

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	22.02.2019
Judgment Pronounced on	10.05.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

ORIGINAL PETITION No.585 of 2011

and

WRIT PETITION No.24453 of 2015

and

WRIT PETITION No.7498 of 2016

O.P.No.585 of 2011:

M/s.Navdhan Enterprises

Rep by its partner Mr.T.V.Mani,
Plot No.6, Vembuliamman Koil 1st Street,
Kottivakkam, Chennai -600 041.

... Petitioner

Vs.

1. Union of India,
Rep. by the The Deputy Salt Commissioner,
Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.

2. P.M.Chaugule,
Assistant Salt Commissioner (Admin.)
Headquarters, 'Lavan Bhawan',
Jaipur, Rajasthan State.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act of 1996 to set aside the Award dated 17.05.2011 passed by the 2nd Respondent and allow the Claim Petition filed by the Petitioner herein in C.No.1/Arbitration/NE/2010/1/530 on the file of the 2nd Respondent, with costs.

W.P.No.24453 of 2015:

M/s.Navdhaan Enterprises

Rep. by its partner Mr.T.V.Mani,
Plot No.6, Vembuliamman Koil 1st street,
Kottivakkam, Chennai -600 041.

.. Petitioner

Vs.

1. Union of India
Rep. by its Secretary to Government,
Department of Industrial Policy and Promotion,
Udyog Bhawan,
New Delhi 110 011.
2. The Deputy Salt Commissioner,
Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.
3. P.M.Chaugule,
Assistant Salt Commissioner (Admin.) (Retd)
Office of Salt Commissioner,
'Lavan Bhawan', Jaipur,
Rajasthan State. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the notice inviting tenders, dated 12.07.2015, published in Deccan Chronicle by the 2nd respondent and quash the same and consequently direct the 2nd respondent to restrain from issuing any fresh tender notifications.

W.P.No.7498 of 2016:

M/s.Sathyagraha Salt Works
Rep. By V.Senthilnathan
28/30, Sethu Road,
Vedaraniyam - 614810
Nagapattinam District.

... Petitioner

Vs.

Union of India,
Rep. by the The Deputy Salt Commissioner,
Shastri Bhavan, 26, Haddows Road,
Chennai 600 006. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus seeking a direction to the Respondent to complete the tender processes by executing necessary required documents for the lease of rights to manufacture Edible Common Salt, etc., in Central Government lands under the Respondent's control for Voyalur Salt factory situated in Thiruvallur District, Tamil Nadu as detailed in the Tender notices dated 03.07.2015 and 06.08.2015.

For Petitioner in O.P.No.585/2011 : Mr.M.S.Krishnan,
: Senior Counsel for
Mr.M.Balasubramanian

For Petitioner in : Mr.S.Vijayan
W.P.No.24453/2015

For Petitioner in W.P.No.7498/2016 : Mrs.R.Priyakumar

For Respondents in O.P.No.585/2011 : Mr.G.Rajagopalan,
and W.P.No.24453/2015 : Additional Solicitor
General, assisted by
: Mr.K.Raju,
Central Govt. Standing
Counsel

For Respondent in W.P.No.7498/2016 : Mr.N.Rajan, Senior Central
: Govt. Standing Counsel

C O M M O N O R D E R

Above cases are heard and taken up for disposal under the "Specially Ordered" caption. As the issue involved in all the above Petitions is one and the same, the cases are taken up for disposal by a common order.

2. For the sake of convenience, parties herein are referred to by their names.

3. Initially, Original Petition No.585 of 2011 was filed by one M/s.Navdhaan Enterprises seeking to set aside the Arbitral Award dated 17.05.2011 passed by one Mr.P.M.Chaugale, (Arbitrator), Assistant Salt Commissioner (Admn.), Headquarters, Jaipur, Rajasthan, and allow their Claim Petition vide C.No.1/Arbitration/NE/2010/1/530.

4. In the year 2015, M/s.Navdhaan Enterprises came up with a Writ Petition in W.P.No.24453 of 2015 challenging the Notice inviting tenders, dated 12.07.2015 published by the Deputy Salt Commissioner, Chennai, in the Daily "Deccan Chronicle" and for a consequential direction to the Deputy Salt Commissioner, Chennai to restrain from issuing any fresh tender notifications.

5. While so, in 2016, M/s.Satyagraha Salt Works, Vedaraniyam came up with a Writ Petition in W.P.No.7498 of 2016 seeking a direction to the Deputy Salt Commissioner, Chennai to complete the tender processes by executing necessary required documents for the lease of rights to manufacture Edible Common Salt, etc., in Central Government lands under their control for Voyalur Salt Factory situated in Thiruvallur District, Tamil Nadu, as detailed in the tender notices dated 03.07.2015 and 06.08.2015.

