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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-01-2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.10161 OF 2014

AND

M.P.NO.2 OF 2014

The Salt Manufacturer's and Merchants Association,
Tuticorin Represented by its President,
Mr.M.S.Prakash,
159, Victoria Street,
Tuticorin - 628 001.

... Petitioner

.Vs.

1. The Union of India,
Represented by the Deputy Secretary
to the Government,
The Ministry of Industry and Commerce,
The Department of Industrial Policy
and Promotion (Salt Section),
Udhyog Bhawan.
2. The Salt Commissioner,
Lavan Bhawan,
2-A, Lavan Marg,
Jhalana Doongri,
Jaipur - 302 004.
3. The Deputy Salt Commissioner,
26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.
4. The State of Tamil Nadu,
Represented by its Secretary to Government,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

(R-4 impleaded vide order of Court dated
09.04.2014 made in M.P.No.3 of 2014
in W.P.No.10161 of 2014)

... Respondents



PRAYER:-

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records comprised in the Government Order, dated 09.10.2013 and numbered 04014/1/2012-Salt, passed by the first respondent, in so far as it relates to renewal of leases and quash the same and consequently direct the first respondent to continue to renew the leases on expiry of the term on such conditions as may be agreed upon by the parties.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.G.Baskaran
1 to 3 Central Government
Standing Counsel

For Respondent-4 : Mr.M.Rajendiran
Additional Government Pleader

O R D E R

The writ petition on hand is instituted questioning the sustainability of the Notification dated 09.10.2013 issued by the Ministry of Industry and Commerce, Government of India, Department of Industrial Policy and Promotion (Salt Section).

"In a room where people unanimously maintain a conspiracy of silence, one word of truth sounds like a pistol shot"

The above words of Czeslaw Milosz would be apt as in the present case the one word of "open auction" creates panic in the minds of the salt manufacturers/writ petitioners."

2. The petitioner in the present writ petition is the salt manufacturer in the State of Tamil Nadu.

3. Salt production using sea brine or subsoil brines is one of the oldest activities in India. As the raw material for production of salt is sea brine, all the salt works or salt factories are located along the coast or alongside natural creeks that bring in sea water during high tides. Salt works or salt factories can be laid out only on saline soils that have a fair amount of clay, in as much as the salt pans i.e., the ponds for impounding sea water or sub-soil brine for storage and evaporation with the help of solar energy are laid out on



such coils without using any artificial surfacing. In view of the process of manufacture of salt, salt works cannot be constructed and worked away from the coast.

4. Salt production is akin to agriculture, in as much as it is entirely seasonal and can be carried out only during the summer months, utilising sea water and/or sub-soil brine and solar energy as the only raw material. No salt manufacturing activity is carried out during the monsoon. The Salt Industry is entirely labour-oriented and labour intensive and no machinery is used except for pumping sea brine or sub-soil brine from the sea or creeks or wells dug to harness sub-soil brine.

5. State of Tamil Nadu is the second largest producer of salt in India, next to Gujarat. The salt in the State is produced from salt pans along the sea coast. Tuticorin and Vedaranyam are the two major Salt Production Centres in the State besides a few other small Production Centres in other Districts like Ramanathapuram, Nagapattinam, Villupuram, Cuddalore, Kanniyakumari, Kancheepuram etc. Tuticorin and Vedaranyam account for about 80% of the State's salt production.

6. Salt is an 'Union subject' and appears as item No.58 of the Union List of the VII Schedule of the Constitution of India. The Central Government is responsible for controlling all aspects of the Salt Industry through Salt Organisations, To meet out the expenses of the Salt Department, the Government of India imposed a cess on salt in the nature of Excise Duty with effect from 01.04.1947, which was subsequently regularised by enacting Salt Cess Act, 1953.

7. Under this Act, the proceeds of the cess reduced by the cost of collection as determined by the Central Government would be utilised toward meeting expenditures incurred in connection with the Salt Organization maintained by the Central Government, besides other object in connection with the development of Salt Industry in regard to quantity and quality welfare of labour, establishment and maintenance of Model Farms, Salt Research Stations, etc. The said Act was amended in the year 1961 with a view to reduce the levy of cess payable by the Salt Works in the Public Sector on par with the Private Sector. Salt Cess Rules, 1964 provides for granting concession to different categories of salt manufacturers and rules for collection of cess, statistics etc.

8. In view of the importance of salt in the economy, the Government of India constituted various Committees such as Salt Expert Committees, 1948, Estimates Committees, 1950, Departmental Committees, 1951 and Manu Bhai Shah Committee, 1958 to look into various aspects of the industry. These Committees



recommended various measures for improving the functioning of the Salt Organization and Constitution of Boards to advice Government on the utilization of salt cess etc.

9. The importance of salt in the economy of the country with its basic use as an article of daily consumption and for industrial purpose was discussed in detail in the report filed by the Committee, constituted under the Chairmanship of Shri Manu Bhai Shah, which contained 39 recommendations, including a common pattern of levy of charges payable by the Assignees of salt land belonging to the Central and State Governments and abolition of other levies such as royalty etc., except for nominal Ground Rent to be fixed at Rs.2/- per acre.

