HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos. 35321, 36249 of 2014, 2369, 2997 & 13341 of 2015, 35206, 35212, 35223, 35227, 35244, 35253, 35256, 35259, 35315, 35328, 35334, 35341, 35367, 35368, 35379, 35430, 35437, 35452, 35454, 35470, 35494, 35496, 35522, 35547, 35560, 35564, 35565, 35619, 36027, 36202, 41104, 41136, 41164, 43131, 43157, 43173, 43203, 43211, 43222, 43299, 43390, 43455, 43460, 43567, 43569, 43666, 43763, 43836, 43888, 43976, 44067, 44126, 44303, 44317, 44663, 44796, 44831, 44993, 45017, 45047, 45172 of 2017, 76, 134, 591, 689, 912, 955, 963, 1072, 1122, 1661, 1733, 1748, 3378, 3426, 3428, 3435, 5400, 5401, 6081, 6123, 6145, 21081, 32407, 32408, 32419, 32447, 32457, 32473, 32501, 32509, 32514, 32522, 32581, 32598, 32715, 32734, 32944, 32952, 33206, 33253, 33289, 33374, 33393, 33408, 33424, 33433, 33454, 33526, 33666, 33974, 34025, 34121, 34187, 34320, 34405, 34625, 34642, 34653, 34703, 34706, 34721, 34727, 34739, 34742, 34774, 34812, 34815, 34816, 34819, 34821, 34827, 34830, 34847, 34851, 34865, 34879, 34890, 34954, 35072, 35095, 35197, 35199 of 2018

COMMON ORDER :

Since the issue involved in all these writ petitions is one and the same, they are being heard together and disposed of by way of this Common Order.

2. These Writ Petitions are filed assailing the action of the 1st respondent in issuing the letter dated 09.10.2013 as illegal and arbitrary and consequently to direct the respondents to renew their licenses, without insisting for payment of differential amount of assignment fee/ground rent as per the impugned letter dated 09.10.2013.

3. Brief facts which led to filing of these writ petitions are that the petitioners and their ancestors have been manufacturing salt by obtaining appropriate lease deeds for a period of 20 years from the Government of India and renewing the same from time to time. They are depending upon the salt manufacturing business and have also invested huge

amounts for production of salt in spite of the natural calamities being faced by them. The leases of some of the petitioners are in existence and some of the leases expired by 30.09.2018. They are regular in paying the rental amounts as per the lease agreements. The petitioners are eking out their livelihood by virtue of lease granted by the respondent authorities and that they have no other source of income except the salt manufacturing. It is stated that some of the petitioners are legal heirs of the original lease holders, as such, they are entitled to continue the lease by virtue of succession as the original licensee expired during the pendency of the lease period. It is stated that since the sea water being the main source of salt in India, salt production is concentrated in the coastal areas in the State of Andhra Pradesh which was covered in Nowpada, Kalingapatnam of Srikakulam District, Konada, Bheemunipatnam and Revupolavaram in Visakhapatnam District, Kakinada, Penuguduru in East Godavari District, China Ganjam in Prakasam District, Machilipatnam, Krishnapatnam in Krishna District, Isakapalli in Nellore District. It is stated that salt revenue was originally vested in the Collectors of Central Excise whose controlling authority was Commissioner of Salt Revenue. Subsequently, on the recommendations of a Commission appointed by the Government of India, department for Salt Commission was created in 1876 and similar procedure was adopted in Bombay and Calcutta

Presidency. In the year 1964, on the recommendation by the Central Advisory Board, the 1st respondent vide letter dated 20.06.194 fixed the assignment fee of Rs.1/- per ton for an area above 10 acres with different minimum production levels fixed for each State which maintaining the ground rent of Rs.2/- per acre. Again the assignment fee was revised in the year 2004 on the advise of Central Advisory Board and fixed the ground rent at Rs.5/- per acre per annum and minimum assignment fee as Rs.10/- per MT., subject to minimum productions fixed differently for different States. While things stood thus, the 1st respondent issued statutory order dated 09.10.2013 bearing No.04014/2012-Salt increasing the ground rent arbitrarily from Rs.5/- to Rs.120/- per MT per acre, while increasing the minimum assignment fee to be paid to Rs.100/- per MT per acre subject to minimum production and also issued consequential final notice dated 19.08.2014 by the 3rd respondent demanding the petitioners to revise the assignment fee, ground rent and rate of minimum and also to pay the enhanced amount. Aggrieved by the same, present Writ Petitions are filed.

