

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

WRIT PETITION NO.10671 OF 2019

Jay Bhawani Maschya Vyavsay Sahakari
Sanstha Maryadit, Singaon (Jahagir)
Tq. Deulgao Raja, Dist. Buldhana
through its Chairman
Sau Lata Prakash Gite
Age : 38 years, Occu: Fisherman
R/o. Singao (Jahagir),
Tq. Deulgao Raja, Dist. Buldhana.

... PETITIONER

VERSUS

- 1) The State of Maharashtra,
through
The Hon'ble Minister of State,
Animal Husbandry, Dairy Development
and Fisheries Development Department,
Mantralaya, Mumbai.
- 2) The Secretary,
Animal Husbandry, Dairy Development
and Fisheries Development Department,
Mantralaya, Mumbai.
- 3) The Commissioner of Fisheries,
Maharashtra State, Taraporewala Building,
Churni Road, Mumbai.
- 4) The Regional Dy. Commissioner of Fisheries,
Aurangabad Region, Aurangabad.

... RESPONDENTS

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Advocate for Petitioner : Mr. Pratik A. Bhosle
Government Pleader for Respondent Nos. 1 to 4 : Mr. D.R. Kale

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**CORAM : DIPANKAR DATTA, CJ &
MANGESH S. PATIL, J.**

DATE : 29.09.2021

JUDGMENT (PER : MANGESH S. PATIL, J.) :

Heard. Rule. The Rule is made returnable forthwith. The learned Government Pleader waives service on behalf of all the respondents. At their request, the matter is heard finally at the stage of admission.

2. The petitioner is a Fisheries Co-operative Society duly registered as such under the Maharashtra Co-operative Societies Act, 1961. It was successful in getting a contract for fishing in the Lower-Dudhna Dam Tq. Partur, District Jalna for the period from 2015 to 2017 pursuant to an order passed by this Court in its Writ petition No.2378/2014 dated 28.04.2015.

3. According to the Government Resolution dated 29.06.1995 and 29.05.1998 if the amount quoted by a Fisheries Co-operative Society is equal to or less by 10% than the amount offered by a private bidder, the lease of the tank should be given to such a society. It is on this ground that though there were other two private bidders, this Court had directed the contract to be given to the petitioner by allowing a benefit of 10% concession. In spite of such a Government Resolution the respondent No.4 called upon the petitioner to deposit the entire amount quoted by it while putting up the offer i.e. Rs.59,53,533/-, without granting the concession of 10%. The matter was taken to the State Government. The learned Minister by the order dated 06.11.2017 in petitioner's Revision Application No.9/2016 allowed the Revision and directed to return 10% amount to it. In spite of such an order the petitioner has not been refunded the 10% amount which comes to Rs.9,27,066/-. Hence this Writ Petition.

4. The learned advocate for the petitioner submits that since the decision of the learned Minister is already in place and directs the money to be refunded, the respondents are under an obligation to obey the direction which has reached finality.

5. The learned Government Pleader submits that the Government Resolution dated 29.06.1995 being relied upon by the petitioner only enables such concession of 10% in the offer amount to be given to such Societies whose bid is the highest one. In the matter in hand, admittedly, apart from petitioner's Society there were two other individual bidders who had offered more amount and consequently it was not entitled to claim any such concession. The learned Government Pleader would further submit that the matter was considered by the Finance Department of the Government on an office submission (Exhibit-R2) and it was pointed out that the petitioner's case was not covered by the Government Resolution dated 29.06.1995 since its offer was not for the highest amount and that it would amount to giving double benefit to it in as much as, in spite of not being the highest bidder the contract was allotted to it and over and above that a concession of 10% would be enjoyed. For this reason the Finance Department has turned down the proposal of the Fisheries Department.

6. We have carefully considered the rival submissions. Being a Writ Court we do not intend to go into the aspect as to whether the petitioner is legally entitled to lay a claim for refund of 10% of return amount.

7. We are satisfied that the learned Minister in the Revision has issued the direction holding the petitioner entitled to such a relief by his order dated 06.11.2017. If the learned Minister has taken such a decision on behalf of the State, to our mind it would be awkward for its Finance Department to take any decision or make any proposal contrary to such order so long as the decision of the Minister stands. There is no dispute about the fact that there is no challenge to the order passed by the learned Minister and it has reached finality. If that be so, irrespective of the fact as to whether the decision of the learned Minister is palatable to the Finance Department of the Government, the respondents cannot be allowed to refuse to obey it.

8. In such a peculiar eventuality, the Writ Petition deserves to be allowed. However, in our considered view, it would not be appropriate to concede to the request of the petitioner for grant of interest in the peculiar facts and circumstances.

9. The Writ Petition is allowed. The respondents shall comply with the order of the learned Minister dated 06.11.2017 within 8 weeks, failing which the amount shall carry simple interest @ 9% per annum from the date of this order till its realization.

10. The Rule is accordingly made absolute.

[MANGESH S. PATIL, J.]

[CHIEF JUSTICE]