6. On a perusal of the material documents available on record, it is seen that originally, an extent of 395.96 acres of Salt Department lands under the jurisdiction of Voyalur Salt Factory under Chennai Circle were leased out to M/s.Navdhaan Enterprises vide proceedings of the Deputy Salt Commissioner, dated 30.04.2001. Thereafter, vide letter dated 31.05.2001, M/s.Navdhaan Enterprises requested the Deputy Salt Commissioner, Chennai to assign additional 11.18 acres of lands under the jurisdiction of Voyalur Salt Factory. By letter dated 20.09.2001, additional area of 11.18 acres of land was allotted by the Deputy Salt Commissioner, Chennai to M/s.Navdhaan Enterprises.

7. M/s.Navdhaan Enterprises was permitted to manufacture salt for a period of 20 years from 11.05.2001 to 10.05.2021 for 395.96 acres and from 10.10.2001 to 10.05.2021 for 11.18 acres, respectively. While so, a dispute arose between M/s.Navdhaan Enterprises and Deputy Salt Commissioner, Chennai regarding the determination of lease by the latter vide Order in C.No.12014 (11)P/Tr/01/Voi-II/10322-26, dated 26.08.2010.

8. M/s.Navdhaan Enterprises, in their letter dated 23.09.2010 have sought for appointment of an Arbitrator as per clause 23 of the Lease Deed. In pursuance thereof, the Salt Commissioner, Jaipur vide order in C.No.1(2)P/2001/4939, dated 19.10.2010, appointed P.M.Chaugule as Arbitrator, who passed the Award dated 17.05.2011 in question.

9. The Arbitrator, in the Award under question, had observed that both the pieces of land to an extent of 395.96 acres and 11.18 acres, respectively, which were leased out to M/s.Navdhaan Enterprises for manufacture of salt, were actually used for prawn cultivation and that the said lands were not previously utilized for salt manufacturing activities. For better appreciation, the findings of the Arbitrator are extracted hereunder:

"I, therefore, conclude that further request of Shri.T.V.Mani, Partner of M/s.Navdhan Enterprises for assignment of 11.18 acres on the pretext of non-availability of brine in the land of 395.96 acres is solely to retain the land of 395.96 acres and also 11.18 acres under reference by dragging the issue of non-availability of brine without paying assignment and ground rent for years together clubbing irrelevant issues with an ulterior motive of not using the assigned land for salt manufacture, but to use the same for dumping prawn ponds waste

water from his own adjacent prawn ponds lands."

10. Learned Senior Counsel appearing for M/s.Navdhaan Enterprises in the Original Petition submitted that pursuant to the auction notice issued by the Deputy Salt Commissioner, Chennai, M/s.Navdhan Enterprises, by paying the Earnest Money Deposit as per the terms and conditions of the tender, became the successful bidder and the lands in question were leased out in their favour, subject to certain conditions. The Deputy Salt Commissioner, Chennai, by letter dated 20.09.2001, allotted 11.18 acres exclusively for brine supply for the land in an extent of 395.96 acres. Learned counsel further stated that M/s.Navdhaan Enterprises excavated channel from the main land to the source, however, was unable to connect the brine supply channel, due to the illegal occupation by M/s.Priyadarshini Salt Works Ltd.

11. It is further submitted by the learned Senior Counsel appearing for M/s.Navdhaan Enterprises that the Deputy Salt Commissioner, Chennai along with the Superintendent, Factory Officer and others visited the site leased out to M/s.Navdhaan Enterprises in December 2002 and after inspection, they sent a letter dated 02.01.2003 to M/s.Navdhaan Enterprises, informing them that they had informed M/s.Priyadarshini Salt Works Pvt. Ltd. to use the brine supply channel, which was leased out to M/s.Navdhaan Enterprises. Learned counsel contended that the said act of the Deputy Salt Commissioner, Chennai is unjust and untenable, as he had no right to permit the third parties to use the land as brine supply channel or otherwise. It is his further contention that the Deputy Salt Commissioner, Chennai, without handing over the brine supply channel, illegally demanded the assignment fee and ground rent.