4. Counter affidavit is filed by the respondents denying the averments in the affidavits filed in support of the writ petitions stating that the Committee headed by Sri Manubhai Shah, the then Industry Ministry has suggested in its report in July, 1956 to the Government of India that there is a great need for rationalizing the several kinds of levies which are

imposed on production of salt in different States. The Committee recommended that the Central Government should in consultation with the State Governments, determine a uniform system of charges payable by the lessee of salt lands belong to Central or State Governments. As such, the Government of India issued orders vide No.18(4)/59-Salt(Pt.VIII) dated 07.12.1961 as well as No.16(23) 63-Salt dated 20.06.1964 stipulating the levy of assignment fee @ Rs.1/- per MT on salt produced and issued and ground rent @ Rs.2/- per acre/annum. It also provides for review of arrangements/formula from time to time. It is stated that the present revision in ground rent and assignment fee is a follow up action on the aforesaid recommendation and decision taken in consultation with the concerned State Governments. The formula of charging assignment fee and ground rent was reviewed after a period of four decades and the rate of assignment fee @ Rs.10/- per ton/acre/annum subject to minimum production fixed for each area and Rs.5/- as ground rent was revised with effect from 01.01.2004 under Department of Industrial Policy and promotion letter No.02011/2/2003-Salt, dated 27.01.2004. The petitioners have also accepted the decision of the Government and continued to pay the assignment fee and ground rent at the revised rate with effect from 01.01.2004 till date. The present policy of the Government is to maintain the transparency in the system and to fix base price based on the price etc., offered in open auction in respect of Salt land during the period of 2007-2011. It is stated that the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, New Delhi in pursuance to the recommendations of the Committee headed by Sri Manubhai Shah Committee consulted all the three major salt producing States i.e., Gujarat, Rajasthan & Tamilnadu before taking final decision of the Government to increase assignment fee and ground rent by virtue of proceedings dated 09.10.2013 and that there is no need for the Government to discuss this issue in Central Advisory Board for Salt. It is stated that the 1st respondent has not taken any unilateral decision in enhancing the Assignment Fee and Ground Rent and same has been done in continuation of earlier revision order No.02011/2/2003-Salt, dated 27.01.2004 of Ministry of Commerce and Industry, New Delhi. It is stated that the Government did not accept the recommendation-18, with regard to period of lease for 99 years and curtailed the renewal period not exceeding to 20 years only. The Government had considered the renewal for further period of 20 years on merits at the appropriate time on such terms and conditions Government may decide. It is stated that giving renewal to the existing lessees on the same terms and conditions would not only create a monopoly in salt manufacture but also contrary to various Court directions and constitutional provisions under Article 14 of the

Constitution of India. It is also stated that as per the Government Resolution dated 19.12.1969, it was clarified that 'Government lands' will ordinarily be leased out for manufacture of sale for a period of twenty years only. It is stated that levying of ground rent is as per Section 105 of the Transfer of Property Act, 1882 to be complied by the lessee on contractual obligations and there is no relevance with the Salt Cess Act, 1953 and Rules made there under. The 1st respondent is having power to revise the Assignment Fee and Ground rent and thereby issued the impugned circular dated 09.10.2013 for its effective implementation in the public interest. It is stated that the petitioners while getting their lease renewals, had also given an undertakings to the effect that they agree to pay the assignment fees on the salt pan area, the incidental area in exclusive possession, brine pit area and the area in common enjoyment with others in the factory at the existing rate fixed by the Salt Department or at the enhanced rate if any with retrospective effect if so decided by the Government of India and also agree to execute a fresh lease deed in the prescribed form and sought for dismissal of the writ petitions.

