
(1990) 11 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 4945 of 1985

Satrudhan Sahani and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-11-1990

Acts Referred:

Citation : (1990) 11 PAT CK 0027

Final Decision : Dismissed

Judgement

N.P. Singh, J.—The petitioners have questioned the validity of the settlement of a tank known as "Lal Pokhar Sahasupan" within the Darbhanga Municipal Corporation in favour of respondents Nos. 8 to 11 (hereinafter referred to as "the respondents"). The petitioners and the respondents are fishermen and members of Bakcrganj Fisherman Co-operative Society Limited, Darbhanga (hereinafter referred to as "the Society").

2. An advertisement was published in the newspapers by the Chief Executive Officer, Fish Farmers Development Agency, Darbhanga (hereinafter referred to as "the Agency") inviting applications from persons engaged in fishing for settlement of the tank aforesaid for a period of ten years with effect from 1-4-1985, in accordance with the terms and conditions laid down in Revenue Department letter No. 272 dated 11-2-1985. Pursuant to that advertisement, applications on behalf of the petitioners as well as the respondents were filed. The Chief Executive Officer of the Agency recommended settlement in favour of the respondents. The recommendation of Chief Executive Officer was placed before the selection committee which approved the suggestion aforesaid. The petitioners filed an objection before the Collector of the district, objecting to settlement in favour of the respondents. The Collector, Darbhanga directed the Additional Collector to re-examine the matter and to submit a report. The Additional Collector submitted his report to the Collector. In his report, it was pointed out that three out of the four respondents had completed the training given by the Agency and as such they had a better claim for taking settlement.

The Collector directed that the settlement be made in favour of the respondents. The petitioners filed an appeal before the Minister, Fishery Department, which was dismissed. Thereafter the present writ application was filed before this Court.

3. A Bench of this Court, in view of the judgment of the Supreme Court in the case of *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, and the Full Bench judgment of this Court in the case of *Chetlal Sao and Another Vs. State of Bihar and Others*, dismissed this writ application, on 7-4-1986, saying:--

"Since this writ petition must be founded on the bedrock of the preliminary objection to its very maintainability, it becomes wholly unnecessary to recount the facts. It suffices to mention that the four petitioners herein, in the context of a sairat settlement have, inter alia, sought a mandamus commanding the official respondents that the fishery tank be settled with them. It is the admitted position that no formal registered lease deed for the fishery rights has even remotely been executed in favour of the petitioners. On the other hand, it is not disputed that a lease agreement for settlement of pisciculture and fishery rights in the disputed tank has been duly executed and registered in favour of the private respondents for the period --- 1st April, 1985 to 31st March, 1995..... It is common ground that on this point the matter stands concluded against the writ petitioners by the recent Full Bench judgment in *Chetlal Sao v. The State of Bihar* (supra) which in terms rests substantially and wholly on the reasoning in *Sipahi Singh's case* (supra)."

According to learned Judges, in absence of a registered deed of lease in favour of the petitioners, a writ application on their behalf for quashing the settlement of the tank in favour of the respondents was not maintainable, in view of the aforesaid Full Bench judgment of this Court in the case of *Chetlal Sao* and of Supreme Court in the case of *Sipahi Singh*.

4. Being aggrieved by the aforesaid order passed by this Court a special leave application was filed before the Supreme Court on behalf of the petitioners. The Supreme Court passed the following order:--

"I. That the judgment and order dated 7th April, 1986 of the High Court of Patna in Civil Writ Jurisdiction Case No. 4945 of 1985 be and is hereby set aside and the case be and is hereby remanded back to the Patna High Court for consideration on merits with the directions that the said High Court do restore to its file Civil Writ Jurisdiction Case No. 4945 of 1985 and do dispose it of as expeditiously as possible after taking into consideration all the facts and circumstances of the case.

