

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3742 OF 2011

Jugalkishore R. Joshi and Ors.	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

Mr. C. G. Gavnekar with Mr. G. S. Hiranandani and Mr. Ashutosh C. Gavnekar for the petitioners.

Mr.S.C.Rajguru for respondent nos. 1 to 5.

Mr. Atul Damle-Senior Advocate with Ms. Swati Sagvekar and Mr. Navin Sachanandani for respondent nos.6 and 7.

Ms. Mohita Kachawaha-Assistant Salt Commissioner i/b. Mr. Rajeev Kandpal-Salt Commissioner present.

**CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.
DATED :- MARCH 16, 2018**

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are seeking the following reliefs:-

“(a) That by Writ of Mandamus and or a writ in the nature of mandamus or any other appropriate Writ, Order or Direction, your Lordships be pleased to quash and set aside impugned order dated 29/03/2011-30/03/2011 bearing No. C. No. 2(43)P/78/IVI/1652 passed by Respondent No.3 on behalf of Respondent Nos. 1 to 5 be directed to resume possession of the Salt Works “Junawachak Salt Works” and “Bhatti Salt Works”, Bassein from Respondent Nos.6 and 7.

(b) That by Writ of Mandamus and or a writ in the nature of mandamus or any other appropriate Writ, Order or Direction, your Lordships be pleased to quash and set aside

the impugned order dated 29/03/2011-30/03/2011 bearing No. C. No. 2(43)P/78/IVI/1652 passed by Respondent No. 3 on behalf of Respondent Nos. 1 & 2 and annexed at **Exhibit "M"** and be further pleased to direct the Respondent Nos.1 to 5 to hold the auction of "Junawachak Salt Works and Bhatti Salt Works, Bassein."

2. The petition claiming such reliefs is filed in this court on 25th April, 2011. During its pendency, it has appeared before several Benches of this court and one of the orders was adverted to earlier. That is an order passed on 13th April, 2012. That order, with its consequences and implications was noted by us in our order dated 30th January, 2018, which reads as under:-

“[1] We have heard Mr. Gavnekar, learned counsel appearing for the petitioners and Mr. Anil Singh, learned Addl. Solicitor General (ASG) for respondent Nos.1 to 5.

2] The petitioners are complaining that the renewal of lease in respect of a Salt pan in favour of respondent Nos.6 and 7 for a period of 20 years without inviting tenders has caused loss to the public revenue and is detrimental to the larger public interest. Our attention was invited to an order passed on this petition on 13th April 2012 by the Division Bench.

3] That order reads as under:

“1. Heard the learned counsel for the respective parties.

2. The grievance of the petitioners is in respect of renewal of lease(s) for manufacture of salt vide order dated 30th March, 2011 in favour of respondent nos. 6 and 7 issued by the Assistant Salt Commissioner, Mumbai on the following grounds:

(1) That the respondents while renewing lease(s), procedure stipulated in Clause 90(1) and (2) of the Bombay Salt Manual Part - II has not been followed. The tenders were not called as required by sub-clause (2) after the earlier lease(s) for manufacturing salt granted in favour of respondent nos. 6 and 7 came to an end w.e.f 30th June, 2010,

(2) The lease(s) was / were renewed for another period of 20 years w.e.f 1st July, 2010 on the same

terms and conditions stipulated in first lease document executed on 1st July, 1990 when prevailing tender rates are Rs.121 - Rs. 300 - Rs. 421.

3. Learned counsel for the petitioners has submitted that clause (c) of letter dated 14th February, 2012 addressed to the Salt Commissioner issued by I/c. Deputy Salt Commissioner, Mumbai reads thus:"

(C) EXAMINATION:

As desired by the Salt Commissioner, Jaipur in his letter dated 9th December 2011, the facts as stated above has been examined in the light of subject petition which naturally leads to the following questions.

(1) Why action for leasing of these two Government Salt Works by inviting tenders from public was not initiated as already decided & reiterated on 13-07-2009 on 02-02-2010, respectively by i/c DSC, Mumbai?

(2) Why renewal of leases in favour of the same lessees was preferred than the leasing of these two Government Salt Works by inviting tenders which would have allowed a fair competition among all interested persons including the present lessees in tender process and it would have also fetched better rate to fetch higher revenue to the Govt.?