5. Heard Sri C.V.Mohan Reddy, learned Senior Counsel, Sri Venkateswar Rao Gudapati learned counsel for the petitioners and Sri K.Laxman, learned Assistant Solicitor General of India on behalf of the respondents.

6. Learned Senior Counsel appearing for petitioners while reiterating the averments in the affidavit filed in support of the Writ Petitions submits that the 1st respondent has unilaterally increased the assignment fee and ground fee, without assessing the ground realities and without consultations of any of the stakeholders, with complete disregard to the Government Resolution dated 07.12.1961. He submits that 1st respondent failed to provide the basis for enhancing the assignment fee and ground rent, even though there is no recommendation from the Central Advisory Board, which recommended the last revision in the year 2004. On the other hand learned Assistant Solicitor General while rebutting the submissions of the learned Senior Counsel submits that the Government of India has issued orders vide No.18(4)/59-Salt(Pt.VIII) dated 07.12.1961 and also No.16(23) 63-Salt, dated 20.6.1964 stipulating the levy of assignment fee @ Re.1/- per MT on salt produced and issued ground rent @ Rs.2/- per acre/annum. A perusal of the proceedings dated 07.12.1961 goes to show that the Government of India had considered the Salt Committee's recommendations for the adoption of a common pattern of levy of charges payable by the lessees of salt lands belonging to the Central or State Governments and it has been decided to working of the revised arrangements should be reviewed at the end of every year in consultation with the State Governments. A perusal of the proceedings dated 20.06.1964 goes to show that the

Government of India has accepted the recommendations of the Central Advisory Board for Salt in their meeting held on 23.09.1963 and also decided to enhance the assignment fee as well as ground rent apart from deciding to review the formula at the end of two years and results. Therefore, it cannot be said that the 1st respondent has taken unilateral decision in enhancing the assignment rate and ground rate as contended by the learned Senior Counsel.

7. Learned Senior Counsel vehemently submits that the 1st respondent has no right to enhance the assignment fee and ground rate with retrospective effect. On the other hand learned Assistant Solicitor General submits that the petitioners themselves have agreed for enhancement of rent and they have also executed lease agreements to that effect. It is categorically mentioned in the lease deeds executed by them in condition Nos.1(i) & (ii), it is specifically stipulated that the lessee is liable to pay the Assignment Fee and Ground Rent at the rate mentioned in the lease deed or as amended by the Government of India from time to time fixed by the lessor, as such, it is not correct state that without issuing notice to the petitioners, the 1st respondent enhanced the fee and rents unilaterally since it is an agreement between the petitioners and the 1st respondent.

8. Learned Senior Counsel submits that the rates enhanced by the 1st respondent are quite exorbitant, without any legal basis and also that they have not followed the procedure

prescribed for enhancement of assignment fee and ground rates. Though it is argued by the learned Senior Counsel that the 1st respondent enhanced the assignment fee and ground rates exorbitantly and that no undertaking is given by the petitioners, but a perusal of a copy of an undertaking dated 09.07.1998 given by one Merla Venkata Rao who is petitioner in WP No.44663 of 2017, Baki Sitharathnam, who is petitioner in WP No.591 of 2018, dated 21.04.1998 which are produced by the learned Assistant Solicitor General, goes to show that the petitioners have categorically agreed to pay rate fixed by the Salt Department or the rate enhanced by the Salt Department, if any with retrospective effect from 01.10.1998 apart from agreeing to execute a fresh lease deed in the prescribed proforma. Therefore, the contention of the learned Senior Counsel that the 1st respondent has no right to enhance the assignment fee and ground rate without notice to the petitioners, and increase of rates exorbitantly, cannot be accepted. That apart, even if the petitioners are aggrieved by enhancement of said rates, they can invoke arbitration clause contained in the agreement for redressal of their grievance before arbitrator.