10. The said recommendations of the Committee were considered by the Union Cabinet and vide Resolution dated 3rd May, 1961, published in the Gazette of India, where some recommendations were accepted and some take note of. Recommendation 39 of the said Committee report proceeded with a common pattern of levy of charges should be adopted for both Central and State Government lands, Ground Rent should not exceed Rs.2 per acre and that all other levies except Ground Rent were to be abolished. As regards recommendation No.39, the Resolution stated that "the Government broadly agreed with recommendation No.39 and State Governments have already been addressed in the matter". Pursuant to this, the first respondent vide letter dated 07.12.1961 communicated to the second respondent levy of uniform charges for all Central Government lands and that the State Governments were not receptive to uniform charges and that the matter would be taken up with the States at the later stage.

11. While-so, in 1964, on recommendation by the Central Advisory Board, the first respondent vide letter dated 20.06.1994 referred the Assignment Fee at Rs.1/- per ton for an area above 10 Acres with different minimum production levels fixed for each State, while maintaining the Ground Rent of Rs.2/- per acre. This fixation was done by the first respondent on recommendation of the Central Advisory Board with an aim to fix the rates on par with the State Government rates.

12. In the year 2004, the first respondent, again on the recommendation of the Central Advisory Board, chose to revise the existing rates for Ground Rent and Assignment Fee, to try and establish parity with the prevailing State Government rates and vide letter dated 27.01.2004 fixed the Ground Rent at Rs.5/- per MT per acre per annum and minimum Assignment Fee as Rs.10/- MT per acre subject to minimum productions fixed differently for different States.



13. When State Governments concerned are maintaining the same rates and when no Central Advisory Board on any Committee in this regard has been formed, the first respondent, vide Impugned Circular dated 09.10.2013, has chosen to increase the Ground Rent from Rs.5/- to Rs.120/- per MT per acre, while increasing minimum Assignment Fee to be paid to Rs.100/- per MT per acre subject to minimum production.

14. The learned counsel appearing on behalf of the petitioner, raised several grounds.

15. It is mainly contended that there is an apparent discrimination in respect of the Ground Rent charges and Assignment Fee between the State Government and the Central Government. There is no level playing field and the impugned circular is issued based on the wrong analysis and assessment of facts and circumstances and it is contended that the Central Advisory Board had not been consulted before issuing the impugned order, which is in violation of the Rules in force. It is further contended that the business rules and procedures were not followed for arriving such a decision, which resulted in passing of the impugned order.

16. It is further contended that the decision was unilateral and Manu Bhai Shah Committee report has not been considered in its real spirit. The principles of reasonableness has not been considered and there is no basis and the rationale for arriving a conclusion for enhancement of Ground Rent and Assignment Fee, which is not in commensuration with the charges prescribed by the State Government and further enhancement is also arbitrary.

17. It is contended that once in such matters though it appears to be a policy decision and the same cannot be taken unilaterally by the Government of India and the salt manufacture involves many stakeholders and other mitigating factors are also not considered. Thus the unilateral decision and the unreasonable assessment made are in violation of Article 14 of the Constitution of India. Based on the above grounds it is contended that in the business of any assessment regarding ground realities and without any consultations with any of the stakeholders and with complete disregard to the Government Resolution passed in year 1961, the circular impugned has been issued. The detailed study and the recommendations made by the Shri.Manu Bhai Shah Committee was not at all taken into consideration. The Committee's report recommended that all levy in respect of saline lands belonging to Central Government, except Ground Rent should be abolished and also recommended that the Ground Rent levied should be fixed at a nominal rate of Rs.2 per acre. The Government of India in its Resolution dated 03.05.1961 had adopted the recommendations of the Manu Bhai Shah



Committee on the Ground Rent to be levied and thus the executive circular modifying the Cabinet approved Resolution is bereft of any source of power and therefore, the impugned circular is liable to be struck down.

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18. It is contended on behalf of the petitioner that the impugned circular suffers from complete non-application of mind as the first respondent has failed to provide the basis for the increase, in as much as there have been no recommendations from the Central Advisory Board, which recommended the last revision in the year 2004 and/or any Committee or body constituted in this regard, Moreover, the minimum production fixed for each State has also been revised by the first respondent without any appropriate or scientific basis for the same as it fails to differentiate areas with lower/higher rainfall and other seasonal vagaries, which affects productivity and contrary to the production details available with the second respondent-Commissioner.

19. It is contended that the Authority Competent has mechanically applied his mind while arriving at the new rate on the basis of the Assignment Fee and Ground Rent levied in the State of Gujarat. The reasons based on which the first respondent has sought to increase the Ground Rent from the existing rate of Rs.5/- per acre per annum to Rs.120/- per acre per annum, viz., increase of land value, increase of cost of management of lands and achieving parity with rate in the State of Gujarat, are baseless and/or artificial. Even 'comparison' in respect of rates to the rate levied by the Government of Gujarat, it is submitted that closer examination of the levy would bring to light that the actual levy by the Gujarat Government is Rs.640/- per acre or Rs.12/- to Rs.80/- per MT, whereas the present levy of Government of India is Rs.2,120/- to Rs.5,120/- per acre per annum.

