

(2014) 01 GUJ CK 0030
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1352 of 2013 in Special Civil Application No. 13684 of 2011 and Civil Application No. 12917 of 2013 in Letters Patent Appeal No. 1352 of 2013

Gujarat Maritime Board

APPELLANT

Vs

Bansal Infracon Ltd.

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226

Citation : (2014) 2 GLH 476

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : P.R. Nanavati, Advocate for the Appellant; Mihir Thakore, Senior Advocate and Vaibhavi K. Parikh, Advocate for the Respondent

Judgement

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Kaushal Jayendra Thaker, J.—We have heard Mr. P.R. Nanavati, learned Counsel for the appellant and learned senior Counsel Mr. Mihir Thakore assisted by Ms. Vaibhavi Parikh for respondent No. 1. This Letters Patent Appeal has been filed challenging the judgment dated 04/09/2013 passed by learned Single Judge in Special Civil Application No. 13684 of 2011.

2. The brief facts of present case are as under:--

2.1. The respondent herein-original petitioner Company is engaged in ship recycling activity and other commercial activities in India and the same is permission holder of Plot No. 154 admeasuring 30 mts. x 45 mts. at Alang - Sosiya Ship Recycling Yard and has been utilizing the said plot since many years for ship dismantling activity.

2.2. In the year 2007 to 2011, the appellant herein-respondent Board has developed different plots of different sizes for recycling of the ships at Alang. As per the Government of India, under the supervision of Hon''ble Supreme Court of

India, the size of the plot has to be increased considering the environmental and safety issues involved. The agenda discussed in all the meetings of the Inter Ministerial Committee consistently included the issue of phasing of the smaller plots and increasing the size of the existing plots considering the environmental and safety issues.

2.3. Clause (9) of Schedule V to the Regulation 2006 of the Board has empowered the Vice Chairman and Chief Executive Officer of the Board to convert existing smaller sized plots into bigger size. Various guidelines were also framed by the Board in circular dated 23/09/2009 to offer existing vacant plots to the permission holder of the adjoining working plot for increasing the size of the existing plots. Following the said guidelines and policy, the original respondent Board has allotted many existing vacant plots to the adjoining permission holders having plots admeasuring 30 mts. width.

2.4. On 03/12/2009 and 06/11/2010, pursuant to said circular, petitioner Company requested vide a couple of correspondences to the respondent Board to allot Plot No. 155, which is lying vacant past many years and which would enable the petitioner Company to have a plot of bigger size by amalgamating the existing plot No. 154 of the petitioner with plot No. 155 in compliance with the recommendations of the Inter Ministerial Committee as well as the guidelines framed by the respondent Board. The respondent Board neither paid any heed nor responded to the said requests for allotment and merger of the said plots.

2.5. In the year 2011, the respondent Board is planning to auction the vacant ship breaking plots which includes plot No. 155 and that would cause grave prejudice to the petitioner Company. The petitioner Company therefore, vide letters dated 24/08/2011 and 30/08/2011 offered to pay a fair price for the allotment and merger of vacant plot No. 155 with working plot No. 154. The respondent Board has not yet responded to the said offer of the petitioner Company.

2.6. It is in these exceptional and extraordinary circumstances that the petitioner Company is left with no meaningful and efficacious remedy, filed writ petition under Article 226 of the Constitution of India being Special Civil Application No. 13684 of 2011 praying for the following relief:-

"To direct the respondent Board to grant the permission sought by the petitioner for the allotment and merger of the working Plot No. 154 admeasuring 30 mts. x 45 mts., which belongs to the Petitioner with the vacant Plot No. 155 admeasuring 30 mts. x 45 mts. in possession of the respondent Board at Alang - Sosiya Ship Recycling Yard to increase the size of the plot in compliance with the Circular dated 23.09.2009 issued by the Respondent Board."

