
(2000) 07 AHC CK 0128

In the Allahabad High Court

Case No : C.M.W.P. No. 25497 of 1994 and 48174 of 1999

Majhgawan Matsyajivi Sahkari Smiti Ltd.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Citation : (2000) 4 AWC 2615

Hon'ble Judges : G.P. Mathur, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Nawal Kishore Saxena, Arti Saxena, R.B. Singhal, Shashi Nandan and M.F. Ansari, for the Appellant; S.C. and P.S. Baghel, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The controversies raised in the two writ petitions are interconnected and, therefore, they are being disposed of by a common order.

2. Writ Petition No. 25497 of 1994, has been filed praying that a writ of mandamus be issued commanding respondent No. 1 and other respondents to pass appropriate orders on the application moved by the petitioner on 14.10.1993. The other prayer made is that respondent No. 1 be commanded to grant lease to catch fish in Majhgawan jalashaya in favour of the petitioner co-operative society. The case of the petitioner is as follows : The petitioner is a co-operative society consisting of local fishermen which has been registered under the U. P. Co-operative Societies Act. The lease to carry on fishing operation in Majhgawan jalashaya was settled in favour of the petitioner from 1988 to 1994. The petitioner made an application on 14.10.1993 to the Director of Fisheries. U. P., praying that the lease to carry on fishing operation in Majhgawan Jalashaya may again be settled in its favour for a period of 10 years, and for this purpose, the petitioner was ready to pay 20 per cent over and above the amount for which the lease had been settled in its favour in the previous year. The petitioner filed writ petition in this Court being Writ Petition No. MI of 1994, wherein a direction was issued on 4.1.1994 that the application moved by the petitioner on

14.10.1993 may be decided within 15 days of the filing of the copy of the order. The certified copy of the order dated 4.1.1994 was filed by the petitioner before the Director of Fisheries along with recommendation of the Dy. Director of Fisheries to grant lease in its favour. A notice was issued wherein it was mentioned that the right to catch fish in certain tanks and ponds in Jhansi and Hamirpur districts shall be put to auction on 25.6.1994 and in the said notice, Majhgawan jalashaya was also included. However, subsequently, the said auction notice with regard to the pond in question was cancelled on account of representation of the petitioner to the Chief Minister. The petitioner claims that in terms of the Government Order issued by the State Government on 30.5.1981 where a cooperative society of local fishermen is available and is willing to take the contract, the lease has to be granted in its favour on the basis of average income of the preceding years and no auction can be held in order to settle the aforesaid contract or to grant lease.

3. The Dy. Director of Fisheries, Jhansi region, issued a public notice that the right to catch fish in categories 11 and III reservoirs (jalashaya) of Mahoba district shall be settled on the basis of an auction on 25.11.1999 in which Majhgawan jalashaya was also included. The petitioner then filed Writ Petition No. 48174 of 1999 praying that the aforesaid public notice be cancelled and a lease to carry on fishing operation in the aforesaid Jalashaya for a period of 10 years be granted in its favour. A further prayer was made for quashing the Government orders dated 14.7.1993 and 9.9.1993.

4. The State has filed counter-affidavits in both the writ petitions and also to some applications moved in the earlier writ petition. The position which emerges from the averments made in the aforesaid counter-affidavits and the documents annexed therewith is as follows. The fisheries are of two kinds, viz, (1) inland fisheries and, (2) marine fisheries. For the purpose of settling the right to catch fish, the inland fisheries is dealt with separately in three categories and they are (1) ponds. (2) reservoirs and (3) rivers. The ponds upto an area of 2 hectares are under the control of Gaon Sabha and the right to catch fish in such pond is governed under the Government order dated 4.1.1994. Fishing in river water is controlled by the revenue department and is governed by Government order No. 12-1 (3)/77 R. 2 dated 30.5.1981. The reservoirs are man made large-sized multipurpose water bodies and are under the jurisdiction of irrigation/ fishery department and are used for culture/capture of fisheries. The reservoirs are of four categories depending upon their area and size and they are governed by Government Order No. 2586/12-E-3--1981 dated 30.5.1981. Majhgawan reservoir has an area of 490 hectares and comes in category II. The petitioner was granted a lease for a period of three years at the rate of Rs. 33,000 per annum in 1988 which expired in 1991. The lease was extended in favour of the petitioner for a further period of three years on 10 per cent enhanced premium and this lease also expired in June, 1994. Even before expiry of the lease, the petitioner moved an application on 14.10.1993 for extension of period of lease in its favour for a further period of three years on 20 per cent enhancement of

