

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

901 WRIT PETITION NO.1173 OF 2024

Adivasi Matsya Vyavsay Sahakari Sanstha Maryadit
Waghur Dharan Raipur Kandari, Tq. & Dist. Jalgaon
Through Its Chairman
Rajendra Shivilal Sonawane

... Petitioner

Versus

The State of Maharashtra,
Through Its Secretary And Others

... Respondents

.....

Shri. Vijay Bhalerao Patil, Advocate for the Petitioner
Shri. A. R. Kale, Addl. G.P. for the Respondent / State.
Shri. G. V. Wani, Advocate for Respondent No.5

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CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : JULY 08, 2025

PER COURT :-

. Heard finally with the consent of both the sides.

2. The Petitioner is the Co-operative Fishing Society registered under the provisions of the Maharashtra Co-operative Societies Act. The Petitioner Society is the only Co-operative Fishing Society within the area of Waghur Dam and Respondent No.3 – the Regional Deputy Commissioner, Fishery Nashik Division, Nashik allotted the said Dam to the Petitioner Society for fishery for a period of five years i.e. from 01.07.2011 to 30.06.2016. As per the said contract, the Petitioner Society did the fishing for the said contract period. As per the

Government Resolution dated 26.06.2014, the Petitioner being the only registered fishery Society on the said Waghur Dam, the Respondent Authorities were expected to allot the contract to the Petitioner Society for further five (5) years. The Respondent Authorities published the tender for the entire region including the Waghur Dam and called the bids. The Petitioner Society approached this Court in Writ Petition No.5544 of 2016 which came to be disposed off by the order dated 09.02.2017. As per the said order of this Court, the Petitioner was ready to deposit additional Rs.500/- (Rs. Five Hundred) with the Respondent Authorities. Since there was no compliance of the said order, the Petitioner had filed Contempt Petition No.564 of 2017. Since the order was complied during the pendency of the Contempt Petition, the same came to be disposed off.

3. The Petitioner Society submitted the proposal for fishing contract on the said Dam. The proposal of the Petitioner Society was considered by the State Level Committee and decided to grant the contract to the Petitioner Society for a period of five (5) years i.e. from 2019-20 to 2023-24 and fixed the rate of Rs.95,607/- (Rs. Ninety Five Thousand Six Hundred Seven) per year. The allotment was issued on certain terms and conditions. By communication dated 11.03.2020 the Respondent No.4 - Assistant Commissioner Fishery, Jalgaon directed the Petitioner Society to deposit Rs.2,07,600/- (Rs. Two Lakh Seven Thousand Six Hundred) within the stipulated time. Since due to Covid lock-down the

Petitioner Society could not pay the amount, the Petitioner Society approached this Court in Writ Petition No.7638 of 2021 which is at Exh. 'V', Page No.84 to the Petition. The said Writ Petition was disposed off by order dated 21.10.2021. The Petitioner Society had also filed Writ Petition No.5898 of 2021 in respect of allotment of contract of fishing on the said Waghur Dam. The said Petition came to be disposed off by order dated 27.04.2021 with the directions that the Petitioner may file Application with the Respondent Authorities stating the reason for non payment of the contract amount and put forth his stand before the Respondent Authorities and the Respondent Authorities shall take decision afresh on its own merits and in accordance with the law within the stipulated period. Thereafter, the Petitioner Society was heard by the Respondent Authorities and by the order dated 21.06.2021, which is at Exh.'S' at page no.76 to the Petition, rejected the Application and decided to go for new auction. In the auction process, the contract of fishing on the said Waghur Dam came to be allotted to Respondent No.5 – Society.

4. The learned Advocate for the Petitioner Society submits that Clause No.17 of the G.R. dated 03.07.2019 which is issued on the subject matter, was not applicable as the Petitioner Society was the only fishery Society in that area. He submits that, the Petitioner had paid more amount to the Respondent Authorities for contract period of five (5) years i.e. from 2019-20 to 2023-24. He submits that the action of

the Respondent Authorities to go for auction by which the Contract came to be allowed to Respondent No.5 – Society was not in consonance with the said G.R. and the same be set aside. He submits that the contract of the fishing on the said Dam was liable to be restored to the Petitioner.