2.7. Objecting the said writ petition, respondent Board has filed affidavit-in-reply and submitted that facts and grounds alleged in the petition are absolutely without any merits and in reply the respondent Board has considered provisions of Clause 10 to the Regulation 2006 of the Gujarat Maritime Board (Conditions

and Procedures for granting permission for utilizing ship recycling plots. Regulation, 2006 which provides that the permission holders belonging to Scheduled Caste/Scheduled Tribe category under Regulations 1994 shall be permitted to continue to hold permission under these regulations, provided that such permission holders shall pay all outstanding dues along with the interest at the rate of 8% per annum and also provides that in case of non payment of charges as aforesaid by the permission holder belonging to SC/ST category two notices will have to be issued by the Chief Executive Officer and Vice Chairman to such defaulter at an interval three months, failing which the permission will automatically come to an end and the same will be given to other aspiring candidates belonging to SC/ST category in the same manner as per the regulations and provisions. It is also submitted in the reply that plot No. 155 in past, has been allotted to one Ever Successor Shopbreakers who belonged to SC/ST category and submitted that plot No. 155 came to be reserved for SC/ST category by virtue of the said regulations 2006 and erstwhile permission holder was occupying the plot till December 2007 and in the Board meeting, decision is taken for merging of plot Nos. 155 and 156 as both are reserved for SC/ST category and after merger the said merged plots was to be auctioned to the persons belonged to SC/ST category. It is also submitted in the reply that period of plot utilization permission had expired in the year 2004 and only came to be renewed on 29/04/2010 and the reason for delay was pendency of some legal proceedings between petitioner and respondent and the petitioner had made several changes in the Board of Directors without prior permission of GMB which leads to commit default/breach of clause of the agreement entered by the petitioner with the Board and clause (p) of Schedule III of the Regulations 2006 as amended in 2008.

2.8. Denying the affidavit-in-reply filed by the respondent Board, original petitioner Company filed affidavit-in-rejoinder and submitted that petitioner Company is permission holder of plot No. 154 and utilizing said plot since many years for ship dismantling activity and as per recommendations of Inter Ministerial Committee of Government of India, under supervision of Hon'ble Supreme Court of India, size of the plots has to be increased considering environmental and safety issues. It is also submitted in the rejoinder that various guidelines were also framed by the respondent board in circular dated 23/09/2009 offering existing vacant plot to the permission holder of adjoining working plots at Alang to increase the size of the plots and following the same, the respondent Board has allotted many existing plots to adjoining permission holders having plots admeasuring 30 mts. It is also submitted in the rejoinder that petitioner's plot No. 154 is between working plot No. 153 and vacant plot No. 155 and therefore, as per guidelines framed by the respondent Board, the petitioner is eligible for the allotment of adjoining vacant plot being plot No. 155.

2.9. Another affidavit is also filed by newly added respondent No. 2 in the writ petition contending that the petition is misconceived and denying the same additional affidavit is also filed by the original petitioner contending that

petitioner is eligible for the demand as prayed for.

2.10. On 04/09/2013, the learned Single Judge (Coram: R.H. Shukla, J.), without considering the evidence produced on record and affidavit in reply filed by the appellant-Gujarat Maritime Board and affidavit in reply filed by the State of Gujarat, allowed Special Civil Application No. 13684 of 2011, directing the appellant herein to give plot as demanded by the respondent herein-original petitioner.

2.11. It is contended by learned Advocate for the appellant that learned Single Judge has grossly erred in law as well as in fact in not appreciating the pleadings of the parties. The prayer cited as above is beyond the scope of exercise of jurisdiction under Article 226 of the Constitution of India. On bear perusal of the above prayer, it is clear that the relief sought in the petition amounts to compelling the appellant to allot plot belonging to the appellant herein on the basis of circular which is in form of guideline. Thus, such a direction should not have been issued by the Hon''ble Court.

