

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 328 of 2014

1. Milan S/o Bharat Lal Dhimar Aged About 31 Years R/o Village Sondh, PS Berla, President Of The Registered Society Krishna Dhimar Machhuwara Kalyan Samiti Village Sondh, Civil & Revenue Distt Bemetara, CG.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Agriculture And Fishery Department, Mahanadi Bhawan, Mantralaya, New Raipur, Distt Raipur, Cg
2. The Collector Bemetara, Distt Bemetara, Cg
3. Sub Divisional Officer, Saja, Distt Bemetara, Cg
4. Sarpanch, Gram Panchayat, Sondh, Block Berla, Distt Bemetara, Cg
5. Sachiv Gram Panchayat, Sondh, Block Berla, Distt Bemetara, Cg
6. Firtu Ram S/o Pachkod, President Of Ramjanki Machhuwa Sahkari Samiti Maryadit, Sondh, Tah Berla, Distt Bemetara, Cg

---- Respondent

For Petitioner	Shri B.P. Singh, Advocate
For Respondent/State	Ms. K. Tripti Rai, Panel Lawyer
For Respondent No.4	Shri R.K. Sharma, Advocate
For Respondent No.6	Shri Sunil Otmani, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/11/2015

1. Petitioner is aggrieved by the order passed by the Collector, Bemetara, on 07.02.2014, whereby the Collector has allowed the revision application of respondent No.6 to set aside the order

passed by the Sub Divisional Officer (Revenue), Saja (for short 'the SDO') on 17.04.2013 and has directed for execution of lease of fishing rights for a period of seven years in favour of respondent No.6.

2. The matter pertains to grant of lease of fishing rights of Darri Talab at village Sondh, Block Berla, District Bemetara, admeasuring 5.04 Hectares. For grant of said lease the Gram Panchayat passed a resolution on 17.12.2012 in favour of the petitioner. For the said consideration four applications were received by the Gram Panchayat, out of which the petitioner was chosen on the ground that the petitioner is a handicapped person and the members of the petitioner society are local persons.
3. Challenging the said resolution, the respondent No.6 preferred an appeal before the SDO. By order dated 17.04.2013 the SDO refused to interfere in the matter, however, the Collector, Bemetara has allowed the revision application of the respondent No.6.
4. It is argued by the learned counsel for the petitioner that petitioner society consists of members of local persons and the petitioner Milan is a handicapped person. The respondent No.6 society is already having the lease of fishing rights at a different tank, therefore, the Collector should not have set aside the order passed by the SDO. It is also argued that the ground on which the Collector has allowed the revision has not been raised before the SDO.
5. Per contra, it is argued by the learned counsel for Respondent No.6 that the petitioner is a society registered under the Societies

Registration Act, 1973 (for short 'the Act, 1973') and is not a cooperative society, therefore, in terms of State Government's circular, the respondent No.6 was entitled to have preference in the matter of grant of fishing rights and the order passed by the Collector does not call for any interference.

6. The extract of the State Government's circular governing the grant of fishing rights has been filed as Annexure R-6/1. In the said circular it is mentioned that in the matter of grant of fishing rights the following order of preference shall be maintained.

- i) Registered fisherman Co-operative Society.
- ii) Group fishermen.
- iii) Fishermen.
- iv) such persons/family who have been displaced on account of submergence of their land in the concerned tank for which lease is considered.
- v) in the event of non-availability of above four categories of society/group/person then a self-help group will be granted the fishing rights.

7. Certificate of registration of the society of which the petitioner is the president has been filed as Annexure P-3. Bare perusal of the certificate would demonstrate that the same has been issued under the Act, 1973. Thus, there is no quarrel about the fact that the petitioner society is not a cooperative society registered under the provisions of the Chhattisgarh Cooperative Societies Act, 1960 (for short 'the Act, 1960'). On the other hand, respondent No.6 has annexed the certificate of registration issued to the society under the Act, 1960 as Annexure R-6/5. Thus, there is no dispute that the respondent No.6 is a registered cooperative society.

8. Although it has been argued that the issue of preference was not raised before the SDO, however, the same being a pure legal question based on undisputed facts the same can be considered by the appellate Court of Collector. When the matter is governed under the instructions issued by the State Government, which accords preference to registered cooperative society or group or individual and it is brought to the notice of the Court that one of the contesting party is entitled to such preference under the norms fixed by the State Government, this Court cannot ignore the said issue to up held the grant in favour of a person who is not entitled by any preference. Moreover, the State Government's circular does not create any special preference or privilege on the ground that president of particular society registered under the Act, 1973 is a handicapped person. The question is about entitlement of grant of fishing rights and not about sympathy or otherwise.

9. For the foregoing, this Court does not find any substance to interfere in the matter. Accordingly, the writ petition is dismissed.

No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra