SUPREME COURT OF INDIA

Yazdani International P.Ltd.

Vs.

Auroglobal Comtrade P. Ltd.

C.A.No.11229 of 2013

(H.L.Gokhale and Jasti Chelameswar,JJ.,)

17.12.2013

JUDGMENT

SLP(Civil) No. 26321 of 2012

Jasti Chelameswar,J.,

1. Leave granted in all the SLPs.

2, All these SLPs arise out of an order of the Orissa High Court made in Miscellaneous Case No. 11005 of 2012 in Writ Petition (Civil) No. 11785 of 2012 on 2nd August, 2012. The said writ petition was filed by the appellant in the appeal arising out of Special Leave Petition (C) No. 38013 of 2012 i.e. M/s. Auroglobal Comtrade Pvt. Ltd. (hereinafter referred to as Auroglobal).

3. Since the appeals at hand require examination of the rights and obligations arising under the Major Port Trusts Act, 1963, we deem it appropriate to examine the scheme of the said Act, insofar as it is irrelevant. Paradeep Port is a major port as defined under *Section 3 sub-Section (8)*[1] of the Indian Ports Act, 1908. The activities of all major ports including the Paradeep Port are regulated by various enactments such as the Major Port Trusts Act, 1963 (hereinafter referred to as etc. The Act stipulates under Section 3 that the Central Government shall cause to be constituted a Board of Trustees with respect to each of the major ports. Such Boards are declared to be bodies corporate. The second respondent in the appeal arising out of SLP(C) No.26321 of 2012 (also a respondent in all the appeals), described (wrongly) as Paradeep Port Trust is one such Board of Trustees constituted under Section 3 of the Act. But for the sake of convenience hereinafter will be referred to as the Each such Board is authorized under Section 37 to compel any sea-going vessel within the *port or* [2] to use the various facilities provided by the Board. Section 35 enumerates the various facilities and services at the port which can be undertaken by the Boards. Section 48 of the Act authorises the framing of a for any one of the services rendered by a Board. Such a scale of rate is required to be notified in the official gazette. The scale of rates is required to be framed by the Tariff Authority for Major Ports constituted under *Section 47A*[3].

4. Section 49 of the Act, 1963, as it stands today reads as follows: â€œ49. Scale of rates and statement of conditions for use of property belonging to Board – (1) The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, any property belonging to, or in the possession or occupation of, the board, or any place within the limits of the port or the port approaches may be used for the purposes specified hereunder â€“ (a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

> "(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods;
>
> (c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;
>
> (d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.
>
> (2) Different scales and conditions may be framed for different classes of goods and vessels.
>
> (3) Notwithstanding anything contained in sub- section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub- section (1)."

5. It is necessary to notice here that sub-Section (3) was inserted by Act 17 of 1982 with effect from 31.5.1982. For the present, it is sufficient to note that Section 49 also authorises the authority constituted under Section 47A to frame a for using any property either belonging to or in the possession or occupation of the Board. The distinction between Sections 48 and 49 is that while Section 48 deals with the scale of rates for the services to be rendered by the Board, Section 49 deals with the scale of rates for the utilisation of the property (both moveable and immovable) of the Board.

6. However, sub-Section (3) authorises the Board to collect amounts higher than those prescribed under the scale of rates contemplated under sub-Section (1) either by resorting to a process of auction or inviting tenders in the context of the use of the property belonging to the Board.

The relevance of the said sub-Section will be discussed later.

7. Chapter IX of the Act contains provisions which authorise the Government of India to exercise supervisory control as specified in the various provisions of the said Chapter over the activities of the boards constituted under the Act. Relevant in the context of the present

litigation is Section 111[4] of the Act which declares that both, the authority constituted under Section 47A and the Boards constituted under the Act are bound â€œby such directions on questions of as the Central Government may give in writing from time to time.

8. In exercise of the authority under Section 111, it appears that the Central Government issued certain directions to all the major ports except Kolkata and Mumbai styled as Land Policy for Major Ports initially in the year 2004 which was modified in the year 2011.

9. In the first of the above-mentioned policies, the Government took note of the fact that under Section 34 of the Act, the Board of a major port can lease out its immovable property However, under the policy, the Central Government directed that no lease or sale of land inside the custom bound area should be permitted but should be given on licence basis only.

10. In the policy directions issued under the Land Policy for Major Ports, 2010, there is a slight shift in the policy regarding the land inside the custom bound area. Under the 2010 Policy, it is stated that normally land inside custom bound area should be given on licence basis only Thus, it can be seen that while the 2004 Policy prohibited giving out of the land inside the custom bound area by any mode other than licence, the 2010 Policy stipulated licensing is the normal rule, implying there could be exceptions to the rule.

Facts leading to the Litigation

11. Pursuant to the order dated 2nd August, 2012 of the Orissa High Court, the Board cancelled the licences of 48 manually operated iron ore storage plots and 11 mechanically operated storage plots. It appears from the additional affidavit filed by the Board on 25th November, 2013, of the 59 licences purported to have been cancelled by the Board, only 38 licences of the manually operated plots category and 7 of the mechanical category are before us.

12. It appears from the material on record[5] that there are three classes of plot holders who manually handle iron ore exports in the Paradeep Port; (i) 15 plot holders who were allotted plots prior to May, 2005, (ii) 52 plot holders who were allotted plots from June, 2005 to May, 2011 on the basis of auction; and (iii) 13 plot holders who acquired plots under the system of tendering process subsequent to June, 2011.

13. By notice dated 2nd June, 2011, the Paradeep Board invited applications from interested iron ore exporters, traders etc. for allotment of 20 manual iron ore plots of different sizes. Auroglobal was one of the parties who responded to the said tender notice and eventually became the successful bidder for one of the plots [plot no. I-5 (C group) admeasuring 5,500 sq. mtrs.]

14. By letter dated 1st August, 2011,[6] the Paradeep Board informed Auroglobal that it had been declared to be one of the successful bidders for the allotment of one manual iron ore storage plot subject to various terms and conditions. Relevant for our purpose are conditions Nos. 1, 2 and 4.

15. After securing allotment of the plot, Auroglobal utilised the same for about a year and eventually approached the Orissa High Court by way of Writ Petition No. 11785 of 2012, some time in July, 2012 with prayers as follows: I. To hold and declare that the petitioner has a right of renewal of the allotment with respect to plot No. I-5 inside the Port area;

> "II. Holding and declaring that the pricing modality arrived at through the tender is contrary to the tender conditions and the conditions for renewal in the tender are violative of Articles 14, 16 and 19 of the Constitution of India;
>
> III. set aside imposing/demanding of licence fee by the opp. Parties for renewal under the tender conditions, IV. direct the opposite parties to renew and extend the allotment of the plot without demanding additional licence fee under Annexure 5;
>
> V. to quash the letter dated 05.07.2012 under Annexure-9"

16. Along with the said writ petition, M.C. No. 11005 of 2012 came to be filed for certain interim relief. It is in the said M.C., the order under appeal came to be passed. By the said order, the High Court opined that the Paradeep Board did not follow a uniform and consistent procedure in making allotment of various plots of lands to various parties and that plots could be allotted only on the basis of an auction to the highest bidders. It also found fault with the Paradeep Board for having renewed certain *licences granted earlier.*[7]

17. Pursuant to the above-mentioned order of the High Court, notices were issued by the Board (at least to some of the appellants herein)[8], the substance of which is that the allotment order made earlier was cancelled and called upon the allottee to hand over vacant possession of the plot within 15 days from the date of the letter.

18. Hence, this batch of SLPs by the various allottees.

19. Auroglobal also preferred an SLP on slightly different grounds. We propose to deal with the case of Auroglobal separately. We first deal with the cases of appellants other than Auroglobal.

20. It is argued on behalf of the appellants that the High Court grossly erred in coming to the conclusion that the allotments made in favour of various appellants are in violation of the law declared by this Court in various decisions relied upon by the High Court in its order including Centre for *Public Interest Litigation and others v. Union of India and others*[1] [also known as 2G case]. Most of the appellants (details of which are available on record and not in dispute) came to be allotted with plots of land either pursuant to a process of auction or tender where each of the appellant had to pay substantial amounts to the Board for securing the allotment of the plots, apart from agreeing to pay the amounts stipulated by the scale of rates prescribed by the Tariff Authority. Therefore, the assumption of the High Court that the principles of law laid down by this Court in the various judgments referred to by the High

Court starting from Dayaram Shetty to is without any factual basis. The allotments made in favour of the appellants are in consonance with the law laid down in case.

