

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2378 OF 2014

Jai Bhavani Maschya Vyavsaik Sahakari
Sanstha Maryadit, Singaon (Jahagir)
Taluka Deulgaon Raja,
District Buldhana.
Through its Chairman
Sau. Lata w/o Parkash Gite,
Age 37 years, Occ. Fisherman,
R/o. Singaon (Jahagir),
Tq. Deulgaon Raja,
District Buldhana.

...Petitioner

versus

1. The State of Maharashtra,
Through the Secretary,
Milk, Animal Husbandry and
Fishery Department, Mantralaya,
Maharashtra State, Mumbai
2. The Commissioner of Fisheries,
Maharashtra State, Tarapurwala
Building, Churni Road,
Mumbai
3. The Regional Dy. Commissioner of
Fishery, Aurangabad Region,
Aurangabad
4. The Assistant Commissioner for
Fishery, Jalna,
District Jalna
5. S. Fawyer Polymers,
C-4/10, Jejuri M.I.D.C.
Tal. Purandar, District Pune

...Respondents

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Mr. G.D. Kale h/f Mr. R.T. Nagargoje, advocate for the petitioner
Mr. S.G. Karlekar, A.G.P. for respondent Nos. 1 to 4
Mr. Vivek Bhavthankar, advocate for respondent No.5.
.....

**CORAM : R.M. BORDE AND
V. K. JADHAV, JJ.**

DATED: 28TH APRIL, 2015

JUDGMENT (PER V. K. JADHAV, J.) :-

1. Heard.
2. Rule. Rule returnable forthwith. By consent of parties, petition is taken up for final disposal at admission stage.
3. This writ petition is preferred challenging the order dated 20.11.2013, passed by respondent No.2, thereby allotting Nimna Dudhna Tank, Tq. Partur, District Jalna in favour of respondent No.5 without considering the guidelines laid down in Government Resolution dated 29.5.1998.

Brief facts, giving rise to the present writ petition, are as follows:-

4. The petitioner is a registered fishery society registered under the provisions of Section 9 (1) of the Maharashtra Co-operative Societies Act, 1960. The respondent authorities had issued a tender notice dated 23.10.2012 for allotment of Nimna Dodhna Tank, Tq.

Partur, District Jalna. which is admeasuring 4549.00 hectares. Upon opening of tenders, it was found that one Mr. Abdul Mohd. Nasir Khan quoted highest amount in his bid, while respondent No.5 stood second highest bidder and the petitioner stood third highest bidder in the said bids. However, said Mr. Abdul Mohd. Nasir Khan submitted an application requesting therein to grant him permission to deposit the amount, as quoted in the bid, in three installments. Respondent no.2 has rejected his request for want of provision. According to the petitioner, instead of considering the claim of petitioner society, respondent authorities have allotted the tank to second highest bidder i.e. respondent No.5 herein, without following guidelines as enumerated in Government resolution dated 29.5.1998. Hence, this writ petition.

5. Learned counsel for the petitioner society submits that as per the Government Resolution dated 29.5.1998, if the lease amount quoted by fisheries Co-operative society is equal with other private bidder then the lease of such tank should be allotted to fisheries co-operative society by granting 10% concession in the lease amount or if lease amount quoted by fisheries Co-operative society is less by 10% than the highest bidder, then also the lease of such tank should be allotted to the fisheries Co-operative society. The learned counsel for the petitioner further submits that if 10% concession is granted to

fisheries Co-operative Society as per Government Resolution dated 29.5.1998, the petitioner society would stand at second position as compared with respondent No.5 herein. Learned counsel further submits that considering the financial position of the fisheries societies, with an object to improve their condition, special protection is given to such societies vide Government Resolution dated 29.5.1998. However, the authorities have not considered the said aspect and illegally allotted the tank to respondent No.5. The learned counsel thus lastly submits that the impugned order dated 20.11.2013 is required to be quashed and set aside and direction is required to be given to the respondent authorities to allot the said tank to the petitioner society.