8. Learned Senior Counsel submits that the petitioners are entitled for automatic renewal of lease, on payment of enhanced assignment fee and ground rate and there cannot be any refusal for renewal of lease by the 1st respondent, which is in violation of principles of natural justice. He

submits that since 50 years, the petitioners are getting renewals, therefore, the petitioners legitimately expect that their leases will be renewed. He further submits that there is no averment in the counter affidavit about the impugned notification being supported by any resolution. He further submits that in sofar as lease agreements between the petitioners and the respondents, they do not contain any undertakings, which are alleged to have been executed by the petitioners. He further submits that even though the respondents obtained the said undertakings, they are hit by the provisions of Section 28 of the Contract Act. He further submits that all the petitioners are small farmers and illiterate people, as such, they will not know the wherewithal of the commercial undertakings. He further submits that the respondents could not have taken such an undertakings from the petitioners, which is contrary to Article 14 of the Constitution of India, which is illegal, arbitrary and against the public policy. He further submits that even if the respondents are not extending the lease period beyond the agreed period, they may be considered for continuing their lease till the respondents takes a policy decision in the matter. He further submits that the respondents cannot dispossess the petitioners without following due process of law. While referring to the order passed by this Court in WP No.39100 of 2013 dated 02.01.2014, he submits that the said Court did not considered the question of legitimate expectation of the petitioners for renewal of lease period. In support of his contentions he relied on the judgments reported in **Madras City Wine Merchants' Assiciation v. State of Tamil Nadu [(1994) 5 Supreme Court Cases 509; LIC of India and another v. Consumer Education & Research Centre [(1995) 5 Supreme Court Cases 482; M.P.Oil Extraction and another v. State of M.P and others [(1997) 7 Supreme Court Cases 592] and Kisan Sahkari Chini Mills Limited v. Vardan Linkers [(2008) 12 Supreme Court Cases.**

9. Learned Assistant Solicitor General for respondents while rebutting the submission of the learned Senior Counsel, submits that the petitioners have no right to claim extension of lease in their favour since the Government of India intends to adopt a fair and transparent policy for leasing out or disposal of public property. It is pertinent to note that in similar circumstances, the Hon'ble Supreme Court in Centre for **Public Interest Litigation v. Union of India [(2012) 2 SCC 1],** it is held that there could be no implied renewal of lease and public authorities are required to adopt a transparent and fair method for disposal of public property. In view of above finding of the Hon'ble Supreme Court, the petitioners cannot have legitimate expectation of lease in their favour by the respondents, as contended by the learned Assistant Solicitor General for respondents. That apart, as per the order of this Court in WP No.39100 of 2013 dated

02.01.2014 in the case of **V.V.Govindarajulu v. Union, Government of India**, wherein it is held that consequent to the expiry of the lease, it was always permissible to the respondents to go for awarding of fresh contract by calling fresh tenders and that the petitioners cannot be permitted to say that they should be permanently continued to operate merely because a lease was granted in their favour. That apart, as rightly contended by the learned Assistant Solicitor General of India, there is no condition stipulated in the lease agreements as to renewal of leases and it is categorically stated in the lease agreements that they have to handover the subject property. Since they have categorically given undertakings to vacate the premises after completion of lease period, they cannot turn back. Moreover, the challenge as to the enhancement of assessment fee and ground rent was not for the first time since they are paying the enhanced rents even much before the impugned proceedings of the respondents. As such, the petitioners cannot conveniently agitate the said grounds in these writ petitions as violation of principles of natural justice. It is pertinent to note here that this Court in catena of decisions held that even for violation of contractual obligations, writ petitions are not maintainable and that this Court cannot go into the disputed question of facts, as held in **State of Kerala and others v. M.K.Jose [(2015) 9 Supreme Court Cases 433],** wherein the Hon'ble Supreme Court held as follows:

> "13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disuted questions of fact. The present case clearly indicates that the factual disputes are involved."

As already observed supra, since the petitioners are disputing execution of undertakings given by them with regard to handing over of leased property after completion of lease period as well as to enhance the assignment fee and ground rent, the same cannot be gone into in these writ petitions, in view of aforesaid judgment of Hon'ble Supreme Court.