(3) When the DSC, Ahmedabad (DLM) {whom the I/c DSC, Mumbai (SM) considered the in-charge of his office for this specific purpose only} advised to consider the renewal of leases at the highest tendered rate in the vicinity for renewal of these said leases, then why leases' renewal was done at the 20 years' old tender rates?

(4) When the DSC, Ahmedabad (DLM) {whom the I/c DSC, Mumbai (SM) considered the in-charge of his office for this specific purpose only} advised on 01-06-2010 over phone [as recorded by I/c DSC (SM)] to consider the renewal of leases if the lessees have been regular in payment of Govt. dues, then whether the fact that the lessees of these salt works were never regular all these 20 years of their tenure since 1990, towards payment of Govt. dues was brought to the notice of DSC, Ahmedabad (DLM) or SC, Jaipur

(SS) before initiating action of renewal of leases in favour of the same lessees?

(5) It appears from the comparative statement attached for item no. 5 of agenda of meeting chaired by SC (SS) on 28-10-2010 at Jaipur that difference in various cumulative amounts of 20 years' revenue in reference to different Assignment Fee rates of Rs.10/-, Rs.121, Rs. 300/-and Rs.421/-were duly compared vis-a-vis 20 years' old tender rates of these leases. On what basis the old tender rates of Rs. 99.80/ (Junawachak S.W.) and Rs.47.18/(Bhatti S.W.) were compared with the minimum rate of Rs. 10/- and not with the actual prevailing tender rates of Rs.121/-, Rs. 300/-and Rs. 421/- while preferring the 20 years old tender rates?

Learned counsel for the petitioners, therefore, has contended that the action of the respondent of renewal of lease(s) in favour of respondent nos. 6 and 7 without following due procedure, as referred to herein above, is bad in law and therefore, cannot be sustained in law. Learned counsel for respondent nos.1 to 5 seeks two weeks time to seek specific instructions in respect of letter dated 14th February 2012 issued by the I/c. Deputy Salt Commissioner, Mumbai to the Salt Commissioner, Jaipur in order to file short affidavit in this regard.

4. S.O to 27th April, 2012.”

4] After that order was passed, repeatedly this court has insisted on the presence of Salt Commissioner or Assistant Commissioner in the court.

5] That was to impress upon them that the terms and conditions of the lease are not so sacrosanct and binding to this extent that it will be impossible for the Salt Commissioner to call upon a lessee after nearly 8 years of the lease to pay rent at a revised rate. In other words, the doors for revision of the rent are not foreclosed, as is apprehended in the affidavit-in-reply.

6] We impressed upon respondent Nos. 1 to 5 that if in larger interest of the public and the public revenue the matter demands a re-look as far as the lease rent and that is imminently revisable bearing in mind the potential of salt land or its location or its close proximity to Mumbai that even now the Salt Commissioner is not precluded from undertaking an exercise in accordance with law.

7] It is this overriding public interest and which compels the Commissioner to have a re-look at the matter and this is emphasized throughout in the earlier order and even by us today.

8] Mr. Anil Singh, learned ASG, on above opinion being expressed by us, has agreed to speak to the Salt Commissioner and revert back to the court.

9] We grant him time to do so and we post this petition on 16th February 2018 on the supplementary board. In the event the Commissioner is ready and willing to have a re-look, then, the writ petition can be disposed of with appropriate directions.””

3. The tenor of this order was that the valuable salt pan lands in and around Mumbai are public properties. They are held in trust for the public by the Salt Commissioner. If any party intends to manufacture salt and by paying appropriate royalty or other charges to the Government, it is free to do so and all these public properties have to be dealt with in terms of the constitutional mandate. The Salt Commissioner has to draw up a document and styled as a contract on behalf of the Union with the concerned manufacturer.

4. Given the implications of a policy then prevailing and allowing the existing salt manufacturers to continue and derive benefits by paying meagre amounts, the complaint of the above nature led to the writ petition as that was not entertained by the concerned authorities.

5. On 16th August, 2016, a Division Bench was informed that the learned Additional Solicitor General is briefed in the matter to oppose the writ petition. When such was the instruction and the petition was pending for more than six and half years in this court, the Division Bench presided over by one of us (S. C. Dharmadhikari, J.) passed an order on 3rd January, 2018. At that time, this court was informed that the larger interest of public demands that a policy decision be taken so as not to cause revenue loss. That policy decision was expected on the lines of the pronouncement of the Hon'ble Supreme Court and particularly a judgment in the case of *Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and Ors.*¹. The learned Additional Solicitor General sought time after his attention was invited to the above pronouncement as also underlying principles, whereby, material resources are held in trust for the public and to be dealt with strictly in terms of the above judgment and by a fair and transparent process of bidding. The time was sought to speak to all concerned and revert back to this court.

