
(2016) 04 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Application No. 3059 of 2016

Jignesh Jivanbhai Som

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 — Section 2

Citation : (2016) 04 GUJ CK 0036

Hon'ble Judges : Akil Abdul Hamid Kureshi and Alpesh Y. Kogje, JJ.

Bench : Division Bench

Advocate : B.S. Patel, Sr. Adv. and Chirag B. Patel, Advocate, for the Appellant;
Jirga Zaveri, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Akil Abdul Hamid Kureshi, J.—1. This petition is filed by an individual who is engaged in the business of collecting Timru leaves from various forest areas in the State of Gujarat which rights are put for auction annually. He has prayed for a direction for quashing and setting aside an order dated 16.01.2016 as at Annexure A to the petition under which, respondent No. 2-Gujarat State Forest Development Corporation [hereinafter to be referred to as "the Corporation"] has allotted 18 blocks of forest areas for collection of Timru leaves to various co-operatives.

2. Brief facts are as under:

"Respondent No. 2-Corporation was earlier engaged in various activities including for allotment of rights for collection of minor forest produce including Timru leaves. A policy for such purpose was framed under resolution dated 30.09.1995. This policy envisaged reservation of 40% of the blocks for being allotted to the co-operative societies. The price to be fixed for such allotment would depend on various factors including the price fetched in the earlier years and the price fetched in the current year in relation to unreserved blocks."

3. The Gujarat Panchayats Act, 1993 was amended w.e.f. 20.12.1997 by which sub section (5) of Section 108 of the Gujarat Panchayats Act, 1993 was added as under:

108. Government may vest certain and in Panchayat:--

(5) (a) For the purposes of this Act, there shall be vested in the village panchayat minor forest produce found (except found in the areas of National Parks or Sanctuaries) in such area of a forest as is situate in the jurisdiction of that village.

(b) The sale proceeds of the minor forest produce shall be paid into and form part of the village fund.

(c) Nothing in clause (a) shall be construed as vesting in the village panchayat the land in the area of forest referred to in clause (a) and trees and plantations thereon.

Explanation.--For the purposes of this sub section the expression "minor forest produce" shall have the same meaning as assigned to it in clause (9) of section 2 of the Gujarat Minor Forest Produce Trade Nationalisation Act, 1979."

4. In terms of sub section (5) of Section 108 of the Gujarat Panchayats Act thus the minor forest produce in the area of the forest situated within the jurisdiction of a village would now vest in the village panchayats. As per clause (b) of sub section (5), the sale proceeds of minor forest produce would be paid into and form part of village fund. In view of such statutory amendment, respondent No. 2-Corporation was no longer authorized to sale minor forest produce which right would now vest in the individual village panchayat. On 18.01.2003, therefore, the Government of Gujarat issued a resolution and authorized the Corporation to carry on the activities of collection and selling of minor produce for a period of one year on experimental basis upto 31.12.2003. This vesting of limited right into the Corporation was subject to certain conditions. One of the conditions was that after deducting administrative expenses, the income arising from sale of the rights for collection of minor forest produce such as Mahuda, Timru leaves etc. would be deposited in the District Panchayat. Granting of such rights would be through auction.

5. The petitioner points out that such policy was continued from time to time on same terms and conditions. According to the petitioner, therefore, with the amendment in the Gujarat Panchayats Act, 1993, and introduction of sub section (5) to Section 108 it was no longer the power of the respondent No. 2-Corporation to sale rights for collection of minor forest produce. It was only by virtue of the Government resolution that such right which had now vested in the village panchayat was assigned to the Corporation. The duty so cast had to be exercised subject to conditions imposed in the resolution.

6. For the present year, the respondent No. 2-Corporation had to dispose of as many as 113 forest blocks for the rights of collection of Timru leaves. After

initially including all such 113 blocks for the purpose of holding public auction, the Corporation suddenly reversed its policy and withdrew 18 out of 113 blocks from the auction proceedings and set apart such blocks for allotment without auction in favour of co-operative societies. The petitioner participated in the auction proceedings for the remaining blocks and, we are informed, was declared as successful bidder for six blocks for which rights have already been granted. The petitioner, however, contends that the action of respondent No. 2-Corporation of withdrawing 18 blocks from such auction was illegal. The Corporation should have put these 18 blocks also for auction. The decision to allot such blocks to individual co-operative societies without auction was wholly impermissible. On such basis, the present petition has been filed.