20. The basis of the increase in Assignment Fee from Rs.100 per tonne subject to the minimum production fixed for each State has been sought to be justified as "The price of salt in all States is fixed based on the sale price of salt in Gujarat plus transport and handling cost of the respective State. Salt is a low value commodity and transport/handling cost three to four times the cost of raw salt. As such the ex-factory price of salt in Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Odisha is very high compared to Gujarat and the salt manufacturers are in a position to quote high Assignment Fee for obtaining salt department lands on lease."

21. While seeking to assign this baseless justification, the first respondent has failed to consider the ex-factory price of salt, which depends on the cost of production to the



manufacturer and a margin of profit. The reason why the ex-factory price of salt is higher in the States of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Odisha, is owing to the climatic conditions. While stating that the Government is able to receive higher offers when its lands are put to tender, the Government has failed to consider that it may receive a higher offer if it auctions an already constructed salt work, as the successful tenderer need not spend on construction cost, and has failed to appreciate that such lands taken on lease in the recent period, have defaulted on the payment of Assignment Fees and have abandoned the lands.

22. The petitioner has raised the above issues through various representations made by the Joint Secretary, Department of Industrial Policy and Promotion, the issues were taken into consideration. However, no steps have been taken till date for the fixation on Assignment Fee and Ground Rent, while taking the above factors into consideration. Thus, the action of the respondents is violative of Article 14 of the Constitution of India as it is arbitrary, artificial and bears no nexus to the object sought to be achieved in fixing the norms for various areas. Though the classification is sought to be done on the basis of productivity, it fails to consider the external factors such as seasonal differences between places while fixing the productivity for each area, and the production rates do not correspond to either the actual or the production taken for collection of cess under the Cess Act, 1953.

23. The impugned circular seeks to include a new clause to the existing leases that there shall be an increase of 10% in the rates of Assignment Fee and Ground Rent every three years, unilaterally when the first respondent does not possess any such power either under the original Lease Deed nor under any Statute and hence is arbitrary and unreasonable and violates rights of the petitioner under Article 14 of the Constitution of India. It is a well-settled position of law that a Legislature can certainly give retrospective effect to pieces of Legislation passed by it, but an executive Government exercising subordinate and delegated legislative powers, cannot make legislation retrospective in effect unless that power is expressly conferred. Thus, the impugned executive circular seeking to impose the increased levy with effect from 01.01.2013 is ultra vires and is liable to be struck down.

24. Mr.G.Baskaran, learned Central Government Standing Counsel appearing on behalf of respondents 1 to 3 and Mr.M.Rajendiran, learned Additional Government Pleader appearing on behalf of the fourth respondent have raised serious objections with reference to the maintainability of this writ petition. Prima facie, it is the leasehold rights extended in



25. Admittedly, the lease period had expired in respect of the petitioner-Manufacturers and therefore, they have no locus to question the circular or seek an automatic renewal of lease period, without conducting the tender process. It is a policy decision taken by the Government of India in regulating the salt manufacturing units and such a policy decision is taken by wide consultation and by following the processes, considering the suggestions and objections of the stakeholders and thus, there is no infirmity in respect of the processes adopted from time to time and increase in charges based on the prevailing circumstances. It is not as if the Lessees can get renewal automatically, which would confer the lease rights perpetually and such a perpetual lease is unlawful and will deprive other eligible persons and also result in discrimination, which is impermissible and violative of the constitutional mandates. Thus, the procedure is transparent and is being followed by improving the system periodically and based on the recommendations of the Committees and after considering suggestions, objections etc., of the stakeholders as well as any consultation with Experts. Thus, there is no perversity with reference to the procedures adopted for forming an opinion and for issuance of the impugned order. The grounds raised regarding unreasonableness, arbitrariness are absolutely untenable and beyond any stretch of imagination.

27. To substantiate various grounds raised on behalf of the Government of India, the learned Central Government Standing Counsel appearing on behalf of the respondents 1 to 3 and the learned Additional Government Pleader appearing on behalf of the fourth respondent drew the attention of this Court with reference to the Committee's report, proceedings, deliberations and considerations as well as the formation of opinions by the Competent Authority for issuing the order impugned.



28. Paragraph 11.28 of the Manu Bhai Shah Committee's Report reads as under:-

"11,28. In view of what has been stated in Chapter IX, we consider there is a great need for rationalising the several kinds of levies which are imposed on production of salt in different States. In the interest of proper and integrated development of salt industry in the country as a whole, we recommend that the Central Government, should in consultation with the State Government, determine a uniform system of charges payable by Lessees of salt lands belonging to the Central or State Governments. The Ground Rent for such lands should be kept reasonably low and in our opinion should not exceed Rs.2 per acre in any part of the country. Other levies like royalty or local cesses or surcharge should, wherever in existence, be abolished."