2.12. It is contended by the learned Advocate for the appellant that learned Single Judge has grossly erred in entertaining such petition which amounts to interfering with the policy decision of the appellant as well as State Government particularly reservation policy and space claimed by the respondent herein is from the plot which is demarcated and reserved for the reserved category and therefore, it being a policy decision of the Government as well as the appellant, this Hon''ble Court, while exercising jurisdiction under Article 226 of the Constitution of India, ought not to have interfered with by issuing mandatory direction to give plot to the respondent herein. It is also contended that learned Single Judge has grossly erred in passing the impugned order which amounts to taking over the administration of the appellant Board in the hands of this Hon''ble Court which is normally not done by this Hon''ble Court under Article 226 of the Constitution of India, though this Hon''ble Court has wide powers, as per the settled principles of law, this Hon''ble Court may exercise such powers sparingly and as far as possible, such direction may not be issued, which amounts to taking over the administration of the appellant Board, particularly when the respondent herein failed to prima facie establish that the decision in not parting with the possession of the adjoining plot cannot, by any stretch of imagination, be said to be arbitrary or against any statutory provisions and therefore, such decision of the appellant herein being administrative in nature and when the same is in consonance with the policy of the Government to keep and maintain reservation policy by reserving the plot for SC/ST category, the same should not have been interfered with in a manner in which it is sought to be done. It is also contention of the learned Advocate for the appellant that learned Single Judge has erred in not appreciating the stand taken by the State of Gujarat wherein very same contention was raised by the State Government that the guidelines in question is directive in nature and when such a guideline is in conflict with the reservation policy of the State, Gujarat Maritime Board - appellant herein has

rightly rejected the request made by the respondent herein-original petitioner.

3. The impugned judgment in this matter holds as under:--

"1. The present petition has been filed by the petitioner under Articles 19(1)(g) and 226 of the Constitution of India for the prayers:--

"(a) to direct the Respondent Board to grant the permission sought by the Petitioner for the allotment and merger of the working Plot No. 154 admeasuring 30 mts. X 45 mts., which belongs to the Petitioner with the vacant Plot No. 155 admeasuring 30 mts. X 45 mts. In possession of the Respondent Board at Alang - Sosiya Ship Recycling Yard to increase the size of the plot in compliance with the Circular dated 28.09.2009 (Annexure "A") issued by the Respondent Board.

(b) ...

(c) ..."

2. Heard learned Senior Counsel Shri Mihir Thakore appearing with learned Advocate Shri Tushar P. Hemani for the petitioner and learned Counsel Shri P.R. Nanavaty for the Respondent-Gujarat Maritime Board.

3. Learned Senior Counsel Shri Mihir Thakore referred to the papers and submitted that the Respondent Board has developed plots of different sizes for recycling of the ships of Alang. He submitted that pursuant to the directions of the Hon'ble Apex Court, the new policy/guidelines have been framed to increase the sizes of the existing plots considering the environmental and health safety issues of the workers. He pointedly referred to the policy/circular produced at Annexure-A dated 23.9.2009, which referred to amalgamation of small plots at Alang Ship-Recycling Yard. He emphasized referring to paragraph 2 that the guidelines have been framed to offer the existing vacant plots to the permission holders of adjoining working plots as it is declared. Learned Senior Counsel Shri Mihir Thakore submitted that the petitioner is allotted Plot No. 154 and the adjoining Plot No. 155, which is vacant. He therefore submitted that according to this policy/circular, at least half should be merged with his Plot. In fairness, he submitted that half of the other area of Plot No. 155 should be merged with Plot No. 156 so that it maintains the size of both the plots. Learned Senior Counsel Shri Mihir Thakore submitted that in fact after this directions and the guidelines, small plots are not made or allotted, as there has been conscious decision, for which he referred to Annexure-B, which is a minutes of the Inter-Ministerial Committee (IMC) on Ship Breaking Activities dated 17.1.2007, and he again emphasized the minutes of the meetings of the Inter-Ministerial Committee held on 28.2.2008, which is produced on record. He emphasized on "phasing out off smaller plots":--

"7. It was pointed out that the IMC is seized of the issue of phasing out of small plots for the last couple of years but not much progress has been achieved.

8. Representatives of GMB clarified that they have stopped allotting smaller

plots. In so far as existing holders of smaller plots are concerned, they are being persuaded to get their plots converted into bigger plots. As regards the study which was to be carried out by Infrastructure Leasing and Financial Services Ltd. (ILFS) the representative of GMB clarified that there were some changes with reference to the Terms of Reference and hence the study could not be started. The matter has since been resolved and it is understood that ILFS will initiate the study and it is expected that the results would be available in about 6 months time. ILFS would also draw up the parameters and minimum requirements for a modern ship breaking unit."

4. In the same way there is another meeting and discussion of the committee thereafter in the year 2009. Learned Senior Counsel Shri Mihir Thakore submitted that it was considering the safety of the workers and the other environmental issues, such decision has been taken. He pointedly referred to Clause-XII:-

"Safety of workers:- The IMC expressed concern over the incident of six labourers being burnt alive in an engine room at Alang Ship breaking yard on 12th August 2009. The GMB representatives informed that the mishap took place due to faulty work practices of the shipyard owner. The representatives of the Ministry of Labour, DGFASLI and DG Shipping also strongly endorsed the view that safety of workers and eliminating hazards and environmental concerns are issues where no leeway or compromise should be allowed and strong corrective action, including penalizing the defaulters, need to be taken. The Committee felt that the GMB should take immediate stringent action available under law, against such defaulters, including cancelling the licence for operating the plot. Both the GMB and ISSSAI should review the work norms and safety precautions to ensure that such fatal accidents do not recur."

5. Learned Senior Counsel Shri Mihir Thakore therefore submitted that the safety of workers and eliminating hazards and environmental concerns are issues where no compromise could be allowed and correcting strong corrective action was suggested. He submitted that it is pursuant to this, again, as it is referred, "Phasing out off smaller plots", it has been suggested, and thereafter the guidelines have been issued, for which there have been a discussions. He again referred to the 13th meeting of the Inter Ministerial Committee of ship breaking held on 8th July 2011 to support his submissions:-

"(vi) Phasing out of small plots:- Regarding phasing out of smaller plots it was emphasised guidelines should be followed strictly. The Vice-Chairman, GMB explained that there is a policy regarding phasing out smaller plots and that the policy is being followed by GMB. GMB to ensure reorganisation of larger plots and phasing out of smaller plots in a time bound manner."

Learned Senior Counsel Shri Mihir Thakore therefore submitted that the present petition may be allowed.

6. Per contra, learned Counsel Shri P.R. Nanavaty for the Respondent submitted

that as per the policy, the Board is required to consider the reservation policy as well as any such guideline or policy for the safety and other environmental issues. He referred to the affidavit in reply and pointedly referred to paragraph 5 and submitted that the application of the petitioner prior to such regulation cannot be considered. He submitted that as the Plot Nos. 155 and 156 are reserved for SC and ST category, such a permission cannot be granted, and therefore, the Board has considered the issue. He also referred to the minutes produced at page 75 that the Board has considered all these aspects and, in its wisdom, has come to the conclusion. He submitted that as it is a matter of policy decision with regard to reservation for SC and ST, the Court may not entertain the present petition. Learned Counsel Shri Nanavaty submitted that unless the decision can be said to be arbitrary, the Court should not interfere with such decision or the policy matter in exercise of discretion under Article 226 of the Constitution of India. Learned Counsel Shri Nanavaty submitted that the Respondent No. 1 Board is bound to adopt/implement the policy of the State, and therefore, they have to take necessary guidelines or the policy regarding the reservation.

7. Learned AGP Shri Bipin Bhatt has also referred to the affidavit in reply filed on behalf of the Respondent State produced at page 83 supporting the stand by learned Counsel Shri P.R. Nanavaty.

8. In view of this rival submissions, it is required to be considered whether the present petition can be entertained or not.

9. As could be seen from the record, pursuant to the observations made by the Hon'ble Apex Court in a litigation before it, the decision has been taken by the Court for increasing the area of the plots for the safety of the workers as well as considering the environmental issues. In fact, as could be seen from the circular/policy at Annexure-A dated 23.9.2009, which provide Amalgamation of small plots at Alang ship-recycling yard, which reads:-

"2. Cl. (9) of Schedule-V to the Regulation-2006 empowered the Vice-Chairman and Chief Executive Officer, GMB to convert the existing smaller size plots into bigger size. Guidelines for offering the vacant plot to the adjoining working plot were under consideration. As per the Board's Resolution No. 2545 passed in the 218th meeting held on 12/08/2009, guidelines/norms to offer existing vacant plots to the permission holder of adjoining working plot(s) is declared here in below."