premium amount. While the application was pending, it filed Writ Petition No. Nil of 1994 which was disposed of on 4.1.1994. The application moved by the petitioner on 14.10.1993 for granting it a further lease for a period of three years was rejected by the Director of Fisheries on 19.4.1994 and the decision was communicated to it. The copy of the said order has been filed as CA-1V to the counter-affidavit. Concealing the said fact, the petitioner filed Writ Petition No. 25497 of 1994 praying that a writ of mandamus be issued commanding the respondents to settle the lease of fisheries rights in its favour and also to pass orders on its application dated 14.10.1993. In this writ petition, a Division Bench issued notice to the respondents on 4.8.1994 and further directed that the auction of the fishery rights shall not be permitted. While the aforesaid stay order dated 4.8.1994 was operating, another co-operative society, namely, Arjun Matsyajivi Sahkari Samiti filed Writ Petition No. 2778 of 1996, stating that the said society was ready and willing to take the lease of the reservoir on a premium of Rs. 2.50 lakhs per annum and it may be settled in its favour otherwise it should be settled through open auction and that it should not be given on 20 per cent enhanced amount to the petitioner, in this writ petition, a Division Bench passed an order on 1.7.1996 directing the respondents to hold auction for grant of fishery rights in accordance with the Government orders dated 14.7.1993 and 3.9.1993. The interim order dated 4.8.1994 passed in Writ Petition No. 25497 of 1994 filed by the petitioner and the interim order dated 1.7.1996 passed in Writ Petition No. 2778 of 1996 filed by Arjun Matsyajivi Sahkari Samiti were directly contradictory to each other and, consequently, the fishery department itself carried on fishing operation from December, 1996 to March, 1997 and in this period of four months, it earned Rs. 1.60 lakhs as revenue. Subsequently, on a complaint the Joint Director of Fisheries conducted a surprise inspection and as some irregularities were found the departmental fishing was stopped. Thereafter, Writ Petition No. 25497 of 1994 and Writ Petition No. 2778 of 1996 were heard by a learned single Judge who passed an order on 29.5.1997 which is as follows :

"Heard counsel for parties. Interim order dated 4.8.1994 is modified to the extent that the auction proceedings in respect of water portion in dispute shall go on but the lease shall not be settled by the respondents until further orders of this Court."

Interim order passed in Writ Petition No. 2778 of 1996 is also modified accordingly."

5. The case of the respondents is that so far as reservoirs are concerned, the procedure for grant of right to catch fish is governed by Government Order No. 2586/12-E-3-1981 dated 30.5.1981 which gives in detail the procedure in all the four categories of reservoir of categories I, II III and IV. The procedure for category II reservoir, which is relevant for the purpose of the present controversy, as detailed in the Government order is being reproduced below in original :

