

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

WRIT PETITION NO.4477/2021

Navsanjivani Dharangrast Sushikshit Berojgar Matsyavyavasaya Sahakari Sanstha
Maryadit, Dagadparwa, through its Secretary-D.D.Mahalle. .. **Petitioner**

Vs.

State of Maharashtra through Commissioner of Fisheries, Mumbai
and three others. .. **Respondents.**

Shri A.M.Ghare, Advocate with Shri O.A.Ghare, Advocate for petitioner.
Ms. N. P. Mehta, Assistant Government Pleader for respondent nos. 1 to 3.
Shri V. K.Paliwal, Advocate for respondent no.4.

CORAM :- A.S.CHANDURKAR AND SMT. M.S.JAWALKAR, JJ.

DATE :- MARCH 15, 2022.

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Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 28.10.2021 that has been passed by the Commissioner of Fisheries thereby allowing the appeal preferred by the respondent no.4 and setting aside the allotment of fishing tank in favour of the petitioner pursuant to the order dated 15.07.2021 passed by the Tank Allotment Committee. By the impugned order a further extension of six months has been granted to the respondent no.4 to undertake fishing operations.

3. A preliminary objection to the maintainability of the writ petition has been raised by the learned Assistant Government Pleader for the respondent nos. 1 to 3 that under Government Resolution dated 03.07.2019 as clarified by subsequent Government Resolution dated 03.09.2021 the remedy of filing revision application under Clause 33 is available to the petitioner. Without invoking that remedy, the petitioner has approached this Court and thus the writ petition may not be entertained on merits.

4. In response thereto, it is submitted by the learned counsel for the petitioner that it was not open for the Commissioner of Fisheries to have cancelled the allotment of the tank in favour of the petitioner that was granted by the Tank Allotment Committee. In fact, the challenge in that regard itself could not have been entertained by the Commissioner of Fisheries. The learned counsel seeks to rely upon the decisions in ***Panchsheela d/o Vajinath Patil vs. President/Secretary, Yavatmal and others 2021 (4) Mh.L.J.514*** and ***Swati Shivaji Lawhare vs. State of Maharashtra and others 2021 (6) Mh.L.J. 685*** to urge that the writ petition is liable to be entertained on merits.

In response, the learned Assistant Government Pleader submits that the petitioner did not raise any objection to the maintainability of the proceedings before the Commissioner of Fisheries by the respondent no.4 and therefore the contention as raised now is being raised after the order has gone against the petitioner.

5. We do not find it necessary to go into this aspect. Under Clause 33 of the Government Resolution dated 03.07.2019 as clarified by subsequent Government Resolution dated 03.09.2021, the remedy of filing revision application is available to the petitioner. Even though the writ petition is maintainable, since factual aspects would require adjudication the revisional remedy can be invoked by the petitioner. It is open for the petitioner to invoke that remedy for redressal of the grievances as raised.

6. Accordingly the following order is passed :

(i) The petitioner is permitted to file revision application in terms of the Government Resolution dated 03.07.2019 by 31st March, 2022. If the same is filed by that date, the revision application shall be entertained without going into the question of delay.

(ii) The Revisional Authority shall consider the revision application on its own merits and in accordance with law after giving due opportunity to all the parties including the respondent no.4 herein.

(iii) All points raised in the writ petition on merits are kept open.

(iv) Since this Court by an interim order dated 09.11.2021 had stayed the operation of the order dated 28.10.2021, that interim order would continue to operate till the revision application is decided by the Revisional Authority. However it is clarified that continuation of the interim order by this Court shall not influence the Revisional Authority in the decision making process.

(v) The Revisional Authority shall endeavour to decide the revision application within a period of eight weeks from the first date of appearance of the parties before it.

The writ petition is disposed of. Rule accordingly. No costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

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