

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 311/2021.

Bhoiraja Matsya Vyavsay
Sahakari Sanstha Ltd. and another. ... Petitioners.

-VERSUS-

State of Maharashtra and others. ... Respondents.

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Shri P.S. Patil, Advocate for the Petitioner.

Ms. K. Deshpande, Assistant Government Pleader for the
Respondent Nos.1 to 3.

Shri C.A. Babrekar, Advocate for Respondent No.4.

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**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATE : 29 JANUARY 2021.

P.C.

On 15 January 2021, after hearing the parties at
length, following order was passed.

*“Heard learned Counsel for the
Parties.*

2. By order dated 11 December 2020,

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the contract given in respect of fishing rights to Petitioner No.1 Bhoiraj Fishing Cooperative Society has been cancelled.

3. *This petition is filed by two Petitioners i.e. Bhoiraja Matsya Vyavasay Sahakari Sanstha Ltd. and Maharshi Valmiki Matsya Vyavsay Co-operative Society. Respondent No.4 claims to be a member of Petitioner No.2 Society.*

4. *The contract which was given to Petitioner No.1 on 3 December 2019 is cancelled by the impugned order on the ground that the distance between the lake and office of the Petitioner No.1 is beyond 10 kms. A reference is made in the order that the Assistant Commissioner had made his own measurements by traveling on a motorcycle and recorded that the distance was almost 16 – 17 kms.*

5. *The learned Counsel for Petitioners has drawn our attention to Clause 1.1.6 of the Government Resolution dated 3 July 2019, which shows that the criterion of the distance is to be certified by the Executive Engineer. Before the contract was granted to Petitioner No.1, such certificate was issued in favour of Petitioner No.1 by the Executive Engineer.*

6. *The learned Counsel for Respondent No.4 submitted that a contrary certificate is also issued by the Executive Engineer. However, the impugned order does not refer to*

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any contrary certificate, but, only to the fact that the signatory – Assistant Commissioner had traveled and measured the distance on his own.

7. *Such a course of action adopted by the Assistant Commissioner is illegal in the light of Government Resolution dated 3 July 2019. Once there was a certificate of the Executive Engineer placed on record certifying the distance, the same was examined and licence was granted, if the certificate was to be treated as false, the exercise if permissible would had to be as per the Government Resolution. Except the reason of distance, which the Commissioner has himself calculated, no other reason is given in the impugned order.*

8. *The Respondent No.4 through his arguments is seeking to supply reasons in the order, which is not permissible.*

9. *While we grant opportunity to learned Counsel for the Respondents to file their reply affidavits, we direct that effect of the impugned order passed by the Commissioner will remain stayed.*

10. *It is open to the Commissioner to follow the course of action provided in the concerned Government Resolution and take necessary decision.*

11. *Stand over to 29 January 2021.”*

3. Reply is not filed and further time is sought.

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According to us, it is not necessary to adjourn the matter any further, as the order dated 15 January 2021 has already dealt with the issue.

4. The impugned order passed by the Assistant Commissioner of Fisheries on the ground that the office of the Petitioner Society is beyond the requisite distance from the lake of which fishing rights have been given to the Petitioner. This aspect of distance as mentioned in the Government Resolution dated 3 July 2019, has to be ascertained by the Executive Engineer who is supposed to issue a certificate.

5. As observed in the order dated 15 January 2021, it was open to the Assistant Commissioner of Fisheries, if there was any doubt, to call upon the Executive Engineer to provide such a certificate. Instead, the Assistant Commissioner has carried out the measurement by himself which is beyond his jurisdiction. The order dated 11 December 2020 being passed merely on the measurements carried out by the Assistant Commissioner of Fisheries, it cannot be sustained. In view of this position, we had granted ad-interim order staying the effect of this order on 15 January 2021.

6. The order dated 11 December 2020 passed by the Assistant Commissioner of Fisheries is quashed and set aside.

7. In case the Assistant Commissioner of Fisheries is

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inclined to proceed to take any action pursuant to the contract granted to the Petitioner on the ground of requisite distance, he will have to follow the methodology under the Government Resolution dated 3 July 2019, whereby the measurements are to be carried by the Executive Engineer. It is open to the Assistant Commissioner of Fisheries to make such a request to the Executive Engineer.

8. Writ Petition is disposed of as above.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Rgd

**Rakesh
Dhuriya**

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by Rakesh
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