10. As contended by the learned Assistant Solicitor General appearing for respondents, the lease agreements contained arbitration clause, the petitioners can go for arbitration for settlement of their disputes. When once an arbitration clause is available for the petitioners, this Court cannot entertain these writ petitions as held in **Commissioner of Income Tax and others v. Chhabil Dass Agarwal [(2014) 1 Supreme Court Cases 603],** wherein the Hon'ble Supreme Court held as follows:

> "15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

Though learned Senior Counsel relied on judgments of Hon'ble Supreme Court in **Madras City Wine Merchants' Assiciation v. State of Tamil Nadu [(1994) 5 Supreme Court Cases 509; LIC of India and another v. Consumer Education & Research Centre [(1995) 5 Supreme Court Cases 482; M.P.Oil Extraction and another v. State of M.P and others [(1997) 7 Supreme Court Cases 592] and Kisan Sahkari Chini Mills Limited v. Vardan Linkers [(2008) 12 Supreme Court Cases,** the same are not applicable to the facts and circumstances of the cases on hand, since the decision taken by the respondents is a policy decision of the Government of India, which intends to adopt a fair and transparent policy for leasing out or disposal of public property and also avoid monopoly in salt manufacturing units, as such, the same cannot be interfered with by this Court by exercising power under Article 226 of the Constitution of India.

All these writ petitions are listed on 26.11.2018 under the caption 'for pronouncement of judgment' and when the matters were called, learned Senior Counsel appearing for the petitioners in WP No.2369 of 2015 stated that petitioners filed I.A.No.1 of 2018 under Order 18 Rule 17 CPC and Section 151 CPC to reopen the matters in view of changed circumstances and to hear the same.

As such, the matter was heard again and Sri C.V.Mohan Reddy, learned Senior Counsel appearing on behalf of petitioners advanced his arguments and Sri K.Lakshman, learned Assistant Solicitor General submitted arguments on behalf of the respondents.

Sri C.V.Mohan Reddy, learned Senior Counsel submits that when an application is made by similarly situated person as that of the petitioners herein on 17.09.2018 in the State of Tamilnadu under Right to Information Act, 2005 with regard to renewal policy, the Director, CPIO issued proceedings F.No.P-34026 (14)19/2018-Salt, dated 18.10.218, renewing the policy decision in respect of renewal of leases etc., in favour of the small scale lease holders, who are having less than 10 acres of land, are entitled for renewal of their leases ad if lease holders having more than 10 acres of land, the Department of Salt to conduct fresh auction and that if the existing bidder matches with the highest bidder, the existing lessee will be given preference to continue him. He further submits that in view of aforesaid changed circumstance seeks to reopen the matter.

On the other hand, Sri K.Lakshman, learned Assistant Solicitor General of India appearing on behalf of the respondents submits that the Government of India has taken a decision not to renew or grant any lease till Cabinet takes a decision on the subject. He filed a letter dated 11.07.2016 to that effect.

A perusal of the minutes of the meeting of the committee for review of leasing policy of Central Government Salt Pan

Land and Revision of Assignment Fee and Ground Rent, conducted on 06.05.2015, which is enclosed to the reply dated 18.10.2018 of the Director & CPIO, New Delhi, it was decided as follows:

> "(i) The fixation of AF & GR should be made by taking into consideration the rates charged by the respective States. SCO should collect the necessary Government Orders from each salt producing States and send a proposal for consideration of the Committee. Issues at para no.12 is also to be examined by SCO.
> (ii) There may be no auction in cases of lessees having land less than 10 acres or the Cooperatives societies in which land holding of each member is less than 10 acres.
> (iii) For the lands more than 10 acres, there will be tendering. However, the existing lessee should be permitted to match with the H-I bidder and if he does so the lease would be renewed in his name.
> (iv) There should be a pre-condition that the existing lessees should have complied with all the terms and conditions of the existing lease to be eligible for renewal of lease."