5. The Petition is opposed by the learned Addl. G.P for Respondent Nos.1 to 4. He submits that since the Petitioner failed to deposit the amount of contract for the period 2022-23 within the stipulated time, the impugned order came to be passed. He submits that, Authority had therefore resorted to Clause No.17 of the said G.R. and started the process of auctioning the fishing rights on the said Dam and after following due procedure, the contract came to be awarded to Respondent No.5 which is also the Co-operative Society. He submits that in absence of any *mala fides*, no interference is called for in the subject matter. In support of his contention, he cited the Judgments of the Hon'ble Supreme Court of India in *the Rajasthan State Industrial Development and Investment Corporation and Anr vs. Diamond and Gem Development Corporation Ltd and Anr*, AIR 2013 SC 1241 and in *M/s. N. G. Projects Limited vs. Vinod Kumar Jain*, AIR 2022 SC 1531. He submits that, no interference is called for and the petition be dismissed.

6. It is submitted by the learned Advocate for Respondent No.5 –

Society that, Respondent No.5 had participated in the auction process and since October – 2023 have taken the charge of the said Dam for fishing and has completed almost two (2) years of the said contract. He further submits that, the Petitioner had neither participated in the said contract proceedings nor challenged the same at the earliest. He submits that the Petition has no merits and the same be dismissed.

7. There is no dispute that the Petitioner is the Fishery Co-operative Society. The said Government Resolution dated 03.07.2019 is in respect of modalities to be adopted for giving contract of fishing on the Dams / Water bodies. The said G.R. provides for entire mechanism for allotment of fishing rights / contracts. There is no dispute that the Petitioner Society being the only Society for the said Waghur Dam area was entitled to receive the contract of fishing on the said Dam. The Papers on record goes to show and on which there is no dispute, is that the Petitioner Society had approached this Court twice, firstly in Writ Petition No.5898 of 2021 and thereafter, in Writ Petition No.7638 of 2021. The issue involved in Writ Petition No.7638 of 2021 was, the Petitioner Society did not deposit the entire amount within the stipulated period as required by the said G.R. for the contract period 2019-2020. This Court after hearing both the sides had passed the following order :

“6. Considering the pandemic situation, we direct the petitioner to deposit the remaining amount as required to be deposited as per Clause-17.5 of the Government Resolution

dated 03.07.2019.

7. The petitioner shall remain present in the office of respondent No.4 tomorrow i.e. on 22.10.2021. The office of respondent No.4 shall communicate the amount of shortfall required to be deposited by the petitioner on or before 25.10.2021. The petitioner shall deposit the shortfall amount as directed by respondent No.4 within seven (7) days from the date of communication.

8. In case, the petitioner deposits the complete amount as directed above upto the year 2021-2022 as required under Clause- 17.5 of the Government Resolution dated 03.07.2019, then the impugned order is quashed and set aside. The petitioner will be entitled to continue for the year 2021-2022.

9. In case, the petitioner fails to deposit the complete amount as directed and as per Clause-17.5 of the Government Resolution dated 03.07.2019, then the writ petition shall be deemed to stand dismissed.”

8. There is no dispute that the Petitioner acted upon the said order. Therefore, now it is not open for the Petitioner to say that Clause No.17 from the said G.R. is not applicable to the Petitioner. Admittedly, the Respondent Authorities had asked the Petitioner to deposit the amount towards the contract for a period of five years i.e. from 2019-2020 to 2023-2024 by quantifying the total amount of contract and other charges, as Rs.2,07,600/- (Rs. Two Lakh Seven Thousand Six Hundred) within the stipulated period. The impugned order dated 25.08.2022, which is at Exh. 'Z-5' Page No.105 to the Petition, shows that since the Petitioner Society failed to deposit the said amount within the stipulated period pursuant to Clause No.17 of the said G.R., the decision to auction the contract was taken. Admittedly, the Petitioner had not participated in auction process. Admittedly, by following the due

process, the Respondent Nos.1 to 4 authorities have granted the contract in favour of Respondent No.5 - Co-operative Society by following due procedure. The contract was allotted to Respondent No.5 on 06.09.2023 for a period of five (5) years. The Petitioner has approached this Court by way of this Petition in December-2023 i.e. after the allotment of contract to Respondent No.5 - Society. Moreover, there is nothing to show that the action of the Respondent Nos.1 to 4 was *mala fide*. It is settled position under the law as it is seen from the above referred decisions that, this Court should refrain itself from interference in such matters in absence of any arbitrariness and *mala fide*. In this backdrop of the matter, we are not inclined to grant the prayers made in the Writ Petition. However, dismissal of this Writ Petition shall not come in the way of the Petitioner in approaching the Authorities for subsequent allotment of the contract on the said dam whenever the exercise is undertaken as per the Procedures / GR's etc. In view of the above, the following order is passed.

ORDER

- (i) Writ Petition is dismissed.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)

GGP