

SUPREME COURT OF INDIA

Pathan Mohd.Suleman Rehmatkhan

Vs.

State of Gujarat

S.L.P.(Civil.)No.32507 of 2013

(K.S. Radhakrishnan and A.K. Sikri, JJ.)

22.11.2013

ORDER

K.S. Radhakrishnan, J.

1. The State of Gujarat, it is seen, in the year 2005 thought of developing an International Financial Services City at Ahmedabad at par with the globally benchmarked financial centres such as Sinjuku-Tokyo, Lujiazui-Shanghai, La Defense Paris, London Dockyard, having offshore banking facilities. The State conducted detailed study through its wholly owned company called Gujarat State Financial Services Limited (GSFSL). The study report was prepared in February 2006 which strongly recommended for execution of the project after undertaking a feasibility study. Since the project was first of its kind in the country and involved commercial risk, the State Government thought of undertaking the project of a public-private partnership so that the responsibility and the risk, if any, could be shared.

2. The State organized the “Vibrant Gujarat Urban Summit” in the year 2007. The third respondent, Infrastructure Leasing & Financial Services Ltd. (ILFS) showed its commitment for development of the national financial services centre and a Memorandum of Understanding was signed with the State Government on 16.2.2007. On 15.5.2007, a joint venture agreement was executed between the State represented by the Gujarat Urban Development Company Limited (GUDC) and the third respondent for forming a 50:50 joint venture company in the name of Gujarat International Financial Tech City Limited i.e. GIFT Company Ltd. on 22.3.2011 and 7.6.2011 the State Government issued and allotted 412 acres of land to the fourth respondent i.e. GIFT Company Ltd. and 250 acres of land to its wholly owned subsidiary i.e. GIFT SEZ Limited with a right to mortgage while retaining ownership thereof with the State Government.

3. On 18.8.2011, the fifth respondent, Government of India, issued a notification under Special Economic Zones Act, 2005, for the area of 261 acres of land for development, operation and maintenance of the project. The Government of India on 27.12.2011,

accorded approval to the GIFT SEZ Limited for setting up of an International Financial Services Centre. Facts reveal, by April 2013, out of the estimated investment of Rs.9,700 crore for the entire proposed project, an amount of Rs.450 crore has already been spent by fourth respondent towards development expenses in creating infrastructure. Fourth respondent has already constructed around 12.8 kms. of roads in the township. The fourth respondent has also constructed a water treatment plant and sewerage treatment plant having respective capacity of 3 MLD and 2.2 MLD and district cooling system, including power sub-station for 66 KV, utility tunnel of around 2.2 kms. and automated waste collection system for load of around 5 TPD. The fourth respondent has also constructed an artificial water body known as “Samriddhi Sarovar” having circumference of 1.5 kms, and a water pumping station at Nabhoi and a pipeline of almost 12 kms. Has been laid to provide water from Narmada canal to the township. Various other activities are also going-on on a war-footing.

4. The project picked up momentum and nobody challenged the joint venture agreement or the decisions taken by the State Government to allot lands to the fourth respondent for creating infrastructure for development and operation of the project. The Comptroller and Auditor General of India (CAG), however, had made certain remarks in his report no.2 of 2013 for the year ending on 31st March, 2011, stating that the performance audit revealed a number of system and compliance deficiencies and the State Government did not adopt a uniform policy in alienation and allotment of land. Further, it was also stated that the delay in finalization has resulted in blocking up of revenue of the Government and there was no mechanism for review and correction of incorrect orders issued by the subordinate officers to safeguard Government revenue and that no proper monitoring system existed in the Department to ascertain and vacate encroachment cases. Relevant portion of the CAG report reads as follows:-

“3.5.13 Inconsistent decision to allot land at token amount Gujarat Urban Development Company Limited (GUDC), a Government Company was authorized by Government in May 2007 to undertake the Gujarat International Finance City project (GIFT city) in a joint venture with Infrastructure Leasing & Financial Services Ltd. (IL&FS) for setting up an International Finance City. Subsequently, a Company called GIFT Company Ltd, (the Company) was formed by IL&FS and GUDC as a joint venture.