2. That there shall be no order as to costs of the said appeal in this Court;

3. That the status quo as obtaining between the parties herein on this the 20th day of October, 1986 with regard to the possession of the tank in dispute shall continue in the meanwhile,"

5. As per aforesaid direction of the Supreme Court, this application was listed for hearing. Before the Division Bench, on behalf of the petitioners it was urged that as the Supreme Court had set aside the earlier order passed in this writ application and had directed to dispose of the writ application on merit, it shall be deemed that the view expressed by the Full Bench in the case of Chetlal Sao and another even in respect of the administrative instructions and circulars issued by the State Government regarding settlement of jalkars and tanks has been overruled. Then this case was referred to a Larger Bench.

6. From a bare reference to earlier order passed in this writ application by this Court, it shall appear that the learned Judges referred to the judgment of the Supreme Court in the case of the Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh (supra) and the Full Bench judgment of this Court in the case of Chetlal Sao v. The State of Bihar (supra) for dismissing the writ application on the ground that it was not maintainable as "no formal registered lease deed for the fishery rights has even remotely been executed in favour of the petitioners". As that finding on the question of maintainability has been set aside by the Supreme Court, by the order aforesaid, and a direction has been given to hear this writ application on merit, it has to be held that the Supreme Court has overruled the view expressed by the Full Bench in Chetlal Sao's case (supra), "that a writ of mandamus would not be maintainable in the absence of a concluded registered contract for the lease of the sairat".

7. It may be pointed out that in the case of Chetlal Sao (supra) main reliance had been placed by the Full Bench on the judgment of the Supreme Court in the case of The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh (supra). It appears that this Court in the case of the Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. had restrained the Co-operative Society in question from acting on the basis of a letter dated 29th June, 1976 addressed by the Department of Revenue and Land Reforms, Government of Bihar and had directed to execute the lease of the fishery rights in question in favour of petitioner before this Court (respondent No. 1 before the Supreme Court) and to put him in possession of the Jalkar. The Co-operative Society filed a special leave application before the Supreme Court. It was urged before the Supreme Court that a writ application before the High Court was not maintainable, since there was no completed, binding and enforceable contract between the State Government and the petitioner before the High Court, as contemplated by Article 299 of the Constitution. The Supreme Court held that as neither any settlement of the Jalkar in favour of the petitioner before this Court had been made nor any deed had been executed in the manner prescribed by Article 299 of the Constitution, the petitioner could not have invoked the writ jurisdiction of this Court.

8. It appears that the aforesaid view has not found favour with the Supreme Court in its later decisions in the cases of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Kasturi Lal Lakshmi Reddy,

Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and Ram and Shyam Company Vs. State of Haryana and Others, . In the case of Ramana Dayaram Shetty v. The International Airport Authority of India and others (supra), larger question was formulated by the Supreme Court as to what are the constitutional obligations of the State, when it takes action in exercise of its statutory or executive power? Is the State entitled to deal with its property in any manner it likes or award a contract to any person it chooses without any constitutional limitations upon it? What are the parameters of its statutory or executive power in the matter of awarding a contract or dealing with its property? After pointing out that "modern welfare State which is committed to egalitarian values and dedicated to the rule of law", it was held that "having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondent, but was bound to conform to the standard or norm laid down in para 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years" experience as such should be eligible to tender". It was further pointed out that the action of the Authority in accepting the tender of the 4th respondent, even though they did not satisfy the prescribed condition of eligibility, "was clearly discriminatory, since it excluded other persons similarly situate from tendering for the contract". It may be mentioned that the petitioner of that case had neither entered into any agreement nor any registered document had been executed in his favour but that objection did not stand in his way while invoking the writ jurisdiction of the High Court.

9. In the case of Kasturi Lal Lakshmi Reddy, etc. v. The State of Jammu and Kashmir (supra) again it was pointed out (at page 1999 of AIR):--

".....unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner, it has to be exercised for the public good..... If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

10. Again in the case of Ram and Shyam Company v. State of Haryana (supra) it

was said that Government is not free like an ordinary individual, in selecting recipient for its largesse and it cannot choose to deal with any person it so pleases "in its absolute and unfettered discretion" and Courts can examine such actions on the touch-stone of reasonableness and public interest.

11. In yet another case *Harminder Singh Arora Vs. Union of India (UOI) and Others*, the tenders were invited for supply of fresh buffalo and cow milk. The appellant before the Supreme Court was eligible for submitting tenders. Although his tender was lowest, the tender of Government Milk Scheme was accepted. It was said (at page 1534 of AIR):

"In the instant case, the instrumentalities of the State invited tenders for the supply of fresh buffaloes and cows milk and, therefore, this case has to be decided on the basis of bid by the tenderers. There was no question of any policy in this case. It is open to the State to adopt a policy different from the one in question. But if the authority or the State Government chooses to invite tenders then it must abide by the result of the tender and cannot arbitrarily and capriciously accept the bid of respondent No. 4 although it was much higher and to the detriment of the State."

12. Recently, in the case of *Star Enterprises etc. etc. v. The City and Industrial Development Corporation of Maharashtra Ltd.* (1990) 2 JT 401 it was pointed out by a Bench of the Supreme Court (at page 403) : --

"In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves long stakes and availability of reasons for action on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process."

13. In view of series of judgments of the Supreme Court, now it is not possible to dismiss a writ application filed on behalf of a person who feels that he has been discriminated by the State Government or an Authority which can be held to be a "State" within the meaning of Article 12 of the Constitution in matters of settlement of fishery rights in tanks land jalkars belonging to the State, only on the ground that no registered document has been executed in favour of such petitioner by the competent authority. When the Supreme Court, by the aforesaid order passed in connection with this case itself, directed that the writ application be heard on merit after setting aside the earlier order passed by this

Court, in my view, the decision of the Full Bench in Chetlal Sao's case (supra) on the question of maintainability of a writ application in absence of a registered document stands overruled.

14. Now the question as to whether the other part of the decision in Chetlal Sao's case (supra) saying that administrative instructions and circulars issued from time to time for the lease of fishery rights in tanks (sairats) vested in the State are not statutory in nature and binding on the Government has also been overruled by the Supreme Court, needs to be examined. On behalf of the petitioners it was pointed out that as the earlier order passed by this Court in this application was based on the Full Bench judgment in Chetlal Sao's case (supra), it will be deemed that the aforesaid Full Bench judgment has been overruled even so far its view in respect of the nature of administrative instructions and circulars is concerned.

15. From a bare reference to the earlier order passed by this Court it shall appear that this application had been dismissed only on the ground that it was not maintainable, as no registered instrument had been executed in favour of the petitioners which was necessary before the petitioners could invoke the writ jurisdiction of this Court, in view of the judgment of the Supreme Court in the case of *The Bihar Eastern Gangetic Fishermen Cooperative society Ltd. v. Sipahi Singh* (supra) and Full Bench judgment in the case of *Chetlal Sao v. The State of Bihar* (supra), This writ application had not earlier been dismissed on the ground that the petitioners could not complain of the violation or contravention of the administrative instructions issued by the State Government in respect of settlement of fishery rights, As such, by the aforesaid order passed in this case by the Supreme Court, it shall not be deemed that even the view expressed by the Full Bench in the case of *Chetlal Sao v. The State of Bihar* (supra) in respect of binding nature of the administrative instructions and circulars issued by the State has also been overruled.

