

CASE NO.:
Appeal (civil) 2300 of 2007

PETITIONER:
M/s Ram Singh Vijay Pal Singh & Ors

RESPONDENT:
State of U.P. & Ors

DATE OF JUDGMENT: 01/05/2007

BENCH:
G.P. Mathur & R.V. Raveendran

JUDGMENT:
J U D G M E N T

(Arising out of Special Leave Petition (Civil) No.4286 of 2004)

G. P. MATHUR, J.

Leave granted.

2. This appeal, by special leave, has been filed challenging the judgment and order dated 5.9.2003 of a Division Bench of Allahabad High Court, by which the writ petition filed by the appellants was summarily dismissed at the admission stage.

3. The appellants herein filed the writ petition before the High Court under Article 226 of the Constitution praying for the following reliefs :

(i) issue an appropriate writ, order or direction commanding the respondents concerned to allot the shops/godowns to the petitioners on hire purchase basis;

(ii) issue an appropriate writ, order or direction commanding the respondents concerned not to interfere, in any manner, on the possession of the petitioners' shops and godowns allotted to them;

(iii) issue an appropriate writ, order or direction commanding the respondents concerned not to compel the petitioners to enter into any agreement for taking shops/godowns allotted to them on rental basis.

(iv) issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

The writ petition was filed on behalf of 143 firms and individuals carrying on business in agricultural produce and the respondents arrayed in the writ petition were (1) State of U.P. through Director, Krishi Utpadan Mandi Parishad, Lucknow; (2) Krishi Utpadan Mandi Samiti, Pilibhit through its Chairman; and (3) Secretary, Krishi Utpadan Mandi Samiti, Pilibhit.

4. The case set up by the writ petitioners in the writ petition is as under. The petitioners are dealers in agricultural produce and have been granted licenses by the Krishi Utpadan Mandi Samiti, Pilibhit, to carry on the said business. They were earlier carrying on business in Purana Galla Mandi in Pilibhit city. After construction of Nawin Mandi Sthal, they were directed to shift their business to the said newly constructed premises. Though the Nawin Mandi Sthal is at considerable distance from the city area and it lacked basic infrastructure, the petitioners shifted their business to the said place as

it was intimated that a policy was being chalked out to give the shops and sheds, etc. to the license holders on hire-purchase basis. Subsequently in the year 1995, the Director, Mandi Parishad, Lucknow, sent a letter that the shops, godowns and sheds will be given to the license holders on hire-purchase basis. In some places like Haldwani, Rudrapur and Ghaziabad, in the State of U.P., the shops and godowns were given to the license holders on hire-purchase basis. The writ petitioners were paying rent to Mandi Samiti, Pilibhit, regularly and had been repeatedly requesting the authorities of the Mandi Samiti to formally execute the document giving the shops and godowns to them on hire-purchase basis. However, instead of executing the said documents, the respondents had given them notice to execute an agreement with the Mandi Samiti, Pilibhit, whereunder the shops and godowns will be given to them on lease on rental basis. The writ petitioners who were carrying on business in the shops and godowns since 1986 and had been regularly paying the rent to the Mandi Samiti were under a bona fide impression that ultimately the same shall be transferred to them on hire-purchase basis. Some of the writ petitioners had spent money in making improvements in the shops and godowns under their occupation and the same was done with the prior approval of the Mandi Samiti. The proforma of the agreement which was now given to the writ petitioners contained a clause that after expiry of a period of 3 years, the rent shall be enhanced by 10 per cent. It was on these grounds that the writ petition was filed seeking the reliefs as quoted above.