6. On 23rd February, 2018, the following order was passed by this court:-

“1 Today when this matter was placed, the learned Additional Solicitor General Mr. Anil Singh states that he has spoken to the senior level officials and particularly at

¹ AIR 2011 SC 1834

the Commissionerate level. They are not only apprised of the view and suggestions of the Court, but even the ground realities which would demand that a proper and uniform policy should be adopted in respect of salt pans and the complaint of the petitioners that a selective tender process is adopted, particularly with regard to adjoining salt pans and the others are excluded though similarly placed, in principle, the authorities are contemplating a review or reconsideration of earlier policies. In order to give that decision a finality, Mr.Singh says that some time be granted.

2. Though this request is opposed by Shri Gavnekar, we are of the view that since the Commissionerate level officials are present in Court, they are indeed serious in taking a final call or decision, purely to accommodate them, we place this matter on 16th March 2018 on Supplementary Board.”

7. Pursuant to that order, the matter was placed today. Surprisingly, at today's hearing, Mr. Rajguru appearing for the Union of India and the Salt Commissioner tenders a copy of a letter dated 13th March, 2018 addressed by the Salt Commissioner to the Deputy Salt Commissioner, Mumbai and which letter reads as under:-

“Government of India
Office of the Salt Commissioner
2-A, Lavan Bhavan, Jhalana Doongrai
Jaipur – 302004.

C. No. 16(21)P/2011/Vol-II dated 13th March, 2018

To,

The Deputy Salt Commissioner,
Mumbai

Sub :W. P. No. 3742/2011 – Shri Jugal Kishor R. Joshi &
Ors. Vs. Union of India, Salt Commissioner & Ors. in

Bombay High Court-against renewal of lease at old rates of two Government Salt Works in Bassein Salt Factory-regarding.

Please refer to the DIPP letter No. 04015/4/2018-Salt dated 13.03.2018 on the subject cited above.

Vide order dated 30.01.2018, the Hon'ble High Court directed to re-look into the matter as far as the lease rent is concerned bearing in mind the potential of salt land or its location or its close proximity in Mumbai.

The matter has therefore been re-looked and the Department is of the view that the land in question should be awarded afresh, on lease through open tender and the present salt manufacturers maybe allowed to participate in the open tender as per the Government policy notified on 09.10.2013. Simultaneously, the rate of assignment fee on the earlier renewed leases of both the Salt Works should be revised with effect from 01.07.2010 on payment of highest tendered rate prevailing then in the area i.e. Rs.421/- per tonne/annum subject to minimum production of 20 tonne/acre/annum for the intervening period.

The Additional Solicitor General may therefore be apprised of this and requested to seek the permission of the Hon'ble High Court on the above exercise.

sd/-
(Dr. Rajeed Kandpal)
Salt Commissioner"

8. We take a copy of this letter on record and mark it as 'X' for identification. Mr. Gavnekar appearing for the petitioners made a serious grievance and particularly that though the above reproduced letter, addressed to the Deputy Salt Commissioner, makes a reference to a Government policy notified on 9th October, 2013, why such policy document, which was already published in the Gazette of India in Part II, section 3 sub-section (2), was held back or suppressed from this court. His submission is that the

policy decision was already taken and it was in place. Yet, this court was not informed about the same at least at the last two hearings.

9. We have taken this copy of the Gazette of India tendered by Mr. Gavnekar on record. This Gazette contains the resolution of the Ministry of Commerce and Industry dated 9th October, 2013. That reads as under:-

**“MINISTRY OF COMMERCE AND INDUSTRY
RESOLUTION**

New Delhi, the 9th October, 2013

S. O. 2301. - The policy on the renewal of leases of Central Government land under the administrative control of Salt Commissioner leased out for manufacture of salt was considered and the President, in partial modification of the Government Resolution No. 18(4)/59-Salt (Pt. VIII) dated 7th December, 1961 and further clarified under Government Resolution No. 16(23)/63-Salt dated 19th December, 1969, is pleased to approve that:-

(a) Central Government land will be leased out for salt manufacture for a period of 20 years by invitation of tender.