16. Dr. Sadanand Jha, appearing for the petitioners, made reference to some judgments of the Supreme Court, where it has been pointed out that when any order or circular has been issued by the State Government and if they are not followed, the persons aggrieved can move courts for a direction to the State Government to follow their own bye-laws and executive orders. In the case of *B.S. Minhas Vs. Indian Statistical Institute and Others*, it was said that "if the bye-laws had been framed for the conduct of the affairs to avoid arbitrariness, respondent No. 1 cannot, therefore, escape the liability for not following the procedure prescribed by bye-laws thereto". Again in the case of *Sadhu Singh and Others Vs. State of Punjab*, it was pointed out (at page 743 of AIR):--

".....any existing executive instructions could be substituted by issuing fresh executive instructions for processing the cases of lifers for premature release but once issued these must be uniformly and invariably applied to all cases of lifers so as to avoid the charge of discrimination under Article 14."

It was said in the case of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., :--

"An administrative authority who purports to act by its regulation must be held bound by the regulation. Even if these regulations have no force of law the employment under these corporations is public employment, and, therefore, an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulations."

In the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, , while dealing with the West Bengal Land Management Manual (1977), published under the authority of the Board of Revenue, it was observed that statutes and statutory orders, no doubt, are to be obeyed but:--

"It does not mean that other orders, instructions etc. may be departed from in any individual case, if applicable to the facts. They are not to be ignored until amended. The Government or the Board may have the power to amend these orders and instructions, but nonetheless they must be obeyed so long as they are in force and are applicable."

Reference was also made to a recent judgment of the Supreme Court in the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, .

17. A Bench of this Court in the case of Man Singh v. The State of Bihar, 1982 BBCJ 392 : (1983 LIC 384) had to consider an order dated 1-11-1980 issued by the State Government laying down the policy and procedure for transfer and posting of Government employees in the State of Bihar. A question arose as to whether the said circular was mandatory in nature and as such the principles and policies laid down therein had to be followed to the letter; infraction of which in any respect will result in invalidity of the order of transfer. It was held that the policy and procedure laid down in that circular amounted to an executive instruction. It was further said as follows (at page 389 of Lab IC) :--

"We should not (if legally permissible) allow administrative or executive efficiency to flounder on the rock of avoidable technicality. It is well to remember that administrative and executive efficiency or exigency should not be too readily sacrificed. But such would be the results if the instruction is given a mandatory force. State would be completely deprived of much needed "play in its joints"."

In that very case, it was observed that even if the executive instructions are directory, it does not mean that they can be ignored because even directory provisions are not meant to be violated. But it was held that breach of such instructions can be overlooked provided there has been substantial compliance. In the case of Bain Peanut Company of Taxes v. Pinsons (1930) 75 LEd 482 (491) Holmes, J. said:--

"We must remember that the machinery of the Government would not work if it were not allowed a little play in its joints."

That very observation was quoted with approval by the Supreme Court in the well-known case of *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, .

18. From the aforesaid judgments it shall appear that Courts have from time to time impressed that not only the statutory provisions are meant to be obeyed or enforced, but even executive instructions issued by the State Government are expected to be followed and obeyed. Same will be the position in respect of i the executive instructions issued relating to grant of licence or lease of the properties Of the State. It need not be pointed out that the very object of issuance of such executive instructions is to avoid arbitrariness in mat-ters of grant of contracts, licence, quotas, mineral rights and rights in Jalkars so that there is no element of personal bias or extraneous consideration. Since last few decades the State Government is the biggest landlord of the State. But within the framework of the Constitution by which it is bound, it cannot act as the old landlords. As such, to achieve uniformity, remove arbitrariness and discrimination, executive decisions are taken from time to time laying down the procedure for the grant of contracts, licences, rights in minerals and Jalkars, which have vested in the State. The difference between the violation of a statutory provision and an executive instruction is that so far the procedures indicated in the statutes, which are integral parts there-of, have to be followed not only in form but even in substance on the basis of the well-known rule laid down by the Courts that if a statute provides a particular procedure for an act to be done, it should be done in that manner or not at all, *Nazir Ahmad v. King Emperor*, AIR 1936 BC 253 : (1936 AILLJ 895). On the other hand, so far executive instructions are concerned, they are also meant to be followed, but if while complying such instructions, in relation to grant of contracts, licence, rights in minerals and Jalkars, there has been some deviation, unless such deviation can be held to be hit by Article 14 of the Constitution, i.e., arbitrary, irrational or mala fide, the grant or the settlement ipso facto shall not become invalid. If a grievance is made before a court of law in respect of contravention of such executive instructions or circulars, the Court has to test the alleged contravention on the touch-stone of Article 14 of the Constitution. If the actions of the authorities are upheld in the light of Article 14 of the Constitution, then Courts have to condone deviations made if any. It is well settled that all provisions of even an Act or statutory rule are not mandatory in nature, unless they form the integral part thereof. Reference in this connection may be made to Crawford on Statutory Construction where it has been said as follows:--

