

Court No. - 51

Case :- WRIT - C No. - 23915 of 2023

Petitioner :- Ibadur Rahman

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Mahesh Narain Singh, M.N. Singh

Counsel for Respondent :- C.S.C., Sudhir Bharti

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Mahesh Narain Singh, learned Counsel for the petitioner, Mr. Abhishek Shukla learned Additional Chief Standing Counsel for State-respondents and Mr. Sudhir Bharti for respondent No.5 Gaon Sabha.

2. On 25.09.2019 following order was passed by this Court:

"1. In compliance of the order dated 31.7.2023, instruction dated 5.8.2023 has been placed before the Court by Mr. S.P. Singh, learned Additional Chief Standing Counsel for the State-respondents which is taken on record.

2. In the instruction dated 5.8.2023, it is mentioned that petitioner was not found eligible to be considered for fisheries auction, as such, petitioner was not permitted to participate in the auction proceeding.

3. Counsel for the petitioner is disputing the facts mentioned in the instruction.

4. Learned Counsel for the petitioner prays for and is granted one week time to file reply to the facts mentioned in the instruction as well as state specifically that petitioner will come under which category to be considered for fisheries auction as provided under Rule 57 of the U.P. Revenue Code, Rules 2016.

5. Put up this matter as fresh on 4.10.2023. "

3. On 04.10.2023 following order was passed by this Court:

"1. Supplementary affidavit filed on behalf of the petitioner is taken on record.

2. Heard Mr. Mahesh Narain Singh, learned counsel for the petitioner, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Sudhir Bharti, learned counsel for the respondent- Gaon Sabha.

3. Learned counsel for the petitioner on the basis of averment made in paragraph nos.3 to 5 of the supplementary affidavit submitted that earlier petitioner's father and after death of petitioner's father, petitioner is eligible for participating in the fisheries auction in view of the provisions contained under Rule 57 (5) (a) of U.P. Revenue Code Rules, 2016. He further submitted that certificate issued from I.C.A.R. Lucknow in favour of the petitioner as well as in favour of the petitioner's father have been annexed as Annexure No.SA-1, SA-2 & SA-3, as such, petitioner is entitled to participate in the auction proceeding.

4. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel is directed to obtain instruction in the matter within two weeks about the status of the auction proceeding which is to take place in respect to the pond in question and also obtain instruction as to why the petitioner has not been permitted to participate in the auction proceeding in view of the averment made in paragraph nos.3 to 5 of the supplementary affidavit.

5. Put up this case as fresh on 18.10.2023."

4. In compliance of the order of this Court dated 04.10.2023, Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents has placed instruction dated 16.10.2023 before this Court today, which is taken on record.

5. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents on the basis of the aforesaid instruction submitted that petitioner comes under Category-(b) of Rule 57 (5) of U.P. Revenue Code Rules, 2016, as such case of

petitioner cannot be considered as persons belonging to category-(a) are present in the village.

6. Learned counsel for the petitioner submitted that case of the petitioner will also come in category-(a) of Rule 57 (5) of U.P. Revenue Code Rules, 2016 in view of the averment made in paragraph Nos.3, 4 and 5 of supplementary affidavit as provided under the explanation clause of Rule 57 (5) of U.P. Revenue Code, Rules, 2016. He further submitted that prayer made in the writ petition is to command the respondent authorities to permit the petitioner to participate in the auction proceeding, which was scheduled to be held on 26.07.2023. He further submitted that till date auction proceeding has not been taken place as such petitioner is entitled to be considered for allotment of fisheries lease in respect to the pond in question.

7. I have consider the arguments advanced by learned counsel for the parties and perused the record.

8. There is no dispute about the fact that proceeding for auction has not been taken place in respect to the plot in question.

9. The perusal of Rule 57(5) of U.P. Revenue Code Rules, 2016 will be relevant, which is as under:

"Rule 57 (5) of U.P. Revenue Code Rules, 2016

(5) The eligibility list of prospective lessees shall be prepared in accordance with the following order of preference:-

(a) Fishermen residing in the concerned Gram Panchayat;

(b) Members of the S.C.,S.T., Other Backward Classes or persons of General category living below poverty line residing in the

Gram Panchayat;

(c) Fishermen residing in the concerned Nyaya Panchayat Circle;

(d) Fishermen residing in the concerned Development Block;

Explanation: For the purposes of this rule and rule 58, the expression 'Fishermen' means any person belonging to the community of Kewat, Mallah, Nishad, Bind, Dheemar, Kashyap, Vatham, Raikwar, Manjhee, Godia, Kahar, Tureha or Turaha or any other person traditionally engaged in the fishing profession."

10. In paragraph Nos. 3, 4 and 5 of the supplementary affidavit, it is stated that petitioner is permanent resident of village-Bairiya, Tappa Andhya, Pargana-Haveli, Tehsil-Sadar, District-Maharajganj and his family has been engaged in fisheries profession last several decades. Fisheries department has issued certificate in favour of the petitioner's father as well as petitioner. Copy of the certificate issued by I.C.A.R., Lucknow has been annexed along with supplementary affidavit in paragraph No.5 of the Supplementary affidavit. It is specifically stated that petitioner will fall within purview of Rule 57(5) (a) of the U.P. Revenue Code Rules, 2016, as such petitioner is entitled to participate in the open auction proceeding, which is to take place in respect to the pond in question.

11. Considering the entire facts and circumstances as well as the averment made in the supplementary affidavit filed on 04.10.2023 as well as provisions contained under Rule 57 (5) of U.P. Revenue Code Rules, 2016, it will be appropriate that petitioner should be permitted to participate in the auction proceeding which is still to

take place in respect to pond in question in accordance with provisions contained under U.P Revenue Code Rules 2016.

12. The writ petition is allowed and respondents are directed to permit the petitioner to participate in the auction proceeding in respect to the pond in question in accordance with the provisions contained under Rule 57 (5) of UP. Revenue Code Rules, 2016.

Order Date :- 18.10.2023

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