

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6403 OF 2021

- 1] Jay Tulja Bhawani Magasvargiya Matsya
Vyavsay Sahkari Sanstha Maryadit, Gaurgaon,
Taluka - Kallamb, Dist. : Osmanabad,
Through its Chairman,
Balaji S/o Sanjay Shinde,
Age: 47 years, Occu : Fishermen,
R/o Gaurgaon, Taluka : Kallamb,
District : Osmanabad – 413 501
- 2] Annabhau Sathe Magasvargiya Matsya
Vyavsay Sahkari Sanstha Maryadit, Govardhanwadi,
Ta. and Dist. Osmanabad,
Through its Chairman,
Sanjay S/o Satawa Shinde,
Age : 45 years, Occu : Fishermen,
R/o Govardhanwadi, Taluka : Osmanabad,
District : Osmanabad – 413 501 .. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Department of Agricultural Dairy Development,
Animal Husbandry and Fisheries,
Mantralaya, Mumbai – 32.
- 2] The Regional Deputy Commissioner of Fisheries,
Latur, Tq. and District : Latur
- 3] The Assistant Commissioner of Fisheries,
Osmanabad, Central Administrative Building,
1st Floor, Osmanabad, Tq. And Dist. Osmanabad – 413 501
- 4] The Chief Officer,
Zilla Parishad Building, Osmanabad,
Tq. and District Osmanabad – 413 501
- 5] The District Water Conservation Officer,
Zilla Parishad (Minor Irrigation), Osmanabad
Zilla Parishad Building, Osmanabad
Tq. and District Osmanabad – 413 501

6] The Sub-Divisional Water Conservation Officer,
Zilla Parishad, Sub-Division (Minor Irrigation),
Kallamb, Tq. Kallamb,
District : Osmanabad – 413 501

.. Respondents

WITH
WRIT PETITION NO. 6426 OF 2021

Vishal Fishery Business Co-operative Society,
Ltd., Chinchapur, Tal. Bhoom,
Dist. Osmanabad,
Through its Chairman,
Bapu S/o. Chandrakant Kasbe,
Age : 40 years, Occu. Agril & Fishing,
R/o. Chinchpur, Tal. Bhoom,
Dist. Osmanabad

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary Rural Development &
Irrigation Department Mantralaya Mumbai
- 2] Zilla Parishad, Osmanabad,
Through its Chief Executive Officer,
Zilla Parishad Osmanabad,
Dist. Osmanabad
- 3] Sub-Divisional Irrigation Officer,
Zilla Parishad Minor Irrigation,
Sub-Division Paranda,
Tal. Paranda, Dist. Osmanabad

.. Respondents

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Advocate for the petitioners : Mr. Manoj U. Shelke (WP/6403/2021)
Advocate for the petitioner : Mr. Sushant B. Choudhari (WP/6426/2021)
AGP for the respondent – State : Mrs. Vaishali N. Patil - Jadhav
Mr. Rajdeep Raut, Advocate for the respondents no. 4 to 6 (WP/6403/2021)
and for respondents nos. 2 and 3 (WP/6426/2021)

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 8 SEPTEMBER 2022
PRONOUNCED ON : 14 SEPTEMBER 2022**

JUDGMENT (MANGESH S. PATIL, J.) :

Since common questions arise on the basis of similar facts, though the petitions have been instituted by different fisheries societies registered under the Maharashtra Co-operative Societies Act, 1960 (Co-operative Societies Act), those are being disposed of by this common judgment.

2. Heard.

3. Rule. Rule is made returnable forthwith in both the petitions. Learned AGP waives service for the respondents no. 1 to 3 in writ petition no. 6403 of 2021 and for respondent no. 1 in writ petition no. 6426 of 2021. Mr. A.D. Raut waives service for the respondents nos. 4 to 6 in writ petition no. 6403 of 2021 and for respondents nos. 2 and 3 in writ petition no. 6426 of 2021. At the joint request of the parties, the matters are being disposed of finally at the stage of admission.

4. The petitioners are the societies registered under the Co-operative Societies Act as fishing societies for specified locations. According to them, they were allotted the fishing rights by virtue of a contract for a period of 5 years from 2020 to 2025 by following due process. However, the respondent – Zilla Parishad prematurely put an end to the contracts and has even resolved to allot tanks to the

societies through auction which is inconsistent with the directions of the State Government. They have, therefore, put up a challenge to the resolution of the Zilla Parishad dated 11-09-2020 and even sought quashment of the communication whereby their contracts were brought to an end.

