

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15055 OF 2017

Matsyagandha Matsya Vyavasaiyik
Sahkari Sanstha Maryadit Through
its Chairman D. T. Renge .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Amit A. Mukhedkar, Advocate for the Petitioner.
Mrs. Vaishali N. Patil-Jadhav, A.G.P. for the Respondent No. 1 to
6.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 08TH MARCH, 2018.

FINAL ORDER :

. Mr. Mukhedkar, the learned advocate for the petitioner submits that, the respondents be directed not to release the water from Pedgaon Lake located in Jamb village in to the canal. According to the learned counsel, the agriculturists are allowed to lift the water from the said lake thereby eroding on the rights of the petitioner. The contract is given for a period of five years to do harvesting of fishes in the said lake to the petitioner. Even steps are not taken to prevent leakage of the water from the gate by repairing the gates. The respondents are required to be

directed to take appropriate measures to cure the leakage. So also prohibit the agriculturists from illegally lifting the water from the lake by water pumps.

2. The learned Assistant Government Pleader submits that, Assistant Engineer - II, Irrigation Department Sub Division - 1, Parbhani has filed affidavit to the effect that prior to 01st January the water level was below 2.5 meter of dead water stock and hence it is deemed to be dry lake and hence fishery business cannot be carried out.

3. Affidavit filed by the authority further states the following facts :

"4. I say and submit that, after first water rotation, the stock of water level went down to 30%. Therefore, as per the rules and regulations of irrigation. If the water stock of Dam is 30% or below, then it is kept reserved as per the direction of Collector. By letter dated 13.12.2017 of respondent no. 6 i. e. Collector, Parbhani, it was directed to reserve the stock of water for the purpose of water supply of village Jamb and other eight villagers situated near by it. Thus, as per the direction and order of Collector, respondent no. 3 i.e. Executive Engineer, Jaikwadi Irrigation Department No. 2 Parbhani

has declared and issued corrigendum dated 27/12/2017, and declared that the second rotation of water, for crops of Rabbi season of the year 2017-18 is cancelled. Now in the said Dam i. e. "Pedgaon Lake" stock of water is 0.640 MM³ means 27% of water level. Thus, all water stock is kept reserved for drinking water purpose. And no water is used or released, for the purpose of crops irrigation purpose.

5. I say and submit that, the Gate of lake is completely closed by using the cement bag with help of sand and heard soil (*Reti and Murum*). Thus now total leakages are closed and no water wastage now. Moreover after the receipt of funds to our department from Government and after the water level is lower down the gate repairing will be done.

6. I say and submit that, as per clause No. 26.1 of Government Resolution dated 30.06.2017 it is the duty of the contractor to get the water level certificate from the Irrigation Department or respondent no. 2 who has control over the lake. No such certificate is taken by the petitioner or no such certificate is issued by the deponent department. Further the clause no. 26.1 also states that, if the water level of lake is below 2.5 meter of level of canal then it is

dead water stock and which stock is sufficient for survival of fishes. If the water level of lake is below the dead water stock, in that even the contractor of fishery business is allowed by extension of period of his business. However, due to uncertainty and change of whether the scarcity is caused and to avoid the additional loss of contract, the maximum extension for (3) three years is allowed during such scarcity and to decide the extension the competent authority should be lake control committee."

4. It is stated that, gate of lake is completely closed by using cement bag with help of sand and hard soil and now total leakages are closed and no water wastage takes place. It is further stated that, after water level goes down, the gate repairing work would be done, if funds are available. Considering above, part of the grievance of the petitioner seems to have meted out.

5. Be that as it may, as it is stated that, water is now below the 2.5 meter of dead water stock, hence harvesting of fishery cannot be carried out, at present no relief can be granted to the petitioner. So also considering the fact that, steps are taken to stop the leakages also. It is further stated on affidavit that the water stock is now reserved for drinking purposes and no water

is released and used for the purpose of irrigation. In view of the affidavit filed by the respondent No. 2, the writ petition is disposed of. No costs.

6. The petitioner may apply for extension of period of contract as may be permissible in law and contract which would be considered by the respondents on its own merits.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 18