21. It is also argued on behalf of the appellants that in the subsequent judgment of the Supreme Court in *Natural Resources Allocation, In Re, Special Reference No.1 of 2012*[2] , the Constitution Bench of this Court clearly held that in the matter of alienation of the property by the State or conferment of largesse, auction is a preferred mode of securing compliance with the commands of the Constitution under Article 14 of the Constitution but-not the only mode. It is argued that even if auction is the only mode of distributing State largesse or alienating property of the State which passes the test of Article 14, most of the appellants, as already indicated, have secured allotment of plots either through the process of auction or of tenders which is nothing but a variant of the system of auction. Therefore, allotments made in their favour could not be faulted. It is further submitted that the conclusion of the High Court that the â€œlicence cannot be granted in favour of persons after expiry of the licence period by way of renewalâ€• [9] is without any basis in law. Renewal of licence is a matter of contract between the parties. If the initial allotment of a plot on licence basis is otherwise in accordance with law, renewal of such arrangement is a matter which ought to be governed by the terms of the agreement between the parties. There is nothing in law or in any of the decisions of this Court relied upon by the High Court which requires the State or its instrumentalities not to enter into any contract or arrangement which is renewable periodically. Learned counsel also submitted that each of the appellants have a right to renewal of the allotment made to them and there is nothing in any one of the judgments of this Court relied upon in the order under appeal which militates against such right of renewal of the allotment which is otherwise validly obtained. It is submitted that any view of law to the contrary would not only be impracticable but also detrimental to the larger public interest as such short term arrangements would not be conducive to the overall economic growth of the country. It is further submitted by the appellants that none of the appellants were parties before the High Court and the order of the High Court is in flagrant violation of the audi alteram partem rule. If only the appellants had an opportunity to present their cases before the High Court, the appellants would have placed on record all relevant facts to substantiate their arguments mentioned earlier. Therefore, on this ground alone the order under appeal is required to be set aside. Lastly they submitted that the order is neither sought by Auroglobal, who was the petitioner before the High Court, nor is within the scope of the final relief sought by Auroglobal in the writ petition.

22. With regard to the limited number of plots allotted without following either the auction route or the tender route it is submitted that such allotments were made prior to 2005 at which point of time there was not much demand for allotment of plots by the Board, therefore, the allotments were on application basis. Hence, such allotments cannot be faulted.

23. Mr. Rohinton Nariman, learned senior counsel appearing for the Board argued that (i) none of the appellants have a right of renewal as their possession is only a permissive possession (a licence) which does not create any interest in the property to enable them to claim a of renewal. (ii) As on today the Board needs the entire area of land (occupied, by these various appellants by virtue of the allotment orders given in their favour earlier) for the

purpose of developing the port for the creation of modern Deep Draught Coal and Iron Ore berths with 10 millions capacity each. The submission is based on the pleadings before this Court.[10] The Board therefore, does not propose to continue or renew the licences of the appellants irrespective of the fact whether the order under appeal is tenable or not, this Court may not exercise its extraordinary discretion under Article 136 to enable the appellants to cling on to the property over which they have no substantive right.

24. The first question which is to be examined is whether this Court is required to set aside the order under appeal and also the consequential notices issued by the respondent/Board to the various appellants on the ground that the order under appeal is made in breach of the rule of audi alteram partem.

25. None of the appellants herein (except Auroglobal) was a party to the proceedings before the High Court. Therefore, there was no occasion for the High Court to examine the twin questions whether the respective allotments made in favour of each of the appellants herein are in accordance with law and whether the appellants have any legally indefeasible right of renewal of such allotments or to continue use of the respective plots allotted to them. In the normal course, the order under appeal is required to be set aside on the simple ground that the same is in breach of principles of natural justice. But we do not propose to do so for reasons to follow.

26. The undisputed facts in these batch of matters are that most of the appellants were allotted plots either pursuant to an auction or through the process of tender system, the details of which are already taken note of (See footnote 5). It is also not in dispute that each of the plots, which are the subject matter of these appeals was allotted on a licence.

27. Before we deal with the new ground urged by the Board, we would like to deal with the question of the legality of the initial allotment in favour of each of these appellants. In view of the fact that most of the licences in favour of the appellants herein came to be granted pursuant to a process of either an auction or tender, those allotments, in our view, cannot be said to be inconsistent with the principles of law laid down by this Court in 2G case in the absence of any other circumstance vitiating the allotment. Insofar as the allotment of plots made on application (prior to 2005), the Paradip Port Trust came out with a clear explanation that there was hardly any competition at that point of time for the allotment of plots. Therefore, we do not see any reason to find any fault with such allotment on the ground that the allotment was made without following the procedure of auction or tender. More particularly, in the absence of any dispute regarding the correctness of the assertion of the Board that there was hardly any demand at that point of time for allotment of plots.