

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

WRIT PETITION NO. 4926 OF 2019

Kalbhairav Matsaya Vyavasaya Co-operative Society,
through its Secretary Bhaskar Shrawan Satote
having its registered address Vihigaon,
Taluka : Khamgaon, District : Buldhana.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Agriculture, Animal Husbandry,
Diary Development and Fisheries Department,
through its Secretary Mantralaya, Mumbai.
2. The Assistant Commissioner, Fisheries Department,
Buldhana.
3. The Executive Engineer, Irrigation Department,
Buldhana.

RESPONDENTS

Shri R.D. Dhande, Advocate for the petitioner.
Ms. N.P. Mehta, Assistant Government Pleader for the respondents/ State.

CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 12, 2023

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

Rule. Heard the learned Counsel for the parties finally considering the short issue involved.

2. The petitioner – Society was granted rights of fishing at Mas tank situated in Taluka – Khamgaon, District – Buldhana for the period from 1/7/2017 to 30/6/2022. An agreement to that effect came to be entered on 13/10/2017. It is the case of the Society that for the year

2017-18, it could undertake fishing operations after depositing an amount of Rs.6,00,000/- for the said year. For the year 2018-19, the Society paid an amount of Rs.6,20,000/- as lease rent. However on account of drought situation, the Society could not undertake fishing operations at the said tank. Accordingly, it obtained a certificate from the Sarpanch of the said village dated 1/1/2019. It also requested the Irrigation Department, Hingna to issue such certificate by making an application on 11/1/2019. The Irrigation Department issued such certificate on 14/1/2019. Relying upon the policy dated 22/2/2019 framed by respondent No.1, the Society sought extension of the contract for a period of one year for the reason that it could not carry out fishing operations in the year 2018-19. A proposal to that effect came to be moved. The same has not been considered for the reason that such proposal ought to had been made prior to 1/1/2019. The Society thus seeks waiver of rent on account of the drought situation as per the Government Resolution dated 22/2/2019.

3. On hearing the learned Counsel for the parties and after perusing the reply filed by the respondents, it becomes clear that under Clause 26.1 of the policy dated 22/2/2019, there is a provision made for extending the period of fishing contract on the contingency that the water level in the tank is reduced below the level of the canal. For said purpose,

the Society seeks to reply upon the communication dated 14/1/2019 issued by the Irrigation Department. On the contrary, the respondents contend that the proposal in question was made by the Society on 29/3/2019 and as the Executive Engineer has certified the same on the basis of the report dated 16/3/2019, the Society's application has not been considered.

4. A perusal of Clause 26.1 would reveal that it requires the water level to be below the level of the canal as on 1/1/2019. For said purpose, the Society has relied upon the certificate dated 14/1/2019 issued on behalf of the Irrigation Department. That certificate indicates the situation of the tank as on 31/12/2018. In addition, there is another certificate dated 16/3/2019 issued by the Executive Engineer. This policy indicates the position of the tank as on 31/12/2018 and 16/3/2019. In our view, in the light of the aforesaid documents, it would be necessary for respondent No.2 to consider the petitioner's proposal dated 29/3/2019. Since the same has not been considered and the only ground put forth is that the proposal is made after 1/1/2019, respondent No.2 has not decided the same. We find that the requirement of the policy is the situation of the tank as on 1/1/2019. Besides the responsibility of the Society as per Clause 26.1(b) it is also the responsibility of the Assistant Commissioner, Fisheries to submit such proposal to the Tank Allotment

Committee. The proposal dated 29/3/2019 has been addressed to the Assistant Commissioner, Fisheries. Keeping that in view, it would be necessary for respondent No.2 to decide the proposal in question.

5. In view of aforesaid, respondent No.2 – Assistant Commissioner, Fisheries Department, Buldhana is directed to consider the Society's proposal dated 29/3/2019 by granting an opportunity of hearing to the representative of the Society. Similarly, the subsequent representation dated 27/6/2019 can also be considered by respondent No.2. The Society is free to rely upon all the relevant documents. Respondent No.2 shall decide the said proposal in the light of the policy decision dated 22/2/2019 within a period of four weeks of receipt of copy of this judgment.

6. With these directions, the Writ Petition is disposed of. Rule accordingly. No costs. In the result, the Civil Application also stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

SUMIT