Thereafter the guidelines have been made, which read:--

"Guidelines to offer existing vacant plots to the permission holder of adjoining working plot (s) at Alang-Sosiya ship recycling yard

(A) Location Arrangement:--

(1) Only vacant plots occupied by the GMB will be offered to the permission holder(s) of adjoining plot(s) for amalgamation.

(2) In case, the vacant plot is located in between two working plots having 30m width, half the width (15m) will be offered to both adjoining permission holders.

(3) Priority will be given to the adjoining working plot having 30m width.

(4) Amalgamation of vacant plot will be offered in such a way so as to enhance the width of working plot to minimum 45m.

(5) In case, where, vacant plot is located in between two merged plots, efforts will be made to enhance width of small plot located next to the merged plot by clubbing and rearranging plot boundary keeping dimension of the merged plot(s) unchanged.

(6) In no case, amalgamation of two working plots will be permitted.

(7) The permission holder of small plot, if found it difficult to carry out ship recycling, will have to surrender the permission to use such plot to GMB. After this, GMB will offer amalgamation of such plots as per above guidelines. In no case, shifting of existing working plot to another plot location will be allowed under the amalgamation.

(8) In case, there exist fixed assets in the vacant plot, allocation of part area shall be in such a manner to avoid split up of the particular assets. The decision of the VC and CEO in this regard shall be final and binding.

(9) If the permission holder of adjoining small plot(s) do not accept offer of amalgamation, permission of such small plot will not be renewed beyond 30/09/2009. Such plot(s) will subsequently be offered under amalgamation."

10. These guidelines seem to have been made after proper deliberation by the concerned Inter Ministerial Committee, minutes of which have been placed on record at Annexure-B collectively. It has been focused on two issues of the safety of the workers and phasing out of smaller plots which has been emphasized by learned Senior Counsel Shri Mihir Thakore.

11. A detailed discussion would also suggest about the various measures to be taken for the welfare or requirement of the workers working, and there is a reference to providing housing facility and also examining the option for tripartite agreement, sanitation facility, hospital and other related matters. There is a reference to the affidavit filed by the Ministry of Environment and Forest stating that the issues raised in the petition will be taken care of.

12. It is in this background, when the decision has been taken by issuing even the circular by the Respondent Board itself produced at Annexure-A, it is not a matter where the Court can be said to have been interfering with the policy of the department or the board. In fact it is rather a scrutiny at the stage of implementation of the policy, and if the policy or the decision, which has been taken pursuant to some litigation before the Hon'ble Apex Court after a conscious deliberation and consideration by different ministry, and if the stand, which is now sought to be taken is contrary, the Court would be under an

obligation to scrutinize the action of the Respondent Board in its discretion under Article 226 so as to do the justice and also to achieve the same goal as desired by the Respondent Board itself, when it has formed the guidelines/issued a circular which is at Annexure-A. The submissions, which have been made by learned Counsel Shri P.R. Nanavaty, sounds contrary to their own policy/circular when such a circular has been issued after the deliberation and the policy. It is too late now to argue that it is a matter of policy inasmuch as the policy is framed by the Board itself making that the permission should be granted to the holder of adjoining plot for merging the adjoining plot as provided in this circular itself. It is in this background, when their own policy provide for merger of the plots, the contention which has been raised referring to the affidavit in reply that some of the plots are only reserved for the SC and ST categories, and therefore, in spite of their own policy for phasing out off the smaller plots, such permission cannot be granted, is thoroughly misconceived. In fact the policy of reservation is one aspect, but the decision, which has been taken for the safety and environmental issues, would have to be applied uniformly, and it cannot be a matter of any such debate or argument that for the plots reserved for the SC and ST, such a circular or the policy would not be applicable. Further, on the contrary, the body like the Respondent Board cannot be heard to say that though there is a policy, which is to be implemented and applied uniformly, when it is touching about the safety of the workers and the environmental issues, there policy or the reservation aspects come in the way. In fact both stand on a different footing and this kind of argument contrary to their own circular cannot be sustained. Further, as rightly pointed out, the decision which has been taken and Resolution No. 2544 produced at page 76 where the entire plot No. 155 is decided to be merged with Plot No. 156 itself, is contrary to their own guidelines inasmuch as it is clearly providing that if there are two adjoining plots, then half of the plot would get merged with both the plots so that two plots could be increased. Therefore, the submission made by learned Counsel Shri Nanavaty cannot be sustained.