5. Learned advocate for the petitioners would submit that the respondents are bound by the long standing policy by virtue of the Government resolutions issued from time to time since the year 1987. No public auctions for allotment of fishing rights can be undertaken. It can happen only through negotiations. It was a contractual obligation of the respondents whereunder they should have allowed the petitioners to undertake the fishing activity in accordance with the contracts for a period of 5 years. The resolution passed is completely in derogation to the Government directives apart from being in breach of the contracts. The decisions are arbitrary and capricious. The resolutions as well as the communications cancelling the contracts be quashed and set aside.

6. The learned AGP would submit that the percolation tanks in respect of which the fishing rights have been allotted to the petitioners are exclusively falling under the domain of the respondent – Zilla Parishad and the Fisheries Department of the State has nothing to do with it.

7. The learned advocate for the Zilla Parishad would submit that as far as the petitioner in writ petition no. 6426 of 2021 is concerned, it is the only registered fishing society operating within the jurisdiction of the irrigation tank mentioned therein and even if a fresh auction is held, being the sole fishing society entitled to apply for, it is bound to get the contract depending upon the terms and conditions agreed upon.

8. The learned advocate would further submit that the petitioner in writ petition no. 6426 of 2021 and the petitioner no. 1 in writ petition no. 6403 of 2021 have taken part in the new auction process, albeit, with the directions of this Court in the order dated 13-12-2021. The auction processes have been undertaken and though those have not been finalized, they have participated in the auction process and even the petitioner no. 1 in writ petition no. 6403 of 2021 and petitioner in writ petition no. 6426 of 2021 are getting the allotment of fishing rights.

9. The learned advocate for the respondent no.1 – Zilla Parishad would further submit that superseding all the earlier directions and Government resolutions issued from time to time, by virtue of the resolution dated 03-07-2019, a new guideline has been issued by the Government settling the modalities to be followed while allotting fishing

rights but that circular does not apply to the tanks falling under the jurisdiction of the Zilla Parishads which fact has been made clear by the affidavit in reply filed on behalf of the Fisheries Department of the State. He would submit that in view of the rights vested in the Zilla Parishad, as also decision, the modalities have been worked out and it has been resolved to allot the fishing rights by resorting to auction with the sole object of increasing its revenue sufficient enough to enable it to maintain the tanks. The decision has not been taken with any mala fide intention or oblique motive.

10. We have carefully considered the rival submissions and perused the papers.

11. There is no dispute about the fact that the State Government has issued various guidelines from time to time to be followed while allotting fishing rights to the fishing co-operative societies throughout the State. It is not expected that such allotment should take place by way of a public auction but is expected to be undertaken by way of private negotiations. Admittedly, the petitioners were allotted the fishing rights on a contractual basis after such negotiations for a period of 5 years from 2020 to 2025 but by the impugned communication, those have been abruptly and prematurely terminated.

12. As far as the grievance of the petitioners regarding the breach of the contract is concerned, it is not their allegation that the decision of the Zilla Parishad to undertake a public auction by taking into consideration taluka as a unit and the communication whereby the contracts with the petitioners have been terminated are prompted by any mala fides or were taken with some ulterior motive.

13. So far as the rights under the contracts are concerned, needless to state that the petitioners may have to resort to appropriate legal remedy for claiming the damages which would depend upon number of variables and disputed questions of facts which exercise we may not be able to undertake in the present enquiry.

14. As far as legality of the impugned resolution is concerned, the Zilla Parishad has the dominion over the reservoirs within its jurisdiction, the responsibility of whose up-keepment rests on it. If it has decided for the reasons mentioned while passing the resolution, to allot fishing rights to various societies on taluka level basis by resorting to public auction with the object of increasing its revenue since it is supposed to maintain the reservoirs and tanks, in our considered view, we cannot question it. In our considered view, we cannot term the decision as illegal merely by referring to the Government resolutions issued from time to time, particularly when the State Government has not raised any objection as to the procedure being followed by the

respondent – Zilla Parishad in undertaking allotment by resorting to public auction.

15. The writ petitions are dismissed.

16. Rule is discharged.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/