respondent No. 3 only was found eligible. Other two cooperative societies, who appeared in the auction had experience of fishing 800 M.T. of fishing but they did not deposit earnest money of Rs. 66 lakhs and, therefore, they were not held eligible for participating in the bid. The two cooperative societies when wanted to participate in the bid were assigned work by Respondent No. 3 himself. This is further not disputed that final settlement has not been made in favour of Respondent No. 3 because of restraint order passed by this Court.

9. Shir Mathur appearing on behalf of Respondent Nigam, submitted that past experience of the State Government as well as the Nigam were, that contractors after securing the settlement, used to abandon it after some time, causing

immense hardships to the fishermen. He submitted that the impugned condition of experience of fishing 800 M.T. of fishes has not come out of sleeve of the Nigam but seeing the yield of preceding years, the said weight has been fixed. He further submitted that this condition is in the shape of policy decision and to use his words "being not palpably arbitrary", that Court is prevented from interfering in the same, it its writ jurisdiction. Shri Mathur further submitted that the writ petition lacks bona fide and fit to be dismissed on this score also. According to him, members of the Petitioner society live in Bhopal or confined to vicinity of the said town but the reservior Gandhi Sagar is at far off distance of the said place. Further, referring to the audited account of the society he submitted that its poor financial status clearly shows that in fact it is not capable of taking settlement but want to create hinderance in the way of Respondent No. 3.

10. Shri S. Kulshreshtha learned Addl. Advocate General, in addition, submitted that experience of fishing of 800 M.T. of fish pre-supposes that the bidder is possessed of infra structure like insulated truck and healthy financial background. He submitted that prime concerned of the Slate Government as well as the Nigam, is well fare of fishermen involved in the fishing operations. He further submitted that selection of a person having experience would simply have adequate infra structure and this would necessarily result into fishing of more yield. This would benefit the fishermen as they are paid remuneration on the basis of weight of catch as also 20% of catch. Thus, according to him providing experience of weight has salutary purpose.

11. Shri B.G. Neema appearing on behalf of Respondent No. 6 while adopting the arguments advanced by Shri Mathur further submitted that his client has already deposited earnest money, Rs. 66 lakhs, and he being the only eligible person, the settlement in his favour may be allowed to be made.

12. Condition impugned can be split into three parts to make the bidder eligible viz. (i) experience of fishing 800 M.T., (ii) in one reservior and (iii) in one year in preceding three years. I shall address myself to each of the said conditions separately.

13. However, before I do so, it is apt to answer the points raised by Shri Mathur that the aforesaid condition being in the realm of policy decision, the same is not fit to be interfered with by this Court in writ jurisdiction. Shri Mathur in support of the aforesaid submission has placed reliance on a decision of Supreme Court in the case of Madhya Pradesh Ration Vikreta Sangh Society and Others Vs. State of Madhya Pradesh and Another, Its relevant portion is as under:

The question whether fair price shops in the State of M.P. under a Government scheme should be directly run by the Government through the instrumentality of consumers" cooperative societies as its agent or by retail dealers to be appointed by the Collector under Class 3 of the Control Order, is essentially a matter of policy with which the Court is not concerned.

Further reliance has been placed in the decision of Apex Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, wherein the Supreme Court held as under:

What can be said in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned Court must not forget that complex economic matters every decision is necessarily empiric and it based on experimentation or what one may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any strait-jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play" in the joints to the executive.

Again in the case of Asif Hameed and others Vs. State of Jammu and Kashmir and Others, the Apex Court considered the scope of judicial review of policy decision of the State or statutory body and held as follows:

When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the Court must strike-down the action. While doing so the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an appellate authority. The Constitution does not permit the Court to direct or advice the executive in the matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

14. Shri Mathur has further drawn my attention to the judgment of Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and my particular attention has been drawn to the following passage:

...So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations.

Relying on the aforesaid authority Shri Mathur submitted that this Court should not interfere with policy decision of the Nigam in putting experience clause in the auction notice.

15. Having given my anxious consideration to the points raised, I do not have the slightest hesitation in holding it as a general rule a Court cannot interfere with

the administrative policy of the Government or the Statutory Corporation or the Authorities which are State within the meaning of Article 12 of the Constitution of India but the exceptions to the aforesaid general rule have been recognized by the Courts viz. where the fundamental right of an individual is affected or some constitutional provision is violated, or where the policy is against public interest or the same is arbitrary or unreasonable, to quote a few. In such a situation judicial review of even policy decision is permissible. The word "policy" according to the Black's Law Dictionary 16th Edn. means the general principle by which a Government is guided in its management of public affairs and according to the concise Oxford Dictionary (8th Edn.) a course or principle of action adopted or proposed by a Government. Thus, I am of the considered opinion that the condition impugned in the present writ petition i.e. laying down a condition of eligibility for a particular reservior does not come within the purview of policy decision. As a result, this condition is subject to judicial review.

