

(2014) 04 AHC CK 0063

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 56149 of 2013

Matsya Jeevi Sahkari Samiti Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 9 ADJ 288 : (2014) 4 ADJ 290 : (2014) 4 ALJ 701 : (2015) 2 AWC 1198 : (2014) 124 RD 29

Hon'ble Judges : Satish Chandra, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Harshita Raghuvanshi, Advocate for the Appellant; Dhananjay Awasthi, C.S.C., M.W. Faridi, Madan Lal Srivastava, Madhur Prakash, Prem Parakash Tiwari, S.K. Pal, Satya Prakash and Shashi Nandan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—By this writ petition, the petitioners have challenged the advertisement dated 26.9.2013 as well as terms and conditions of auction issued by Gorakhpur Development Authority for settlement of fishing rights in Rajgarh Jheel. Affidavits between the parties have been exchanged, with the consent of the learned counsel for the parties, we have heard the writ petition finally.

2. Counter-affidavit has been filed by respondent Nos. 2, 3 and 4 and affidavit of compliance has also been filed by Principal Secretary, Department of Housing and Urban Planning, Government of Uttar Pradesh. Supplementary-affidavit has also been filed by the petitioners to which supplementary counter-affidavit has been filed by the respondent Nos. 2 and 3.

3. The brief facts of the case as emerge from the pleadings of the parties are; The respondent No. 3 Gorakhpur Development Authority owns a big pond measuring 1691.16 acre known as Ramgarh Jheel in the development area of city of Gorakhpur. The Gorakhpur Development Authority has been granting

Theka/licence of fishing rights in the said pond from time to time. An advertisement dated 31st May, 2013 was issued by Gorakhpur Development Authority notifying auction of fishing rights on 7.6.2013. The advertisement mentioned that the registered Machuwa Samiti and registered Matsya Jeevi institution falling in the local development area shall be entitled to participate in the auction. It further mentioned that in addition to twelve villagers falling in the geographical area of Ramgarh Tal, the Matsya Jeevi Cooperative Societies and Self Help Group of concerned block shall also be entitled to participate in the auction. The auction scheduled on 7.6.2013 was cancelled. The Gorakhpur Development Authority constituted a committee for formulating terms and conditions for grant of five years fishing rights in the Ramgarh Tal. The said committee held its meeting on 7th August, 2013 and finalised various terms and conditions. One of the terms and conditions finalised by the said committee was that in the first phase of auction, registered cooperative fishermen society belonging to 12 villages, whose land was acquired under Ramgarh Tal Pariyojana shall alone be permitted to participate in the auction. In the event more than one society come up to submit their tender, auction shall be held amongst them and contract shall be given to the highest tenderer. The condition further mentioned that in the event no settlement takes place in first phase then in the second phase the registered Matsya Jeevi Cooperative Societies of the Tehsil/District shall also be permitted to participate, following the same procedure. If in the second phase no settlement takes place, the fishermen society of entire State shall be allowed participation. The minimum reserved price of Rs. 1,85,48,294.00/- was fixed. The Gorakhpur Development Authority, thereafter, issued advertisement dated 26.9.2013, notifying auction/tender for 10.10.2013. This writ petition was filed by the petitioners on 7.10.2013 praying for following reliefs:

(a) issue a writ, order or direction in the nature of certiorari calling for the records of the case and quashing the entire auction proceeding which is scheduled to take place on 10.10.2013 in pursuance to the advertisement dated 26.9.2013 (Annexure 6 to the writ petition) as well as terms and conditions of auction furnished by the Gorakhpur Development Authority, Gorakhpur in so far as it confines the participation of the registered Matsya Jeevi Sahkari Samiti belonging to 12 notified villages falling within the acquired land of Ramgarh Tal Pariyojna only in the Ist Phase of auction.

(b) Issue a writ, order or direction in the nature of mandamus directing the respondents not to hold the auction for settlement of contract in respect of the Ramgarh Tal ignoring the terms and conditions furnished by the Gorakhpur Development Authority, Gorakhpur in pursuance to the advertisement dated 26.9.2013 (Annexure 6 to the writ petition).

(c) Issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioners' society and other societies to participate in the tender notice in pursuance to the advertisement dated 26.9.2013

(Annexure 6 to the writ petition).

(d) Issue any other suitable writ, order or direction as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

(e) Award cost of the petition in favour of the petitioner.

4. The auction fixed for 10.10.2013 could not take place and no settlement has yet been made.

5. We have heard Ms. Harshita Raghuvanshi, learned counsel appearing for the petitioners, Sri Suresh Singh, Additional Chief Standing Counsel appearing for the State, Sri Prem Prakash Tiwari appearing for respondent Nos. 2 and 3, Sri Shashi Nandan appearing on behalf of respondent No. 4 and Sri Madhur Prakash assisted by Sri Sunil Kumar Pandey, learned counsel for the respondent No. 5.

6. Learned counsel for the petitioners challenging the advertisement dated 26.9.2013, submitted that the conditions incorporated in the advertisement that in the first phase of auction only the registered Cooperative Societies belonging to 12 notified villages shall be allowed participation is invalid. He submits that according to the Government Order dated 8th March, 2000 as modified by Government Order dated 16th January, 2006, in first phase of auction all registered Cooperative Fisheries Societies of the block in addition to fisheries societies of the local area has to be allowed participation. It is submitted that earlier advertisement dated 31.5.2013 allowed participation of other societies of block which condition has been arbitrarily changed by the Gorakhpur Development Authority. It is submitted that Gorakhpur Development Authority is bound by Government Order dated 8th March, 2000 and 16th January, 2006 and could not have prescribed any terms and conditions of the auction, different from those which are prescribed in the aforesaid Government Orders. It is submitted that action of the Gorakhpur Development Authority is arbitrary and violative of Article 14 of the Constitution of India. Learned counsel for the petitioners has placed reliance on two judgments of Supreme Court in Union of India (UOI) and Another Vs. International Trading Co. and Another, and Judgment of the Apex Court in Jagdish Mandal Vs. State of Orissa and Others,

7. Learned counsel appearing for the Gorakhpur Development Authority refuting the submission of counsel for the petitioners contended that the aforesaid Government Orders are not applicable with regard to settlement of fisheries rights in pond owned by Gorakhpur Development Authority. He submitted that the Government Orders were issued to regulate the settlement of fishing rights in the water bodies/ponds which were owned and managed by fisheries department of the State and Fisheries Development Corporation. It is submitted that Gorakhpur Development Authority is the owner and entitled to manage the settlement of fisheries rights and lay down the terms and conditions for such settlement. It is submitted that conditions providing for fishing right of participation to Cooperative Fisheries Societies of 12 notified villages whose land was acquired for Ramgarh Tal Pariyojana is a valid condition. He submits that

most of the land owners of the aforesaid 12 villages had become landless on account of acquisition in the year 1987 for beautification of Tal, hence, they have right and claim to participate to the settlement of fisheries rights in the Tal. It is submitted that the Government Order dated 8th March, 2000 and 16th January, 2006 were issued by the State Government only with regard to water bodies which were controlled by Fishery Department. It is submitted that for the water bodies which are under control by the Gorakhpur Development Authority and municipalities several Government Orders were issued from time to time, beginning with the Government Order dated 28.9.1978. It is submitted that petitioners have right of participation in the second phase of auction it being registered Fisheries Cooperative Societies of the block/district.

8. Learned Additional Chief Standing Counsel supporting the action of Gorakhpur Development Authority submitted that Gorakhpur Development Authority is the competent authority to lay down terms and conditions for settlement of its pond.

9. Learned counsel appearing for the respondent No. 4 also supporting the action of Gorakhpur Development Authority submitted that the petitioners are not registered Cooperative Societies of 12 villages of Ramgarh Tal which have been notified. It is submitted that the 12 villages are those villages whose land was acquired under Ramgarh beautification scheme. It is submitted that on account of acquisition of land of those villages the registered Fishery Co-operative Societies of those villages surrounding the Tal are entitled to participate in the auction in the first phase and no error has been committed by the Gorakhpur Development Authority in giving them right to participate the first phase of auction. It has further been submitted by learned counsel that the issue regarding the applicability of Government Orders dated 8.3.2000 and 16.1.2006 has already been decided by a Division Bench of this Court in Writ Petition No. 55460 of 2009 (Nishad jal Mazdoor Sahkari Matsya Jeevi Samiti Ltd. and another v. State of U.P. and others) on 21st July, 2010 where the Division Bench held that the aforesaid Government Orders are not applicable regarding settlement of Ramgarh Tal. It is submitted that above writ petition related to the auction notice issued by Gorakhpur Development Authority itself regarding Ramgarh Tal and the issues are fully covered by the aforesaid judgment.

10. We have considered the submissions of learned counsel for the parties and perused the record.

11. From the submissions made by learned counsel for the parties and pleading on record following are the issues which arises for consideration in this writ petition.

(i) Whether the grant of fishing rights in Ramgarh Tal owned and managed by Gorakhpur Development Authority is to be governed and regulated by Government Order dated 8th March, 2000 as modified by order dated 16.1.2006?

(ii) Whether the action of the Gorakhpur Development Authority laying down terms and conditions for settlement of fishing rights vide its advertisement dated

26.9.2013 confining the participation of the registered Matsya Jeevi Cooperative Societies belonging to 12 notified villages falling within the acquired land of Ramgarh Tal Pariyojna only in the first phase of auction is arbitrary, unreasonable and violative of Article 14 of Constitution of India?

12. The first issue is regarding the applicability of the Government Order dated 8.3.2000 and 16.1.2006 for settlement of fishing rights in Ramgarh Tal. From the facts and pleadings of the parties brought on the record, it is clear that Ramgarh Tal earlier belonged to Nagar Nigam, Gorakhpur which was managing the Tal. After constitution of Gorakhpur Development Authority, the Ramgarh Tal was, subsequently, purchased by Gorakhpur Development Authority from the Nagar Nigam, Gorakhpur. Under the Ramgarh beautification scheme 1207.76 acres land of 12 notified villages have been acquired by the Gorakhpur Development Authority. After acquisition of the land of aforesaid 12 villages green cards have been issued to the land owners mentioning the details of the land acquired and left after acquisition. Copy of some green cards have been brought on record and the same has been annexed as Annexure-C.A.-1 to the counter-affidavit filed by respondent No. 4. Some of the land holders have become landless after acquisition of their land. The Gorakhpur Development Authority in the first phase has confined the participation of registered fisheries societies belonging to these 12 villages only. The Government Orders dated 8th March, 2000 and 16th January, 2006 have been brought on record as Annexure-3 to the writ petition. The subject of the Government Order dated 8.3.2000 is to the following effect:

13. The Government Order dated 16.1.2006 also contained the same subject. A perusal of the subject indicate that the said Government Order was issued for regulating the water bodies under the control of fisheries department and fisheries development corporation.

14. The respondents have brought on record the various Government Orders issued by State of U.P. for settlement of the fisheries rights under the control of the municipalities and local bodies. The Government Order dated 28.9.1978 has been annexed as Annexure-S.A.-1 to the supplementary counter-affidavit filed by respondent Nos. 2 and 3. The said Government Order was issued on the subject of auction of a pond situated in Nagar Palika.

15. In the counter-affidavit filed by the respondent No. 4 various Government Orders issued by the State Government for regulating the grant of fishing rights by local bodies have been brought on record. The Government Orders dated 25th September, 1978, 28th September, 1978, 15th May, 1987 and 28th February, 2008 have been brought on record. The subject of the Government Order dated 25th September, 1978 is as follows:

16. The Division Bench of this Court while hearing this writ petition on 12.11.2013 directed the State Government to file an affidavit. An affidavit has been filed on 8.11.2013 by Principal Secretary, Department of Housing and Urban Planning, Government of Uttar Pradesh, Lucknow in which the State

Government has come up with the stand that for auction of Ramgarh Tal the terms and conditions are to be decided by Gorakhpur Development Authority.

17. The Division Bench judgment relied by learned counsel for the respondents in the case of Nishad Jal Mazdoor Sahkari Matsya Jeevi Samiti Ltd. and another v. State of U.P. and others, related to terms and conditions of grant of fishing rights in Ramgarh Tal itself which have considered the issue of applicability of Government Order dated 8th March, 2000 and 16.1.2006. In the said case, when the Gorakhpur Development Authority issued on advertisement dated 13th August, 2009 laying down the terms and conditions which confined the participation of the registered Matsya Jeevi Cooperative Societies belonging 12 notified villages the writ petition was filed. It is useful to quote the prayer in the writ petition which were quoted in the judgment itself to the following effect:

(i) issue a writ, order or direction in the nature of certiorari calling for the records of the case and quashing the entire auction proceedings allegedly held by the GDA on 10.9.2009 in pursuance of the advertisement dated 30.8.2009 as well as the terms and conditions of auction (as contained in Annexure 9 to this writ petition) furnished by the GDA in so far as it confines the participation of the registered Matsya Jeevi Sahkari Samitis belonging to 12 notified villages falling within the territorial jurisdiction of the GDA only in the first phase of auction;

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to hold fresh auction for settlement of contract in respect of the Ramgarh Tal ignoring the terms and conditions furnished by the GDA pursuant to the Advertisement dated 30.8.2009 permitting the petitioner and other societies to participate in the same.;

(iii) issue such other and further writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;

(iv) award cost of the petition in favour of the petitioner.

Brief facts giving rise to the writ petition which emerge from the pleadings of the parties are; that there is a big pond which is owned and managed by respondent No. 3 known as Ramgarh Tal in which fishing rights are settled and granted by respondent Nos. 3 and 4.

18. The Division Bench after considering submissions of learned counsel for the parties regarding applicability of Government Orders dated 8.3.2000 and 16.1.2006 held as following:

Subject of the Government Order dated 16.1.2006, is also to the same effect, i.e., determination regarding the management of ponds of category No. 3 and 4 maintained by Fisheries Department. A perusal of the aforesaid Government Orders clearly indicates that the aforesaid Government Orders were issued with regard to the settlement of ponds which are managed by Fisheries Department or Matsya Vikas Nigam. The said Government Orders are not applicable with regard to ponds which are to be settled by the Development Authority. However,

in the counter-affidavit as well as in the information which has been given under the Right to Information Act which has been filed by the petitioner himself, it has been stated that the procedure in the Government Order dated 16.1.2006 has been adopted by the Vice-chairman and the villages which are falling under the Ram Garh Pariyojana and the registered societies of those area were eligible to participate in the first round, the copy of which has been filed as Annexure 8 to the writ petition which clearly contemplates that in the auction which was to take place the local registered societies within the area of Development Authority were entitled to participate and in event substantial amount is not received in the second round the societies of Tehsil and District are entitled to participate. The conditions of the auction mentioned in Annexure 9 are in line of the said notice. The pond being in the ownership of the Development Authority, it was open to the Development authority to lay down the terms and conditions for auction. The petitioner as well as the respondent without any demur has submitted their tenders and participated in the proceedings. The petitioner has also submitted his tender which fact is clearly mentioned in the original proceedings dated 10th September 2009 which has been produced by the learned counsel for the Development Authority for perusal of the Court. The societies, i.e., respondent Nos. 4 and 5, which were within area of the Ram Garh Tal, were permitted participation and there being two societies, the further bid was taken and highest bid of an amount of Rs. 78,35,000/- was accepted of respondent No. 5.

In view of the aforesaid, the submission of the learned counsel for the petitioner the procedure as prescribed in Government Order dated 8.3.2000 was to be followed cannot be accepted. The Government Order dated 8.3.2000 is not applicable for the Development Authority and the said Government Order having not been adopted by the Development Authority the above submission cannot be accepted. Learned counsel for the petitioner further submitted that in fact Government Order dated 16.1.2006 is only an amendment in the earlier Government Order and when they adopted Government Order dated 16.1.2006 it means that the entire Government Order was adopted. We fail to see any substance in the submission. Substantially, the Government Order dated 16.1.2006 which provides procedure for settlement of category 3 and 4 ponds has been adopted by the Development Authority. The said procedure having been applied, we see no error in the procedure adopted for settling the right.

19. The writ petition was dismissed by Division Bench of this Court on 21st July, 2010. The same submission are being raised in this writ petition regarding the applicability of Government Orders which submissions were repelled by the earlier Division Bench of this Court in its judgment dated 21st July, 2010.

20. In view of the above discussion, we are of the view that the Government Order dated 8.3.2000 and 16.1.2006 were issued for regulating the settlement of fishing rights under ponds of fisheries department and fisheries development corporation and were not issued for regulating the pond under the control of local bodies with regard to which separate Government Orders were issued from time

to time. However, it is open for the Gorakhpur Development Authority and local bodies to adopt the procedure and manner of settlement as far as applicable while settling the fishing rights.

21. Now, we come to the second submission. The thrust of the submission of learned counsel for the petitioners is that the action of Gorakhpur Development Authority in laying down the terms and conditions in the advertisement dated 26.9.2013 confining the first phase participate only to the fishing cooperative societies of 12 notified villages is arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

22. Learned counsel for the petitioners has placed reliance on two judgment of Apex Court, namely, *Union of India v. International Trading Company* and *Jagdish Mandal v. State of Orissa* (supra).

23. The Apex Court in *Union of India v. International Trading Company* and others, had occasion to consider the scope of judicial review of the policy decision of the Government. It was laid down by the Apex Court that Governmental policy even in contractual matters have to satisfy the test of reasonableness. Following was laid down in paragraphs 14, 15, 16 and 17:

14. What remains now to be considered, is the effect of permission granted to the 32 vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as 32 vessels are concerned. But it cannot come to the aid of respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case; direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India, 1950 (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs or par. Even if hypothetically it is accepted that wrong has been committed on some other cases by introducing a concept of negative equality respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.

15. It is (SIC) law that Article 14 of the Constitution applies also to matters of Governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

16. While the discretion to change the policy in exercise of the executive power, when not trammled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily on by any ulterior

criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

17. Where a particular mode is prescribed for doing an act and there is not impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

24. The next judgment relied by the learned counsel for the petitioners is the case of Jagdish Mandal v. State of Orissa, which was a case where the Apex Court has considered the scope of judicial review in contractual matters. In the said case Apex Court after referring several earlier judgments of Apex Court on the scope of judicial review of award of contract laid down following in paragraph No. 22:

22. We have already noticed that while the Committee acted on the letter dated 14.3.2005 of the Superintendent of posts, the High Court acted on an Inquiry Report submitted by the Officer in Charge of Junagarh Police Station during the pendency of the writ petition. When the SLP came up for consideration on 25.1.2006, this Court directed the State to place on record the report of the Superintendent of Post Offices and the Police investigation report. Accordingly, the State placed three reports before this Court. The first is the detailed Vigilance Enquiry Report of the Postal Department holding that the TA Account pass book No. 154120 issued by Sub-Post Master, Mukhiguda should not be considered as genuine. The second is the Inquiry Report dated 16.9.2006 of the Officer in charge of Junagarh police station reiterating his earlier report submitted to the High Court that the pass book is genuine and a sum of Rs. 1,70,000 was deposited by fifth respondent in postal TA Account No. 154120 on 6.12.2004. The third is the report of the Superintendent of Police, Kalahandi, dated 28.10.2006, opining that fifth respondent did not deposit Rs. 1,70,000 on 6.12.2004 and that the Sub-Post Master, Mukhiguda had shown the date of deposit as 6.12.2004 in order to help fifth respondent to get his tender accepted. While the inquiry report of the Postal Vigilance Cell and the letters from postal department clearly holds that the TD Account Passbook No. 154120 produced by fifth respondent was not genuine, the report of the office in charge of the police

station, concludes that the passbook is genuine and not forged. But significantly the subsequent police report dated 28.10.2006 by a higher authority, namely the Superintendent of Police, Kalahandi, states that fifth respondent had obtained a pre-dated passbook in connivance with the Sub-Post Master Mukhiguda.

25. There cannot be any dispute to the proposition laid down as above by the Apex Court in the above two cases. The action of the State or its instrumental even in matter of awarding of control has to be fair and reasonable. Even if the said decision relates to change of any policy it should conform to the statutory provisions and should be fairly made, any auction done arbitrarily or with ill motive has to be struck down. The core issue is that whether the action of Gorakhpur Development Authority confining participation in the first phase of auction to the registered fishermen of 12 villages is arbitrary violative of Article 14 of the Constitution. As noted above for Ramgarh Tal project more than 1200 acres of land was acquired of the aforesaid 12 villages. It is common knowledge that the fishermen living on the bank of River, Tal and Pond use the fishing as their livelihood in which they are traditionally engaged. The State and its instrumentals from time to time have taken decision to grant fishing rights to registered Cooperative Societies of fishermen of local area. Even the Government Order dated 8th March, 2000 and 16th January, 2006 reflect the policy of giving preference to the fishermen Cooperative Societies of local area. The action of Gorakhpur Development Authority confining the participation in the first phase of auction of the registered fishing society of 12 notified villages cannot be said to be arbitrary and violative of Article 14 of the Constitution of India. It is relevant to note that in the year, 2010 also the Gorakhpur Development Authority had confined the participation of registered fishery societies of above mentioned 12 villages in first phase of auction which is clear from the Division Bench judgment of this Court in Nishad jal Mazdoor Sahkari Matsya Jeevi Samiti Ltd. and another v. State of U.P. and others (Supra) which action was upheld by the Division Bench. It is stated by the Gorakhpur Development Authority that when notice dated 31st May, 2013 was issued there were mistakes which were corrected and after finalising the terms and conditions by a committee constituted by Gorakhpur Development Authority advertisement dated 26.9.2013 was issued.

26. We do not find any infirmity in the advertisement dated 26.9.2013. In view of the foregoing discussions, we are of the view that action of the Gorakhpur Development Authority in confining the participation of registered fisheries societies of 12 villages cannot be said to arbitrary and unreasonable. The petitioners are not entitled for any relief as claimed in the writ petition. The writ petition is dismissed.