29. The letter dated 14.12.1960 issued by Ministry of Commerce and Industry provides delegation of powers for leasing out for salt manufacturing. Clause (iv) stipulates 'the lease of lands should be for a period not exceeding 20 years' and Clause (v) denotes 'the lands should be leased through invitation of public tenders after adequate publicity, the lease being awarded to the highest bidder'. This decision was taken in the year 1960 itself. The power was delegated to the Salt Commissioner for leasing out Government lands for salt manufacture.

30. The proceedings of the Ministry of Commerce and Industry dated 03.05.1961 considers the Report of Shri Manu Bhai Shah Committee. The said Committee submitted its Final Report in July, 1958 and the report contains 39 recommendations and conclusions. Clause 39 of the Report reads as under:-

"A common pattern of levy of charges payable by the Lessees of salt lands belonging to the Central or State Governments should be adopted for the whole country. The Ground Rent should not exceed Rs.2/- per acre. Other levies like royalty' wherever in existence should be abolished. (Para 11.28)"

31. Paragraph 3 of the Report states that the Government of India have considered the recommendations and conclusions of the Salt Committee is also provided. In the conclusion, the Government of India accepts the recommendation No.15 and said that suitable steps have been taken to implement the same. The Government also broadly agreed with recommendation No.39 and State Governments have already been addressed in the said matter. Recommendation Nos.16, 20 and 24 are being accepted and



necessary steps were taken to set up an autonomous Central Salt Board for the purpose and functions mentioned under these recommendations. Government accepts recommendation No.18 of the Committee, which states that Government lands should ordinarily be leased out for manufacture of salt for a period of 99 years and the term of the existing leases should be extended to this period of 99 years. However, the Government limits the period of lease to 20 years. Thus renewal of such leases for a further period of 20 years could be considered on merits at appropriate time on such terms and conditions as the Government may decide. Government also accepts recommendation No.19 except in respect of those salt works which did not even pay any fees at the time of current assignment. The Government further stated that salt is already being looked after under the Central Excise and Salt Act, 1944 and the Salt Cess Act, 1953, Government do not see the need for the present to bring 'Salt' under the Industries (Development and Regulation) Act, 1954. Regarding recommendation No.38, Government has already taken several steps to reduce the number of zones and rationalise the distribution. Thus it is clear that the lease period is restricted to 20 years and renewal of leases for a further period could be considered on merits at appropriate time on such terms and conditions as Government may decide. This decision was taken in Resolution dated 03.05.1961 and thereafter on 07.12.1961, common pattern of levy of charges for salt lands are issued and paragraph 3 of the letter reads as under:-

"3. Most of the Governments of sale producing States, who were consulted, are not agreeable to accept the Salt Committee's recommendations. It has, therefore, been decided that the above method for levy of Assignment Fee should be brought into effect immediately in respect of Central Government lands, and that the question of its extension to State Government lands should be considered after some experience of the method has been gained."

32. In letter dated 20.06.1964, formula for the levy of Assignment Fee on salt lands are considered in paragraphs 2 clause(iv), which reads as under:-

"For the purpose of levy of Assignment Fee, a minimum production of 10, 15 and 20 tonnes per acre per annum is fixed respectively for lands in the States of Orissa, Andhra Pradesh and Madras (Other than Tuticorin area) and 50 per acre for Tuticorin area."

33. The concluding paragraph-2 of the above said letter reads as under:-



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"2. The working of the above formula should be reviewed at the end of two years and results of the review furnished to enable this Ministry to take up with the State Governments concerned the question of following a similar policy in respect of their salt lands."

34. Further Resolution was passed on 19.12.1969 with reference to the Salt Committee's recommendations/conclusion Nos.18 and 19 with reference to the lease period and it was recommended by the Committee that the Government lands are ordinarily be listed out for manufacture of salt for a period of 19 years. However, the Government clarified its policy regarding extension of leases as below:-

"6. For the sack of clarity, Government's policy regarding extension of leases is indicated below:

Government lands will ordinarily be leased out for manufacture salt for a period of twenty years only. Request for renewal of such leases for a further period not exceeding twenty years at a time would be considered on their merits at the appropriate time, on payment such assignment fee/ground rent etc., and such other terms and conditions as Government may from time to time decide upon.

No further assignment fee will be charged for Government salt lands leased for manufacture of salt in the event of a transfer of lease from one party to another during the period of its currency in the original Lessee had paid the fees at the time of original assignment."

35. An important decision regarding revision of Assignment Fee, Ground Rent and rate of production of salt per acre for charging Assignment Fee, Ground Rent etc., of the Salt Commissionerate land was issued in proceedings dated 27.01.2004. In the said letter, the earlier orders passed by the Government of India on 07.12.1961, 20.06.1964, 22.07.1964, 19.12.1969 and 24.07.1989 were superseded. By superseding all the earlier decisions, the revision was effected in letter dated 27.01.2004 and the following procedures shall be adopted for levy of Assignment Fee/lease money in the States of Gujarat, Andhra Pradesh, Maharashtra, Karnataka, Odisha and Tamil Nadu:-

"(i) Ground rent should be recovered in lump sum annually in advance.



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(ii) The assignment fee in respect of area covering more than 10 acres should be collected in instalments, not exceeding four in a year. In respect of the holdings of 10 acres and less, the assignment fee for the entire lease period to be collected in instalments not more than 10.

