

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8814 OF 2014

Jagdamba Matsya Vyavasaik Sahakari
Sanstha, Pardi Ltd
Tq. Selu, Dist. Parbhani
through: Its Chairman
Shri Rajubhau Rustum Kutare
age: 40 years, occu: Fishery
R/o Gopalgaon, Tq. Manwat,
Dist. Parbhani

Petitioner

Versus

1 The State of Maharashtra
through: Commissioner of Fisheries

2 The Regional Deputy Commissioner -
Fisheries, Aurangabad
Near Collector Office,
Aurangabad

3 The Assistant Commissioner -
Fisheries, Parbhani
Dist. Parbhani

4 Karpara Matsya Vyavasaik Sahakari
Sanstha Ravha Ltd.,
Tq. Jintoor, Dist. Parbhani
through Its Chairman
Shri Sadashiv Baburao Nikam
age: 65 years, occu: Agricultural,
R/o Ravha, Tq. Selu
Dist. Parbhani

Respondents

Mr.V.D. Salunke advocate for the petitioner
Mrs. S.A.Dhumal AGP for Respondent State
Mr.K.J. Suryawanshi Advocate for respondent No.4

CORAM : R.M. BORDE &
V.K. JADHAV, JJ

(Dated : 28th April, 2015)

ORAL JUDGMENT

(Per R.M. Borde, J)

1 Rule.

2 Heard.

3 With the consent of the parties taken up for final disposal at admission stage.

4 The petitioner is a co-operative fisheries society, having received registration certificate on 13.11.2009, taking into consideration the location of Karpara dam, within the area of operation of the society. Respondent No.4 Society is also a registered society, on the same consideration. However, it is pointed out that, an order of liquidation of the said society was passed on 13.1.2015 and thereafter the said society has been de-registered. It is brought to our notice that, in view of the subsequent orders passed by the Officials of the Cooperation Department, respondent No.4 society has been revitalized on 14.7.2013 and order of de-registration, which was issued earlier,

has been quashed and set aside.

5 The petitioner is raising challenge to the order dated 10.9.2014 issued by the Regional Deputy Commissioner of Fisheries, Aurangabad, granting license in favour of respondent No.4 society, to exercise fishing rights, in respect of Karpura dam, for a period of five years, commencing from 2014-2015 till 2018-2019. According to the petitioner, the claim of the petitioner society has not been considered by the Tank Allotment Committee, while taking decision in respect of allotment of fishing rights in favour of respondent No.4. The respondent No.4 produced before the committee, 'no objection' certificate, purportedly issued by the petitioner society and on consideration of the said document, claim of respondent No.4 for issuance of license/contract in respect of fishing rights, was considered favourably. The petitioner contends that, the so- called 'no objection' issued on behalf of the petitioner society, was signed by one Mr. Rathod, in his capacity as Chairman of the society, although said individual was already removed from the post of Chairman, on adoption of resolution of 'no confidence' by the members of the petitioner society. The resolution, proposing 'no confidence' on Mr. Rathod was adopted by the petitioner society on 28.8.2013 and the letter of 'no objection' allegedly issued is after the said date. On the date of

issuance of license/contract in favour of respondent society, i.e. on 10.9.2014 Mr. Rathod was not the Chairman of the petitioner society and as such he had no authority to issue 'no objection' and said document allegedly issued by Mr. Rathod ought not to have been considered by the Tank Allotment committee for acceptance of the offer of respondent No.4

6 An affidavit in reply has been presented on behalf of respondents No.2 and 3 i.e. by the Regional Deputy Commissioner and the Assistant Commissioner – Fisheries, wherein, it has been contended that, factum of removal of Mr. Rathod as Chairman of the petitioner society, was not brought to the notice of the committee and as such, acting upon the communication presented before the committee, by respondent No.4, decision was taken in respect of acceptance of the offer made by respondent No.4.

7 It is the contention of respondent No.4 that, after adopting of resolution for 'no confidence' Mr. Rathod approached the Cooperative Court, by presenting a dispute bearing No.166/2013 and the learned Judge of the Cooperative Court, issued an order, directing the parties to maintain statusquo, as on 27.9.2013. It is further pointed out that, the order of statusquo granted earlier has been modified and the resolution adopting motion of 'no confidence' against Mr. Rathod, has been stayed, by the

Cooperative Court, on 31.10.2014.

8 It cannot be denied that, on the date of issuance of 'no objection' certificate by Mr. Rathod, on behalf of the society, motion of 'no confidence' was already passed, against him and that, he was not empowered to issue such certificate on behalf of the society. While dealing with issue raised in this petition, we do not propose to go into the question of legality and propriety of the order passed by the Cooperative Court, in entertaining the dispute presented by Mr. Rathod, challenging the motion of 'no confidence' adopted against him. The fact, however, remains that, Mr. Rathod in issuing 'no objection' certificate in favour of respondent No.4 society, prima facie, does not appear to have acted in the interest of the petitioner society. It was an error on the part of the Tank Allotment Committee to have acted upon the 'no objection' certificate issued by a person who had no authorization to issue such certificate and consider the claim of the respondent No.4 for allotment of fishing rights. The impugned decision rendered by respondent No.3 therefore, deserves to be quashed and set aside and it is accordingly set aside.

9 The respondent No.4 has no serious objection if the Tank Allotment Committee is directed to reconsider the matter in accordance with the Government Policy and take a fresh decision

in respect of allotment of fishing rights.

10 In view of the statement made by respondent No.4, as stated above, respondent No.3 and the Tank Allotment Committee are directed to reconsider the issue in respect of allotment of fishing rights, relating to Karpara dam and take appropriate decision, on consideration of the offers of the petitioner as well as respondent No.4, as expeditiously as possible and preferably within a period of four months from today.

11 In the mean while, neither the petitioner, nor the respondent No.4 shall have any entitlement to conduct fishing activities, in relation to the aforesaid tank.

12 The respondent authorities may take into account the amount deposited by respondent No.4 in the event of allotment of contract/license in favour of said society and in the event of its failure, the said amount shall be refunded.

13 Rule is accordingly made absolute.

14 There shall be no order as to costs.

15 Pending Civil Applications do not survive and stand disposed of.

(V.K. JADHAV, J)

(R.M.BORDE, J)