

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

49 WRIT PETITION NO.8951 OF 2021

JALPARI FISHING CO-OPERATIVE SOCIETY LTD AARSOLI
THR IT'S CHAIRMAN PANDURANG MARUTI PATOLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. S.B. Choudhari
AGP for Respondents: Mr. S B Pulkundwar
Advocate for Respondents 2,3 : Mr. A.D. Raut,
Mr. V A Dhakne for R 4.

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated: April 24, 2023

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PER COURT :-

1. Heard.
2. The petitioner, a registered Fishery Society is questioning allocation of Fishing rights in favour of respondent no.4- Society in relation to Percolation Tank Nos.1 and 2 of Hadongri and Percolation Tank No.1 of Arsoli.
3. Contention of the learned counsel for the petitioner is, though the petitioner had participated in the auction, however, in relation to the aforesaid two percolation tanks, no auction process was conducted and tender process was renewed in favour of respondent no.4.

aaa/-

4. Counsel for the petitioner so as to substantiate his contentions submits that the petitioner has participated in the tender process only in relation to Arsoli Percolation Tank. So as to substantiate his contentions, learned counsel for the petitioner submits that, respondents were directed to produce on record auction procedure conducted by the respondents and the respondents failed to do so. According to him adverse inference needs to be drawn against respondents.

5. As against this, counsel for respondent nos.2 and 3 would oppose the prayer and submit that on similar line in writ petition bearing No.121 of 2021 (Magasvargiya Fishery Business Co-operative Society Ltd Shingoli Through it's Chairman Vs. State of Maharashtra) and Writ Petition No.6403 of 2021 (Jay Tulja Bhawani Magasvargiya Matsya and another Vs. The State of Maharashtra and others) with connected matters, this court has already taken a view that once having taken part in the tender process and failed to secure the contract, it is not open for them to question tender process.

6. We have appreciated the submissions.

aaa/-

7. Contention of the counsel for the petitioner are respondents nos.2 and 3 have not conducted auction process for Hadongri Percolation Tank. So as to establish said fact, the petitioner initially need to discharge the burden by prima facie establishing such claim before this court. But for bald statement of the petitioner, there is no material on record to interfere the same. Merely because respondents have not produced the documents, that by itself will not give liberty to the petitioner to claim that auction as was claimed was not conducted.

8. Apart from above, the fact remains that the petitioner has already participated in the tender process. In this view of the matter, since petitioner is seeking disputed question of facts, petition stands dismissed.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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