^^Js.kh&2 ds tyk''k;ksa esa fuEukuqlkj dk;Zokgh dh tk,%&

?d? eNyh fudkyus dk Bsdh rhu o''kZ ds fy, fn;k tk, A

?[k? Js.kh nks ds tyk''k;ksa esa eRL; cht lap; eRL; foHkkx }kjk fu/kkZfjr ek=k esa izR;sd o''kZ Bsdsnkj }kjk fd;k tk;sxk vkSj bl gsrq eRL; cht eRL; foHkkx ls ;k eRL; fodkl fuxe ls ?; djds Mkyk tk;sxk A ;fn Bsdsnkj {ks=h; mifuns''kd }kjk fu/kkZfjr frfFk rd eRL; cht tyk''k;ksa esa lap; ugha djrk gS rks foHkkx }kjk ;Fkk le; cht lap; dj fn;k tk;sxk vkSj bl dk;Z ij O;; dh x;h IEiw.kZ /kujkf''k Bsdsnkj ls olwy dh tk;sxh A

?x? Js.kh nks ds tyk''k;ksa dk fuLrkj.k e.Myh; eq[;ky; ij gksxk vkSj Bsds dh Loh?fr {ks=h; mifuns''kd eRL; ds gLrk{kj ls fuxZr gksxh A tyk''k; dh uhykeh cksyh Loh?fr gks tkus ds i''pkr Bsds ds foHkUu ''krks? ds vuqikyus ds IEcu/k esa visf{kr dk;Zokgh djus rFkk Bsdh jnn djus] tekur tCr djus dk vf/kdkj vkfn funks''kd] eRL; esa gh ;Fkkor fufgr jgsxk A

??k? izR;sd tyk''k; dk dksVk fu/kkZfjr fd;k tk;sxk vkSj ;g Hkh lqfuf''pr fd;k tk, fd dksVk ls vf/kd eNyh dh fudklh u gks A dksVk xr rhu o''kZ ds mRiknu dh vkSlr okf''kZd fudklh ds vuqlkj j[kk tk, A

?p? eNyh fudkyus dk Bsdh ^^vk?V jkbV vkDlu** ds vk/kkj ij Js.khokj izfr''kr ,oa dksVk fu/kkZfjr lhekUrxZr fn;k tk;sxk A uhyke dhy cksyh izfro''kZ dh nj ls yxk;h tk;sxh A

?N? eNyh fudkyus dk Bsdh mPpre cksyh cksyus okys O;f? dks fn;k tk;sxk] ijUr q;fn iath?r eNwvk lgdkjh lfefr Hkh cksyh esa Hkkx ysarh gS vkSj ;fn lfefr dh mPpre cksyh ls lfefr dh 75 izfr''kr ls de ugha gS] rks lfefr dks eNyh fudkyus dk Bsdh mldh cksyh ij ns fn;k tk;sxk A

?t? uhyke ls IEcu/kvU; ''krksZ ds izfr js[kkafdr O;f?@lfefr dks Bsdh Loh?fr fn;k tkrk gS mls uhyke lekIr gksus ij ,d o''kZ dh cksyh dh IEiw.kZ /kujkf''k rqjUr tek djuk vfuok;Z gksxh vkSj f}rh; o''kZ dh IEiw.kZ /kujkf''k uhyke dh frfFk ls 6 ekg ds vUnj tek djuh gksxh] blh izdkj r`rh; r''kZ dh IEiw.kZ /kujkf''k uhyke dh frfFk ls ,d o''kZ ds vUnj tek djuh gksxh A ;fn nwljh vkSj rhljh fd''rs ;Fkk le; tek ugha dh x;h rks fdjk;k ns; gksus dh frfFk ls Bsdh lekIr djds iqu% uhykeh fd;k tk ldrk gS A bl Js.kh ds tyk''k;ksa ea iath?r eNqvk lgdkjh lfefr;ksa dks ;g vfrfjDr NwV izkIr gksxh fd og ,d o''kZ dh cksyh dh vk/kh /kujkf''k rqjUr tek djs vkSj ''ks''k /kujkf''k vk/ks vk/ks dh fd''r es izR;sd rhu ekg ckn tek djs A

?V? Js.kh nks ds tyk''k;ksa dk uhyke fuEukuqlkj xBr lfefr }kjk e.Myh; eq[;ky; ij fd;k tk;sxk %&