5. In reply to the writ petition, a counter affidavit was filed by the Secretary, Krishi Utpadan Mandi Samiti, Pilibhit and the pleas taken therein are as under. The writ petitioners were carrying on business in wholesale in specified agricultural produce and they had been allotted shops, sheds and open space in Nawin Mandi Sthal for which rent is charged. All the basic amenities had been provided in the Nawin Mandi Sthal which was quite close to the city. The writ petitioners had been allotted the shops etc. on rental basis and at no stage any assurance was given that the shops, godowns or sheds would be given to the writ petitioners on hire-purchase basis. At the outset, it was made clear to the traders that the Mandi Samiti was giving the shops, godowns and sheds on lease for which rent would be charged. It was denied that anywhere in U.P. a different policy was adopted or that shops or godowns had been given by the Mandi Samiti on hire-purchase basis. Regarding the letter of the Director allegedly sent in 1995, it was submitted that being a policy matter, it was the Mandi Parishad (Board) alone which could take such a decision and the Director had no authority to direct that the property of Mandi Samiti shall be given to the traders of agricultural produce, who are license holders, on hire-purchase basis. It was further submitted that the Inspector General and Commissioner of Stamps, U.P. had sent a letter dated 24.10.2002 to the Director, Mandi Parishad, U.P. that the agreement which was to be executed between the Mandi Samiti (Committee) and the traders required to be registered and stamp duty in accordance with Article 35 of Schedule I (kha) of the Indian Stamp Act (as amended in the State of U.P.) had to be paid. It was after receipt of the said communication that the various allottees of the shops, godowns and sheds of the Mandi Parishad were informed to get the agreement (lease deed) registered. It was specifically pleaded that the uniform policy of the Mandi Parishad (Board) was to give the shops, godowns and sheds to the traders of agricultural produce, who had obtained licenses, on lease on rental basis and not to transfer the property in their favour either on hire-purchase basis or otherwise.

6. The High Court on 5.9.2003 summarily dismissed the writ petition by a brief order which reads as under :-

"Heard learned counsel for the parties.

The petitioner has an alternative remedy of filing a revision under Section 32 of the U.P. Krishi Utpadan

Mandi Adhiniyam, 1964 before the Mandi Parishad.

The petition is dismissed on the ground of alternative remedy. However, if a revision is filed the same will be decided expeditiously."

7. We have heard Mr. Dinesh Dwivedi, learned senior counsel for the appellants and Mrs. Shobha Dikshit, learned senior counsel for the respondents.

8. The dispute here is governed by U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as 'the Act'). Sections 12, 26-A and sub-section (1) of Section 26-L of the Act read as under :-

"12. Establishment and incorporation of Committee.
\026 (1) For every Market Area there shall be Committee to be called the Mandi Samiti of that Market Area, which shall be a body corporate having perpetual succession and an official seal and, subject to such restrictions or qualifications, if any, as may be imposed by this or any other enactment, may sue or be sued in its corporate name and acquire, hold and dispose of property and enter into contracts :

Provided that the Committee shall not transfer any immovable property except in accordance with a resolution duly passed at any of its meetings by a majority of not less than three-fourths of the total number of its members and with the previous approval in writing of the Board.

(2) The Committee shall be deemed to be a local authority for the purposes of Land Acquisition Act, 1894 and any other law for the time being in force.

26-A. Establishment of the Board. \026 (1) The State Government shall, by notification in the Gazette, and with effect from a date to be specified therein, constitute a Board by the name of the State Agricultural Produce Markets Board with its head office at Lucknow.

(2) The Board shall be a body corporate by the said name having perpetual succession and a common seal and may sue or be sued by the said name and acquire, hold and dispose of property and enter into contracts.

(3) The Board shall for all purposes be deemed to be a local authority.

26-L. Powers and functions of the Board. \026 (1) The Board shall, subject to the provisions of this Act, have the following functions and shall have power to do anything which may be necessary or expedient for carrying out those functions \026

(i) superintendence and control over the working of the Market Committees and other affairs thereof including programmes undertaken by such Committees for the construction of new Market yards and development of existing markets and Market areas;

(ii) giving such direction to Committees in general or any Committee in particular with a view to ensure efficiency thereof;

- (iii) any other function entrusted to it by this Act;
- (iv) such other functions as may be entrusted to the Board by the State Government by notification in the Gazette."

The proviso to sub-section (1) of Section 12 of the Act would show that the Mandi Samiti (Committee) is not empowered to transfer any immovable property without the previous approval in writing of the State Agricultural Produce Markets Board (Mandi Parishad). Section 26-L of the Act deals with the powers and functions of the Board. The Director of Mandi Parishad (Board) has not been conferred any power whereunder he may issue a general direction that the shops, godowns and sheds of the Mandi Parishad shall be transferred or sold to the traders on hire-purchase basis. Therefore, the appellants can derive no benefit from the letter of the Director dated 4.11.1995, wherein it was mentioned that a decision had been taken to give the shops on hire-purchase basis. In the counter affidavit the respondents have specifically asserted that the Board never took any such decision to sell the property of the Mandi Samiti to the traders either on hire-purchase basis or otherwise. No document has been filed to show that the Board ever took any such decision. It is the case of the respondents that the letter sent by the Director was his own action which had never been authorized by the Board. At any rate the proposal made by the Director never fructified as no such decision was taken by the Board and the Board never authorized the Mandi Samities (Committees) of various districts in the State to transfer the property of the Samiti in favour of the traders of agricultural produce who had been allotted the shops, godowns and sheds by the Mandi Parishad. In this view of the matter, the appellants have no legal right to claim that the property be given to them on hire-purchase basis.

9. Mr. Dinesh Dwivedi, learned senior counsel for the appellant has next submitted that the writ petitioners were earlier carrying on business from their own premises in Purana Galla Mandi in the city of Pilibhit and they shifted to Nawin Mandi Sthal, where the Mandi Samiti had made construction of shops and godowns, etc. which is at considerable distance from the city and which lacked basic infrastructure, on the assurance given by the Mandi Parishad that the business premises would be sold to them on hire-purchase basis. Learned counsel has submitted that after having shifted to the Nawin Mandi Sthal which caused considerable inconvenience to the traders, it is not open to the respondents to contend that the business premises would be given to them by the Mandi Samiti on lease or rental basis. In this connection it may be pointed out that the writ petitioners have not filed any document whatsoever to show that either it was held out or any assurance was given by the respondents that the business premises would be sold to the petitioners on hire-purchase basis or otherwise. In fact, there is not a single piece of paper on record to substantiate the allegation made by the writ petitioners. Whether the shops, godowns and sheds of the Mandi Samiti, which have been allotted to the writ petitioners, should be given to them on lease or should be sold to them on hire-purchase basis, is purely a matter of policy as the property belongs to the Mandi Samiti or the Mandi Parishad. It is for the Mandi Samiti or the Mandi Parishad to take a policy decision in this regard and the Court cannot examine the correctness or otherwise of the said policy except in a very narrow compass.

10. In *Netai Bag v. State of West Bengal* (2000) 8 SCC 262, this

Court held as under in para 20 of the reports :
 "20. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In State of M.P. v. Nandlal Jaiswal (1986) 4 SCC 566 it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or malafide. In the matter of different modes, under the rule of general application made under the M.P. Excise Act, the Court found that the four different modes, namely, tender, auction, fixed licence fee or such other manner were alternative to one another and any one of them could be resorted to."

In the well known case of BALCO Employees Union v. Union of India (2002) 2 SCC 333, a Three Judge Bench summarized the law on the point as under :

"In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court. It is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic polices and consider whether a wiser or better one can be evolved. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts....."

In Federation of Railway Officers Association v. Union of India (2003) 4 SCC 289, it was held as under in para 12 of the reports :-

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."

This being the settled position of law no direction can be issued to the respondents to transfer the shops, godowns or sheds to the writ petitioners on hire purchase basis.

11. The principal relief claimed by the writ petitioners is that a writ of mandamus be issued commanding the respondents to allot the shops, godowns and sheds to the writ petitioners on hire-purchase basis. The principles, on which a writ of mandamus can be issued have been settled by a catena of decisions of this Court. In *The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh* AIR 1977 SC 2149, this Court observed as under: -

"A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."

12. The writ petitioners have absolutely no legal right to claim that the shops, godowns or sheds be transferred to them on hire-purchase basis. In these circumstances the relief claimed by them cannot at all be granted and the writ petition was rightly dismissed.

13. Having given our careful consideration to the submissions made by learned counsel for the parties, we are of the opinion that the appellants have failed to make out any ground for granting any relief to them, as claimed in the writ petition. The appeal is accordingly dismissed with costs.