

(1998) 08 AHC CK 0056
In the Allahabad High Court
Case No : Writ Petition No. 878 (M/S) of 1997

Matsya Jeevi Sahkari Samiti Ltd.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-08-1998

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 126(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115K

Citation : (1999) 1 AWC 508

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : J.C. Srivastava, for the Appellant; C.S.C., Ashok Kumar Srivastava, Miss Maya and Brij Mohan Singh, for the Respondent

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—Matsya Jeevi Sahkari Samiti Ltd.. Bakia Pahalwan, pargana Bidhar, tehsil Alapur, district Ambedkar Nagar through its President has filed the present writ petition praying that the order dated 20.2.97 passed by Up Zila Adhikari. Alapur be quashed and a direction in the nature of mandamus commanding the opposite parties to treat the petitioner's society as the licence holder/lease holder to carry on the fishing in the tank in question be Issued.

2. According to the impugned order, earlier the fishing rights were given to 58 fishermen, with effect from 5.7.83 to 4.7.93 for a period of ten years. After some time, a dispute arose between the licence/lease holders and the tank was divided into two parts and the contesting parties started fishing in the said tank. Out of those 58 persons only 22 lease holders deposited the licence fee and out of 36 who did not deposit the fee. 5 expressed their unwillingness to take the lease in future because they did not reside in the said village. The remaining 31 licence holders are related with sixteen families of the fishermen. They joined together and formed a Co-operative Society. There is another society also in the said village which is known as Machhua Kalyan Samiti. The said Society is registered

under the Societies Registration Act for purposes of development of handicraft and Small Scale Industries.

3. It was averred in the order that when the question arose as to which of the society be given the lease for the period commencing from 5.1.95 to 4.1.2005. the petitioner's society became successful in obtaining the Patta. Later on a revision was filed before the Commissioner who remanded the matter to the Collector, because he was not vested with the power to decide that question. The Up Zila Adhikari by means of his order dated 20.2.97. cancelled the Patta which was granted in favour of the petitioner and granted lease to 61 families of the fishermen who were traditionally engaged in fishing.

4. Being aggrieved against the said order, the petitioners have filed the present writ petition.

5. It is the settled policy of the State Government, which is reflected in various Government Orders issued u/s 126 (1) of the U.P.Z.A. and L.R. Act read with Rule 115Ka (3) of the Z.A. and L.R. Rules from time to time that the licence/ lease for fishing into the ponds or rivers which exist or pass through the village should be given to such Co-operative Societies of the fishermen which are registered under the Co-operative Societies Act and recognised by the Department of Fisheries on preferential basis, if no such Cooperative Society exists, then it can be given to other societies. If none of such societies exist, then it should be given to persons traditionally engaged in the profession like Nishad. Matlah, Kewat. etc.

6. The power to register the co-operative society is vested with the Director of Fisheries Department. The lease/licence of the petitioner's society was cancelled by the Up Zila Adhikari for the reason that it does not represent the families of the fishermen, residing in the village but the said Co-operative Society is confined to 16 families only. There are 58 members of the Society who are related to each other. In the said Society husband. wife, sons, daughters, daughter-in-laws and even the minors are the members and some of the members who formed the petitioner Society were among those who were earlier granted the licence but they failed to deposit the licence fee.

7. The Up-Zila Adhikari in his order took the view that the petitioner Society does not represent all the families of fishermen and its membership is confined to few families only so it is disentitled for grant of lease.

8. As far as the respondent No. 4 is concerned, the Up Zila Adhikari came to the conclusion that the society was also not entitled for grant of licence/lease as the said Society is registered under the Societies Registration Act and not registered under the Co-operative Societies Act and the same is not recognised by the Director (Fisheries) so he granted licence of fishing right to the entire body of fishermen who resided in the village.

9. I am of the view that the Up Zila Adhikari has committed an error apparent on

the face of record in cancelling the licence/lease of the petitioner Society, If there was any complaint against the petitioner Society, he ought to have referred the matter to the Registrar Co-operative Societies/Director (Fisheries) for taking appropriate action against the Society in question. He has not been vested with the power to recognise or de-recognise or supersede a cooperative society. That power is vested with the Registrar, Cooperative, only.

10. The licence/lease for fishing rights cannot be granted either to an individual or body of individuals even if those individuals belong or traditionally engaged in fishing. When a Co-operative Society of the fisherman registered under the Cooperative Society Act and recognised by the Fisheries Department which has a preferential claim for the grant of lease was available in the area.

11. It is only when that there is no Co-operative Society of the fishermen registered under the Cooperative Societies Act and recognised by the fisheries department, the licence/lease for fishing rights can be granted in favour of a society registered under the Societies Registration Act and body of persons like Nishad. Mallah and Kewat, etc. but in the present case altogether there existed a cooperative society the petitioner which is recognised by the Fisheries Department was denied the lease for the reasons indicated in the order. According to the Government Orders, the Up Zila Adhikari had no jurisdiction to deny a Co-operative Society the right of fishing into the tank belonged to Gaon Sabha.

12. As I have slated earlier that Up Zila Adhikari had no right/jurisdiction to decide the question as to whether the petitioner Co-operative Society was dis-entitled for grant of lease for the reasons indicated in the order. If there existed any complaint against the Society, he ought to have referred the matter to the Registrar, Co-operative Societies for supersession of that Society or for taking any other action but he could not have denied the preferential right to that of the petitioner Co-operative Society for fishing into the tank. The Up Zila Adhikari ought not have granted the lease for fishing to all the families of the fishermen in the village particularly when the petitioner co-operative society in the village was available for the grant of lease.

13. If the lease is granted to a body corporate, it would be easier for the authorities concerned to realise the licence fee, but it would be rather difficult for the authorities to realise the licence fee from 61 families who may later on quarrel among themselves and do not pay the fee to Gaon Sabha as happened in the past.

14. For the aforesaid reasons, I am of the view that the order passed by the Up Zila Adhikari, Alapur, district Ambedkar Nagar dated 20.2.97 contained in Annexure- i cannot be sustained. Accordingly, the writ petition succeeds and a writ in the nature of certiorari quashing the order dated 20.2.97 passed by the Up Zila Adhikari, Alapur is issued. The respondents are directed to allow the petitioner Co-operative Society to carry on fishing into the tank in question for

the period the licence was earlier granted to them. It would, however, be open to the Up Zila Adhikari to refer the complaints, if any, against the petitioner Co operative Society to the Director Fisheries/Registrar, Co-operative Societies, U. P.. Lucknow. The Receiver who was entrusted to carry on the work in the meantime is discharged.