

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

WRIT PETITION NO. 7631 OF 2022

Sanskar Matsya Vyavsay Sahkari
Sanstha Maryadit Pokhari, Taluka
Mahagaon District Yavatmal.
YML/MGN/RSR/NC/1446/2009-
10, thorough its president
Khushal Madhukar Ade aged
about 45 years occupation
fisherman R/o Pokhari Ejara at
post Pedhi Taluka Mahagaon
Distict Yavatmal

Petitioner

-Vs.-

1. State of Maharashtra through its
Principal Secretary department of
Fishery Mantralaya Mumbai
2. Commissioner of Fisheries having
office at 2nd floor Tarapurwala
Charni Road Mumbai 400 002
- 3 Assistant Commissioner of fishery
Yavatmal having office at
administrative building first floor
Collector premises Taluka and
district Yavatmal.
- 4 Assistant register co-operative
society dairy Yavatmal.
- 5 District Lake Allotment
Committee Yavatmal through
president Assistant Commissioner
fishery Yavatmal having office at
administrative building first floor

collector premises Taluka and district Yavatmal.

6. Gorakhnath Matsya Vyavsay Sarkari Sanstha Maryadit through its president Wardha Bramhi Taluka Mahagaon district Yavatmal.

Respondents

Ms.B.D.Vora a/w Mr.VN.Morande, counsel for the petitioner.

Mr.S.M.Ukey, Addl.GP. for respondents-1 to 5

Mr.C.M.Samarth, counsel for respondent 6.

CORAM:ROHIT B. DEO AND

MRS. VRUSHALI V. JOSHI, JJ.

DATE : 12th APRIL, 2023

O R A L J U D G M E N T (Per : Vrushali V.Joshi, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. By this writ petition, the petitioner society is challenging the resolution passed by the respondent 5

District Lake Allotment Committee, Yavatmal passed in the meeting dated 18.08.2022 whereby the Pokhari Lake in Mahagaon tahsil is allotted to respondent 6 Gorakhnath Matsya Vyavsay Sarkari Sanstha for fishing rights for the period of 5 years from 01/07/2022 to 30/06/2027.

4. The resolution passed by the respondent 5 indirectly debars the petitioner society from allotment process without taking a positive decision and disqualifying the petitioner society. The order of allotment is passed by passing the claim of the petitioner society, it was not communicated to the petitioner, and only after the petitioner applied under Right to information Act, copy of the said resolution and order allotting fishing rights to respondent 6 society was supplied to the petitioner by Information Officer/Assist. Commissioner Fisheries vide it's covering letter dated 12/10/2022.

5. The petitioner Sanskar Matsya Vyavsay Sahakari Sanstha Maryadit Pokhali Taluka Mahagaon District Yavatmal is a registered society having it's registration No.1446/2009-10 registered on 24/06/2009. The petitioner society has experience of fishing. The contract of Pokhari Lake was allotted for five years for the period from 01.07.2012 to 30.06.2017 to the petitioner society and the petitioner has successfully completed said contract. After the completion of the contract for next year the said contract was allotted for five years to respondent 6 Gorakhnath Matsya Vyavsay Sarkari Sanstha Maryadit being the highest bidder in auction.

6. On 16.03.2022 the respondent 4, the Assistant registrar co-operative societies (dairy) Yavatmal published a list of qualified societies in the district to apply for fishing contract for various lakes in the district for year 2022-23 to 2026-27. Accordingly objections were

called on 16.03.2022. The name of the petitioner was mentioned for Pokhari Lake at Sr. No.5.

7. The respondent 3 Assistant Commissioner fisheries, Yevatmal send a letter dated 27.05.2022 to the petitioner society inviting application for fishing contract for Pokhari lake.

8. Respondent 6 society with a *mala fide* intention to keep petitioner society out of consideration from proceedings of allotment of Lake made a false complaint on 23.03.2022 to the respondent 4- Assist Registrar Co-op Societies questioning the registration process of the petitioner society which is made after 12 years of the registration of the petitioner society which was already adjudicated and finally decided by respondent 2. Said complaint dated 23.03.2022 was duly replied by the petitioner society and the petitioner pointed out to the respondent 4 Assistant Registrar Co-op Societies that, on

same issue, the President of respondent 6 had submitted an appeal under Section 152 of the Maharashtra Cooperative Societies Act, 1960 before the respondent 2 the Commissioner of fisheries along with application for condonation of delay of 11 years and seven months. Said application was dismissed by respondent 4.