".....The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its design, and the consequences which would follow from construing it the one way or the other...."

If some of the provisions which are statutory in nature on proper construction can be held to be directory, then, in my view, it is difficult to hold that all instructions contained in an administrative circular in respect of settlement of a Jalkar shall be mandatory in nature so as to vitiate the settlement in a case where there has been some deviation, which is not unreasonable, irrational, mala fide and as such hit by Article 14 of the Constitution.

19. Now coming to the merit of the case it appears that a communication dated 18-1-1984 (Annexure-8/1) was issued by the State.

Government to different District Magistrates and Divisional Commissioners saying that the Fish Farmers Development Agencies: have been established in the different districts of the State of Bihar. It was further said that, the District Magistrates of the district will be the Chairman of such Agencies and such Agencies were to make settlements of the Jalkars and tanks within the districts in question. Apart from other directions, it was said, in the communication aforesaid, that, while making settlement of a tank or Jalkar having an area up to 4 hectares, preference should be given in the following order:--

- (i) Fishermen of the Gram Panchayat who are members of the Society;
- (ii) Fishermen of the Gram Panchayat who are not members of the Society but are trained;
- (iii) Fishermen of the Gram Panchayat who are not trained; and
- (iv) Other persons who are interested in fish farming.

It was said that primary purpose of settlement of such tanks and Jalkars on long term basis was not to raise revenue but to develop the fish farming with the financial help of the World Bank.

20. On 11-2-1985, yet another communication (Annexure-4) was issued by the Department of Revenue and Land Reforms to all the District Magistrates, Deputy Commissioners and Commissioners of the Division saying that in respect of aforesaid communication dated 18-1-1984 (Annexure-8/1) some objections have been raised by the members of the Fishermen Co-operative Society and those objections have been examined in all respects by the State Government and thereafter the decision had been taken which was being communicated. It was mentioned, in that communication, that for the purpose of development of fish farming in tanks and Jalkars of different areas mentioned therein, settlement shall be made by the Agency aforesaid for ten years. Para 4 of that communication is more or less similar to para 7 of the earlier communication for giving preference for settlement. Instead of four categories, in the present communication, five categories were identified in order of preference. The first preference was to be given to the fishermen of the Gram Panchayat in question who are members of the Society meaning thereby the Fishermen Co-operative Society. The second preference was to be given to the fishermen of the Gram Panchayat who were not members of any Co-operative Society but who were

trained in fish farming. Categories (iii), (iv) and (v) with which we are not concerned, in the present case, refer to fishermen who are members of the Panchayat but not trained, fishermen of nearest Gram Panchayat and other persons who are interested in fish farming. It may be pointed out that towards the end, in the communication dated 11-2-1985, it has been stated that certain paras of the earlier communication dated 18-1-1984, including para 7, referred to above, shall be deemed to have been substituted.

21. In the notice, which was published in the newspapers inviting applications for settlement of the tank in question, there was specific mention only in respect of aforesaid communication dated 11-2-1985 regarding procedure and preference in connection with settlement of tank in question. There is no mention in respect of any other communication or order of the State Government in that notice. Pursuant to that notice, admittedly, the petitioners and the respondents filed applications. As such it has to be examined first as to whether settlement has been made in accordance with the instructions given by the State Government, in the communication dated 11-2-1985 (Annexure-4).