From the above minutes it is clear that there may be no auction in cases of lessees having land less than 10 acres or the Cooperatives societies in which land holding of each member is less than 10 acres and for the lands more than 10 acres, there will be tendering. However, the existing lessee should be permitted to match with the H-I bidder and if he does so the lease would be renewed in his name. But a perusal of the letter dated 11.07.2016 addressed by the Deputy Secretary to the Government of India to the Salt Commissioner, Office of Salt Commissioner, Rajasthan, goes to show that the Salt Commissioner's Organization, Jaipur had requested not to renew or grant any lease till Cabinet takes a decision on the subject matter. For the sake of convenience, the relevant paragraphs are reproduced as follows:

> "To: 11th July, 2016
>
> The Salt Commissioner,
> Office of Salt Commissioner
> Lavan Bhawan, 2-A Lavan marg,

Jhalana Doongri, Jaipur,
Rajasthan-302004.

Sub: Lease of salt pan lands-regarding

Sir,

I am directed to refer to your letter No.1(1)P/97/V/11674, dated 29th October, 2015 on the subject mentioned above and to state that a Note for the consideration of the Cabinet on closure of Salt Commissioner's Organization (SCO) and disposal of salt pan lands is under finalization, which shall be moved shortly.

2. In view of the above, Salt Commissioner's Organization, Jaipur is requested not to renew or grant any lease till Cabinet takes a decision on the subject matter.

3. This issues with the approval of Secretary, IPP.

Yours faithfully
Sd/-
(Narender Kumar)
Deputy Secretary to the Govt.of India."

Admittedly, the aforesaid letter is subsequent to the minutes of the meeting dated 06.05.2015 and the Government of India intends to close the Salt Commissioner's Organization and a note to that is also pending for consideration before the Cabinet. Therefore, no favourable orders can be issued for renewal /grant of any leases in favour of the petitioners.

At this juncture, learned Senior Counsel submits that the aforesaid letter dated 11.07.2016 is not issued by the Secretary to the Government of India, as such, same cannot be looked into. But in the 3rd paragraph of the letter, it is categorically stated that the said letter issued with the approval of the Secretary, IPP, as such, it cannot be said that the Deputy Secretary to the Government of India has no right to issue such communication to the Salt Commissioner.

In view of above facts and circumstances, I do not see any merit in these writ petitions and accordingly, the same are dismissed. However, in the case of petitioners whose leases have already expired, as per the lease agreements; have to vacate the leased premises within a period six months from the date of receipt of a copy of this order. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

11.12.2018
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos. 35321, 36249 of 2014, 2369, 2997 & 13341 of 2015, 35206, 35212, 35223, 35227, 35244, 35253, 35256, 35259, 35315, 35328, 35334, 35341, 35367, 35368, 35379, 35430, 35437, 35452, 35454, 35470, 35494, 35496, 35522, 35547, 35560, 35564, 35565, 35619, 36027, 36202, 41104, 41136, 41164, 43131, 43157, 43173, 43203, 43211, 43222, 43299, 43390, 43455, 43460, 43567, 43569, 43666, 43763, 43836, 43888, 43976, 44067, 44126, 44303, 44317, 44663, 44796, 44831, 44993, 45017, 45047, 45172 of 2017, 21081, 76, 134, 963, 1122, 1661, 1733, 1748, 912, 955, 1072, 3378, 3426, 3428, 3435, 34774, 34812, 34815, 34816, 34821, 5400, 5401, 591, 6081, 6123, 6145, 689, 32734, 32952 33289, 32408, 32419, 32447, 32457, 32473, 32501, 32509, 32514, 32522, 32581, 32598, 32715, 32944, 33206, 33253, 33374, 32407, 33393, 33408, 33424, 33433, 33454, 33526, 33666, 33974, 34025, 34121, 34187, 34320, 34405, 34625, 34642, 34653, 34703, 34706, 34721, 34727, 34739, 34742, 34819, 34827, 34830, 34847, 34851, 34865, 34879, 34890, 34954, 35072, 35095, 35197, 35199 of 2018

Date:11.12.2018

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