(iii) Before the lands are formally assigned, the assignees should be required to deposit a fixed amount equal to the estimated amount of assignment fee for one year as security deposit. This would be refundable after the expiry of the term of the lease. The assignment fee paid as advance shall be adjusted against outstanding dues in case the lease of land given for manufacture of salt is revoked owing to violation of lease conditions.

(iv) In respect of fresh and undeveloped lands, lease money/assignment fee at half of this scale should be recovered for the first three years. However, such conditions should be incorporated in the NIT and subsequent in lease agreement.

(v) In respect of the State of Orissa, the rate assignment fee should be 40% of that applicable to other States. However, the annual ground rent shall remain the same.

(vi) In respect of the duly registered co-operative Societies, the rate of assignment fee obtained in the NIT should be half of the normal rule of assignment fee proposed for the first five years.

(vii) In case of prevailing assignment fee obtained by NIT ranging from Re.1 to 10, the minimum assignment fee shall be charged Rs.10. However, this shall be made applicable after current lease tenure expires and competent authority renews the lease of land for another term.

(viii) In case the higher tender rate of assignment fee being more than Rs.10, the lessee shall pay the tendered rate.

(ix) In case of holding less than 10 acres where a fixed amount of assignment fee/lease money is charged shall be calculated in such a way that minimum assignment fee does not come to less than Rs.10 per tonne per annum.



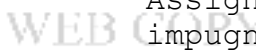
f) In cases where the highest tender rate of assignment fee being more than Rs.100, the lessee shall pay the tendered rate.

h) All lessees will be required to pay ground rent at revised rate.

4. This issues with the concurrence of IF Wing vide their Dy.No.650 dated 10.7.2013.

38. The learned Central Government Standing Counsel appearing on behalf of the respondents 1 to 3 and the learned Additional Government Pleader appearing on behalf of the fourth respondent further relied on the consultations and the proceedings issued by the Government of India even after revision of Assignment Fee, Ground Rent etc., issued in view of the impugned proceedings dated 09.10.2013 and importantly renewal of lease and revision of Assignment Fee, Ground Rent for every Government salt land was issued in proceedings dated 20.05.2013, wherein the Committee constituted to examine the issue of renewal of lease and revision of Ground Rent and Assignment Fee of the Government salt land leased to salt manufacturers was held under the Chairpersonship of Smt.Shubhra Singh, Joint Secretary, Department of Industrial Policy and Promotion (DIPP).

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40. The Committee considered the formula for fixing the Assignment Fee adopted in 1964 and in the year 2013 based on the impugned order dated 09.10.2013. While considering these issues, the Committee elaborately considered the location of lands, discharge of fresh water into sea by river causing dilution of sea brine, resulted in low productivity of the land. Therefore, it is contended that all such difficulties of the salt manufacturers, natural calamities peculiarly prevailing in the particular area climatic conditions were elaborately taken into consideration and carried out for the purpose of forming a policy. Further considered the basis for arriving at a new proposed rate. Elaborate discussions were made and the Committee constituted justified the proposal for renewal of lease, payment of prevailing on the highest rate or long existing Lessee to participate in the tendering process and renewal of lease on payment of highest tender amount. No renewal of lease will be done. The present Lessee may participate along with fresh applicants. No extra advantage would be given to the present Lessee in bidding procedures.

42. The learned Central Government Standing Counsel appearing on behalf of the respondents 1 to 3 and the learned Additional Government Pleader appearing on behalf of the fourth respondent reiterating that it is the policy decision taken by the Government of India after much deliberations, contended that the petitioner who is the salt manufacturer submitted an undertaking in stamped papers and the said undertaking of the petitioner reads as under:-

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at the existing rate fixed by the Salt Department or at the enhanced rate if any with retrospective effect from 01.10.1990 is so decided by the Government of India and also agree to execute a fresh lease deed in the prescribed form."

43. The abovesaid undertaking was given in the year 1998 and based on the undertaking the Lease Deed was entered into between the Government of India and the petitioner, who is the Lessee.

44. Importantly the terms and conditions are to be considered in the present case. The relevant terms and conditions 1 (a) to 3 and 10, 18, 22 and 23 read as under:

"1(a). In subsequent years, the lessee shall pay Ground Rent of Rs.18/-(Rupees eighteen only) in lump sum at the rate of Rs.5/- per acre per annum payable in advance at the beginning of each year on or before the date fixed by the lessor.

2. The lease shall be subject as herein provided, for a period of 20 years commencing from 1.10.1998 to 30.09.2018 provided always that the Dy. Salt Commissioner on behalf of the lessor or the lessee(s) shall be at liberty to determine the lease on giving to the other of them notice in writing at the close of the salt manufacturing season. Such notice will have effect at once but six months from date of notice will be allowed for removal of Salt belonging to the lessee(s) unless the Dy. Salt Commissioner in his absolute discretion decides that this period may be extended. All Salt not removed within that period will be forfeited to the lessor.

