

(1996) 10 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25931 of 1996

Ajay Sonkar

APPELLANT

Vs

State of U.P.through Collector,Agra and Others

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 10 AHC CK 0080

Hon'ble Judges : B.M.Lal, J and J.S.Sidhu, J

Final Decision : Disposed Of

Judgement

B. M. Lal, J.—By this petition under Article 226 of the Constitution petitioner has challenged the settlement of fishing rights over Yamuna River part I made in favour of respondent No. 4 for a sum of Rs. 1,86,000 by the respondents 1, 2 & 3 vide order dated 21696 for the year 199691 i.e. for the period commencing 171996 and ending on 30697.

2. Learned Senior counsel Sri Murlidhar in his extensive arguments, raised all possible grounds for declaring the said settlement a nullity, but an objection was raised that at the time of alleged settlement neither the petitioner offered a bid nor submitted a tender rather he emerged after the settlement of fishing rights was made in favour of respondent No. 4, thus the" petitioner has no locus standi to challenge the same.

3. No doubt, if the petitioner was not party to the proceedings for the said settlement, he cannot claim any right for himself, but if the settlement is arrived at with patent illegalities affecting augmentation of public revenue, the petition challenging the same is maintainable even on behalf of third party. In this context it is needless to say that the locus standi has been given almost go by in India. Therefore, this petition will be heard and decided on merits.

4. Now coming on merits it may be mentioned that the settlement of fishing rights is governed by the statutory Rules framed under Section 126 of U.P.

Zamindari Abolition and Land Reforms Act. The Rules have been amended from time to time. The recent amendment is dated 671987 published in U.P. Gazette Revenue Section^ No. 10357 (9)/82710 and is relevant for the instant case. Para 60(2)(A) as amended by the aforesaid amendment provides that the lease of tanks and ponds vested in Gaon Sabha shall be granted for 10 years on annual rent for the purposes of fishing as well as growing singhara crops. After completion of 10 years period, if performance of the lessee remains satisfactory the lease shall be again granted to him provided no preferable person/society as prescribed in para 60(2)(B) in preferential order is available.

5. Pursuant to above Rules notice dated 17696 (Annexure T) was published, in clause 2 of which it has been specifically mentioned that in granting lease cooperative Matsya Societies of same village or Gaon Sabha are to be given preference. The idea behind it is to promote the cooperative movement. Thus, if by giving preference to cooperative societies applications for granting lease are invited, it is settled that it does not amount to discrimination attracting Article 14 of the Constitution but is in consonance with the cooperative jurisprudence. Therefore, the submission made by the learned counsel for the petitioner that the petitioner who belongs to a general category has been discriminated, has no legs to stand.

6. Learned Senior Counsel for the petitioner further invited attention of this Court to the circumstances under which the respondent No. 4 has been favoured by the respondents 1, 2 and 3 in the matter of granting fishing rights. But clause (2) of Annexure 1 envisages in very clear terms that taking into account income of 3 preceding years or the last year, whichever is more, lease than be granted to Matsya Cooperatives Societies (registered) of the Gaon Sabha concerned,

7. Counter affidavit has been filed on behalf of respondents. Vide Annexure C.A. 11 it is stated that the income for the year 199394 was Rs. 1,18,000, for the year 199495 Rs. 1,54,000 and for the year 199596 Rs. 2,85,800, Thus it is apparent that the income for the last year was more than the average income of preceding 3 years and therefore, as per the criteria income for the last years was relevant to grant the lease for the year in question. Therefore, we fail to understand as to how the lease was granted in favour of respondent No, 4 for the petty amount of Rs. 1,85,786 which resulted in depletion of public revenue to the tune of Rs. 1,00,000. Notwithstanding the fact that petitioner has no locus standi to maintain this petition but the depletion of public revenue brought to the notice of this Court persuades this Court to interfere in the settlement of fishing rights in favour of respondent No. 4.

8. Learned counsel for the respondent No. 4 contended that if that is so, the respondent No. 4 is ready and willing to make the deficiency of that amount good, but it is not a matter of making the deficiency of amount good rather it is a case of depletion of public revenue and therefore, no leniency is possible in such matters. While making settlement of such rights the public authorities are expected to see that the public property is not filtered or looted or grabbed or

dissipated by unfair procedure and there should be transparency in the transaction. These aspects of the matter are totally lacking in the transaction in question and the settlement of rights appears to have been made in favour of respondent No. 4 in most arbitrary manner. The grant of fishing rights is not grant of rights in respect of personal property of public servants concerned rather is a public property right to be governed by the statutory provisions, therefore, it is expected from the public servants that such settlements of rights be granted in accordance with the provisions of the Act and Rules framed thereunder.

9. At this juncture, we may point out that the public officers are accountable for the negligence committed by them in discharge of their official duties. This is not a negligence, but appears to have been committed deliberately just to oblige the respondent No. 4 when requires investigation by the respondent No, 1. This is well settled that public officers, if found guilty of negligence or misfeasance in discharge of their official duties or of violating statutory provisions whereby the State Exchequer is put to lose, the concept of State immunity which has now been diluted by the apex Court under judicial review, will not come to their rescue. (See Lucknow Development Authority v. M. K. Gupta (1994) SCC 243 and Nagendra Rao v. State of Andhra Pradesh (1994) SC 2663.

10. This being so, the settlement of fishing rights in question made in favour of respondent No. 4 dated 21696 is; hereby set aside. It is directed that the enquiry into the matter be made by the Commissioner of Division and necessary action be taken against the guilty officers due to whose negligence financial loss was caused on the public exchequer. It as furtive? directed that the process of settling fishing rights in favour of Cooperative Society at general public may be taken strictly in accordance with the relevant Rules .Till then the fishing rights be operated by the State on licences if permissible under the Rules or otherwise as provided under the Rules. The amount deposited, if any by the respondent No. 4 be refunded proportionately.

11. This petition is finally disposed of accordingly. Order accordingly.