As per the direction of the Government in Revenue Department, Collector, Gandhinagar handed over advance possession of Government land admeasuring 26,77,814 sq.mt. Valued by the DLVC/SLVC during September 2007 to December 2008 at Rs.500 crore situated at fourteen survey numbers of four Talukas of Gandhinagar district to GUDC for setting up the GIFT city. The GUDC proposed (June 2007) to Government for relaxation in payment of occupancy price for the land. Chief Secretary, Principal Secretaries of Revenue Department, Finance Department and UDUHD opined that the land shall be allotted at market value as per the extant policy on valuation of Government land. However, moratorium period of two years shall be allowed for payment of 50 per cent of the value of land and remaining 50 per cent payable as a soft loan. Meanwhile,

Ministry of Commerce and Industry, Govt. of India accorded a formal approval in January 2008 to GIFT Company Ltd., for the proposed Multi Services SEZ covering an area of 10,11,750 sq.mt. (250 acres).

As per GR dated 22.11.2004, if the allotment could not be made within completion of two years from the date of DLVC's valuation, it was to be refixed afresh. The land was allotted in April/June 2011 by Government to the Company after expiry of two years from the date of valuation of DLVC, though fresh valuation was not done. Scrutiny of Cabinet note indicated that Collector, Gandhinagar had stated that the value of the allotted land was approximately Rs.2,760 Crore. However, Cabinet allotted 10,11,744 sq.mt. Of land to GIFT SEZ Ltd., and 16,66,070 sq.mt. to GIFT Company Ltd., for a nominal price of rupee one with the condition that during the first phase of the project, the surplus amount received by the developers shall be divided between Government and the two Companies in 50:50 ratio. During the execution of subsequent phases, the surplus amount, which may be received over and above the base cost of the project shall be divided between Government and the GIFT Company Ltd., in 80:20 ratio. We noticed that land was allotted without ascertaining its value as on the date of allotment. Advance possession of land was given to an organization other than Boards/ Corporations/ SEZ in contravention of the Government policy. Land was allotted negating the views of Finance Department, Revenue Department and UDUHD without collecting occupancy price to a minimum extent of Rs.500 crore as on the dates of advance possession of land.

After this was pointed out, the Government stated (July 2012) that it was a Public Private Partnership (PPP) project and development rights were only given and ownership rights vested with the Government. The reply is not acceptable as the Government land is allotted at new and restricted tenure wherein the allottee is not entitled to sell, transfer or mortgage the land without the permission of the Collector. However, in this case, the Government authorized the allottee to mortgage/lease the land without seeking permission from the Collector/Government. Further, the State Government has produced no records to indicate that allotment for the GIFT city was on the basis of PPP. The State Government despite repeated requests did not produce to audit the Joint Venture Agreement signed between Government/GUDC and IL&FS. Non production of the records to audit has the consequential effect of limiting the scope of audit.

3.5.14 Conclusion The performance audit revealed a number of system and compliance deficiencies. Government did not adopt a uniform policy in alienation and allotment of land. Delay in finalization of valuation also resulted in blocking up of revenue of the Government. There was no mechanism for review and revision of incorrect orders issued by the subordinate officers to safeguard Government revenue. No proper monitoring system exists in the Department to ascertain and vacate encroachment cases.”

5. The petitioner herein filed a Public Interest Petition before the Gujarat High Court primarily based on the report of CAG seeking a declaration that the action of the State

Government for allotting land in favour of the respondent company was illegal and void and sought for an investigation by the Central Bureau of Investigation and also for other consequential reliefs. The Gujarat High Court after hearing all the parties at length and, after elaborately considering the materials on record, framed the following questions:

“(i) Whether the report of the CAG by itself can legally be made the basis for the reliefs claimed in the petition?

(ii) Whether the decision of the State Government to develop an international finance service city on the basis of a public private partnership model with a social objective could be termed as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the sole object of equality clause embodied in Article 14 of the Constitution of India?

(iii) Whether the petition deserves to be dismissed on the ground of delay and laches?

6. The Gujarat High Court felt, though the Writ Petition could have been dismissed on the ground of delay, the Court still examined all the contentions raised by the parties and recorded a clear finding on all the issues. The High Court placed reliance on the judgment of this Court in

*Arun Kumar Agrawal vs. Union of India & others*¹, and held that having regard to the powers conferred on the CAG, CAG is not entitled to question the merits of the policy objectives of the State Government. The Court also held that it cannot be said that the State Government had given largesse to an individual according to its sweet will and whims and took the view that the Government took a conscious commercial decision after perusing the pros and cons of the entire matter and that the action of the respondent was not based on extraneous considerations or vitiated by malafide exercise of powers. Holding so, the writ petition was dismissed by the impugned order, against which this special leave petition has been preferred.