12. At this juncture, learned Senior Counsel appearing for M/s.Navdhaan Enterprises drew the attention of this Court to the final notice dated 15.05.2006 issued by the Deputy Salt Commissioner to M/s.Priyadarshini Salt Works Pvt. Ltd., advising them to form a separate channel in their leased portion without causing any disturbance to the adjacent lessee viz. M/s.Navdhaan Enterprises. For better appreciation, paragraph 3 of the said notice is extracted hereunder:

"Whereas M/s.P.S.W.P. Ltd. have dug a Channel crossing and abutting the earmarked area of M/s.Navdhaan Enterprises by occupying around 0.40 acres as could be found out in the survey made on 27.08.2004 on a complaint received from M/s.Navdhaan Enterprises. Since they have occupied the area of M/s.Navdhaan Enterprises, the

latter could not proceed with their development for vacating the area occupied by M/s.P.S.W.P. Ltd. in the form of complaint, even earlier to the survey they had already been advised to form a separate channel in their leased portion without causing any disturbances to the adjacent lessee viz. M/s.Navdhaan Enterprises vide Deputy Salt Commissioner, Chennai's letter of even No.5989-92, dated 26.03.2004 and Deputy Salt Commissioner, Chennai's final notice of even no.8160-64, dated 21.05.2004. But, M/s.PSWP Ltd. has not complied with the directions issued by the Office of the Deputy Salt Commissioner, Chennai."

13. Learned Senior Counsel appearing for M/s.Navdhaan Enterprises went on to state that there was no response from the Deputy Salt Commissioner, Chennai as regards the handing over of brine supply channel, despite several letters in that regard. In the course of several correspondences, on 26.08.2010, the Deputy Salt Commissioner, Chennai illegally passed an order revoking Lease Condition No.22 and informed M/s.Navdhaan Enterprises to opt for Arbitration. Though M/s.Navdhaan Enterprises requested the Deputy Salt Commissioner, Chennai to appoint a retired District Judge as Arbitrator, without heeding to the said request, the Assistant Salt Commissioner, Jaipur who passed the Arbitral Award in question was appointed as Arbitrator.

14. The main contention of the learned Senior Counsel appearing for M/s.Navdhaan Enterprises is that the learned Arbitrator has passed the impugned Arbitral Award in a cryptic manner, without evaluating and discussing on 102 marked documents and also the oral evidence adduced on the side of M/s.Navdhaan Enterprises, but, erred in simply rejecting the claim of M/s.Navdhaan Enterprises in a mechanical manner, by reason of biased approach in favour of the Salt Department.

15. Learned Senior Counsel vehemently contended that the learned Arbitrator failed to appreciate that M/s.Navdhaan Enterprises erected five borewells in the leased out lands and only 0.5% saline water is available, whereas, for manufacture of salt, 33.3% salinity in water is required and the same can be availed only from sea water through 11.18 acres being the brine supply channel leased out to M/s.Navdhaan Enterprises in paper and admittedly, Priyadarshini Salt Works Pvt. Ltd. had been in exclusive occupation of the same till 15.06.2009.

16. In support of his case, learned Senior Counsel appearing for M/s.Navdhaan Enterprises has relied on the following decisions:

(i) MSK Projects India (JV) Limited vs. State of Rajasthan, (2011) 10 SCC 573

"18. In Kishore Kumar Khaitan V. Praveen Kumar Singh [(2006) 3 SCC 312], this Court held that when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding a fact, the said finding of fact cannot be said to be one rendered with jurisdiction. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction {See also Williams V.Lourdusamy [(2008) 5 SCC 647]}.

(ii) Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49

"Fundamental Policy of Indian Law

27. Coming to each of the heads contained in Saw Pipes (2003) 5 SCC 705 judgment, we will first deal with the head "fundamental policy of Indian law". It has already been seen from Renusagar (Renusagar Power Co., Ltd., v. General Electric Co., 1994 Supp (1) SCC 644) judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of India law. To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law."

(iii) Oil and Natural Gas Corporation Limited Vs. Western GECO International Limited, (2014) 9 SCC 263

"35. What then would constitute the "fundamental policy of Indian law" is the question. The decision in ONGC Ltd.v. Saw Pipes Ltd (2003) 5 SCC 705 does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the

purport of the expression "fundamental policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bonafide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge."

17. On the other hand, learned Standing Counsel appearing for the Respondent/Deputy Salt Commissioner, Chennai submitted that originally, an extent of 395.96 acres of Salt Department lands under the jurisdiction of Voyalur Salt Factory under Chennai Circle were leased out to one C.R.Jamuna Rani for 20 years, vide Agreement dated 17.01.1994. However, the Lease was cancelled on 25.04.1997 due to non-execution of the Lease Deed. Thereafter, the said lands were assigned to M/s.Navdhaan Enterprises on 30.04.2001 with 50% concession in payment of dues to Government. Apart from the aforesaid extent of lands, a further extent of 11.18 acres of land was allotted to M/s.Navdhaan Enterprises initially for a period of five years from 11.05.2001, subject to the outcome of O.S.No.87 of 1997 filed by C.R.Jamuna Rani before the District Munsif Court,

Ponneri. Learned Standing Counsel pointed out that the said Jamuna Rani is none other than the wife of one T.V.Mani, Managing Partner of M/s.Navdhaan Enterprises.