3. On the expiry of the period of lease or its sooner determination as provided in Clause 1 or Clause 2 supra or Clause 22 infra the lessee(s) shall leave the demised premises in such order and condition as is consistent with the due performance of this lease with all works erected or made thereon as they are, provided that any machinery erected by him/them may be remove but he/they shall not be entitled to any compensation for any expenditure that he/they may have incurred in respect of the works or to any damages if the area is resumed.

10. The lessee(s) shall on application be granted a lease to manufacture salt by the Dy. Salt Commissioner or the authorised officer and at all times be bound to duly observe the terms and



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conditions of the lease or any modifications thereof which the Government of India in their discretion make.

18. If notice of termination of the lease as provided in Clause 2 above is given either by the lessee(s) or by the lessor, the lessees(s) shall pay all sums due or falling due to the lessor upto the close of the official year in which such notice is given.

22. Subject to the foregoing conditions, the lessee(s) shall continue to enjoy the demised premises undisturbed for the said term of twenty years. In case, however, there is any breach of any of the above mentioned conditions or the lessee(s) delay payment of any sum or sums due under this agreement for over two months (excepting payment in instalments of the agreed sum, as lease money for which a specific provision has been made in Clause 1 Supra) from the date of its falling due or in case the lease granted in accordance with clause 10 above is cancelled or forfeited, the lessor may determine the case forthwith.

23. In the event of any question, dispute or difference arising in respect of or in connection with this indenture (except as to any matters, the decision of which is specially provided for by these presents) the same shall be referred to the sole arbitration of the Salt Commissioner to the Government of India or of some other person appointed by him. It will be no objection that the Arbitrator is a Government Servant, that he has to deal with matters to which these presents relate or that in the course of his duties as a Government Servant, he has expressed views on all or any of the matters in dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this indenture. It is a term of this clause that no person other than the Salt Commissioner, Government of India or the person appointed by him should act as Arbitrator and that, if for any reason, that is not possible, the matter shall not to be referred to arbitration at all. The Arbitrator may, with the consent of the parties, enlarge the time from time to time for making and publishing the award. Subject as aforesaid, the Arbitration Act, 1940 and the Rules thereunder and any statutory modification thereof for the time being in force



shall be deemed to apply to the arbitration proceedings under this clause."

45. A supplementary Lease Deed was also executed based on the terms and conditions of the lease and any implementation of the policy decision taken by the Government of India, demand notice was issued in the year 2014. The demand notice is issued clearly stating that the Lessee shall required to execute a Supplemental/Rectification Lease Deed in the enclosed proforma to this effect on appropriate value of non-judicial stamp paper and the same may be submitted to the Lessor Department for acceptance and attaching to the Principal Lease Deed within 30 days of the receipt of the notice, failing the lease will be terminated.

46. The learned Central Government Standing Counsel appearing on behalf of the respondents 1 to 3 and the learned Additional Government Pleader appearing on behalf of the fourth respondent relying on the above discussions, decisions, proceedings and the Committee's recommendations etc., relied on the judgment of the Hon'ble High Court of Andhra Pradesh, wherein the High Court of Andhra Pradesh in WP No.35321 of 2014 etc. batch, wherein the very same impugned order dated 09.10.2013 was challenged in a batch of writ petitions. Andhra Pradesh High Court also considered the issues and held as follows:-

"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 18 ARR,J WP Nos.35321_2014 & batch 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



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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."

47. The Writ Appeal filed against the above said judgment before the Hon'ble Division Bench of the Andhra Pradesh High Court also was disposed of by stating that the impugned order passed by the Government of India warrants no interference in all respects, including the time given for vacating the premises.

48. Considering the arguments of the learned counsel for the petitioner, the learned Central Government Standing Counsel appearing on behalf of the respondents 1 to 3 and the learned Additional Government Pleader appearing on behalf of the fourth respondent, this Court is of an opinion that the very initial ground taken by the petitioner that discrimination between the charges adopted by the State Government and the Central Government cannot be a ground for interference with reference to the order impugned. The Central Government inclusive of the State had taken efforts to maintain uniformity in the matter of imposing charges. However the deliberations made during the appropriate time had not fructified and the process is still on and under these circumstances, an independent decision taken by the Central Government considering various factors, report of the Committee's and prevailing situation etc., cannot be found fault with. Thus, the discrimination part as raised by the petitioner deserve no merit consideration.

49. The State may take appropriate decision by way of a policy decision and the said factor cannot be a ground to set aside the present impugned order passed by the Government of India regarding revision of Assignment Fee, Ground Rent and rate of minimum production of salt per acre for charging Assignment Fee and Ground Rent etc., of the Salt Commissionerate Land. It is further contended that the decision for revision was taken unilaterally without any consultation and based on wrong analysis of facts and circumstances. It is further stated that it is an executive decision. This Court is of the considered opinion that the deliberations made right from the year 1958 i.e., Manu Bhai Shah Committee's Report, there are various letters and proceedings considering the facts and circumstances. Thus, the proceedings and letters are elaborately considered in the aforementioned paragraphs, which would reveal that the decision can never be construed as unilateral, but by considering various facts and circumstances, including the difficulties expressed by the stakeholders. Thus, such a policy



decision taken in the interest of public by the Government of India cannot be interfered with by the Courts in a routine manner.

