

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

WRIT PETITION NO. 1083/2021

Jay Maharashtra Prathamik Bhujalashayin
 Matsyavyavsay Sahkari Sanstha Maryadit,
 Kherda, through its Chairman, Shri Dnyaneshwar
 Sahebrao Thakare, aged about major,
 At post Kherda, Tq. Karanja Laad, Dist.
 Washim.

.....PETITIONER

...V E R S U S...

1. The Commissioner of Fisheries and
 Add. Registrar Co-op. Society (Fishery)
 Maharashtra State, Taraporwala Matsyalaya,
 Charni Road, Mumbai-440 002.
2. The Asstt. Commissioner of Fisheries (Tech.)
 Washim, Triveni Nagar Railway Station Road,
 Washim.
3. The Regional Dy. Commissioner of Fisheries,
 Amravati Division, Amravati.
4. The Asst. Registrar, Co-op Society (Dairy),
 Akola, Add. District Dairy Development Office,
 Murtizapur Road, Behind Govt. Dairy, Akola.
5. Vikasganga Matsyavyavsai Sahakari
 Sanstha Maryadit, Zodga, Tq. Karanja Laad,
 Dist. Washim, through its Chairman/
 Secretary.

...RESPONDENTS

 Mr. A. P. Kalmegh, Advocate for petitioner.
 Mrs. M. A. Barabdhe, A.G.P. for respondent nos. 1 to 4.
 Mr. A. P. Tathod, Advocate for respondent no.5.

CORAM:- V. M. DESHPANDE, J.

DATED :- 01.03.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties. Heard Mr. Kalmegh, learned counsel for petitioner, Mrs. Barabdhe, learned A.G.P. for respondent nos.1 to 4 and Mr.Tathod, learned counsel for respondent no.5.

2. By this writ petition, the petitioner is challenging order passed by respondent no.1 dated 18.12.2020 by which the said authority allowed the appeal filed on behalf of respondent no.5 i.e. Appeal No.1/2019 thereby cancelling registration of the petitioner in respect of tank situated at Zodga, Tq. Karanja, Dist. Washim and disentitling petitioner to have fishing rights therein.

3. The petitioner has filed Roznama of the appeal. Relevant portion is at pages 48 and 49 of the compilation of this writ petition. The order sheet dated 15.02.2020 shows that respondent no.5 herein was represented by his counsel before the authority whereas there was nobody on behalf of the present petitioner. The matter was then kept on 13.03.2020. On the said

day, the petitioner as well as respondent no.5 were represented by their respective counsel and matter was adjourned to 24.04.2020.

4. It is submitted before this Court by learned counsel for the petitioner, which is not disputed by learned counsel for respondent no.5, that due to lockdown, the matter was not taken on 24.04.2020 thereafter the order sheet is of dated 15.12.2020. On the said day, counsel for respondent no.5 was present. Nobody was present on behalf of petitioner and after hearing counsel for respondent no.5, authority has passed order dated 18.12.2020.

5. The submission made on behalf of the petitioner is that order impugned is hit by the principles of natural justice inasmuch as behind back of the petitioner, the order is passed. It is not disputed by respondent no.5 that no fresh notice was given to the petitioner intimating that the date is fixed on 15.12.2020 when the matter was heard by respondent no.1.

6. In that view of the matter, I am of the view that impugned order cannot stand to the scrutiny of law. Hence, I pass the following order.

ORDER

- (i) The writ petition is allowed.
- (ii) Order dated 18.12.2020 passed by respondent no.1 in Appeal No.1/2019 is hereby quashed and set aside.
- (iii) Respondent no.1 is directed to decide Appeal No. 1/2019, afresh by giving opportunity of hearing to the petitioner as well as respondent no.5.
- (iv) Both the parties submit that they will appear before respondent no.1 on 07.04.2021. The respondent no.1 shall decide appeal within two months from 07.04.2021, by giving opportunity of hearing to both the parties.
- (v) Till decision of the appeal by the appellate authority, petitioner shall have fishing rights in the tank situated at Zodga, Tq. Karanja, Dist. Washim, which was already granted in favour of the petitioner.

Rule is made absolute in the above terms.
No order as to costs.

JUDGE

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