

In the High Court of Judicature of Andhra Pradesh at Hyderabad

Mrs. V.N.Reddy and another.

v.

Salt Commissioner, Govt. of India.

Writ Petition No. 10878 of 2000

09.07.2001 dd.

Sri. Satyabrata Sinha C.J. & V.V.S. Rao J.

Order:

1. Grant of lease of land measuring 565 acres 55 cents in Survey No. 608 of Chinaganjam in favour of a salt manufacturing factory, the fourth respondent herein, is in question. The petitioner No.1 is Sarpanch of Kothapalem Panchayat and petitioner No.2 of Rajubangarupalem Panchayat in Chinnaganjam Mandal. The third petitioner is an agriculturist.
2. A vast area of land measuring Ac. 1934.32 in Survey No. 608 vested in the Salt Department in terms of the provisions of the Madras Salt Act, 1889. 471 acres in Chinaganjam North Salt Factory and 775 acres of Chinaganjam South Salt Factory had been leased out to various parties for manufacture of salt. Since time immemorial activities relating to manufacture of salt had been going on in this area.
3. The contention of the petitioners is that by reason of grant of lease in respect of the aforementioned land, due to manufacture of salt by the process of natural evaporation the ground water, which includes subterranean, would be rendered saline and as a result whereof the agricultural operations may be hampered.
4. Before this Court, a report of the Ground Water Department, Government of Andhra Pradesh, had been placed before us. The said report is based upon a detailed investigation on the question as to whether manufacture of salt by solar evaporation

process by the fourth respondent to lead to intrusion of saline water resulting in adverse effect on agricultural activities and drinking water. It has, in no uncertain terms, been stated in the said report, which was filed upon taking up investigation, that there would be no adverse effect on ground water body when the referred area is filled with saline water during the time of salt manufacturing by solar evaporation process. The conclusions, which were tentative in nature, were based on topographic, location and geography of the area ground water direction and water quality status and presence of natural barren. However, a suggestion has been made therein to evolve a mechanism by establishing observation cells in and around the area in question and maintain the record of the same for the period of inspection by the Ground Water Department.

5. Andhra Pradesh Pollution Control Board, by and large, supported the statements made by the petitioners herein to the effect that there are possibilities of salination of water. Such a conclusion having been arrived at by the Pollution Control Board only on the basis of inspection, which was not done in presence of the parties, a Division Bench of this Court by an order dated 16-3-2000 directed the National Environmental Engineering Research Institute at Nagpur (for short "NEERI) to make an investigation and submit a report to the effect as to whether there would salination of the water in the surrounding areas of fourth respondent and there would be health hazards on account thereof, as also other factors by reason of running of such factory. Pursuant to and in furtherance of the said direction, a status report in areas contiguous to the area leased out to fourth respondent and its resultant health related aspects had been submitted by NEERI. As regards, the water quality studies, NEERI's team collected 22 water samples from in and around the land in Survey No. 608 and ten villages and analysed for significant physico-chemical parameters and noted the results. Its main findings are:

"The area leased to M/s. Snow White Salts is a low lying area surrounded by Kothapalem village in the east, Ramachandranagar in the north-east and other ten villages including Chinaganjam on the west. The elevation of these villages is about 1.00 m to 4.0 m with respect to referred area.

6. The referred area consists of saline soils of clayey nature, which are not suitable for cultivation and are best suited for salt farming. The quality of the ground water in the referred area is saline in nature. However, there are some fresh water pockets scattered in the adjacent sand dunes on both sides of the referred land i.e. on the east and west. The referred area is underlain by thick beds of clay, sandy clay and clayey sands. The rate of infiltration ranges from 1 to 1.5 mm/hour, which is low. This is further confirmed by the grain size analysis that the soil is comprising of 75.7 to 84% clay with silt at 30 cm depth and 53.5 to 88% clay with silt at 60 cm depth in the referred lands. The grain size analysis from agricultural lands in the west have 54.5 to 56% clay at 30 cm and 87.5% to 95% at 60 cm depth. This will act as barrier against salination of fresh waters in the western sand dunes.

7. The area towards south of the referred land consists of clayey saline soil covered with salt pans through natural evaporation process. Towards south and south-west of the area and south of Ameennagar, aqua culture ponds are existing. Agricultural land to the

extent of 60 acres are located to the south-west of referred land which consists of predominantly clay and clayey sands.

