
(2010) 07 AHC CK 0186
In the Allahabad High Court

Agori Nishad Navik Evam Matasya Jeevi Sahkari Samiti Ltd. APPELLANT
and Another

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Northern India Ferries Act, 1878 — Section 8

Citation : (2010) 07 AHC CK 0186

Hon'ble Judges : Virendra Singh, J;Ashok Bhushan, J

Bench : Division Bench

Judgement

Ashok Bhushan, J.—Heard Shri Ravi Kiran Jain, learned Senior Advocate assisted by Shri R.K. Awasthi for the petitioners, Shri W.H. Khan, learned Senior Advocate assisted by Shri J.H. Khan has appeared on behalf of respondent Nos. 5 to 7 and Shri Shailendra Sharma has appeared on behalf of respondent Nos. 3 and 4.

2. Counter and rejoinder affidavits have been exchanged and with the consent of the learned Counsel for the parties, the writ petition is being finally decided.

3. Brief facts giving rise to this writ petition are: The petitioner is a registered co-operative society of Nishads duly registered under the Cooperative Societies Act, 1965. There are several ghats on river Son which flows through District Sonebhadra. The said ghats are under the supervision and control of Zila Panchayat, Sonebhadra. Settlement of ferry rights on the aforesaid ghats are made under the Northern India Ferries Act, 1878. Government Orders dated 21/8/1981, 04/11/1981, 19/2/1990 and 31/1/1994, lays down the procedure and manner for settlement of ferry rights which provide preference to the registered cooperative societies of Mallahs. By order dated 06/9/2002, ferry rights of ten Nauka Ghats were settled in favour of Chopan Nishad Navik Matsya Jivi Sahkari Samiti Ltd. for the year 2002-03 and 2003-2004, which settlement was challenged by the petitioner No. 1 by filing Writ Petition No. 42286/2002. An interim order was passed on 30/9/2002, in the aforesaid writ petition providing that as an interim measure, District Magistrate, Sonebhadra shall operate the

ferry rights through his officials. Again an auction was held 25/10/2002, in which the answering respondents were the highest bidders. The State Government approved the proposal of Zila Panchayat by Government Order dated 14/11/2002. The petitioner No. 1 again filed Writ Petition No. 50783 of 2002 challenging the settlement dated 14/11/2002. An interim order was passed on 28/11/2002, directing the District Magistrate to operate the ferry rights through his officials as an interim measure. The interim order continued till the petition was dismissed as infructuous on 09/5/2007, on the statement made by the learned Counsel for the petitioner.

4. The contesting respondents filed Writ Petition No. 26803/2007, claiming a direction to the respondents to permit the answering respondents to operate the ferry rights for the period which was stayed by this Court in Writ Petition No. 50783/2002. Another Writ Petition No. 26803/2007, was filed by Subhash Chandra Jaiswal and Ors., and the said writ petition was disposed by the learned Single Judge by the judgment and order dated 08/6/2007, directing the Commissioner, Vindhyachal Division to consider the claim of the petitioners and also to take into consideration the judgment of the Apex Court reported in Beg Raj Singh Vs. State of U.P. and Others, The petitioner No. 1 filed Special Appeal No. 923/2007 challenging the order of the learned Single Judge dated 08/6/2007, which was dismissed on 11/7/2007. The Commissioner in pursuance of the order of this Court dated 08/6/2007, passed a detailed order on 05/9/2007, allowing the representation of the contesting respondents providing that for the rest of the period after 28/11/2002, the respondents are entitled to run the Nauka Ghats.

5. Writ Petition No. 45496/2007, was filed by the petitioner challenging the order dated 05/9/2007. Following interim order was passed on 19/9/2007.

Sri W.H. Khan, who represents respondents No. 6, 7, 8. Standing Counsel, who represents respondents No. 1, 2, 3, 4 and Sri Vineet Pandey, who has appeared for respondents No. 5 pray for and are granted two weeks" time to file counter affidavit. Rejoinder affidavit may be filed within a week.

List on 9th October, 2007.

Till then the operation of the impugned order dated 5th September 2007 filed as Annexure-24 to the writ petition shall remain stayed. As the contract with the petitioner is going to expire on 30th September 2007. From 1st October 2007 till further orders the ferry rights would be operated by the District Magistrate through his agency.

