

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

18 WRIT PETITION NO.6356 OF 2023

**PARDESHI BHOI MASHHIMARI SAHAKARI SANSTHA MARYADIT
THROUGH CHAIRMAN JAGATSINGH PARASRAM BHARDWAJ
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS**

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Advocate for Petitioner : Mr.Suryawanshi Kamlakar J.
AGP for Respondent Nos. 1 to 4/State : Ms. D.S.Jape
Advocate for Respondent No. 5 : Mr. Pratik A. Bhosale
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**CORAM : KISHORE C. SANT, J.
DATE : 17.07.2023.**

PER COURT :

1. Heard the learned Advocates for the parties.
2. The petitioner Society is engaged in fishery business. Respondent No. 5 also is the Society known as Fishery Society. Respondent No. 5 was granted permission of fishing in the 'Jivrekha' tank, Jafrabad for the year 2017-18 till 2021- 2022. Since the contract was to come to an end, fresh procedure was undertaken and it was given to the petitioner well as to respondent No. 5 for a period of 5 years, starting from June, 2023. Both the parties were directed to deposit 50% of the amount of the deposit and that was also paid by petitioner and

respondent No. 5. A decision was taken in the resolution dated 10.01.2023 by respondent No. 3. However, later on, respondent No. 5 filed an appeal before the Commissioner Fishery, Mumbai (State of Maharashtra), on the ground that respondent No. 5 had already prayed for extension of one year period prior to the expiry of his term. Pending his application for extension, fresh procedure was undertaken. The learned Commissioner, Fishery i.e. respondent No. 2 passed an order dated 17.05.2023, granting extension of time for one year by charging proportionate amount. Therefore, this order is challenged by the petitioner in this petition.

3. It is the submission of the learned Advocate for the petitioner that before passing the impugned order the petitioner was not heard. As a matter of fact, the petitioner was even not made as a party by respondent No. 5 before respondent No. 2. From the impugned order he points out that even the fact was not brought to the notice of respondent No. 2 that the tank is already allotted by resolution dated 10.01.2023 to the petitioner as well and still the impugned order is passed. He therefore, submits that the impugned order deserves to be quashed and set aside.

4. The learned Advocate appearing on Caveat for respondent No. 5 vehemently opposes the prayer. He submits that when an application of respondent No. 5 was filed prior to expiry of earlier period, it was necessary for respondent No. 3 to take decision on his application. Respondent No. 3 however, without considering the request of the petitioner for extension, proceeded to pass the resolution and passed order dated 10.01.2023. He submits that the resolution itself is not proper and legal and it is only for that reason respondent No. 2 has passed the impugned order. No fault can be found with the order. Even after the participation of the petitioner, it was only this order that was possible.

5. The learned AGP submits that no prejudice is caused even to the petitioner by the order. He further points out that there is also an alternative remedy in view of Government Resolution dated 03.07.2019, wherein the provision of appeal is made against the order passed under Clause 33 of the said Government decision. He submits that if an efficacious alternative remedy is available, this Court need not entertain the petition.

6. Considering the submissions and record, this Court finds that though there is alternative remedy, however, since the ground raised in the petition is only that the petitioner was not made a party to the appeal. This Court finds that a ground is made out to entertain the petition. By looking to the order it is clear that the order is in violation of principles of natural justice and therefore, the petition can very much be entertained to this limited extent. Hence following order :

ORDER

- a) The impugned order passed by respondent No. 2 dated 17.05.2023 is quashed and set aside.
- b) Respondent No. 2 shall hear the petitioner and respondent No. 5 and pass a fresh order within a period of two months from the date of this order.
- c) With this the petition is disposed off.
- d) The present arrangement be continue till then.

**(KISHORE C. SANT)
JUDGE**

mahajansb/