

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (M/S) NO. 2668 OF 2021

25TH SEPTEMBER, 2023

Jaswant Singh

.....Petitioner.

Versus

State of Uttarakhand & others

....Respondents.

Counsel for the Petitioner : Mr. Jitendra Chaudhary and Mr. Suhail Ahmed Siddiqui, learned counsels.

Counsel for the Respondent No.1 : Mr. Amarendra Pratap Singh, learned Additional Advocate General.

Counsel for the Respondent No.5 : Mr. S.S. Chauhan and Mr. Pradeep Joshi, learned counsels.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

We have heard learned counsels and proceed to dispose of this writ petition.

2. The petitioner has preferred the present writ petition to seek the following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari, calling for the original record and pleased to quash the impugned tender notice no.6130/Jalasaya/ 2021-22 Dehradun dated 18th November 2021 (Annexure-1) along with corrigendum dated 02nd December 2021 (Annexure-2) issued by the respondent no.2 i.e. Secretary Uttarakhand State Matasaya Palak Vikas Abhikaran Dehradun.

(ii) Issue a writ, order or direction in the nature of mandamus, directing and commanding the respondent fisheries board to the effect that it shall issue fresh tender notice in respect to Baur & Haripura Reservoir situated in District Udham Singh Nagar for awarding fishing contract for

next 05 years only in accordance with the Uttarakhand State Water Management, Fisheries and Angling Rules 2013".

3. The case of the petitioner is that respondent no.2 issued the impugned tender Notice No. 6130/Jalasaya/ 2021-22 Dehradun dated 18th November 2021, to which a corrigendum was issued on 02nd December 2021. The said tender invited bid from the interested bidders for providing fishing rights at Baur & Haripura Reservoir in District Udham Singh Nagar. The tenure of the contract was stated to be for ten years, i.e. from 2021-22 to 2030-31. The tabulation contained in the tender, which, *inter alia*, described the period of tender reads as follows:-

क्र०	जलाशय का नाम	जनपद / मण्डल	ठेके की अवधि	आरक्षित धनराशि	बयाने की धनराशि	ऑनलाईन निविदा जमा करने की अन्तिम तिथि
1.	बौर एवं हरिपुरा जलाशय	उधमसिंहनगर / कुमायूँ मण्डल	वर्ष 2021-22से वर्ष 2030-31 तक दस वर्ष	₹36.08 लाख	₹3.608 लाख	दिनांक : 6.12.2021 समय: सायं 05 बजे
2.	96 केंज			₹36.00 लाख	₹3.60 लाख	
	योग			₹72.08 लाख	₹7.208 लाख	

4. The petitioner was aggrieved by the said tender on the ground that the tenure of the contract under the tender, which was stated to be ten years, was contrary to the rules framed by the State Government under the Uttarakhand Fisheries Act, 2003. The said Act, in Section 3(1), empowers the State Government to make the Rules for the purposes mentioned in the said Act. In pursuance of Section 3(1) of the

Act, the State Government has framed the Uttarakhand Fisheries Rules, 2013, on 25.10.2013. Rule 11 of the said Rules, *inter alia*, reads as follows:-

"11. मैदानी क्षेत्र की नदियों के ठेकों की अवधि **पांच वर्ष होगी** और इसकी गणना आगामी 1 जुलाई से 30 जून तक की अवधि को सम्मिलित कर की जायेगी। प्रथम वर्ष में यह अवधि स्वीकृति की तारीख से प्रारम्भ एवं 30 जून को समाप्त समझी जायेगी। स्वीकृत निविदा मूल्य में प्रतिवर्ष 10 प्रतिशत की वृद्धि आगणित की जायेगी और तदनुसार निविदादाता द्वारा संदेय होगी।"

(emphasis supplied)

5. In the same Rules, Appendix 6(1) again reiterates the same position in the following words:-

क्र०	जलक्षेत्र का नाम	अनुज्ञावित शिकारमाही विधि	परमिट / लाईसे वैधता अवधि	बीट आवंटन की विधि निविदा माध्यम से	निषेध अवधि	शिकारमाही के निषिद्ध क्षेत्र का स्थान
1	2	3	4	5	6	7
9.	मैदानी क्षेत्र की नदियां	समस्त मान्य शिकारमाही विधियाँ	पाँच वर्ष	खुली नीलामी के आधार पर	01 जुलाई से 30 सितम्बर तक मत्स्य मेला आखेट पर पूर्ण प्रतिबन्ध रहेगा।	1. कुंभ मेला क्षेत्र एवं अन्य धार्मिक स्थलों के आस - पास 2. चिन्हित प्रजनन क्षेत्र।