9. The petitioner Society vide application dated 27.06.2022 applied to respondent 3 Assistant Commissioner Fisheries in prescribed format for allotment of fishing contract at Pokhari Lake. Nothing was communicated to the petitioner Society from the office of respondent 3 about the contract allotment process.

10. The petitioner came to know from the villagers that the fishing contract for the Pokhari Lake is given to the respondent 6 society. Therefore, the petitioner applied under the Right to Information Act about the

proceedings of allotment of Pokhari Lake to respondent 6 society. After the application under the Right to Information Act by the petitioner, the respondent 5 District Lake Allotment Committee, Yavatmal called the meeting dated 18.08.2022 and had issued the order dated 13.09.2022 allotting the Pokhari Lake to the respondent 6 for fishing contract for the period of five years.

11. The counsel for the petitioner has argued that though the respondent Committee has not disclosed about the dispute pending with the Assistant Registrar regarding the petitioner society, the resolution was passed and the order in favour of respondent 6 was passed. Without any inquiry on the complaint of the respondent 6, the petitioner was disqualified in the said contract. The District Lake Committee i.e. respondent 5 ignored the factual aspect that the petitioner society is duly registered back in the year 2009. The fishing

contract was given to the petitioner society for five years from 2013 to 2017 and it was successfully completed by the petitioner. Without any verification and on the false complaint lodged by the respondent 6, the respondent 5 has allotted the contract of Pokhari Lake to the respondent 6. Hence, prayed to set aside the said order by allowing this petition.

12. Respondent 6 appeared and filed his reply stating that the Deputy Commissioner of Fisheries took cognizance of the complaint and directed the respondent 4 to conduct the inquiry on the basis of claims and submit the report. The said authority on 08.07.2022 issued reminder urging the respondent 4 to take the action as urged in the communication dated 14.06.2022 by authority. The authority of fisheries department itself has taken the cognizance of the complaint made by respondent 6 against the petitioner society. The result of the objection and the adjudication taken thereon would

have bearing on the tank allotment as it has a direct effect on the eligibility of the petitioner society for the allotment of the tank. The Assistant Registrar, in pursuance of the said complaint has conducted hearing of the petitioner and the respondent 6 society, and report would be forwarded to the Regional Commissioner in a short time of appropriate action. The petitioner has chosen to belatedly approach this Court. Hence, prayed to reject the claim of the petitioner.

13. Respondent 1, 2, 3 and 5 have filed their reply. The respondents have stated that on 29.03.2022, the respondent 6 society made a complaint to the Assistant Registrar Society for Animal Dairy, Fisheries and Husbandary, Yavatmal. Pursuant to the same, the Assistant Registrar Society issued a notice and hearing was conducted and the said matter was closed for orders. In view of the dispute, which has been raised by the respondent 6, the Committee came to a conclusion that as the proposal is incomplete and in addition to the same,

there is a dispute of the petitioner society which is pending before the Assistant Registrar Society of Animal, Dairy, Fisheries and Husbandry then took a decision that the Pokhari Lake to be allotted to respondent 6 on a condition, subject to the result of the decision in the said case and the said lake should be granted equally. The complaint is pending before the Assistant Registrar, therefore, Pokhari Lake should be allotted to both the societies i.e. petitioner and respondent 6 equally and till the said decision is taken, the same should be allotted to the respondent 6.

14. The dispute is about the allotment of the Pokhari lake to the respondent 6. Earlier till 2017 the petitioner has completed five years contract successfully. Thereafter, the contract was given to the respondent 6 and it was challenged by the petitioner. Thereafter, again in 2022, the applications were called and the name of the petitioner was mentioned in the list of Pokhari lake. The

respondent 6 has lodged the complaint. The said complaint was already decided and the Appeal was filed . The condonation of delay application was also rejected by the appellate authority. Still respondent 4 without giving any reason, which dispute and without enquiry, has passed the resolution and the contract was allotted to the respondent 6, which clearly shows the malafide intention of the respondent 6. As the respondent 1, 2, 3 and 5 have considered the grievance of the petitioner and they agreed to give the Pokhari Lake 50-50 % . Accordingly, as per the alternate prayer, the petition is disposed of with a direction to divide the contract of Pokhari Lake between the petitioner and respondent 6. The petition is partly allowed and disposed of with these directions.

15. Rule is made absolute in the above terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO)