

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6843 OF 2014

Urdhuv Mannar Fisheries
Cooperative Society Ltd, Dongargaon
through: Its Chairman
Shri Vithal Sadashiv Jadhav
Age: 35 years, occu: agri
R/o Dongergaon, Tq. Loha
District : Nanded

Petitioner

Versus

1 The State of Maharashtra
through: Secretary,
Fisheries Department, Mantralaya,
Mumbai

2 The Commissioner of Fisheries
Maharashtra State, Mumbai

3 Regional Deputy Commissioner – Fisheries
Latur, Dist. Latur

4 Assistant Commissioner – Fisheries
Nanded

5 jai Malhar Macchimar Sahakari Sanstha Ltd
Gaudgaon, Tq. Loha
Dist. Nanded
through: Chairman

Respondents

Mr.V.D. Hon, Sr. Advocate h/f
Mr Ashiwin Hon, advocate for the petitioner
Mr.P.P.More, AGP for Respondent State
Mr.N.P. Patil, advocate for respondent No.5

CORAM : R.M. BORDE &
P.R. BORA, JJ

Dated : 28th January, 2015.

ORAL JUDGMENT
(Per: R.m. Borde, J)

1 Heard.

2 Rule.

3 Petition is taken up for final disposal at the admission stage, with the consent of the parties.

4 The petitioner is aggrieved by an order granting continuation in exercise of fisheries rights concerning fishing tank in question for a period of five years commencing from 2013-2014. The petitioner contends that the respondent society was allotted continuation of rights in respect of the fishing tank in question for a period of five years commencing from 2008 onwards and the period has come to an end in 2013. The authorities, however, in compliance of the Policy framed by the State, granted continuation in favour of the petitioner for a period of five years commencing from 2013-2014. The petitioner contends that the exemption granted in favour of the respondent society from operation an exemption clause contained in Govt. resolution dated 15.10.2001 is illegal and erroneous and the authorities of the fisheries department have shown undue favour to the petitioner.

5 An affidavit in reply has been presented, controverting the contentions raised by the petitioner. It is contended that, the national policy has been implemented in the State since 2010 onwards and the extension is granted in favour of the respondent No.5 in terms of national policy prescribed by National Fisheries Development Board. Our attention is invited to the Govt. resolution dated 7.3.2009 which provides for continuation of the fishing rights allotted to a cooperative fishing society for a period of five years in case of small project and for a period of 10 - 15 years in case of medium and large projects. The policy has been declared by the Government on 7.3.2009. In the affidavit in reply presented on behalf of the State, it is contended that, since the national policy prescribes grant of fishing rights for a period of five years or continuation thereof, the respondent No.5 society has been issued an order.

6 It is true that the decision taken by the State Government is in conformity with the policy prescribed by the National Fisheries Development Board. However, while calculating the period of continuation, due regard has not been paid to the policy norms and more specifically paragraph 4 of the Policy document. It is prescribed that, the national policy allows the beneficiaries to develop and sustain fisheries in the reservoirs, especially those

under medium and large categories, a minimum lease period of five years is necessary. It is further provided that, the leasing should be carried out, on a competitive basis, with reasonable incentives to cooperative societies. It does appear that, the directives contained in paragraph No.4 in respect of carrying out the leasing activities on a competitive basis, have not been adhered to by the Government. It is not a matter of dispute that as per the policy, the respondent society was entitled to continuation till the year 2012-2013.

7 The National Policy has been implemented in the State since 2010-11 is not a matter of dispute. Even if it is assumed that, after implementation of the national policy, the society shall be protected for a period of five years, the period shall come to an end after expiry of five years from the year of implementation of the policy i.e. 2010-2011. In the order, granting extension in favour of the petitioner, issued by the allotment committee, it is recorded that the respondent No.5 society has carried out the development and made investment as per the policy directives issued by the National Fisheries Development Board from 2011-2012 and 2012-2013. It is also evident from perusal of the representation tendered by the petitioner to the Commissioner, Fisheries, Maharashtra State, Mumbai that the respondent No.5

has received 50% subsidy under the National Policy for the year 2010-2011 and has invested the amount for development purposes during the year 2011-2012 and 2012-2013. The National policy has been implemented in case of the State since the year 2010-2011 onwards and the petitioner has already received benefits under the changed policy since 2010-2011. In this view of the matter, in accordance with terms prescribed under the National Policy as well as the Govt. resolution dated 7.3.2009, the claim of the entitlement for continuation of fishing rights over tank in question of the petitioner is protected for a period of five years from 2010-2011. Although the decision taken by the respondent authorities granting extension in favour of the respondent No.5 for a period of five years cannot be questioned, the period prescribed under the order shall commence from 2010-2011 and shall come to an end after five years.

8 The computation of the period under the impugned order, in respect of grant of continuation of fishing rights in favour of the respondent No.5 is erroneous and the period of five years shall have to be counted from the year 2010-2011 onwards and shall come to an end at the end of five years.

9 With the modification, as above, writ petition stands disposed of.

10 Rule is accordingly made absolute. There shall be no order as to costs.

11 It is expected of a Government to adhere to national plan and the policy of the State Government while allotting fishing rights at the end of five years term allotted to the respondent No. 5.

12 Pending Civil Applications, if any, do not survive and stand disposed of.

(P.R. BORA, J)

(R.M.BORDE, J)