50. The power of Judicial Review of the Constitutional Courts are to ensure the processes through which a decision taken by the Competent Authorities in consonance with the Statute and the Rules in force, but not the decision itself.

51. This being the scope of the power of Judicial Review of the High Court under Article 226 of the Constitution of India, every policy decision cannot be interfered with by the High Courts. However, a policy decision directly infringing the fundamental rights of the citizen or ultra vires of the constitution alone are liable to be set aside.

52. However, in these cases, Manu Bhai Shah Committee made several recommendations and based on the recommendations, considerations were shown by the Government of India. Certain recommendations were agreed and certain recommendations were deferred. Certain decisions regarding the lease period has been taken considering various facts and circumstances and a decision was arrived for revision of charges. The period of lease also underwent changes. It is important to note that even now the procedures are evolving and consultations are going on.

53. The learned Central Government Standing Counsel appearing on behalf of the respondents 1 to 3 and the learned Additional Government Pleader appearing on behalf of the fourth respondent made submissions by stating that various issues are under reconsideration and appropriate decisions will be taken at the Cabinet level during appropriate time. However, that will not be a bar for the Competent Authorities to enforce the Lease Agreement and to implement the policy in force. Thus, the very contentions of the petitioner that till the decision is taken at the Cabinet level, all further proceedings are to be stalled deserves no merit acceptance.

54. Undoubtedly cultivation of salt is akin to agriculture. The salt manufacturers, no doubt, are facing difficulties. However, one cannot arrive a conclusion that it is not at all profit making business. Profit and loss alone cannot be the criteria for taking policy decisions by the Government of India in such matters where the lands belongs to the Government of India are leased out for salt cultivations. The charges prevailing for long years were revised in the year 2004 and thereafter through the impugned order in the year 2013. Periodical consultations are going on. Recommendations of the Experts are under consideration. Thus, such evolving procedures in progress cannot be a ground for implementing the existing



revision of charges with reference to the terms and conditions of the lease for Assignment Fee, Ground Rent and rate of minimum production of salt per acre for charging Assignment Fee and ground rate etc.

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55. In this context, the rights of the petitioner are to be considered by this Court. The rights of the petitioner are only based on the Lease Agreement. The Lease Agreement entered into between the Salt Commissioner and the petitioner unambiguously stipulates that the lease shall be subject as herein provided for a period of 20 years. Almost all the Lease Deeds are executed in the year 1998 and expired in the year 2018.

56. Clause 3 of the Lease Agreement in clear terms stipulates that on the expiry of the period of lease or its sooner determination as provided in Clause 1 or Clause 2 supra or Clause 22 infra, the Lessee (s) shall leave the demised premises in such order and condition as it consistent with the due performance of this lease with all works erected or made thereon as they are provided that any machinery erected by him may be removed but he shall not be entitled to any compensation for any expenditure that he may have incurred in respect of the works or to any damages if the area is resumed.

57. Thus the petitioner had expressly agreed to vacate the premises leased out to them on completion of 20 years. Even for renewal, if at all permissible, the petitioner has to submit an application before the Competent Authorities. Contrarily, after the expiry of the lease period they cannot assume any such renewal or contend that the original recommendations of Manu Bhai Shah committee for 99 years and therefore, the benefit of renewal is to be given automatically. The policy underwent changes after Manu Bhai Shah's Committee in the year 1958. In respect of the recommendations even in the year 1961, the Government of India restricted the lease period for 20 years and renewal of further period of 20 years will be considered only on the terms and conditions and with reference to the changes from time to time. Thus renewal of lease can never be automatic nor the petitioner can claim renewal based on the Committee's recommendations of the year 1958, as a matter of right.

58. On behalf of the petitioner, it is contended that the salt manufacturing cannot be compared with the other manufacturing units. The difficulties in particular are to be considered. The salt manufacturers have invested huge money for the purpose of making over the salt land. Thus, they require further more period for the purpose of compensating the loss in respect of the investments made at the beginning.



59. In this regard, deliberations of the Authorities Competent with reference to the Committee's recommendations were made. The issues were specifically considered by the Committee constituted to examine the issue of renewal of lease and revision of Ground Rent and Assignment Fee of Government salt land to salt manufactures. A Committee was constituted under the Chairmanship of Smt. Shubhra Singh, Joint Secretary, Department of Industrial Policy and Promotion (DIPP). The Committee consists of seven delegates elaborately considered the entire developments right from the year 1958 and the issues were raised for discussions and based on the issues decisions were taken. In fact, the formula for fixing the Assignment Fee adopted in the year 1964 and now, the basis of arriving at new proposed rate, whether the new proposed rate can be made applicable from the retrospective date, why the proposed new rate of AF/GR cannot be fixed each salt factory-wise based on the productivity of the area, rationale for proposed enhancement of 10% in proposed new rate after every three years, why the salt land cannot be leased for salt manufacture by open auction instead of open tender to bring more transparency and avoid cartelisation. Accordingly, justifying the proposal for renewal of lease on payment of prevailing highest rate or renewing the existing Lessee to participate in the tendering process and renew his lease on payment of highest tender amount. No renewal of lease will be done. The present Lessee may participate along with the fresh applicants. No extra advantage would be given to the present Lessee in bidding procedures.