16. It is projected before me that previous experience of State Government and Nigam had been that the contractors used to abandon the contract, midway leaving the fishermen in lurch resulting into immense hardship to them. Firstly, this is basic human instinct to earn maximum after getting settlement in ones favour and it is difficult to approve this line of reasoning. A person required to deposit Rs. 66 lakhs and after spending more than a crore is not likely to abandon the same. To put the record straight it is stated that this condition in the auction notice has been put for the first time and it is the allegation of the Petitioner that it has been done to suit the Respondent No. 4.

17. Even if it is assumed that the contractors may run away after getting the settlement, I do not have any hesitation in holding that fixing of experience of 800 M.T. will not serve any purpose and the same is not possible to achieve the object sought for. There is no guarantee that an experienced person will not abandon the contract in midway.

18. In my opinion what can be achieved directly, there is no reason to lay down a condition to achieve the same indirectly. If the purpose of the bidding experience is condition of 800 M.T. was to see that adequate infra structure and finance is available at the disposal of the bidder, the same could have been placed as condition directly. Thus, the object sought to be achieved by putting condition of 800 M.T. is arbitrary, irrational and fit to be struck down. Even assuming that the so-called is a policy decision, it is palpably arbitrary and subject to judicial review.

19. Not only this, the other facts of this condition that experience of 800 M.T. must relate to only one reservior, also seems to be absolutely irrational, and on the face of it, is arbitrary. Even if I proceed on the assumption that experience of 800 M.T. has any nexus, I fail to understand how the said experience in one reservior would be a reasonable condition. In fact I am of the view that experience varied conditions should be more helpful than putting condition of experience in one reservior only. Thus, in my opinion this condition is absolutely arbitrary.

20. In view of my answer to the aforesaid questions, it is not necessary to answer as to whether the condition of experience in one year within 3 preceding years is arbitrary or not.

21. It is well settled that if an action of the State Government or its functionary is arbitrary the same violates Article 14 of the Constitution of India. Reference in this connection can be made to the decision of S.C. in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the relevant portion whereof is quoted below:

56. Now, the question immediately arises as to what is the requirement of Article 14; What is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexocographic approach. No attempt should be made to truncate all-embracing scope and meaning for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa Vs. State of Tamil Nadu and Another*, namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to the political logic and constitutional law and is, therefore, violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically is an essential cement of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21, must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be not procedure at all and the requirement of Article 21 should not be satisfied. How far natural justice is an essential element of procedure established by law.

Applying the aforesaid test, I am of the considered opinion that Condition No. 1 referred to above, is absolutely arbitrary and must be struck down.

22. Before I conclude, I must answer an ancilliary submissions of Shri Mathur that the writ petition lacks bona fide on the ground that members of the Petitioner's society reside at a distant place from the place where the reservoir is situated. The Nigam is blowing hot and cold at the same time. To impress upon me that their action is bona fide, all the time it was emphasised before me that auction notice was published in various news papers published from Delhi, Calcutta & Madras. The publication of this auction notice, in my opinion, pre-supposes that Nigam expected bidders from far off places to take part. Further, Article 19 of the Const. guarantees its citizens to move freely through out the

territory of India and to practice any profession or to carry on any occupation or trade or business. Respondent No. 4 himself is a resident of Jabalpur, which is not nearer to the reservoir than Bhopal. In the facts and circumstances of the case, if it is confined to the person residing in the vicinity of reservoir, the same will plainly violate Article 19 of the Const. Thus, I do not find any substance in this submission of Shri Mathur.

23. As regards submission of Shri Mathur that financial status of the Petitioner docs not enable it to take settlement, also, does not impress me. The Respondent Nigam has stated that financial health of the Petitioner is absolutely bad whereas the same has been contraverted by the Petitioner and they have stated that they have taken settlement after paying large sum after last audited account and they have capability of paying earnest money and it has the capacity of taking settlement and paying necessary amount. In view of the aforesaid factual position, I am of the view that the Petitioner does not lack bona fide and submission of Shri Mathur is fit to be rejected.

24. To complete the record, it is stated that an application for intervention has been filed on behalf of Adarsh Matsya Udyog and during the course of arguments Shri S.S. Garg has offered to take settlement at rupees two crores. The amount offered by Respondent No. 4 is only Rs. 1.78 crores.

25. For reasons stated above, the writ petition deserves to be allowed and Condition No. (1) of the auction notice dated 16.6.1995 (Ann. P/I) referred to above is fit to be quashed and I do so, accordingly.

26. In the result, the application is allowed with costs to be paid by Respondent No. 1. Counsel's fee is assessed at Rs. 2,500/- if certified.