18. It is the contention of the learned Standing Counsel that the Respondent/Deputy Salt Commissioner, Chennai along with the Officials of the Department inspected the lands in question and came to know that the lands were still virgin. It is his case that the burden is on the Original Petitioner-M/s.Navdhaan Enterprises to excavate the lands for having a brine supply channel for the purpose of manufacturing salt. Having failed to do so, the contention of the learned counsel for M/s.Navdhaan Enterprises that the finding rendered by the Arbitrator is perverse, is not correct. According to the learned Standing Counsel, the totality of the circumstances have to be taken into account and technicality should not come in the way of granting relief to the Original Petitioner-M/s.Navdhaan Enterprises, when they have failed to carry out the work as per the Lease Agreement.

19. Learned Standing Counsel went on to state that as per Section 34 of the Arbitration and Conciliation Act, 1996, the scope of interference of the Arbitral Award is very limited and the finding of fact rendered by the Arbitrator need not be interfered with. According to him, as the Original Petitioner-M/s.Navdhaan Enterprises has not come with clean hands and suppressed the facts, they should not be shown any indulgence.

20. In reply, learned Senior Counsel appearing for M/s.Navdhaan Enterprises contended that when the Respondent/Deputy Salt Commissioner, Chennai is unable to mark a single document to substantiate their case, they cannot convert this Court into one of a fact finding authority or an Arbitrator, According to him, the Arbitral Award is perverse and it has to be interfered with and the matter has to be referred to a new Arbitrator and that in view of the latest amendments in the Arbitration and Conciliation Act, 1996, a Retired Judge of this Court has to be appointed as an Arbitrator in this matter, so as to arrive at a finding.

21. Heard the learned counsel for the parties and gone through the material documents available on record.

22. It is not in dispute that no documents have been filed by the Respondent/Deputy Salt Commissioner, Chennai and no evidence has been let in on their behalf, though the records produced by the Deputy Salt Commissioner clearly show that there are documents with the family members of the Original Petitioner-M/s.Navdhaan Enterprises to show that the lands to an extent of 395.96 acres are virgin. Unless and until, there is a

document to disprove the claim of M/s.Navdhaan Enterprises, the contentions of the Respondent/Deputy Salt Commissioner, Chennai, cannot be accepted.

23. Though the documents produced by the Respondent/Deputy Salt Commissioner, Chennai have not been marked, on a perusal of the same, it is clear that M/s.Navdhaan Enterprises, in collusion with the officials of the Respondent-Department, has played fraud and it cannot be stated that M/s.Navdhaan Enterprises is not aware of the existence of brine supply channel in the lands leased out to them to an extent of 11.18 acres.

24. As stated supra, though M/s.Navdhaan Enterprises was initially granted lease for a period of five years, lease agreement was thereafter extended to 20 years. Since brine supply channel has already been dug by M/s.Priyadharshini Salt works in the land allotted to M/s.Navdhaan Enterprises, the latter was unable to manufacture salt for no fault on their part. It is further seen that the Arbitrator has passed the Award completely brushing aside the documents produced by M/s.Navdhaan Enterprises.

25. Section 34 of the Arbitration and Conciliation Act, 1996 is not a bar for this Court to interfere with the Arbitral Award, if the findings of the Arbitrator are arbitrary, capricious or perverse. In the case on hand, a finding has been rendered based on mere evidences and the Arbitrator has taken into account irrelevant facts, without putting M/s.Navdhaan Enterprises on notice. It has to be noted that the vital evidence, i.e. the admission of the Respondent-Salt Department that there is a channel for brine supply in the extent of 11.18 acres of land, which vests with M/s.Priyadharshini Salt works Private Limited, has been completely brushed aside and the Arbitrator has framed his own question, which is not in the pleadings, and answered in favour of the Respondent-Salt Department, which cannot stand in the eye of law.

26. Already there is one wrong committed by the Arbitrator in rendering a finding in favour of the Respondent-Salt Department without considering any documentary evidence. This Court cannot render a finding accepting the unmarked documents produced by the Respondent-Salt Department. Two wrongs will not make a thing correct. Though, there appears to be collusion between the Officials of the Respondent/Salt-Department and M/s.Navdhaan Enterprises, the entire tender process cannot be stalled forever.