60. This being the decision taken in the meeting and the considerations shown by the Committee are elaborately discussed in proceedings dated 20.05.2013 issued by the Department of Industrial Policy and Promotion, this Court is of an opinion that there is no reason what so ever to form an opinion that the decision is taken unilateral or in an unreasonable manner.

61. Beyond the policy decision taken by the Government of India, the rights of the petitioner are to be considered for the purpose of entertainability of these writ petitions. No doubt, the present writ petition is maintainable under Article 226 of the Constitution of India. However, entertainability is to be considered based on facts.

62. In this regard, the petitioner has given an undertaking in a non judicial bond paper categorically stating that the existing rate fixed by the Salt Department or at the enhanced rate if any with retrospective effect from 01.10.1990 is so decided by the Government of India and also agreed to execute a fresh lease period in the prescribed format.



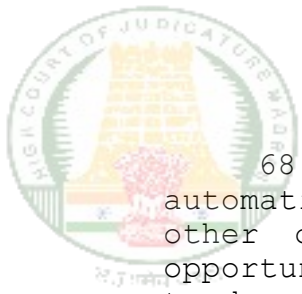
63. The undertaking given by the petitioner-Manufacturer is unambiguous that they agreed for the rate prevailing at the time of signing of the Lease Agreement and also agreed for the enhanced rate if any with retrospective effect from 01.10.1990. The undertaking was signed in the year 1998. The Lease Deed also categorically stipulates that on expiry of the lease period of 20 years, the Lessee shall leave the demised premises in such order and condition as it consistent with the due performance of this lease with all works erected or made thereon as they are provided with any machinery erected by him\they may be removed. It states that the Lessee shall not be entitled to any compensation for any expenditure or any damages.

64. This being the scope of the Lease Agreement, the petitioner has signed the Lease Agreement and also the undertaking agreeing for the enhanced rate with retrospective effect, such contractual obligation cannot be rescinded nor the petitioner acquire any right to adjudicate such issues in the writ proceedings. No doubt, if any dispute arises from and out of the Lease Agreement, then the parties are bound to approach the Competent Civil Court of Law for adjudication of such issues.

65. Contrarily, in the writ proceedings, the lease period cannot be extended nor the policy decision arrived by the Government, which is agreed between the parties can be interfered with. Thus the scope of the entertainability of the writ petition is no doubt not in favour of the petitioner. Even on merits, the grounds raised with reference to unreasonableness, arbitrariness, unilateral decisions etc., this Court do not find any merit on the contentions raised by the petitioner and with reference to the proceedings, the Committee's recommendations, deliberations made by the Government of India for arriving a new policy and for effecting revision of charges.

66. No doubt Central Government salt lands are not revenue generating area. However, once the Central Government leased out its salt land for manufacturing of salt, then it becomes a commercial venture. The salt manufacturers, no doubt, are doing business and therefore, periodical enhancement of charges and equal opportunity to all the eligible persons to get lease of such salt lands are constitutional mandates.

67. We the people of India resolved equality of status and of opportunity and to promote among them all. When, we the people of India resolved in the Constitution, more specifically in its preamble, no doubt, equal opportunity is the foundation stone of the Indian Constitution.



68. Leasing of Central Government lands for 99 years or automatic renewal of lease would infringe the rights of all other citizen, who all are longing and aspiring to get an opportunity into the field of manufacturing of salt or related trade activities. Deprivation of equal opportunity is directly infringing the fundamental right of every citizen. Economic status and equal opportunity are the touchstone and moreover creating monopoly at the behest of the Central Government lease by few individuals at no circumstances be appreciated. No doubt, salt being commodity of every day consumption, the Government must control market price. Equally the Central and State Governments are bound to ensure that the interest of the public at large is protected by implementing open auction process in order to ensure equal opportunity to the citizens of our Great Nation.

69. This being the factum, this Court has no hesitation in forming a definite opinion that the petitioner could not able to establish any right for the purpose of grant of relief, as such sought for in all these batch of writ petitions. Since the period of lease had admittedly expired as per the terms and conditions of the lease, the petitioner/Lessee shall leave the demised premises, within a period of three months from the date of receipt of a copy of this order. The respondents are directed to initiate all further actions for tendering the subject salt lands by following the procedures as contemplated and as expeditiously as possible. Accordingly, the impugned order stands confirmed.

70. Consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Deputy Secretary to the Government,
The Union of India,
The Ministry of Industry and Commerce,
The Department of Industrial Policy
and Promotion (Salt Section),
Udhayog Bhawan.



2. The Salt Commissioner,
Lavan Bhawan,
2-A, Lavan Marg,
Jhalana Doongri,
Jaipur - 302 004.

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

4. The Secretary to Government,
The State of Tamil Nadu,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.G.Baskaran, CGSC, S.R.No.2626
+1cc to the Government Pleader, S.R.No.3419

W.P.NO.10161 OF 2014

PL(CO)
PBS/07/02/2022