The Energy And Resources Institute vs Suhrid Sudarshan Shah & Ors on 22 July, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3577, AIR 2016 SC (CIVIL) 2475, (2016) 7 SCALE 328, (2016) 4 JCR 11 (SC), 2016 (14) SCC 115, 2017 (121) ALR SOC 59 (SC), 2017 (171) AIC (SOC) 5 (SC)

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Bench: D.Y. Chandrachud, A.M. Khanwilkar, T.S.Thakur

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……6606……/2016
(Arising out of S.L.P. (Civil) No. 39898/2012)

The Energy and Resources Institute ….Appellant

Versus

Suhrid Sudarshan Shah & Ors. …..Respondents

WITH

CIVIL APPEAL NO……6607……/2016
(Arising out of S.L.P.(Civil) No. 4886/2013)

J U D G M E N T

A.M. Khanwilkar, J.

Leave granted.

2. Respondent No.1 (Suhrid Sudarshan Shah) had filed Writ Petition under Article 226 of the Constitution of India before the High Court of Uttarakhand at Nainital in the nature of public interest litigation against the State of Uttarakhand and the Director of Horticulture and Food Processing, to question the allotment of orchards belonging to the State on lease for a period of 25 years to private parties without following auction process. Reliefs claimed in the said Writ Petition (PIL) No.600 (M/B) of 2003 read thus:

PRAYER It is, therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this petition and issue:-

Writ Rule, Order or direction in the nature of mandamus commanding and directing the respondents not to implement the decision/policy of the government to handover 77 government orchards to the private person.

Writ, Rule, Order or direction in the nature of mandamus declaring or rendering the government action/policy, or handing over of 77 government orchards to private persons, void and unconstitutional.

Any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of this case.

To award the cost to the petitioners.

This Writ Petition was summarily dismissed by the Division Bench of the High Court on 30th August 2003. The Court noted that the short point to be decided in the Writ Petition was whether 74 orchards or any of them were making profit, as alleged. The Division Bench opined that the writ petitioner had failed to provide any details in that regard in the Writ Petition. On the other hand, the State furnished a chart based on Profit and Loss Account of the orchards, which was taken on record. The factual position stated therein having remained uncontroverted, the Division Bench summarily dismissed the Writ Petition in limine.

3. The respondent No.1 carried the matter to this Court by way of S.L.P.(Civil) No. 23707/2003 (converted into C.A. No. 4629/2006). In that appeal, the State was called upon to file counter affidavit before this Court, wherein, it was, inter-alia, contended by the State as follows:

"(1) That a total area of 1380.254 Hectare comprised in 104 Government orchards have been dismissed, the estimated value whereof would be about Rs.138 crores.

(2) The State of Uttaranchal has allegedly taken a purported policy decision in terms whereof Public Private partnership was sought to be resorted to with a view to attract more investment and provide new avenues of employment for local people and for betterment of the economic condition of the public in general and the Government.

(3) With the private investment coming in these orchards the benefit thereof would also pass to the local people. Moreover, other horticultural activities like medicinal and herbal plants, tea, sericulture and other high value land based operations are proposed to be taken upon these lands/orchards in future." With reference to this plea, this Court vide judgment dated August 30, 2006 opined that the matter required consideration afresh by the High Court. In that, the High Court in the first place ought to consider the question as to whether on the admissions made by the

> State, the purported policy to lease out such valuable lands on nomination basis was in public interest or not, keeping in mind the exposition in the case of Ramana Dayaram Shetty vs. International Airports Authority of India & Ors.[1]. The Court noted that since the nominees were not before the Court, the High Court should give opportunity to them before finally deciding the matters in issue.

This Court, accordingly, was pleased to set aside the High Court order and remanded the Writ Petition to the High Court for fresh consideration in accordance with law.