8. The underground water in the referred area is highly saline which will be used for salt cultivation. At the start of salt cultivation there may be seepage of brine water at the rate of 1-1.5 mm/hour which is considered as very low. The seepage at this rate during initial stages of operation may not percolate deep and salinate groundwater down below the pans due to considerable thickness of clayey bed in the referred area and also due to high holding capacity of the clay. As soon as the clay is saturated with dense brine solution from the pans, seepage stops.

9. Kothapalem is situated at a higher elevation than the referred area, and is predominantly consist of sand dunes. The quality of sub-surface water available at shallow depths (3-4 m) in the sand dunes is found to be good. Precipitation and subsequent recharge are the main sources of sub-surface water available in sand dunes. The sand dunes with fine grain sand tapered towards the west i.e. the referred area merging with fine sandy clay zone, which is impervious. Hence, there is least possibility of salination of sub-surface water available in the sand dunes due to salt cultivation in the referred area, which is at a much lower elevation.

10. The referred area being discharge area, the flow of water will be towards the referred area from the adjacent areas. Hence, there is no adverse effect on ground water in the adjacent areas when referred area is under salt cultivation."

Upon the aforementioned observations, the conclusions arrived at by NEERI are to the following effect:

"Salt pans are located in such areas where base of the salt pan is clayey which is impervious. The sub-surface composition of soil in the referred land is clayey, thereby there is no possibility of salination of ground water in the adjoining areas. The region very close to Ramachandranagar has sandy pockets and the groundwater in this area is brackish. Presence of large number of aqua farms around Ramachandra Nagar possibly results in salination of groundwater.

There is no evidence that salt cultivation has caused any health hazard to the people in the surrounding areas. It is observed that there are no pizeometers in the area for water level and water quality monitoring. The salt cultivation has no effect on crop yield in the adjoining areas."

11. In this view of the matter, having regard to the report of NEERI, Mr. Bhatt, learned counsel appearing on behalf of A.P. Pollution Control Board, would urge that a special technical team now would be appointed for the purpose of finding out as to the effect, if any, on general environment and particularly as regards the quality of ground water in the surrounding area so as to arrive at a finding. The learned counsel would, however, submit that Section 25 of the Water (Prevention and Ceontrol of Pollution) Act, 1974 would come into play and hence the fourth respondent is required to obtain permission

from A.P. Pollution Control Board, both for operation as well as manufacture, inasmuch as they would be discharging water from the industry.

12. It is not in dispute that in terms of the provisions of the Madras Salt Act, 12 villages have been acquired. It is also not in dispute that the salt cultivation is being carried out in the area for the last 200 years. No adverse effect either as regards maintenance of ecological balance or damage to ground water has been found. According to 1971 Census, the area in question is inhabited by 12 lakhs people. Prima facie, we are of the opinion that, having regard to the fact that 1000 acres of land, is being used for manufacture of salt, a further addition of 500 acres of land for the said purpose would change the situation. The area in question had been leased out in favour of fourth respondent herein upon compliance of the provisions of the Madras Salt Act, 1889. Advertisement had been issued in the year 1998, lease has been granted on 19-1-1999 and the lease deed had been executed on 27-2-1999. The said lease is for a period of 20 years.

13. In *A.P. POLLUTION CONTROL BOARD v. M.V. NAYUDU1* and *A.P. POLLUTION CONTROL BOARD II v. M.V. NAYUDU2*, the Apex Court had laid emphasis on maintenance of ecology. Relying upon a report based on scientific data, it has to be seen whether precautionary measures are taken before any action is taken against an industry in terms of the provisions of the Pollution laws. The report of the ground water department, as also the report of the NEERI, excludes such possibility. The Pollution Control Board, as noticed hereinbefore, has since agreed that the report of NEERI has to be given serious consideration and further detail studies are required to be made by a technical team, we are therefore of the opinion that at this stage no case has been made out for issuance of any direction in this regard. Sustainable development is the cry of the day.

14. In *INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION v. UNION OF INDIA3*, it has been held:

"Similarly, the objection of Shri Bhat that the reports submitted by the NEERI, by the central team (experts from the Ministry of Environment and Forests, government of India) and RPCB cannot be acted upon is equally unacceptable. These reports were called by this court and several orders passed on the basis of those reports. It was never suggested on behalf of Respondents 4 to 8 that unless they are permitted to cross-examine the experts or the persons who made those reports, their reports cannot be acted upon. This objection, urged at this late stage of proceedings - after a lapse of several years - is wholly unacceptable. The persons who made the said reports are all experts in their field and under no obligation either to the RPCB or for that matter to any other person or industry. It is in view of their independence and competence that their reports were relied upon and made the basis of passing orders by this court from time to time."