6. Writ Petition No. 45496/2007, was subsequently dismissed as infructuous by order dated 30/4/2008.

7. In view of the interim order passed by this Court in Writ Petition No. 45496/2007, consequential order in favour of the contesting respondents in pursuance of the order of the Commissioner dated 05/9/2007, could not be

issued. However, when the writ petition was dismissed as infructuous on 30/4/2008, consequential order dated 06/6/2008, was issued by the Commissioner in pursuance of the earlier order dated 05/9/2007, directing the Zila Panchayat to take appropriate action. The Zila Panchayat issued a consequential order on 01/7/2008 for the remaining period for the year 2007-08.

8. The petitioners by this writ petition has prayed for following reliefs:

(i) Issue an appropriate writ, order or direction in the nature of Certiorari quashing order dated 6-1-2008 contained in Annexure No. 13 and consequential order dated 1-7-2008, passed by Upper Mukhya Adhikari, Zila Panchayat Sonbhadra (Annexure No. 14) under which settlement has been made in favour of the Respondents for the remaining period.

(ii) Issue a writ, order or direction in the nature of Mandamus Commanding the Respondents to settle the theka of ghats covered under the impugned order by fresh settlement in accordance with Section 8 of the Northern India Ferries Act, 1878 read with Government Order dated 21-8-1981 (Annexure No. 3) read with Government Order dated 4.11.1981 (Annexure Nos. 4).

9. Shri Ravi Kiran Jain, learned Senior Advocate appearing for the petitioners challenging the impugned order dated 06/6/2008, passed by the Commissioner and the order dated 01/7/2008, contended that the contesting respondents were not entitled for extension of their period. It is submitted that initially the ferry rights granted in favour of respondents nos 6 to 8 was not in accordance with the relevant Government Orders as referred above. It is submitted that the petitioners being registered cooperative societies of Navik/Mallahs, were entitled for grant of ferry rights and the contract granted in favour of the contesting respondents was erroneous. It is further submitted that the Commissioner committed error in allowing the claim of the contesting respondents for extension of their period and the judgment of the Apex Court in Beg Raj Singh's case (supra) was not applicable.

10. It is further submitted that the said case did not lay down any general proposition that whenever ferry right is not able to run for the entire period, the contractor is entitled for extension. It is submitted that the case of the Beg Raj Singh's case (supra) was different and was concerned with the policy decision of the State Government as taken by the Government Order dated 25/5/1995, for grant of new areas to an applicant searched by the applicant himself. Petitioners' period of contract having come to an end they have no right to claim continuance of their ferry rights.

11. Shri W.H. Khan, learned Senior Advocate appearing on behalf of respondent Nos. 5 to 7, submitted that the petitioners' writ petition is not maintainable against the consequential order, when the order dated 05/9/2007, passed by the Commissioner has not been successfully challenged. It is submitted that the Writ Petition No. 45496/2007, was filed by the petitioner challenging the order dated 05/9/2007, passed by the Commissioner, which writ petition has been dismissed

on 30/4/2008, as infructuous, the order dated 05/9/2007 has become final and the present writ petition challenging only consequential orders is not maintainable. Reliance has been placed on a Division Bench judgment of this Court in *Sushila Chitra Mandir v. State of U.P. and Ors.* 2004 (4) AWC 3076. It is further stated that the decision of the Commissioner dated 05/9/2007, has been taken in pursuance of the direction of this Court dated 08/6/2007 in Writ Petition No. 26803/2007. The petitioners challenged the order dated 08/6/2007, by means of Special Appeal No. 923/2007 which was dismissed by the Division Bench on 11/7/2007, which fact has not been disclosed in the writ petition. It is submitted that the petitioners cannot be allowed to challenge the grant of ferry rights in favour of the respondents since the writ petition filed by the petitioners challenging the grant in favour of the respondents was got dismissed by the petitioners themselves on a statement that the writ petition has become infructuous, hence they are not entitled to challenge the grant in favour of the respondents. It is further submitted that the petitioners cannot be permitted to challenge the decision dated 05/9/2007, of the Commissioner in this writ petition.

12. We have considered the submission of the learned Counsel for the parties and have perused the record.

13. From the facts brought on the record, it is clear that the grant of ferry rights in favour of the contesting respondents was challenged by the petitioners by means of Writ Petition No. 50783/2, in which an interim order was passed on 28/11/2002, by this Court which remained operative till the writ petition was dismissed on a statement made by the petitioners' Counsel himself on 09/5/2007.

14. Following order was passed on 09/5/2007, in Writ Petition No. 50783/2002:

Shri Anupam Kulshreshtha, learned Counsel for the petitioner states that this petition has become infructuous.

It is accordingly dismissed as infructuous.