1- mi fodkl vk;qDr &v/;{k

2- v/kh{k.k vfHk;Urk flapkbZ foHkkx }kjk euksuhr vf/kdkjh &lnL;

3- funks''kd] eRL; }kjk euksuhr mifuns''kd eRL; &lnL;

4- {ks=h; mifuns''kd] eRL; &lfpo

6. It is further stated in the counter-affidavit that the World Bank had decided to grant aid for the purpose of development of shrimp and fish culture. The State Government identified some reservoirs in different districts for this purpose and the Majhgawan reservoir was also one of them. In order to implement the aforesaid World Bank aided project, a Government order was issued on 14.7.1993 which was slightly modified by the Government order dated 3.9.1993. The said Government order also provided that the right to catch fish will be settled on the basis of auction and the lease will be granted for a period of 10 years on an enhancement of 10 per cent of the premium amount for the first year. Under the Government order dated 14.7.1993, any one could participate in the auction and no special concession or facility was to be given to a co-operative society. The World Bank scheme was for a fixed period, namely, from 1992-93 to 1998-99, and after 30.6.1999 the said scheme came to an end. According to the respondents though the reservoir in question had been selected for development under the World Bank scheme but on account of interim order passed on 4.8.1994 in Writ Petition No. 25497 of 1994 filed by the petitioner, the auction to settle the right to catch fish could not be held.

7. The principal relief claimed by the petitioner is that though his lease has expired in 1994, the same may be extended in its favour for a further period of 10 years on 20 per cent enhancement in premium. The procedure for granting lease for carrying on fishing operation in reservoirs of different categories under the control of fisheries department has been provided in Government order No. 2586/12-E-1981 dated 30.5.1981 and the procedure for category II reservoir, which governs the case in hand, has been reproduced in Hindi in extenso. Clause (Chha) of the Government order clearly provides that the contract shall be given on the basis of an outright auction. It also provides that if a registered cooperative society of fishermen participates in the auction and the bid made by it is not below 75 per cent of the highest bid, the contract shall be awarded to it. Therefore, it is clear that there is no provision at all for grant of lease without holding an auction. Even a co-operative society of fishermen has to participate in the auction and it is entitled to certain benefits and concessions in the event the bid made by it is not below 75 per cent of the highest bid made in the auction. The petitioner wants extension of contract in its favour for 10 years straightaway without holding any auction when in fact under the Government order the contract has to be awarded to the highest bidder in an open auction and that too only for a period of three years. The petitioner filed copy of a letter written by Shri Tribhuwan Prasad, Chief Secretary, U. P. Government on 30.5.1981 to District Magistrate of six districts as Annexure-3 to the writ petition describing it as Government order and on its basis, made a claim that the contract be extended in its favour on twenty per cent enhanced premium. The very first sentence of the letter shows that it was with regard to fisheries in rivers and not with regard to reservoirs (jalashaya), in the later part of the letter, reference is again made to rivers and to Gaon Sabhas and Bhumi Prabandhak Samitis (Land Management Committees). The dispute here is with regard to fisheries in a

reservoir of Irrigation Department and not to fisheries in rivers where Gaon Sabhas are also concerned. The letter of the Chief Secretary has no application at all to the facts of the present case and is wholly irrelevant. The claim made by the petitioner is, therefore, without any basis and cannot at all be granted. In fact, the original contract granted in favour of the petitioner in 1988 expired in 1991 and, thereafter, there should have been a fresh settlement on the basis of an open auction. The petitioner somehow managed to secure an extension in 1991 for a further period of 3 years which was contrary to the Government orders applicable to the case.

