
(1999) 01 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 2183 of 1999

Panchoo

APPELLANT

Vs

Collector/District Magistrate, Gorakhpur and others

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : (1999) 1 AWC 817 : (1999) RD 186

Hon'ble Judges : S.L. Saraf, J;M. Katju, J

Bench : Division Bench

Advocate : Swaraj Prakash, for the Appellant;

Final Decision : Disposed Of

Judgement

M. Katju and S. L. Saraf, JJ.—Heard learned counsel for the petitioner and learned standing counsel.

2. The petitioner has challenged the impugned order of the District Magistrate, Gorakhpur dated 30.12.1998, Annexure-11 to the writ petition.

3. The petitioner was granted fishery lease which expired in 1997 and he claimed that the same was renewed in his favour by order dated 3.12.1997. We have held in a large number of Division Bench decisions that a fishery lease cannot be renewed vide Writ Petition No. 39985 of 191998 RD 38587 decided on 27.10.1098, Murari v. State of U. P., etc.

4. Shri Swaraj Prakash, learned counsel for petitioner has relied upon the decision of a Division Bench of this Court. Ajai Singh v. State of U. P. 1997 (88) RD 157 and the decision in Gram Panchayat v. Collector 1997 (3) AWC 1665. In our opinion, these decisions are distinguishable as they have not dealt with Article 19(1)(g) of the Constitution. Article 19(1)(g) states that every citizen has freedom to do business or trade. Hence, in our opinion, every citizen of any community or caste can do business of fishery, and it cannot be restricted to any particular caste or community. Any Rule or G.O, to the contrary is, in our opinion,

violative of Article 19(1)(g). The renewal of the lease in 1997 was violative of Articles 14 and 19(1)(g) and wholly unconstitutional. We are of the opinion that if the lease in question has been granted without advertisement in well-known newspapers having wide circulation and thereafter holding public auction, that lease will also be invalid. Hence, if as yet no fishery lease after 1997 has been granted after advertising it in well-known newspapers and holding public auction/tender, then we direct the authorities concerned to grant it only after following the aforesaid procedure otherwise it will be violative of Articles 14 and 19(1)(g) of the Constitution.

5. We further direct that if any lease has been granted to anyone without advertisement in well-known newspapers having wide circulation and without holding public auction, such person cannot do fishery business in the pond in question, and the authorities concerned will restrain anyone doing fishery business illegally.

6. The petition is disposed of finally.