27. In view of the above, the Arbitral Award dated 17.05.2011 is set aside and the Original Petition is allowed. No costs. In view of the contention made in paragraph 20 of this order, this Court suggests the names of the following Hon'ble Judges (Retired) to act as Arbitrators in the case on hand.

1. Hon'ble Mr.Justice Paul Vasanthakumar
2. Hon'ble Mr.Justice K.P.Sivasubramaniyan
3. Hon'ble Mrs.Justice Prabha Sridevan
4. Hon'ble Mr.Justice S.Rajeswaran
5. Hon'ble Mr.Justice K.Venkataraman
6. Hon'ble Mr.Justice R.S.Ramanathan

28. The parties shall select any one of the above Hon'ble Judges (Retired) to act as Arbitrator in the case on hand within a period of thirty (30) days from the date of receipt of a copy of this order, and thereafter produce entire documents available with them before the learned Arbitrator, to enable the learned Arbitrator to render a finding within six months from the date of commencement of Arbitration Proceedings.

29. As the Original Petition is allowed, and as years have gone by, it is open to the Respondent-authorities to follow the tender process in respect of leasing out rights to manufacture edible common salt in the Respondent-Department lands. It is made clear that if the tenderer is already successful in the tender floated, he shall be given preference. Writ Petitions in W.P.Nos.24453 of 2015 and 7498 of 2016 are disposed of accordingly.

No costs. Consequently, connected M.P.Nos.1 & 2 of 2015 in W.P.No.24453 of 2015 and W.M.P.No.6715 of 2016 in W.P.No.7498 of 2016 are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

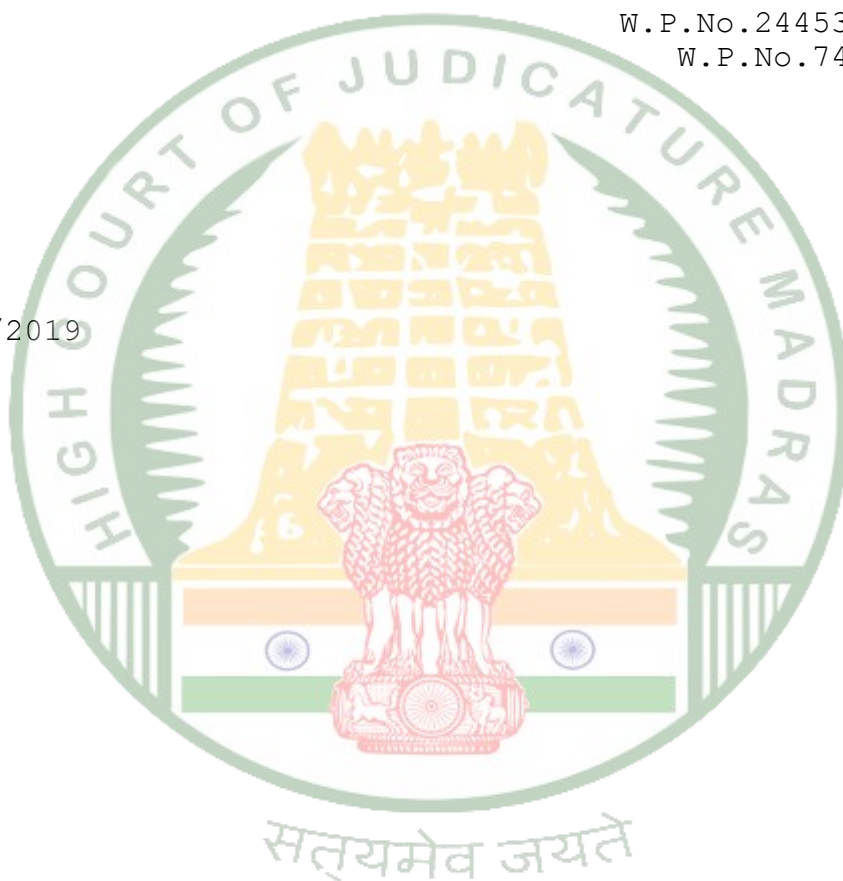
To:

1. The Secretary to Government,
Union of India
Department of Industrial Policy and Promotion,
Udyog Bhawan,
New Delhi 110 011.

2. The Deputy Salt Commissioner,
Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.

Common Order
in
O.P.No.585 of 2011
W.P.No.24453 of 2015 &
W.P.No.7498 of 2016

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