
(2019) 07 SC CK 0128

In the Supreme Court Of India

Case No : Civil Appeal No. 5609 Of 2019

M/S. R. K. Industries (Unit-Ii) LLP

APPELLANT

Vs

S.C/S.T Shipbreakers Association & Ors

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Citation : (2019) 07 SC CK 0128

Hon'ble Judges : R. F. Nariman, J;Sanjiv Khanna, J;Surya Kant, J

Bench : Full Bench

Advocate : Shekhar Naphade, Kunal Cheema, Aditi Parkhi, Abhikalp P. Singh, Rajendra Singhvi, K. K. L. Gautam, Arundhati Chakraborty, Sanjeev Malhotra, Tushar Mehta, Gursharan Virk, Nakul Mohta, Misha Rohatgi, Lalit Mohan, Anupam Lal Das, Apoorv Shukla, Anirudh Singh, Krishanu Barua, Prabhleen Kaur

Final Decision : Allowed

Judgement

R. F. Nariman, J

Leave granted.

The challenge in the instant appeal is by a person who was not a party before the High Court. The reason why we have heard Mr. Shekhar Naphade, learned senior counsel appearing on behalf of the appellant, and why we have given his client leave to appeal, is only to set right the interpretation to The Gujarat Maritime Board (Conditions & Procedures for granting permission for Utilizing Ship Recycling Plots) Ship Recycling Regulations, 2015 (hereinafter referred to as '2015 Regulations' for brevity).

The skeletal facts necessary to decide this case are as follows:

In February, 2017, the Gujarat Maritime Board issued a tender for auction of eight vacant plots at Alang-Sosiya Ship Recycling Yard, District Bhavnagar, for the reasons best known to it, as it chose to do so despite the fact that on this date, 20 vacant plots were available for auction. Considering the 2015

Regulations supra, the Gujarat Maritime Board decided that out of these plots, four should be reserved for ST category, two for SC category and two would go to the General category. Respondent Nos. 1, 2 and 3 before us, viz. the S.C./S.T. Shipbreakers Association, filed Special Civil Application No. 5509 of 2017 before the High Court of Gujarat at Ahmedabad on 14.03.2017 in which it challenged the allocation of plots to SC and ST candidates stating that the Regulations, if properly read, would necessarily mean that the reservation of 14 per cent and 7 per cent for ST category and SC category respectively, should be of the total number of plots that are available and not merely those that are sought to be auctioned. If this were to be so, then all the eight plots would have to be reserved for SC and ST candidates inasmuch as the total reservation quota as a percentage of the total number of plots had not been reached. On 22.04.2017, the tender notice issued by the Gujarat Maritime Board was stayed by the High Court, and by the impugned judgment dated 16.04.2018, the High Court held that not only would all the eight plots that were subject matter of the auction notice be reserved for the ST and SC candidates but that, even for the remaining number, i.e., if 20 plots were to be taken as a block, all 20 would have to be reserved for ST and SC candidates inasmuch as the quota for these candidates, going by the percentage of total plots, had not been reached. In this view of the matter, the High Court quashed the tender notice and directed the Gujarat Maritime Board as follows:

"12. In view of the above and for the reasons stated above, Special Civil Application No. 5509 of 2017 is allowed. It is held and directed that respondent GMB shall make reservation of 7% plots belonging to SC Category and 14% of plots to ST Category out of /considering the Total Plots and not Vacant Plots as on today (as contended on behalf of the GMB). The respondent GMB is also directed to simultaneously hold the auction of all the vacant plots and apply the reservation as directed herein above i.e., including all the vacant plots bigger size plots and / or smaller size plots. Consequently, the impugned tender at Annexure F (collectively) issued by the respondent no. 2 in February 2018 for 8 plots at Alang-Sosiya Ship Recycling Yards is hereby quashed and set aside and the respondent GMB is directed to invite fresh tenders/bids in light of the present judgment and order. The said exercise shall be completed at the earliest but not later than six months from today. Rule is made absolute to the aforesaid extent. No costs."

Shri Shekhar Naphade, learned senior counsel appearing on behalf of the appellant herein, has attempted to argue his peculiar facts before us in which he sought to challenge the fact that the plot licensed to him has itself been set up for auction, together with the fact that since he wishes to amalgamate with the neighbouring plot, this amalgamation would become impossible if all vacant plots were to be reserved for ST and SC categories, as was required by the impugned judgment. We may state that we are not going into the individual facts of Shri Naphade's client's case. Suffice it is to state that we are granting his client a limited permission to file a special leave petition against the impugned judgment

challenging its correctness. It will be open for him, in separate proceedings, to challenge action taken against his client by the Gujarat Maritime Board up to date, including action taken by the Maritime Board pursuant to our judgment. All contentions in this behalf are left open both to his client as well as to the Gujarat Maritime Board.

Shri Naphade has assailed the High Court's interpretation of the 2015 Regulations by painstakingly taking us through the history of various regulations, pointing out the difference between the earlier regulations and the present Regulation, and ultimately pointing out that clause 5.4 of the 2015 Regulations must be read as an adjunct to clauses 5.1 and 5.2. As a result of this, clause 5.4 cannot be read torn out of context along with the definition of "plot" contained in the Regulations so as to arrive at the result arrived at by the High Court. In his submission, therefore, having regard to the fact that the earlier Regulation of 2006 specifically spoke of reservation "out of total plots" which language is missing from the current Regulation, it is clear that the context of the current Regulation requires reservation only of the plots that are sought to be auctioned.

To this, Shri Gursharan Virk, learned counsel appearing for the Gujarat Maritime Board, argued that the issue today is really academic inasmuch as Shri Naphade's client should not be allowed permission to file the special leave petition at all. The Board has since taken a decision to follow the Gujarat High Court's judgment. He also argued before us that if the Gujarat High Court's judgment were not followed, incongruous results might follow. He gave us an example, by which, assuming that only three plots were vacant and were auctioned, it would be impossible to work out a reservation of 14 per cent and 7 per cent of these three plots. So, obviously, what is meant by reservation is reservation only out of the total plots. Even otherwise, according to him, the appellant ought not to be granted any relief given the fact that he has woken only at this late stage.

We have also heard Mr. Rajendra Singhvi, learned counsel appearing for respondent Nos. 1-3, who has argued that the tender notice of February, 2017, could be said to fall between two stools. It could only be upheld if, according to him, the High Court's judgment were right, because it is only if reservation is taken of total plots - six out of eight plots would be reserved. If the contrary construction is adopted, it is obvious that, at best, perhaps, one plot could be reserved. The Gujarat Maritime Board, therefore, though it ought to have reserved all eight, has really followed the principle of reservation from out of total number of plots, which is the correct principle to be followed in the facts of this case.

Having heard learned counsel for all the parties, we may first go to The Gujarat Maritime Board (Conditions and Procedure for granting permission for Utilising Shipbreaking Plots) Regulations, 1994 (hereinafter referred to as 1994 Regulations' for brevity). In these Regulations, paragraph 9 laid down reservation for ST and SC candidates as follows:

"9. Out of plots which were vacant as on 3rd August, 1992 or fell vacant thereafter, or any new plot which is developed thereafter 7 per cent of these plots shall be reserved for granting permission to Co-operative Societies all of whose members belong to Scheduled Castes, and 14% plots shall be reserved for Co-operative Societies all of whose members belong to Scheduled Tribes. All the terms and conditions specified in the Government of Gujarat, Roads & Buildings Department Vernaculars Resolution No. 2 LPW-1290-25435-GH dated 3rd August, 1992 shall be treated as forming part of these Regulations ----- Scheduled Caste/ Scheduled Tribe applicants included in the list from category ---- in Regulation 4, shall be permitted to utilize plots on reservation basis on fulfillment of ----- terms and conditions specified in those Regulations and in the Schedule hereto and thereafter, ----- other applicants of SC/ST categories, permission for utilizing the plots shall be granted on tender-cum-auction basis."

A perusal of paragraph 9 of the 1994 Regulations would show that reservations were to be based only on three categories of plots viz., those that were vacant on 03.08.1992; or those that fell vacant thereafter; or any new plot which is developed thereafter. A reading of these Regulations would show, therefore, that reservation at this juncture, was not from out of the total number of plots but only of the three categories mentioned hereinabove.

The 1994 Regulations were supplanted by the Gujarat Maritime Board (Conditions and Procedures for granting permission for Utilising Shipbreaking Plots) Regulations, 2006 (hereinafter referred to as '2006 Regulations' for brevity) by clause 9 by which reservations for plots were made as follows:

"9. Out of total plots 7 per cent of these plots shall be reserved for granting permission to Co-operative Societies of all of whose members belong to Scheduled Castes, and 14% plots shall be reserved for Co-operative Societies of all of whose members belong to Scheduled Tribes. All the terms and conditions specified in the Government of Gujarat, Roads & Buildings Department Vernacular Resolution No. LPW-1290-25435-GH dated 3rd August, 1992 and Government of Gujarat, Port & Fisheries Department Resolution No. WKS-1099-CM, MLA 82 (17) GH dated 4/1/2000 shall be treated as forming part of these Regulations.

Explanation for the purpose of these Regulations before calculating 7% for the Co-operative Societies belonging to the members of Scheduled Caste and 14% for the Cooperative Societies belonging to the members of Scheduled Tribe categories, the Chief Executive Officer & Vice Chairman shall reserve 10 plots for granting permission for ship recycling activities on ship to ship basis as provided in Regulation herein above."

The scheme of these Regulations would clearly show that there has been a vital change in the reservation policy insofar as vacant plots to be auctioned are concerned. The vital change is contained in the opening words of clause 9 which

states "'Out of total plots'....." This situation obtained until the present 2015 Regulations were enacted, substituting the 2006 Regulations. By these Regulations, a new Chapter 5 was inserted. What is relevant for our purpose are paragraphs 5.1 to 5.4 which read as under:

"5.1 The Chief Executive Officer may grant permission to use plots for ship recycling in respect of-

- a. a plot which is newly developed
- b. a plot which is vacant
- c. a plot which has fallen vacant on account of cancellation/termination of the permission.

5.2 Procedure : All such plots, shall be offered for use for ship recycling after following the procedure of Tender-cum-Auction.

5.3 Tender-cum-Auction:

The upset price for tender cum auction will be Rs.540/- per sqm per year. The terms and conditions of the tender document shall be fixed by the Board.

5.4 Allocation for the Reserved Categories: 7% and 14% of the plots shall be reserved for Scheduled Castes and Scheduled Tribes respectively for granting permission for utilization of ship recycling plots."

The bone of contention between the parties is, what is the meaning of the expression "the plots" contained in paragraph 5.4. The High Court has held that "the plots" must be read with the definition of "plot" contained in the Regulations, which is contained in paragraph 15 as follows:

15. "Plot" means piece of land adjacent to waterfront or otherwise earmarked by the Board for the purpose of ship recycling having dimensions specified in the permission letter. This shall include existing plot or plots that may be developed in future within the ship recycling yard under the Gujarat Maritime Board."

If this interpretation is to be accorded, then the High Court is right in stating that the expression "the plots" would include total plots and not merely plots to be auctioned.

It is important to first notice the context of paragraph 5.4 of the 2015 Regulations. The marginal note of clause 5.4 indicates the drift of the provision as follows:

"Allocation for the reserved categories".

If one would ask oneself the question as to what is to be allocated, the answer is to be found in clause 5.1 and 5.2. What is to be allocated, therefore, is only plots which are newly developed; plots which are already vacant; and plots which have fallen vacant on account of cancellation/termination of the permission. Clause 5.2

is even more explicit in its language. In that it states "All such plots" are to be auctioned. Once clause 5.4 is interpreted keeping in view the context of clauses 5.1 and 5.2, it is obvious that the expression "the plots" contained in clause 5.4 has reference only to plots that are to be auctioned, which are mentioned in clauses 5.1 and 5.2. Once this is so, the expression "plots" must take colour from the context in which it is placed. Indeed, the definition clause is itself expressly subject to context to the contrary.

This being the case, it is a little difficult to agree with the High Court that reservation is to take place only out of the total plots and not the plots to be auctioned. In point of fact, the 2015 Regulations are an express departure from the earlier Regulations of 2006, which, in turn, were a departure from the earlier Regulations of 1994. The argument of Mr. Virk that if only three vacant plots were to be auctioned, reservation of 21% of this figure would be impossible is an argument which flies in the face of the express language of the 2015 Regulations, coupled with the fact that the preceding 2006 Regulations, which had the words "Out of the total plots....." is missing in the 2015

Regulations. In the case of reservation of vacant plots of a smaller number that are put to auction, it is for the Board to work the reservation policy contained in the 2015 Regulations in a non-arbitrary fashion, giving effect to reservation as authored by us hereinabove. This being so, we set aside the judgment of the High Court. However, it is made clear that there being no challenge by any General candidate to the reservation made out of the eight plots of six plots in favour of SC and ST candidates, this reservation will continue only for the purpose of the auction of eight plots. All future tenders/auctions will abide by the interpretation given by us in our judgment today.

With these observations the appeal is allowed.

The protection granted by our order dated 29.03.2019 will continue for a period of four weeks. The appellant, as has been stated hereinabove, is free to adopt whatever proceedings is available to him in law. Any challenge made by the appellant in proceedings hereafter would be heard on its own merits. All the contentions therein are open to the appellant as well as the Gujarat Maritime Board.