15. In *M.C. MEHTA v. KAMAL NATH4*, it has been held:

"The forest lands which have been given on lease to the Motel by the State government are situated at the bank of River Beas. Beas is a young and dynamic river. It runs through

Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left. The river is fast-flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The right bank of River Beas where the Motel is located mostly comes under forest, the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.... We have no hesitation in holding that the Himachal Pradesh government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease transactions are in patent breach of the trust held by the State government. The second lease granted in the year 1994 was virtually of the land which is a part of the riverbed. Even the Board in its report has recommended de-leasing of the said area."

16. Further more, the entire area in question has been leased out in favour of the salt commission. It is expected that responsible statutory authority, before grant of lease, shall take all precautionary measures as the primary duty of Central Government is to see that ecology is maintained. We may also notice that the production of salt in the State is only 2.75 lakh tonnes, whereas its requirement is 6.75 lakh tonnes and thus the present level of production is not sufficient to meet its requirements either for edible or industrial purposes. The Salt Commissioner in his affidavit has stated that the petitioners are unnecessarily creating problems by using local public and preventing fourth respondent in developing the salt areas. It appears to be so.

17. It is also not in dispute that the process adopted all over the country for production of salt spread over lakhs of acres of land had resulted in no complaints whatsoever as regards the adverse effect on agriculture crops or drinking water. The very fact that no adverse effect had been found out, despite carrying of such activities for about two centuries in the area is also a factor which should be borne in mind. In this view of the matter, we are of the opinion that no case has been made out for issuance of any directions. However, there appears to be a dispute as to whether the provisions of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 will have any application or not.

18. Fourth respondent herein may file show cause before the statutory authority which should decide the question upon giving an opportunity of hearing to it and examining the reports of the expert body. The Pollution Control Board shall, however, be at liberty to appoint a technical team to make further study in the matter and take such action as is permissible in law.

19. So far as Writ Petition No. 10312 of 1999 is concerned, it stands admitted that the area belongs to Salt Commissioner, a lease had been for a period of 20 years on 27-2-1999. The said lease was executed obtaining the report of the Ground Water Department of the State Government itself. The Collector has absolutely no jurisdiction to direct

stopping of the works by fourth respondent. The learned counsel for the State submits that as a large number of people demonstrated in the area, such an order had been passed, although the State has no interest in the land. If that be the position, the action of the Collector must be condemned. Mobocracy has no role to play in maintenance of rule of law. If such trend is allowed, the rule of law cannot be maintained.

20. In *M/s. NEELAM WINES v. COMMR. OF POLICE, HYD.5*, it has been held: "We are not oblivious to the possibility of some unruly elements gathering around the wine shop and disturbing peace. But we hold that it is not normally permissible to the State to prevent a person from doing his lawful business or carrying on his lawful activity on the basis that some other person or persons might be provoked to disturb peace, because of those lawful acts. Where such a situation develops or is likely to develop, the clear duty of the police would be to afford protection to the lawful activities and to put down those who are the law-breakers. The police by totally prohibiting the carrying on both the legal activity as well as the illegal activity would only bring about peace of the grave-yard. That cannot be the purpose of the Act. In fact that would be contrary to the general objects and ideals of the police system itself. The celebrated one-hundred-year old judgment of a Divisional Court in England in *Betty vs. Gill Banks* (1882) 9 Q.B.D. 308 is a clear judicial authority for this fundamental legal position. In that case members of the salvation Army marched to a meeting which they intended to conduct lawfully and peaceably however knowing fully well that their marching was likely to be opposed and disturbed by a so-called Skeleton Army. Apprehending breach of public peace Magistrates had prohibited the march by the Salvation Army. But the Salvation Army disregarded not only the threat of disturbance and disorder from their rival army but even the prohibitory orders from the Magistrates that it should not march. For this act of disobedience of the Magisterial orders their leaders were charged with the offence of unlawful assembly. The Divisional Court held that a man might not be punished for acting lawfully even if he acts in the knowledge that by his so doing he might lead another man to act unlawfully. In effect, the Divisional Court in that case held that the police could not disperse an otherwise lawful assembly simply because of opposition from another body and directed that the police should direct their attention to dealing with the unlawful counter-demonstration. Where there is no time for dispersal of the unlawful crowd probably different consideration might arise.

21. We are in respectful agreement with the ration in *M/s. NEELAM WINES* (5 supra). With the aforementioned observations and directions, the writ petitions are disposed of with costs to be borne by the State. Advocates fee assessed at Rs.5000/-.