

IN THE HIGH COURT OF KARNATAKA

October 3, 2008

P. D. Dinakaran , C. J.

Mohan Shantanagoudar , J.

KRISHNA FISHERMAN CO-OPERATIVE SOCIETY LIMITED, BANGALORE

v

STATE OF KARNATAKA AND OTHERS

JUDGMENT

The Court, delivered the following:

P.D. Dinakaran, C.J.:

The appeal is directed against the order dated 24th June, 2008 made in Writ Petition No. 296 of 2008 whereby the lease of fishing rights granted in favour of the appellant herein in respect of Thippagondanahalli tank to an extent of 1,162 hectares *vide* Government Order No. PNM:86:MEE:2007 BANGALORE, dated 02-04-2007 by the Government of Karnataka for a period of five years (2006-07 to 2010-11) *i.e.*, from 1-7-2006 to 30-06-2011, at a cost of Rs. 87,450/- for 2006-07, Rs. 91,508 for 2007-08, Rs. 96,083/- for 2008-09, Rs. 1,00,887/- for 2009-10 and Rs. 1,05,932/- for 2010-11, was quashed at the instance of respondents 6 to 23, who were the writ petitioners before the learned Single Judge, on the ground that the said lease was contrary to the scheme formulated by the Government by Gazette Notification dated 16-02-2006.

2. According to Sri Shashikiran Shetty, learned Counsel for the appellant, the appellant-society has a subsisting lease in their favour granted *vide* lease order dated 02-04-2007 and that the said lease was granted in their favour as there was no other application for grant of lease of fishing rights with respect to Thippagondanahalli tank; and, in any event, the respondents-writ petitioners having approached this Court challenging the said lease after a period of six months, the learned Single Judge ought not to have interfered with the leasehold fishing rights of the appellant. However, neither the learned Counsel for the appellant nor the learned Government Advocate disputes the fact that the Government had not issued any notification for leasing out fishing rights in the impugned tank.

3. We heard Sri Ashok B. Patil, learned Advocate for the contesting respondents and Sri B. Veerappa, learned Government Advocate for Respondents 1 to 5, who have reiterated the contentions that were made before the learned Single Judge.

4. We have given our careful consideration to the submissions of all the parties.

5. The policy of the Government and the scheme formulated for grant of lease of fishing rights in the public tanks, ponds, reservoirs *etc.*, contemplates that the same could be granted only by tender-cum-auction after giving wide publicity. The above policy, concededly, is in terms of the object enshrined in the Karnataka Transparency in Public Procurements Act, 1999 (for short, hereinafter referred to as 'the Act') to ensure the transparency in public procurement of goods and services by streamlining the procedure in inviting, processing and acceptance of tenders by procurement entities and for matters related thereto. Even though Section 4(g) of the Act empowers the Government to issue notifications exempting the specific procurements from the purview of the Act from time to time, Sri B. Veerappa, learned Government Advocate fairly submits that the right of the Government to lease out the fishing rights in the public tanks, ponds, reservoirs *etc.*, were not exempted under Section 4(g) of the Act, particularly the impugned tank.

6. It is settled law that the need to maintain the transparency in grant of public contracts is mandate. Maintenance of transparency and compliance of Article 14 of the Constitution would *inter alia* be ensured by holding public auction upon issuance of advertisement in the well-known newspapers. Therefore, the State or its instrumentalities should not give contracts by private negotiation but by open public auction/tender after wide publicity. The law is, therefore, clear that ordinarily all contracts by the Government or by an

instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have opportunity to participate in the bid, and there is total transparency and the same is an essential requirement in democracy (*vide* judgment of the Supreme Court in the case of *Nagar Nigam, Meerut v Al Faheem Meat Exports (Private) Limited and Others*) [(2006)13 SCC 382: 2007(8) SCJ 702].

7. In the instant case, even though the Government had formulated such a scheme in consonance with the provisions of the Act, it has not chosen to invite applications for grant of lease. But, the only explanation for giving lease in favour of the appellant is that there was no other rival claim. In our considered opinion, in the absence of any notification inviting applications/tenders, the contention that there was no rival claim would not justify the stand of the Government much less the appellant. In fact, such a contention is alien to the object of the Act as well as the scheme provided under notification dated 16-2-2006 relating to the leasing of fishing rights in the public tanks, ponds, reservoirs, *etc.*

8. Similarly, the contention that the Court ought not to have interfered with the appellant's leasehold right as the writ petitioners had approached the Court after six months, in our considered opinion, also fails as the writ petitioners cannot be found at fault for want of notification inviting tenders/applications for the impugned lease; and, in the absence of transparency, the writ petitioners cannot be blamed for having approached the Court after six months.

9. The learned Single Judge, by order dated 4th August, 2008 in Review Petition No. 257 of 2008 permitted the appellant (review applicant) to remove all the fish within three months from 4th August, 2008, which period expires by 3rd November, 2008; and therefore, the order of the learned Single Judge is fully justified even from equity point of view. Hence, finding no merit, we dismiss the writ appeal.