8. The other prayer made in the writ petition is that the respondents be directed to pass an appropriate order on the petitioner's application dated 14.10.1993. The specific case of the respondents is that the said application was rejected by the Director of Fisheries on 19.4.1994 on the ground that in view of the Government orders, the settlement of contract has to be made on the basis of auction. A copy of the order has been filed as Annexure-CA-IV to the counter-affidavit. There was no occasion for making such kind of prayer in the writ petition which was filed on 3.8.1994 when the application had already been disposed of.

9. Sri Shashi Nandan has strenuously urged that the petitioner-co-operative society was registered under the provisions of the U. P. Cooperative Societies Act on 30.3.1987 relying on the representation made by the State Government that lease for grant of fishing rights will be granted in favour of a co-operative society of fishermen without requiring such a society to participate in open auction wherein others would also be allowed to make a bid and, consequently, the respondents are now estopped from granting lease on the basis of an auction. In support of his submission learned counsel has placed reliance on *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, . *Shrijee Sales Corporation and Another Vs. Union of India (UOI)*, , and *M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others*, . We are unable to accept the submission made. The petitioner-society was registered under the provisions of the U. P. Co-operative Societies Act on 30.3.1987 and long before the said date, the Government had issued Government order No. 2586/12-E-3-1981 on 30.5.1981 laying down the procedure for grant of lease with regard to the reservoirs under the control of fisheries department. No representation had ever been made by the Government that the lease with regard to such category of reservoirs would be given to co-operative societies without holding any auction. Learned counsel is unable to point out as to how the petitioner has altered its position relying upon the alleged representation of the Government or other respondents. It cannot be said by any stretch of imagination that by merely getting a co-operative society of fishermen registered, the petitioner has altered its position to its disadvantage. That apart, the Government order does confer some benefits or advantages to a co-operative society as under clause (Chha), the lease would be

granted in favour of the co-operative society if the bid offered by it is not less than 75 per cent of the highest bid made at the auction. Under clause (Ja) immediately after the close of the auction, the highest bidder has to deposit the entire amount for one year but a concession is provided to a co-operative society as it is required to deposit only half of the said amount and the balance in quarterly instalments. Though on facts no claim of the petitioner founded on the principle of estoppel is established, nevertheless it is clear that under the relevant Government orders, a cooperative society is given certain advantages and benefits.

10. In *Fertilizer Corporation Kamagar Union v. Union of India* AIR 1981 SC 344 at 350, a Constitution Bench observed as follows :

".....We want to make it clear that we do not doubt the bona fides of the authorities, but as far as possible, sales of public property, when the intention is to get the best price, ought to take place publicly. The vendors are not necessarily bound to accept the highest or any other offer, but the public at least gets the satisfaction that the Government has put all its cards on the table."

11. In *State of Uttar Pradesh Vs. Shiv Charan Sharma and Others*, , the dispute was with regard to grant of lease for excavating sand and minor minerals. It was observed that the State should sell the right by public auction and not on application of a party as public auction with open participation and a reserved price guarantees public interest being fully subserved.

12. In *Khilodhar v. Addl. District Magistrate (RA), Allahabad and others* 1987 ALJ 590, a Division Bench of this Court, speaking through K.J. Shetty, C.J. (as his lordship then was) held as follows with regard to grant of fisheries rights :

"When the statute prescribes particular procedure for disposing of certain rights the authorities should not be permitted to circumvent that procedure. The disposal of any right by public auction is a wholesome procedure. It is advisable to follow that procedure even if it has not been specifically prescribed but when prescribed it must be faithfully followed. It must not be disregarded."

13. In *Union of India and others Vs. Hindustan Development Corpn. and others*, , it was observed that the Government while entering into contracts or issuing quotas is expected not to act like a private individual but should act in conformity with certain healthy standards and norms. An action should not be arbitrary, irrational or irrelevant. It was further held that in the matter of awarding contracts inviting tender is considered to be one of the fair ways. Thus, it is well-settled by a catena of decisions that while entering into contracts or granting other form of largesse the Government cannot act arbitrarily at its sweet-will and it cannot choose to deal with any person as it pleases. An open auction guarantees fairness as everyone gets a chance to participate and the Government gets the best price for its goods. The system of auction envisaged in the Government order dated 30.5.1981 is, therefore, eminently just and proper and cannot be faulted on any ground. The grant of lease without holding the

auction is bound to lead to corruption and loss of revenue to the State.