4. In furtherance of remand order, the Writ Petition stood restored before the High Court and was assigned fresh number as Writ Petition (PIL) No. 857/2007. In the said Writ Petition the High Court ordered impleadment of the nominees. The appellants before this Court were accordingly impleaded as respondent Nos. 25 and 26 vide order dated 18th July 2011. Having received court notice, respondent No. 25 (appellant in appeal arising from SLP (Civil) No. 3989/2011) responded to the writ petition by filing an affidavit dated 20th November 2011 and supplementary affidavit dated 29th July 2012 in the said Writ Petition. The said appellant asserted on affidavit that allotment of orchard in its favour was just and proper. It was done on the basis of a well informed policy decision taken by the State Government and in larger public interest. Further, the said appellant being a registered society was established with the aim to tackle and deal with immense and acute problems that mankind is likely to face in the years ahead on account of gradual depletion of the earth's finite energy resources which are largely non-renewable and existing method of their use. That the policy decision, contended the said appellant, was taken by the State Government - as the stated 104 orchards were causing huge losses to the public exchequer for its management, in particular towards the payment of salaries to its employees. The State Government had suffered staggering loss to the tune of Rs. 2,70,00,000/- in the year 1998- 1999, Rs. 2,91,00,000/- in the year 1999-2000 and Rs.2,10,00,000/- in the year 2000-2001. In this backdrop, with the approval of the Cabinet the State Government delineated the measures for re-organization of the Horticulture Directorate of the State Government of Uttarakhand. In pursuance of the said Scheme, the Principal Secretary-cum-Commissioner circulated an official Order dated 21st May 2001 to all Universities, Research Institutes and Government Departments as well as District Administrations expressing its desire to make available on long term lease the unproductive 77 Government Udhyaans/orchards for horticulture and agricultural diversification. The appellant (in C.A. arising out of SLP (Civil) No.39898/2012) after becoming aware of the policy decision of the State Government, expressed its interest for allotment of Government orchard on long term basis by submitting proposal on 22nd August 2001. That proposal was processed at different levels including by the Cabinet of the State Government in its meeting dated 11th October 2002; and after due deliberations, the Government through its Joint Secretary, Horticulture, vide letter dated 16th October 2002, informed the said appellant that the proposal submitted by it has been accepted. It is also contended by the said appellant that news articles were duly published in the local newspapers including Indian Express about the Uttarakhand Government having invited NGOs to conduct research on the uses of the medicinal plants and herbs available in the Himalayas. Further, consequent to the sanction accorded in favour of the said appellant, lease deed was executed on 5th February 2003 through the Director, Horticulture, Government of Uttarakhand in respect of 7.50 hectares for 5 years initially subject to renewal for another 20 years on satisfactory fulfillment of the terms and conditions of the

allotment and the lease deed. That the appellant thereafter has made huge investment to the tune of Rs. 15 crores in setting up the entire project. It is stated that the State Government had formed a Six Members Committee under the Chairmanship of Professor A.N.Purohit for formation of Government policy for allotment of the remaining 70 unproductive orchards to private parties on leasehold basis. Requisition notice was also issued inviting private (interested) parties for grant of orchards on long term leasehold basis. It is contended that as per the policy the lessee was obliged to pay lease amount quantified as 100 times of the Government revenue for the first 10 years and, thereafter, 200 times for the next 15 years. In the process, no revenue loss has been caused to the State Government.

5. As regards the appellants in companion Civil Appeal (arising out of SLP (Civil) No. 4886/2013) whose predecessor was impleaded as respondent No.26 in the Writ Petition, the High Court in the impugned judgment has noted that neither any representation was made on his behalf nor any response was filed. As the legal heirs and representatives of the said respondent, who have filed the present appeal, however, assert that neither any notice was served on their predecessor nor they were aware about any proceedings pertaining to the two grants issued by the State Government in favour of their predecessor. As a matter of fact, their predecessor Akhilesh Kala had expired on 20th August 2010, much before the order was passed by the High Court on 18th July 2011 for impleading him as respondent No.26 in the remanded Writ Petition. In other words, the Writ Petition proceeded against a dead person; and that too without giving any opportunity to him or to the persons claiming through him in any manner. For, no notice about the said proceedings was ever served on the said respondent or their successors in title.

6. The Division Bench of the High Court proceeded to finally dispose of the remanded Writ Petition vide impugned judgment dated 30th July 2012. The High Court in the first place noted that before the formation of State of Uttarakhand, stated 104 orchards were under effective control of State of Uttar Pradesh and were run and managed through its Horticulture Department. After creation of State of Uttarakhand, the Horticulture Department of the State of Uttarakhand evolved mechanism to manage and maintain those orchards for which it invited six persons of the public to take over seven orchards. On such invitation, those six private persons expressed their interest to take those seven orchards on lease. Seven leases were executed in favour of six private persons and they were put in possession of seven orchards on lease basis. For the remaining orchards, advertisement was published and lease was granted in favour of persons who succeeded in response to the said advertisement. The High Court then proceeded to observe that the present public interest litigation raises issue about the unjust allocation of orchards, as it has not benefitted the State Government. Thus, the grants must be declared as illegal. After having noticed this position, the High Court in the impugned judgment has noted that grants given pursuant to advertisement need no interference as no contention has been raised in the Writ Petition about the correctness or validity of the advertisement and as the grants were settled pursuant to the said advertisement.