(b) No renewal of lease will be done. Fresh tender for the assignment of land for salt manufacture will be called. The present leasee on expiry of the existing lease may participate along with fresh aspirants.”

10. Upon a perusal of this publication, we are of the firm opinion that at least on 9th October, 2013, there was a clear cut and defined policy. There was thus no impediment in pointing out to this court that in the light of this policy, the grievance of the

petitioner would not survive. Far from stating on these lines, it was left to the petitioners to pursue the cause and in the larger interest of the public. This would clearly mean that the Salt Commissioner, the Deputy Salt Commissioner and the concerned officials in the Ministry have misled this court and from time to time. There was enough opportunity available to them to file an affidavit dealing with the contentions of the petitioners and particularly the allegation that there is an arbitrariness given the lack of defined policy in allotting the lands styled as salt pan lands for manufacturing salt. The public revenue and public interest is sacrificed and not safeguarded and protected by these public officials. We are surprised that no such stand was taken until this court impressed upon the officials through the learned Additional Solicitor General that they would take all the consequences in the event they are found to be violating the law of the land.

11. In these circumstances, while we dispose of this writ petition in terms of the above communication to the Deputy Salt Commissioner and the publication in the Gazette of India, we direct that every salt pan lands used for manufacturing salt within the Mumbai city and Suburbs as also within the vicinity have to be strictly allotted or leased in terms of this policy and which demands that by issuing a public notice, bids and offers are

invited from interested parties, they are duly considered by a competent scrutiny and verification committee, fairly and transparently and thereafter, the lease or allotment of lands for manufacture of salt be made.

12. We dispose of this petition by accepting the statements made by Mr. Rajguru as undertakings given to this court. It is stated that now the subject salt pan lands would be allotted after inviting bids from interested parties by a fair and transparent process, in which, all the interested parties, including the petitioners and respondent nos. 6 and 7 are free to participate. The moment the process is finalised by such tender or bid notice and in terms thereof, all existing rights of salt manufacturers qua the subject salt pan lands would come to an end. Meaning thereby, physical possession of the same would be obtained from the existing salt manufacturers and the same would be allotted to the successful bidder.

13. Since we are of the firm opinion that this court is engaged in a futile litigation and misled on more than one occasion, we direct the Secretary in the Department of Ministry of Commerce and Industry (Policy and Promotion) to initiate disciplinary proceedings against the guilty officials, including the Deputy Salt Commissioner, Mumbai. If the officer as high as holding the post

of the Salt Commissioner has also not brought to this court's notice the policy or the underlying measures, then, even he should be proceeded against in terms of the Disciplinary Rules and Regulations.

14. We ought to remind these officials their duties as public servants and in the words of the Hon'ble Supreme Court itself. We do so by making a reference to a decision of the Hon'ble Supreme Court in the case of *Sonal Sihimappa vs. State of Maharashtra and Ors.*², where, the Hon'ble Supreme Court holds as under:-

“22. A public servant – whatever his status be – is in the position of a trustee. Social power vests in him for a purpose of rendering service to the community. Every public servant has to be cognizant to that obligation. Once the level of that consciousness grows up there is bound to be a corresponding fall in the attitude to litigate over small issues. What this Court said in the case of Dr. T. G. Siddapparadhya (1971) 3 SCR 621 at p. 628 : (AIR 1971 SC 2264 at p. 2268) has to be borne in mind. These were the words then said:-

“The canker of litigiousness has spread even to a sphere of life where discipline should check ambition concerning personal preferment. A teacher is justified in taking legal action when he feels that a stigma or punishment is undeserved but he is expected to bear with fortitude and reconcile himself to his lot suppressing disappointment when he finds a co-worker raised to a position which he himself aspired after”.

What applies to a teacher may perhaps well apply to everyone in positions of social trust. It is for the privileged public servant as also his employer to share this philosophy.”

2 AIR 1987 SC 2359

15. We expect the disciplinary proceedings to be initiated and concluded within a period of six months from the date of the communication of this order.

16. With the aforesaid directions, the writ petition is disposed of. There would be no order as to costs.

17. This order is passed in the presence of Ms. Mohita Kachawaha-Assistant Salt Commissioner.

(PRAKASH.D.NAIK, J.) (S.C.DHARMADHIKARI, J.)