14. In Writ Petition No. 48174 of 1999, the petitioner has prayed for quashing of the notice for holding the public auction on 25.11.1999 for grant of fishing rights in respect of Majhgawan reservoir. In the supplementary counter-affidavit, it is stated that due to administrative reasons the auction could not take place on 25.11.1999 and another notice was issued fixing 7.12.1999. Even on this date the auction could not take place and then another notice was issued on 11.12.1999 fixing 23.12.1999 as the date of auction. Wide publicity including in some leading news papers was given of this auction. In the said auction, 9 parties participated and the highest bid was offered by Matsyajivi Sahkari Samiti Ltd. Mauranipur through Secretary Liaqat AH for Rs. 15.20 lakhs per year. The next highest bid was offered by Arjun Matsyajivi Sahkari Samiti Ltd., Kalpahar, through its Secretary Ram Das for Rs. 15.05 lakhs. The bid of Matsyajivi Sahkari Samiti, Mauranipur, was accepted as it was the highest. It is noteworthy that the petitioner had paid only Rs. 36,300 for the same reservoir in the year 1993-94, and it wanted extension of lease in its favour on 20 per cent enhanced premium for a further period of 10 years. The grounds urged in this writ petition are same as urged in Writ Petition 25497 of 1994, which we have already discussed above. Thus, there is absolutely no ground for either quashing the auction notice or the auction which has already been held.

15. Sri Shashi Nandan, learned counsel for the petitioner, has submitted that the bid made in the auction is too high and is wholly unworkable and, in fact, the society which has got the right would indulge in malpractices. At the time of hearing of the writ petition, Sri Subhash Chandra Agarwal, Fisheries Development Officer. Mahoba and Dr. Salim Sultan. Dy. Director of Fisheries of the region were personally present. They informed the Court that on account of the stay orders passed in the writ petitions filed by the petitioner, no lease has been granted in favour of any party after 1994 and practically no fishing operation has been done as a result whereof the size of the fish in the reservoir has grown very much and an average fish is of 15 kg. weight. They have further informed that this big size fish will be used for the purpose of producing seedlings which fetch a very high price in the market and it is for this reason that the bid in the auction was high.

16. In the writ petition, a prayer has also been made for quashing of the Government orders dated 14.7.1993 and 3.9.1993. Learned counsel did not make any submission in this regard. These Government orders were issued for World Bank aided project of shrimp and fish culture. As already mentioned, the said scheme came to an end in 1998-99. There is no occasion now for quashing the aforesaid Government orders.

17. Before parting with the cases, we would like to observe that the petitioner got lease of the Majhgawan reservoir for a small amount of Rs. 33,000 in 1988 for a period of three years. Contrary to rules, it got extension of lease for three years in 1991 on 10 per cent enhancement of premium, i.e., for Rs. 36,300 and

enjoyed exclusive right till 1994. This extension was against the Government order, as stated in paragraph 7 of the counter-affidavit filed in Writ Petition No. 48174 of 1999. Thereafter, it succeeded in forestalling the auction of the reservoir by taking recourse to several writ petitions. In 1999 the same reservoir has fetched Rs. 15.20 lakhs for one year as premium in an open auction. The loss of revenue suffered by the State cannot be compensated in any manner. The reservoir also missed the opportunity of further development out of the aid provided by the World Bank. In the name of a co-operative society, the petitioner succeeded in causing substantial damage to public interest.

18. For the reasons mentioned above, both the writ petitions lack merit and are hereby dismissed with costs. Stay orders are vacated.