(emphasis supplied)

6. Upon issuance of notices, respondent no.1 and respondent nos.2 to 4 have filed their counter-affidavits. The stand taken by the State in their counter-affidavit is that, the State had issued a Government Order on 18.11.2021- which also happens to be a date on which the tender, in question,

was issued, thereby fixing the tenure of government contracts for fishing rights as ten years. Clause 25 of the Government Order dated 18.11.2021 reads as follows:-

"25- ठेके की अवधि दस (10) वर्ष होगी जबकि प्रथमतः ठेकेदार के साथ पांच (05) वर्षों हेतु अनुबंध निष्पादित किया जायेगा अर्थात् अनुबंध की अवधि 05 वर्ष होगी। यदि ठेकेदार / समिति द्वारा समीक्षा से पूर्व या समीक्षा के बाद मध्यावधि में ठेका छोड़ दिया जाता है तो अभिकरण को हुयी वित्तीय हॉनि के सापेक्ष ठेकेदार द्वारा जमा धरोहर धनराशि को ब्याज सहित जब्त कर लिया जाएगा और ठेकेदार के विरुद्ध अवशेष धनराशि का समायोजन उसकी बैंक गारण्टी से किया जाएगा।" (emphasis supplied)

7. We have inquired from learned counsel appearing for the State, as to how the said Government Order could have been issued in the teeth of Rule 11(1) of the 2013 Rules, framed by the State Government, under Section 3(1) of the Fisheries Act, aforesaid. There is no answer forthcoming.

8. Pertinently, the Government Order dated 18.11.2021 does not purport to be an amendment to the Fisheries Rules, 2013, since the said Government Order does not even purport to have been issued in exercise of the rule making power of the State. The Fisheries Act, 2003 clearly sets out the procedure prescribed for the purpose of framing of Rules under Section 3(1). Section 3(2) states that the State Government may, by notification in the official gazette, apply the Rules. The Government Order dated 18.11.2021 is not claimed to have been gazetted. Moreover, Section 3(5) provides that every rule made under the Act shall be laid, as soon as may be after it is made, before the Legislative

Assembly while it is in session for a total period of not less than fourteen days which may be comprise in one session or in two or more successive sessions. It is, therefore, clear that the Government Order dated 18.11.2021, relied upon by the respondents to justify the issuance of tender for a period of ten years, is contrary to the existing Uttarakhand Fisheries Rules, 2013, and in particular, contrary to Rule 11(1) thereof. The said Government Order, being in the nature of executive instructions, cannot override the statutory rules. Consequently, neither the Government Order dated 18.11.2021 can be sustained, nor the action taken thereunder while issuing the tender, in question.

9. We find the action taken by the respondent- State, even otherwise, to be completely mindless, for the reason that the same does not appear to be financially prudent on the part of the State. It is not the stand of the respondent-State, that the contractor, who is granted the fishing rights, has to make a substantial capital investment at the beginning of the contract, and therefore, the period of the contract needs to be increased to enable the successful contract to recovery its capital expenditure. Grant of contracts for such long periods of time as ten years, is bound to result in loss of revenue for the State in the long run, since the inflation would not be factored in when contracts are awarded for such large periods of time.

10. We may also take note of the order dated 05.01.2022, passed by this Court, wherein the Court had observed as follows:-

"Having regard to the facts & circumstances of the case, it shall be open to the respondents to award contract to the highest bidder, however, extension of contract beyond 5 years shall be subject to final outcome of the writ petition.

As prayed, four weeks' time is granted to learned counsel for the respondent(s) for filing counter affidavit(s). Two weeks' time, thereafter, is allowed for filing rejoinder affidavit.

List this matter in the month of March, 2022".

11. We, therefore, quash the tender and the corrigendum in question. The contract awarded to respondent no.5 shall, accordingly, stand terminated. It shall be open to respondent no.5 to claim the refund of the excess amount from the State that respondent no.5 claims to have deposited for the unexpired period. The respondent- State shall initiate a fresh tender in accordance with the existing Fisheries Rules, 2013 without any delay.

12. The writ petition stands disposed of in the aforesaid terms.

13. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 25th September, 2023

NISHANT