15. The petitioners themselves having got their writ petition dismissed, challenging the grant in favour of the respondents, it is not open for them to again contend that the grant in favour of the respondents was not in accordance with law.

16. Now, comes the main submission of the petitioners challenging the orders granting extension of the period.

17. Shri Ravi Kiran Jain, learned Senior Advocate appearing for the petitioners contended that the judgment of the Apex Court in *Beg Raj Singh's case* (supra) has wrongly been applied by the Commissioner for granting extension. The extension for the unexpired period has been granted by the Commissioner by order dated 05/9/2007. The petitioners have challenged the order dated 05/9/2007 by filing Writ Petition No. 45496/2007, in which writ petition although initially an interim order was passed on 19/9/2007, but the writ petition was

ultimately dismissed as infructuous on 30/4/2008. When the writ petition challenging the order dated 05/9/2007, has been dismissed, we see no reason to permit the petitioners to again assail the correctness of the decision of the Commissioner for extension of the period.

18. From the relief which has been claimed in the writ petition, it is clear that the petitioners have challenged the order dated 06/6/2008, Annexure-13 to the writ petition and the order dated 01/7/2008, passed by the Zila Panchayat granting lease for the unexpired period 2007-08. The aforesaid two orders are only consequential orders passed in pursuance of the order of the Commissioner dated 05/9/2007. There is sufficient force in the submission of the learned Counsel for the respondents that when the main order is not under challenge, challenge to the consequential orders cannot be entertained. The Division Bench judgment of *Sushila Chitra Mandir (supra)* relied on by the Counsel for the respondents fully supports his submission.

19. Following was laid down in paragraphs 6, 7, 8 and 9 in the said judgment:

6. We fail to understand that if the Writ Petition No. 15082 of 2004 filed by the petitioner remained pending before this Court for the basic relief how the writ petition can be filed challenging the consequential order, i.e., auction sale as in the earlier writ petition the sale proclamation dated 13.11.2000 is under challenge. There is no separate cause of action giving rise in the later case which may warrant the petitioner to file the second writ petition.

7. Challenging the consequential order without challenging the basic order is also not permissible.

8. In *P. Chitharanja Menon and Others Vs. A. Balakrishnan and Others*, the Hon'ble Supreme Court held that in absence of challenge to the basic order, subsequent consequential order cannot be challenged.

9. Similar view has been reiterated in *Roshan Lal and Others Vs. International Airport Authority of India and Others*, wherein the petitions were primarily confined to the seniority list and the Apex Court held that challenge to appointment orders could not be entertained because of inordinate delay and in absence of the same, validity of consequential seniority cannot be examined. In such a case, a party is under a legal obligation to challenge the basic order and if and only if the same is found to be wrong, consequential orders may be examined.

20. The orders impugned in the writ petition being consequential order giving effect to the order of the Commissioner dated 05/9/2007, we see no infirmity in the said order which may warrant interference by this Court in exercise of writ jurisdiction. However, it is to be noticed that initially the respondents were granted ferry rights for 3 years i.e. 2002-03, 2003-04 and 2004-05. In the year 2002-03, the contesting respondents started operating the ferry rights. They were stopped by the interim order dated 28/11/2002. The entitlement of the

respondents was at best for the period of 3 years. By order dated 01/7/2008, petitioners were permitted to run the ferry rights for the rest of the year 2007-08.

21. Learned Counsel for the respondents submitted that in pursuance of the order dated 05/9/2007, respondents are still running their ferry rights after 2007-08. Year 2008-09, has already come to an end and the period 2009-2010 is running. From the materials brought on the record it is clear that the ferry rights are granted till 30/9/2010, and at best the respondents are entitled to continue their ferry rights U.P. to 30/9/2010. In pursuance of the decision of the Commissioner dated 05/9/2007 w.e.f. 01/10/2010, the respondents are free to settle the ferry rights in accordance with law.

22. In view of the aforesaid, we are of the view that in case the respondents are still permitted to continue their ferry rights they may be allowed to continue till 30/9/2010 and from 01/10/2010, fresh grants be given. In view of the fact that settlement of ferry rights takes time, it is open for the respondents No. 1 to 4 to take appropriate steps for settlement of ferry rights w.e.f. 01/10/2010, henceforth.

23. In the result, the petitioners are not entitled for any of the reliefs as claimed in the writ petition. However, it shall be open for the respondent Nos. 1 to 4 to take steps for settlement of ferry rights a fresh with effect from 01/10/2010, henceforth.

24. The writ petition is disposed of accordingly.