6. The learned A.G.P. for respondent Nos. 1 to 4 submits that the concession, as laid down in Government Resolution dated 29.5.1998, can be considered at the initial stage itself. The learned A.G.P. further submits that at the time of opening of tenders, the petitioner society was considered for grant of concession in view of Government Resolution dated 29.5.1998. However, there is difference between first bidder and the petitioner beyond 10% concession as contemplated in the said Government Resolution and therefore, the tank was initially allotted to said Mr. Abdul Mohd. Nasir Khan. The learned A.G.P. further submits that while allotting the tank

to respondent No.5, which is at later stage, the petitioner is not entitled to get concession of 10% and therefore, his claim was not considered for allotment of tank. The learned A.G.P. thus submits that there is no merit in the petition and the same is liable to be dismissed with costs.

7. The learned counsel for respondent No.5 submits that respondent has passed order of allotment of tank in favour of respondent No.5 after considering the Government Resolution dated 29.5.1998 and as such, there is no irregularity in passing the said order of allotment of tank in favour of respondent No.5. The learned counsel further submits that respondent No.5 has already incurred huge amount in starting the activities of fishing in the said tank. The learned counsel thus submits that there is no merit in writ petition and the same is liable to be rejected with costs.

8. We have carefully gone through the contents of Government Resolution dated 29.5.1998. It appears that there is protection given to fisheries co-operative societies to the effect that if fishing area of a particular area is more than 201 hectare, then, even though the lease amount quoted by fisheries Co-operative society is equal with other private bidder, the lease of such tank should be allotted to fisheries Co-operative society by granting 10% concession in the lease

amount or even if such amount quoted by the fisheries co-operative society is less by 10% as compared with the highest bidder, then also lease of such tank should be allotted to fisheries co-operative society. We do not find any such condition that such concession should be granted to the fisheries Co-operative society at the initial stage only. After opening of the tender, one Mr. Abdul Mohd. Nasir Khan found to be highest bidder and difference of amount between the said first bidder and the petitioner was found to be beyond 10%. However, the request made by the highest bidder Mr. Abdul Mohd. Nasir Khan for deposit of such amount in three stages came to be rejected by the authorities for want of provision. Consequently, the next bidder in the queue was considered by the authorities. It is not disputed that the petitioner was third highest bidder and lease amount quoted by the petitioner is less by 10% than the amount quoted by respondent No.5. In our view, in order to strengthen and survive the fisheries co-operative societies in open tender processes, the concession seems to have been given by issuing Government Resolution dated 29.5.1998. Thus, in view of the second part of the Government Resolution dated 29.5.1998, the authorities should have allotted the fisheries work of the said tank to the petitioner.

9. It thus appears that the respondent authorities have illegally allotted the said tank to respondent No.5 without following guidelines

of Government Resolution dated 29.5.1998. However, it appears that the respondent No.5 has almost completed more than two and half (2 ½) years of fishing work of the said tank allotted to him. The petitioner society is at least entitled for the remaining period of said contract which is valid up to 30.6.2017. We also make it clear that the petitioner is not entitled to claim any benefits and/or damages for the period which is already expired till today.

10. In the result, we pass the following order;-

ORDER

- I. The writ petition is partly allowed.
- II. The impugned order dated 20.11.2013 passed by respondent No.2, thereby allotting Nimna Dudhna Tank, Tq. Partur, district Jalna in favour of respondent No.5, is hereby quashed and set aside.
- III. The respondent authorities are hereby directed to allot the Nimna Dudhna Tank, Tq. Partur, district Jalna in favour of the petitioner w.e.f. 01.06.2015 for remaining period of contract, which is valid upto 30.6.2017.
- IV. We make it clear that the petitioner society is not entitled to claim any damages, from 1.7.2012 till 31.05.2015, the period for which fishing rights of the said tank have been allotted in

favour of respondent No.5.

V. In the circumstances, there shall be no order as to costs.

VI. Rule made absolute in the above terms. Writ petition stands disposed of.

(V. K. JADHAV, J.)

(R. M. BORDE, J.)

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