
(2017) 04 MP CK 0161
In the Madhya Pradesh High Court
Case No : 09 of 2017

Mukund

APPELLANT

Vs

Smt. Sulakshana Bokare

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Citation : (2017) 04 MP CK 0161

Hon'ble Judges : S. C. Sharma, Rajeev Kumar Dubey

Bench : Division Bench

Judgement

1. The petitioner before this Court, a Registered Society, has filed this present Writ Appeal being aggrieved by the order dated 20/10/2016 passed by the learned Single Judge in Writ Petition No. 648/2016 dismissing the Writ Petition filed by the Society.

2. Facts of the case reveal that the petitioner Matsudyog Sahakari Sanstha Maryadit, Barod, is a registered Society registered under the provisions of the M. P. Cooperative Societies Act, 1960. The Members of the Society, as stated, are members of Other Backward Caste and the Society was registered on 22/4/2013, having Registration No. 1083. The petitioner Society has already been leased out three ponds for the purpose of exercising fishing rights. The Chief Executive Officer, Jila Panchayat, Shajapur - respondent No.4, issued an advertisement on 7/7/2014 inviting applications for allotment of leasehold rights in respect of fishing in Kachal Madhyam Talab Pariyojna and the application of the petitioner Society as well as of the respondent No.7 were processed keeping in view the allotment rules and respondent No.7 was placed in the first priority. The pond in question has been allotted to respondent No.7 vide order dated 8/12/2015.

3. The petitioner being aggrieved by the allotment in favour of respondent No.7 came up before this Court by filing Writ Petition and the learned Single Judge has dismissed the Writ Petition. Paragraph 5 to 11 of the order passed by the learned Single Judge reads as under : 5. The petitioner - society being aggrieved by the aforesaid allotment has filed the present writ petition challenging the order of

allotment on the ground that Rule 1.3 (ga) and 1.3 (ka) of para 1 of policy of allotment dated 8.10.2008, the order of preference shall be registered societies of Machva caste S.T/S.C/OBC/General Category. The members of the petitioner - society belonged to Machva caste as defined in Rule 1.1 of the said policy and, therefore, the petitioner - society is having preference over respondent No.7 - society, which belongs to either S.C. or OBC Category. It is submitted that the respondents while passing the order impugned have totally ignored the Rule 1.3 (ga) (ka), which states that if more than one application is received of registered society of Machva caste then the rights will be allotted to that society, which is older as per date of registration and which is more active. He has further drawn my attention to the registration number of the petitioner - society and submitted that the society was registered on 8.12.2009 whereas, respondent No.7 was registered on 22.4.2013. The allotment of leasehold right to respondent No.7 is contrary to the rules of allotment and prayed for its quashment.

6. In reply, the respondents have raised a preliminary objection regarding maintainability of the writ petition on the ground that impugned order is appealable under Section 91 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 read with Rule 3 of M.P. Panchayat (Appeal & Revision) Rules, 1995. In view of the statutory remedy of appeal available to the petitioner, the present writ petition is not maintainable.

7. In the case in hand, the proposal for grant of leasehold fishing right has been recommended in favour of the respondent No.7. The members of the respondent No.7 - society was having preference as per Rules and, therefore, allotment has been made in their favour and prayed for dismissal of the writ petition.

8. To appreciate the contention of the learned counsel for the parties, (ga) (ka) and (kha) Clause :-

"VERNACULAR MATTER OMITTED"

9. As per by-laws and registration granted, the working area of respondent No.7 - society is Madkota (Kachaal Dam) of District Shajapur as is evident from clause 6 of application (Annexure R/2) and registration certificate of the society vide (Annexure R-7/2) whereas, the area of operations of the petitioner - society is far away from the pond in question. At the time of registration of the respondent No.7 - society, the petitioner - society through its president filed an objection to the registration of the respondent No.7 - society, but subsequently, the same has been withdrawn as the area of operation of the respondent No.7 - society and petitioner - society was different from each other. The then president of the petitioner - society filed an application withdrawing its objection vide Annexure R- 7/3, supported with the affidavit of the president. Para 2 of the affidavit reads as under :-

"VERNACULAR MATTER OMITTED"

10. The members of the respondent No.7 - society belongs to Machva caste. As

per rule 1.3, operation area of the petitioner - society is same where the pond is situated and, therefore he was having preference over the petitioner - society. Granting authority rightly applying the aforesaid provision held that the respondent No.7 - society was having preference and granted the leasehold rights to respondent No.7 - society over looking the claim of the petitioner. As per recommendation of society Assistant Director vigilance department of District Shajapur, respondent No.7 - society was at Serial No.1 and petitioner - society was at Serial No.2. The relevant part of the recommendation reads as under :-

"VERNACULAR MATTER OMITTED"

11. From the aforesaid, it is clear that the allotment has been made as per rules of allotment dated 8.10.2008. The allotment was made in the year 2013 and thereafter, the respondent No.7 has started his lease right as per terms and conditions of the agreement executed between the department and the respondent No.7. The allotment is not made in violation of the rules of allotment nor preference of the petitioner has been over looked while allotting the leasehold right to the respondent No.7.

4. This Court has carefully gone through the impugned order and it is not in dispute that the petitioner Society was earlier allotted three ponds for the purpose of exercising fisheries rights. It appears that the petitioner - Society wants to create a monopoly in the matter of exercise of fisheries rights in the entire region. Rules have been framed by the State Government in order to ensure that the Societies of fishermen are granted fisheries right and the local fishermen are given preference in the matter of allotment of ponds. The members of respondent No.7 - Society belongs to "Machua" caste and in the considered opinion of this Court, the authorities were justified in placing respondent No.7 at S.No.1 in the matter of allotment and for grant of leasehold rights for respondent No.7. Not only this, respondent No.7 Society is having its area of operation closer to the pond in question as compared to the appellant / petitioner Society. The State of Madhya Pradesh has framed a policy to ensure that the fishermen of the locality are allotted fisheries rights and a preferential treatment has to be given to local fishermen, which has been done in the present case. The appellant Society is not satisfied with the three ponds already allotted to it and all hue and cry is being raised in the matter when the fourth pond has been allotted to the society of local fishermen.

5. This Court is of the considered opinion that the order passed by the learned Single Judge does not suffer from any perversity and the learned Single Judge was justified in dismissing the Writ Petition preferred by the petitioner. This Court does not find any reason to interfere with the impugned order. Accordingly, admission is declined.