7. Learned counsel Mr. B.S. Patel for the petitioner vehemently contended that respondent No. 2-Corporation had no authority to allot the rights for collection of minor forest produce in view of sub-section (5) of Section 108 of the Gujarat Panchayats Act, 1993. The Corporation had a limited right to conduct auction as authorized by the Government. The Corporation, therefore, cannot dispose of any of the blocks without conducting auction. He submitted that such blocks have been allotted at an extremely low price. If public auction was held, the petitioner and other contractors would have participated and higher price could have been fetched. The village panchayats have been deprived of their rights of higher revenue.

8. On the other hand, learned counsel Mr. Chudgar for respondent No. 2 Corporation opposed the petition contending that the policy of reserving limited number of blocks for allotment without auction to co-operative societies has been in existence since decades. It aims at fulfilling the important object of ensuring that the co-operative societies of whose members are only tribal forest dwellers would also sustain out of the activity of collection of minor produce. He pointed out that the blocks for allotment without auction are rotated every year. The upset price is fixed taking into account the price fetched by such blocks in the last three auction proceedings. The procedure for allotment of such blocks thus is transparent and reasonable.

9. Respondents No. 3 and 4 are the co-operative societies which have been allotted some of the blocks out of the reserved 18 blocks. Advocates appearing for such societies also opposed the petition contending that the petitioner has no vested right of being allotted any block which has not been put for auction. The co-operative societies consist of tribal members who are forest dwellers. Policy of the Corporation is not under challenge and, in any case, serves a larger social purpose.

10. In the present petition, the central question is, whether the Corporation committed an error in not putting up 18 out of 113 blocks for right to collect Timru leaves for auction? In the context, the question is, can the petitioner object to such decision of the Corporation? These questions arise in the background where, as noted, the policy of respondent No. 2 Corporation, since

more than 20 years, has been to set apart a certain number of blocks for allotment to co-operative societies without auction. The reserved blocks are rotated every year where the upset price is fixed on the basis of consideration of the price fetched in last three years for such blocks.

11. It may be that with introduction of sub section (5) of Section 108 of the Gujarat Panchayats Act, 1993, the right to collect or to have collected the minor forest produce vests in the village panchayats within whose jurisdiction such forest areas are situated. However, as noted, the Government formulated a policy by which the Corporation would continue to perform the task of an agency who would distribute such rights as was being done earlier. The significant or perhaps the only change which came up was that now the produce out of allotment of such rights after deducting administrative expenditure would be deposited in the District Panchayat which, in turn, would distribute amongst the village panchayats. It is also true that in such Government resolution it is provided that such rights would be sold through auction. Nevertheless, it is not village panchayats, who are before us complaining about any shortfall in the sale price. It is individual contractor, who aspires to get such allotment, who questions the decision of the Corporation to allot few of the blocks without auction. In our opinion, at the hands of the petitioner we would not examine such a grievance. The panchayat concerned have not raised any such grievance. It is not the right of the petitioner to insist that every block must be put to auction so that the petitioner and other similarly situated contractors can bid for such blocks as well. As is well settled through series of judgements of the Supreme Court that though conducting auction for disposal of the public property or the Government resources is one of the recognized and preferred mode, it is not necessary that in every such case, it must be the sole means of disposal of the public resources. There are number of factors and considerations which would weigh with the authorities. In some cases, fetching maximum revenue may not be the sole criteria. If it is found that in the interest of tribal forest dwellers who have sustained on the minor forest produce since centuries, it is necessary that few of the blocks are set apart to be allotted without auction but only in favour of co-operative societies consisting of such persons, the question of fetching the highest sale consideration may become secondary.

12. When we prima facie find that the policy of the Corporation which is in existence since long is not otherwise unreasonable or arbitrary, when we find that the fixation of the upset price for allotment of such blocks without auction is otherwise transparent and reasonable and we when further find that the petitioner has no vested right to insist that each and every block of forest must be disposed of through auction, the petition must fail.

13. It would, however, be open for respondent No. 2 Corporation to take clear decision in consultation with the Government for future allotment of blocks so that such similar disputes may not arise. With these observations, the petition is dismissed.