13. The another facet of the submission that it has been emphasized that in exercise of powers under Article 226, the Court should not interfere with the policy, is also thoroughly misconceived. In fact, when the Respondent Board has made the policy/circular, it has to abide by its own policy, which has been evolved for the safety of the workers and environmental issues pursuant to the observations made by the Hon'ble Apex Court. Further, when there is a complaint or when an application has been made that such a policy is not either implemented or there is a deviation, it will be subject to scrutiny by judicial review regarding any justification. The scope of judicial review covers all the executive actions and the policies and it has to meet with the necessary test of Article 14 and the concept of transparency, fairness and equality. It is well accepted that the judicial review is well accepted and recognized principle to ensure the fairness and, the degree of judicial review may depend on the facts of the case. Therefore, the doctrine of judicial review has to be considered in background of well recognized principle of promissory estoppel and legitimate

expectation. Therefore, the claim based upon such a principle of legitimate expectation can be sustained and the decision could be questioned if it is found to be unfair, unreasonable or violative of principles of natural justice.

14. The Hon''ble Apex Court in catena of judicial pronouncements has laid down that every action or such policy can be subject to the judicial review and the scope of judicial review is well settled. A useful reference can be made to the observations made by the Hon''ble Apex Court in a judgment reported in Jayrajbhai Jayantibhai Patel Vs. Anilbhai Jayantibhai Patel and Others, .

15. Therefore the submission that the Court should not interfere, is devoid of any merits and cannot be accepted. Rather the Court is under an obligation in such cases and to scrutinize the judicial review of the administrative action which apply with the standards of transparency, fairness and equality.

16. Therefore, the present petition deserves to be allowed and the accordingly stands allowed. The prayer in terms of paragraph 6(A) is granted. The Respondent Board is directed to grant permission to the petitioner for the allotment and merger of the Plot No. 154 admeasuring 30mts. X 45 mts., which belonged to the petitioner with vacant plot No. 155, which is in possession of the Respondent Board at Alang so as to increase the size of the plot in complying with their own circular at Annexure-A dated 23.9.2009. The said decision shall be taken and the permission shall be granted by the Respondent Board within 4 weeks. Rule is made absolute to the aforesaid extent. No order as to costs.

17. After the order was dictated, learned Counsel Shri P.R. Nanavaty has requested for the stay of the operation of the order, which cannot be granted in the facts and circumstances and therefore the request is refused."

4. The appellant herein-original respondent Board has taken policy decision to convert smaller plots in larger plots by amalgamating the plots vide circular dated 23/09/2019. The respondent was holding a plot No. 154 having width of 30 meter. Plot No. 155 and 156 were also having width of 30 meter. The petitioner claimed that his plot be merged with plot No. 155 so that it become 60 meter. The respondent contended that plot No. 155 is reserved for scheduled caste. It is not in dispute that plot No. 156 is vacant and is also for reserved category. Therefore, learned Single Judge has directed that out of plot No. 155, 15 meter width be given to the respondent and remaining 15 meter of plot No. 155 be added in plot No. 156 and result would be that plot No. 154 would become of 54 meter and plot No. 156 would become of 45 meter.

5. The observations made in this regard by learned Single Judge in para-16 of Special Civil Application No. 13684 of 2011 are relevant as stated herein above in paragraph-4 of the judgment.

6. We do not find any illegality in the order passed by learned Single Judge as it was in accordance with the circular issued on 23/09/2009.

7. This Letters Patent Appeal fails as none of the grounds urged by learned

Advocate Shri Nanavati persuade us to take a view different than that of learned Single Judge. Hence, we are not inclined to interfere with the findings of learned Single Judge.

8. As the main appeal is dismissed, no order is required to be passed in Civil Application No. 12917 of 2013 and the same stands disposed of accordingly. Time to comply with the order passed by learned Single Judge is extended for a period of one month from today.