

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11902 OF 2017

Mukne Dharan Prathamik Bhujalashayeen
Sahakari Sanstha Ltd. Through Chairman

..Petitioner

Vs.

State of Maharashtra & Ors.

..Respondents

Mr.Sushant S. Prabhune for Petitioner.

Mr.Rohit Sakhadeo for Respondent No.3.

**CORAM : SHANTANU S. KEMKAR AND
G.S. KULKARNI, JJ.**

DATE : 7th NOVEMBER 2017

P.C.:

1. The petitioner is before the Court seeking a writ of mandamus praying for setting aside of the Government Order dated 12th September 2017 issued by the Government of Maharashtra (Fisheries Department) transferring three reservoirs to the Maharashtra Fisheries Development Corporation Limited (for short "the Corporation"). It is further prayed that the advertisement inviting e-tender for lease of Mukne reservoir, Nashik, for fishing from 2017-18 to 2021-22 be set aside.

2. The learned Counsel for the petitioner in support of the prayers as made in the petition, would contend that the impugned Government Order dated 12th September 2017 could not have been issued in regard to the Mukne reservoir, Nashik, in as much as in the past the said reservoir fell within the jurisdiction of the Department of Fisheries, Government of Maharashtra, for grant of fishing contracts as the area of the said reservoir was less than 1000 hectares, however, by the impugned Government Order, the reservoir is now transferred in favour of the Corporation. It is submitted that by issuance of the impugned order, the petitioner would be subjected to E-tender which was not the case prior to the transfer in favour of the Corporation. This would lead to petitioner facing severe competition and would render small societies like the petitioner out of such business. The contention as urged on behalf of the petitioner is that even assuming that the Government Order dated 12th September 2017 is to be accepted, the Mukne reservoir in the past was having an area of 944 hectares in the year 2015-16. It is thus submitted that this reservoir was required to be maintained within the powers of Government of Maharashtra and ought to have been made available for the purpose of E-tender to the Corporation.

3. We have heard the learned Counsel for the parties and we have also perused the impugned Government Order dated 12th September 2017 and the E-tender dated 16th October 2017.

4. We are not inclined to accept the submission made on behalf of the petitioner. This is for the reason that the impugned Government Order appears to be a policy decision of the Government in making available reservoirs having area of more than 1000 hectares available to the Corporation in the interest of development of fisheries in the State of Maharashtra. The decision of the Government as reflected in the said Government Order also indicates that it has been issued so as to have transparency in awarding fishing contract by adopting E-tender as per the policy of the Government. The Government Order has set out 11 conditions on which such contracts would be awarded. We do not find that there is anything arbitrary or illegal in the State Government having a policy in the said nature.

5. As regards the contention of the petitioner that the area of Mukne reservoir in the past was 984 hectares and therefore, it ought to have been at the disposal of the State Government also cannot be accepted as clear from the communication dated 28th September 2017 issued by the Irrigation Department, Nashik, wherein on an average of the minimum and maximum level of the water, the area occupied by the reservoir for the last five years it has been noticed that for the year 2016-17, the average area of the reservoir would be 1191 hectares. We do not find that there was anything arbitrary in the Department undertaking such exercise. What we find is that except for the year 2015-16 for all the years since 2012-13 to 2016-17 the area of Mukne reservoir has been above 1100 hectares. Thus, we cannot accept the contention of the

petitioner that it was illegal for the respondents to hold that the area of reservoir be considered as 1191 hectares.

6. Resultantly, we do not find any merit in the Writ Petition. It is accordingly dismissed. No order as to costs.

[G.S. KULKARNI, J.]

[SHANTANU S. KEMKAR, J.]