7. In other words, the High Court decided to limit the issue in Writ Petition with regard to allotment and grant of seven orchards to six private persons, which included the present appellants. The Court noticed that out of seven grants, three grantees have surrendered their grants. Only three grantees namely, Dabur Research Foundation, Tata Energy Research Institution (appellant in appeal arising

out of SLP (Civil) No. 39898/2012) and Akhilesh Kala (appellant in C.A. arising out of SLP(Civil) No. 4886/2013) have chosen to continue with the four grants. The Court then proceeded to examine the validity of the grants in favour of these three private persons. It first considered the validity of grant in favour of Dabur Research Foundation. The High Court noted the contention of the said grantee that lease was executed after advertisement was published. It, however, found that the said grantee had not stated that the lease in its favour was the subject matter of any advertisement. With regard to the second contention of the grantee that the lease conditions provide for periodical inspection after every five years, the High Court opined that neither the State nor the said grantee produced inspection report on record to substantiate that inspection has been carried out, much less having complied with the terms and conditions of lease in all respects. The Court further found that as per the lease terms the grantee was obliged to impart horticulture education to the people of the locality and also to provide them engagement, but neither the State nor the said grantee has produced any record that even that condition has been complied with. The Court noted that the said grantee claims to have planted medicinal herbs which has had the capability of fighting cancer, but found that the said grantee was exploiting the same for its own benefit to the extent possible. In that, no benefit has been derived by the State Government or its people to any extent except the lease rent of Rs.1250 per Hectare per year. The Court, accordingly, held that the allotment in favour of Dabur Research Foundation was surreptitious and has benefitted only the grantee Dabur Research Foundation.

8. Having analysed the case of Dabur Research Foundation, the High Court proceeded to hold that similar situation obtains even in respect of the appellant (in C.A. arising out of SLP (Civil) No. 39898/2012-Tata Energy Research Institute), who has been given orchards spread over to the extent of 7.50 Hectares at an yearly rental of Rs. 7245/- only. No other analysis much less are any reasons found in the impugned judgment qua the said appellant Tata Energy Research Institute. The sum and substance of the conclusion of the High Court, is that, the State did not take recourse to due diligence to ascertain as to how the revenue from the land could be optimized by the State. On this reasoning, the High Court proceeded to cancel the grants and the lease granted even in favour of the appellant (in appeal arising out of SLP (Civil) No. 4886/2013-Akhilesh Kala). The High Court also issued direction to the three grantees to hand over physical possession of the land in question to the State Horticulture Department within a period of six months from the date of the order. The Court further directed that after possession is taken the State should utilize the orchards and must make an endeavour to ascertain at least what best possible price it can get for the same before exploring the option of private-public partnership arrangement for exploitation of the said orchards.

9. This decision is the subject matter of challenge in the two appeals before us. Notably, Dabur Research Foundation has not chosen to challenge the decision. It is only the legal heirs of Akhilesh Kala (original Respondent No. 26 in Writ Petition) and The Energy Research Institute (formerly known as Tata Energy Research Institute) (original Respondent No. 25 in Writ Petition) who have questioned the correctness of the view taken by the Division Bench of the High Court and in particular quashing and setting aside of the grants and lease deeds executed in their favour by the State. The grievance of the Energy Research Institute is that the High Court has completely glossed over the stand taken by it on affidavit filed to oppose in the Writ Petition.

10. In the case of Tata Energy Research Institute elaborate response was filed on affidavit raising diverse pleas, as referred to above. None of the contentions so raised have been dealt with by the High Court. As regards the heirs of Akhilesh Kala, it is submitted that the High Court could not have proceeded with the hearing of the Writ Petition against a dead person. In any case, the High Court should have ascertained the factual position about service of notice on respondent No.26 as impleaded. No satisfaction in that behalf is noted in the impugned judgment. It is cardinal that in absence of service on the named respondent, the Court should be loathe to proceed with the matter finally against such respondent; and more so in the backdrop of the dictum of the Supreme Court whilst remanding the Writ Petition that the nominees should be heard who were not made parties in the Writ Petition, as was originally filed.

11. Having considered the rival submissions, we desist from examining the controversy about the merit of the allotment to the respective appellants. For, we are inclined to relegate the appellants and respondent No.1 as also the State Authorities in the respective appeal for reconsideration of the matter afresh qua these appellants.

