

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

WRIT PETITION NO.824 OF 2021

1. Nal Damayanti Sagar Matsya Utpadak Va Matsya Vyavasaya Macchimar Sahakari Sanstha Maryadit, Rajur Bajar, Tahsil Warud, District Amravati, through its President Shri Wasudo S/o Baburao Surjuse, R/o Warud, District Amravati.
2. Shri Wasudeo S/o Baburao Surjuse, Aged 59 yrs, Occupation : Fishing activity, R/o Ram Nagar, Rajura Bazar, Tahsil Warud, District Amravati. **PETITIONERS**

...VERSUS...

1. The State of Maharashtra through its Secretary, Fisheries Department, Mantralaya, Mumbai-32.
2. The Commissioner of Fisheries, Mumbai.
3. The Regional Deputy Commissioner of Fisheries, Amravati, Tahsil & District Amravati.
4. Commissonerate level tank allotted committee, through its Chairman, Taraporwala Aquarium, Marine Lines, Mumbai, Commissionerate level tank allotted committee, through its Chairman, Taraporwala Aquarium, Marin Lines, Mumbai.
5. Dattatraya Maccha Vyavasayik Sahakari Sanstha Maryadit, Haterna, Tahsil Warud, District Amravati, through its President.
6. Shri Devendra S/o Mahadeorao Bhuyar, Aged adult, Occ : Member of Legislative Assembly State of Maharashtra, R/o at and post Gavhankund, Warud, Tahsil Warud, District Amravati. **RESPONDENTS**

Mr. Onkar A. Ghare, Advocate h/f Mr. Ajay M. Ghare, for
Petitioners.

Mr. N. S. Rao, AGP for Respondents 1 to 4/State.

Mr. Chetan R. Sharma, Advocate for Respondent 5.

CORAM: **ROHIT B. DEO AND ANIL L. PANSARE, JJ.**

DATE: **19th AUGUST, 2022.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

Heard Mr. Onkar Ghare, the learned counsel for the petitioners, Mr. N. S. Rao, the learned Assistant Government Pleader for the respondents 1 to 4/State and Mr. Chetan R. Sharma, the learned counsel for the respondent 5.

2. The controversy pertains to the allotment of fishing rights in respect of the Upper Wardha Irrigation Project, and lies in a narrow compass.

3. The petitioner was allotted the fishing rights qua the said tank, in the auction held in the year 2014. The tenure of the licence or allotment was till 30.06.2019. However, an extension of one year was granted to the petitioner vide order dated 26.04.2019.

4. The case of the petitioner is that on 24.09.2020, the allotment committee passed an order whereby the petitioner was blacklisted and declared ineligible for participating in the auction process for the next six years, on the premise, that the petitioner sublet the contract.

5. The petitioner contends, that in ugly haste, the auction was conducted, in which the petitioner was not permitted to participate in view of the blacklisting order, and the fishing rights are allotted to respondent 5 – Society.

6. Several contentions are raised by the petitioner assailing the manner in which the auction was conducted and fishing rights allotted to respondent 5. One contention is that the entire process is vitiated by *mala fide*.

7. We are not inclined to delve deeper in the contentions in the petition, save and except the contention that the order of blacklisting is bad in law. We have no hesitation in holding that the petitioner could not have been blacklisted without being afforded opportunity of showing cause. We, therefore, set aside the order of blacklisting and direct the allotment committee –

respondent 4 to serve show cause notice to the petitioner, to consider the response filed by the petitioner, if any, to hear the petitioner and then pass a reasoned order in accordance with law. This exercise shall be completed within the next ninety days.

8. We are not inclined to consider the challenge to the allotment made after the blacklisting, in as much as till the eligibility of the petitioner is decided, such an exercise will be wholly unwarranted. It is well settled that an eligible person ought not to be permitted to question the auction process.

9. We, therefore, reserve liberty with the petitioner, to approach this Court or to take recourse to any other remedy, as the petitioner may deem fit, if the order of blacklisting is set aside, in which eventuality the eligibility of the petitioner to participate in the auction will have to be re-visited.

10. We make it abundantly clear, that we have not considered the other contentions raised in the petition nor have we considered the contentions in rebuttal, including the contention that there is an alternate and equally efficacious remedy available to challenge the auction process. We have

further not considered the contention of the petitioner that by executive instructions an appellate forum cannot be created. We leave all contentions open for the petitioner and/or respondents to agitate in appropriate proceedings.

11. The petition is partly allowed, in the aforestated terms. Interim order if any, stands vacated.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)

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