22. Before the aforesaid question is examined, it may be mentioned that, although the tank is within the Municipal area, settlement is said to have been made in accordance with paragraph 4 of the communication dated 11-2-1985 which applies only to Jalkars and tanks in a Gram Panchayat. But the petitioners as well as the respondents have not made any grievance on that account and both have relied on para 4 of the aforesaid communication. Neither the petitioners nor the respondents have challenged the validity of the notice published in the newspapers that settlement of the tank shall be made for a period of ten years with effect from 1-4-1985 in the light of the aforesaid letter dated 11-2-1985 issued by the Department of Revenue and Land Reforms.

23. The petitioners as well as the respondents are fishermen and members of the same Fishermen Co-operative Society. They are also residents of the same town. As such so far preference is concerned, both come in category No. (i). But for making settlement in favour of the respondents one fact which has been taken note of is that three out of four respondents have been trained in fish development by the Agency whereas the petitioners are untrained. In the counter affidavit, which has been sworn by the Deputy Director of Fisheries, Government of Bihar, details have been set out as to how the World Bank has financed the scheme of the Government of India regarding development of fishery in different districts of the State of Bihar. It has also been stated that for raising high equality of seed of Carps through monoculture of induced breed spawn in hatchery, complexes have been established at selected sites. It has also been mentioned therein that training centres have been established. Another counter affidavit has been filed on behalf of the Department of Revenue and Land Reforms in which it has been asserted that guidelines have been issued in respect of settlement of Jalkars by the aforesaid Agency.

24. On behalf of the petitioners it was pointed out that when both the petitioners

as well as the respondents belong to category No. (i) for the purpose of giving preference to the respondents, there was no occasion to take note of the fact that three out of four respondents were trained which will amount to an extraneous consideration.

25. As the petitioners and the respondents both are residents of the same place and both are members of the same Fishermen Cooperative Society, if the respondents have taken note of the fact that three out of the four respondents are trained in fish farming, in my view, that consideration cannot be held, to be irrelevant or extraneous. It has already been pointed out above that the very purpose of settlement of the tank for a period often years instead of one year, which is the usual practice, is to implement the scheme framed by the Government of India and financed by the World Bank for rearing fishes. If a set of persons are trained in rearing fishes, then certainly they can be preferred to other set of persons who are not so trained, other things being equal. In the counter affidavit filed on behalf of the respondents, the certificates of training in fish farming have been annexed in support of the statement that respondents Nos. 8 to 10 have been duly trained by the Agency before the settlement was made in their favour. As the settlement of the tank has been made in favour of respondents Nos. 8 to 11 jointly, no useful purpose will be served by declaring it invalid so far respondent No. 11 is concerned, on the ground that she has not taken training in fish farming although she is a resident of the same Gram Panchayat and member of the same Co-operative Society like the petitioners.

26. On behalf of the petitioners our attention was drawn to two other communications dated 14-2-1984 and 17-2-1984 issued by the Department of Animal Husbandry and Fishery. It was pointed out that in view of those communications, settlement should not have been made in favour of the respondents because three of them belong to the same family whereas the instruction is to make settlement to persons who are not members of the same family. It was also pointed out on behalf of the petitioners that settlement is not to be made to persons who are defaulters within the meaning of Clause 9 of the application form. It is said that the respondents had taken loan from the Fishermen Co-operative Society of which they are members but have not cleared the dues. So far the objection regarding the respondents being defaulters is concerned, it may be mentioned that Clause 9 of the application form requires the applicants to state whether they had taken loan from any Bank or from the Block. That form does not require to disclose whether the applicant has taken loan from any Co-operative Society. Apart from that, as I have already mentioned above, in the notice (Annexure 3) inviting applications, it had been clearly given out that the settlement shall be made in the light of the letter dated 11-2-1985 (Annexure-4) issued by the Department of Revenue and Land Reforms. In that communication, there is no instruction that set-tlees cannot be members of the same family or that if the applicants have not cleared the loan taken from the Co-operative Society of Which they are members, they shall be debarred from taking settlement.