12. This Court, on the earlier occasion, had plainly observed that the High Court in the first place must examine the question whether the stand taken by the State Government that the stated policy to lease out orchards to the private persons (including appellants herein) on nomination on long term basis was in public interest or not; and to do so after giving due opportunity to the nominees (such as the appellants before us) by impleading them as party respondents in the Writ Petition. Admittedly, the appellants were directed to be impleaded as respondents 25 and 26 respectively, in the remanded Writ Petition.

13. In the impugned judgment, however, there is absolutely no discussion on the question whether the policy of the State Government, which was the subject matter of challenge in the remanded Writ Petition, was in accordance with law and in public interest or not. If it were to be found that such a policy is permissible in law; and that the allotment to the respective respondents 25 and 26 in the said remanded Writ Petition was in conformity with that policy, the end result would be quite different. Further, the High Court has in any case failed to analyze the diverse pleas available to the appellants herein and more so specifically taken by the appellant (in C.A. arising out of SLP (Civil) No. 39898/2012) on affidavits whilst opposing the remanded Writ Petition on the factual matrix including about the engagement of the said appellant in activities which are beneficial to the locals and in larger public interest. According to the said appellant, they have not only complied with all the stipulations required to be fulfilled in terms of the State Government policy but were scrupulously adhering to all the terms and conditions of lease executed in their favour without any exception. Moreover, even the periodical inspection of orchards managed by the said appellant has been done by the competent authority, unlike in the case of Dabur Research Foundation.

14. We are in agreement with the appellants that without analyzing the contentions specifically raised by them, it was improper to make a sweeping observation against these appellants with reference to the case of Dabur Research Foundation.

15. Indubitably, no discussion about the stand taken by the respondent No. 25 on affidavits can be discerned from the impugned judgment. In other words, the decision of the Division Bench qua the respondent No.25 in the remanded Writ Petition is sans any reason, if not cryptic. That cannot stand the test of judicial scrutiny especially when the decision results in serious civil consequences to the party; and more so when this Court while remanding the matter had made it clear to hear all the nominees likely to be affected by the decision and to answer all relevant issues including the justness of the Government Policy.

16. Reverting to the case of appellant (in C.A. arising out of SLP (Civil) No.4886/2013) their predecessor in title had already expired on 20th October 2010. If so, the High Court could not have directed impleadment of a dead person as respondent No.26. Further, there is nothing in the impugned judgment to indicate that the High Court before proceeding to finally dispose of the Writ Petition, reassured itself that respondent No.26 has been duly served. All that is mentioned in paragraph 4, in the last sentence, is that, Akhilesh Kala, despite notice, has not responded. However, on the factum as to when such service was effected or whether the service was complete in all respects, no observation is found in the impugned judgment. The appellants in the said appeal, however, asserted that no notice was received at the known residence of their predecessor. The fact remains that the respondent No.26 could not be represented, being a dead person. The concomitant is that, the Writ Petition proceeded for final hearing without hearing the said respondent. This was against the spirit of the remand order passed by this Court.

17. Considering the above, we deem it appropriate to quash and set aside the impugned judgment and order only qua appellants herein (the respondents 25 and 26 in the Writ Petition); and further direct remand of the Writ Petition to the High Court for reconsidering it afresh only with regard to them as regards the validity of grants in favour of Tata Energy Research Institute (now known as Energy and Resources Institute); and two grants in favour of Akhilesh Kala as the appellants herein claim to be the heirs and legal representatives of deceased Akhilesh Kala.

18. We once again make it clear that we may not be understood to have disturbed the order in any manner operating against Dabur Research Foundation (original respondent No.14, in the remanded Writ Petition).

19. Considering the fact that the Writ Petition has been filed in the year 2003 and is required to be remanded for the second time by this Court and in view of the nature of issue involved and the substantial period of lease term is already exhausted, the High Court is requested to dispose of the remanded Writ Petition expeditiously, preferably within six months. The High Court may consider the request of the concerned parties to file affidavits and further pleadings as may be necessary. All questions in the remanded writ petition in terms of this order, are left open.

20. The appeals are allowed in the above terms with no order as to costs.

.……CJI (T.S.Thakur) ……J. (A.M. Khanwilkar) .....J. (D.Y. Chandrachud) New Delhi, Dated: 22nd July, 2016

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[1] [1979 SCR (3) 1014 = (1979) 3 SCC 489]