7. We heard Shri Y.N. Oza, learned counsel for the petitioner and perused the records, as well as counter affidavit and reply affidavit filed by the parties before the Gujarat High Court. The entire case of the petitioner is based on the CAG report. The applicability and the binding characteristics of such report were considered by the High Court. In Arun Agrawal’s case (supra), this Court held as follows:-

“We may, however, pointed out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective Ministries have to offer on the CAG’s Report. The Ministry can always point out, if there is any mistake in the CAG’s report or the CAG has inappropriately appreciated the various issues.”

8. CAG is a key figure in the system of parliamentary control of finance and is

empowered to delve into the economy, efficiency and effectiveness with which the departmental authorities or other bodies had used their resources in discharging their functions. CAG is also the final audit authority and is a part of the machinery through which the legislature enforces the regulatory and economy in the administration of public finance, as has been rightly pointed out by the High Court. But we cannot lose sight of the fact that it is the Government which administers and runs the State, which is accountable to the people. State's welfare, progress, requirements and needs of the people are better answered by the State, also as to how the resources are to be utilized for achieving various objectives. If every decision taken by the State is tested by a microscopic and a suspicious eye, the administration will come to stand still and the decisions-makers will lose all their initiative and enthusiasm. At hindsight, it is easy to comment upon or criticize the action of the decision maker. Sometimes, decisions taken by the State or its administrative authorities may go wrong and sometimes it may achieve the desired results. Criticisms are always welcome in a Parliamentary democracy, but a decision taken in good faith, with good intentions, without any extraneous considerations, cannot belittled, even if that decision was ultimately proved to be wrong.

9. We have extensively referred to these principles in Arun Agrawal's case (supra), where we have held as follows:-

“This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement, after evaluating and assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or taken for extraneous considerations or improper motives. States and its instrumentalities can enter into various contracts which may involve complex economic factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. There is always an element of risk in such decisions, ultimately it may turn out to be correct decision or a wrong one. But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be wrong, that itself is not a ground to hold that the decision was mala fide or taken with ulterior motives.”

10. Reference in this regard may also be made to the judgment of this Court in *Centre for Public Interest Litigation & Ors. vs. Union of India & Ors*², wherein it was held that when the CAG report is subject to scrutiny by the Public Accounts Committee and the Joint Parliamentary Committee, it would not be proper to refer the findings and conclusions contained therein. The Court even went on to say that it is not necessary to advert to the reasoning and suggestions made, as well.

11. We have gone through the salient features of the Project referred to in the various orders passed by the State Government and the resolutions dated 22.3.2011 and 7.6.2011 allotting lands to fourth respondent and also the notification dated 18.8.2011 issued under the Special Economic Zones Act, 2005, and we are in agreement with the High Court that

it cannot be said that the State has acted against public interest. The Government has noticed the development and the employment opportunities that the project would bring into the State. The decision taken by the Government was also transparent and that the Government has also got substantial stake in the Public-Private Partnership and has also taken care of its interests while entering into the various agreements. Learned senior counsel fairly submitted that he is not attributing any motives or stating that the decision was taken for extraneous reasons, but contended that the Government had, without any application of mind, parted with a large tracks of land worth crores of rupees to the private party, which is not in the interest of the State.

12. We are of the view that these are purely policy decisions taken by the State Government and, while so, it has examined the benefits the project would bring into the State and to the people of the State. It is well settled that non-floating of tenders or absence of public auction or invitation alone is not a sufficient reason to characterize the action of a public authority as either arbitrary or unreasonable or amounted to mala fide or improper exercise of power. The Courts have always held that it is open to the State and the authorities to take economic and management decision depending upon the exigencies of a situation guided by appropriate financial policy notified in public interest. We are of the view that is what has been done in the instant case and the High Court has rightly held so. We, therefore, find no reason to entertain this Special Leave Petition and the same is dismissed.

Judgment referred

¹2013 (7) SCC 0001

²AIR 2012 SC 3725