27. In the instant case, it is an executive instruction on which the petitioners as well as the respondents both are relying. It is an admitted position that the said instructions strictly do not apply to settlement in respect of a tank or a Jalkar within a municipal area. The instructions issued by the State Government, referred to above, are in respect of settlement of tanks and Jalkars within Gram Panchayats. But if the procedures indicated being rational and not arbitrary have been applied for selecting the respondents for settlement of a tank within the municipal area, the settlement cannot be held to be invalid. In the facts and circumstances of the present case, a procedure consistent with the requirements of Article 14 of the Constitution has been followed.

28. As already pointed out above, in olden days, there was some misconception in some quarters that the State has some discretion in selecting the persons for grant of Government largess as any other owner of such rights. But, in view of the series of judgments, many of them have already been referred to above, the distinction between the exercise of executive power and quasi-judicial power are being obliterated. Court have been insisting that even in such matters a rational policy be formulated, so that no citizen can make a grievance that he has been treated as unequal. So far settlement of Government largesses through public auction is concerned, which procedure has been insisted by Courts from time to time, there is a safeguard that every one has been given an opportunity to participate at such public auctions. In my view, some safeguard is required to be introduced in respect of settlements, which are being made not through public auction on the ground of public policy, which is permissible in respect of a class of cases.

29. Now, so far the settlements of the tanks and Jalkars by the Agency are concerned, normally, Courts would have insisted that even such settlement be made through public auction. But that may come in conflict with another policy decision of the State Government that, in view of the scheme framed by the Government of India with the finance of the World Bank to develop big tanks and Jalkars for rearing of fishes and to develop their breed, settlement should be made on long term basis with persons, who are considered to be expert in that field. Perhaps, that is the reason that the State Government has decided to give preference in matters of settlement first to the fishermen of the Gram Panchayat in question, who are members of the Fishermen Co-operative Society. But, in my view, it will be advisable on the part of the State to examine the procedure for settlement of tanks and Jalkars to fishermen for growth and development of fishery, in detail, and to formulate a better rule, on the basis of which the Agency should be directed to make selection of persons for making such settlements.

30. In the present case itself, the petitioners as well as the respondents both are residents of the same Gram Panchayat; both are members of the same Fisherman Cooperative Society. In this background, a lot of discretion has been left with the Agency to select one group or the other. In the instant case, the respondents have been preferred on the ground that three out of four have been

trained in fish farming by the Agency but, on another occasion, the authorities of the Agency may apply some other rule to eliminate the better claimants for settlement. it need not be pointed out that the settlements are not being made for a year or so; they are being made for ten years at a time. It has been said that the object is to develop the tanks and Jatkars for better breeds of the fishes. But it cannot be denied that by such settlements the settlees are likely to derive enormous benefits for a period of ten years, which have been denied to other claimants.

31. As in the present case I have held that the settlement has been made in favour of respondents Nos. 8 to 10 in compliance with the decision of the State Government as contained in the communication dated 11--2-85 (Annexure-4), which decision was only referred to in the notice (Annexure-3) inviting applications for settlement of the tank in question, there is no occasion to consider the question as to whether all administrative instructions and circulars issued by the State Government from time to time in respect of settlement of tanks and Jalkars by the State Government are statutory in nature.

32. Accordingly, this writ application fails and it is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

B.N. Agrawal, J.

33. I entirely agree.

N. Pandey, J.

34. I agree.

Binod Kumar Ray, J.

35. I entirely agree with the judgment prepared by Brother Singh and nothing useful is left to be added.

Sachchidanand Jha, J.

36. I entirely agree.