

(2007) 04 CHH CK 0004
In the Chhattisgarh High Court
Case No : Writ Petition No. 2688 of 2006

Rajendra Chandrakar

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) 2 CGLJ 502

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Manoj Paranjpe, for the Appellant; Sushil Dubey, Government Advocate Respondent Nos. 1 and 5, J.A. Lohani, for Respondent Nos. 2 and 3 and Pankaj Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the Petitioner, President, Chhattisgarh Fishery Cooperative Society, Telibandha, District Mahasamund, questions the legality and validity of the order dated 05.09.2005 (Annexure P-3) passed by the Chief Executive Officer, leased out the right of fishing of the disputed irrigation pond to Respondent No. 2 and 3 Society for a period of 5 years, the order dated 13.12.2005 (Annexure P-8) passed by the Collector, Mahasamund. confirming the order dated 05.09.2005, as being valid and proper and order dated 12.04.2006 (Annexure P-11) passed by the Director, Panchayat, where under the revision filed by the Petitioner was dismissed holding that 58.89 hectare of submerged area of Telibandha Irrigation Pond is in village Kurubhata and 7.59 hectare submerged area is in Telibandha. Both the areas come within the periphery of 8 K.M. Thus, the grant of lease for fishing right to the Respondent No. 2 and 3 society was just and proper.

2. The indisputable facts, in nutshell, are that the Petitioner and Respondent No. 2 and 3 societies are registered co-operative societies engaged in the business of pisciculture. On 20.07.2005, applications were invited on floating tenders by

Janpad Panchayat, Mahasamund, for leasing out the fishing rights to the Registered co-operative society, which operates within the periphery of 8 K.M. The Petitioner society and the Respondent No. 2 and 3. Jai Mama Bhanca Co-operative Society, Kurrubhata, applied for the same. Having considered all the aspects, the lease of fishing rights of the pond was awarded to the Respondent society, Jai Mama Bhanca Co-operative Society. Kurrubhata, (hereinafter referred to as "Respondent society") vide order dated 5.9.2005, pursuant to the resolution dated 20.7.2005 (Annexure P/1).

3. Being aggrieved and dissatisfied, the Petitioner society preferred an appeal before the Collector in Revenue Case No. 16/A-98/2004-05 challenging the order passed by the Chief Executive Officer, Mahasamund, on the ground that the Petitioner society is situated in village Telibandha and 24 out of 25 members are the resident of village Telibandha. Thus, as per policy of the government, the Petitioner society is entitled to be allotted fishing rights of the said pond. The Petitioner society's registration is earlier in point of time and the Petitioner society should be given preference as per the government policy.

4. The Collector, vide order dated 13.12.2005 (Annexure P/8), after hearing both the parties, came to the conclusion that 58.89 hectare of the submerged area is in village Kurrubhata and 7.59 hectare is in village Telibandha. Thus, as per policy, the society operating in village Kurrubhata, i.e. the Respondent society, has preferential right over the allotment of fishing right of the Telibandha and the area of both the society are within the periphery of 8 K.M. Thus, the appeal filed by the Petitioner society was rejected and the order passed by the Chief Executive Officer, Mahasamund was upheld.

5. Being aggrieved and dissatisfied with the order passed by the Collector, the Petitioner society preferred a revision case No. 11/A-89/2005-06 before the Director, Panchayat, Government of Chhattisgarh, Raipur. The Director, Panchayat, after having heard both the parties and perusing documents, confirmed the findings recorded by the Collector and rejected the revision vide order dated 12.04.2006 (Annexure P/1). Thus, this petition.

6. Shri Manoj Paranjpe, learned Counsel appearing for the Petitioner would submit the same ground before this Court as raised before the Collector. Per contra, learned Counsel appearing for the Respondent society and Respondent No. 5 and 6 would support the orders passed by the authorities below.

7. I have heard the learned Counsel for the parties, perused the pleadings and the records appended thereto.

8. The relevant clause i.e. 1.1, 2.1, 2.4, 3.3, 4.2, 10.1, 10.2 and 16.2 of the Fishing Policy of the State of Chhattisgarh reads as under:

9. On careful reading of the above stated clauses and perusing the policy, it is established that the preference has to be given to the society which is operating within the periphery of 8 K.M. In case, one or more societies are working, the

oldest society should be given preference having more Scheduled Caste and Scheduled Tribes as members of the society. It is further made clear that the members living below the poverty line should not be the criteria for grant of lease for fishing rights. The contention of the Petitioner is that the bundh portion of the pond is situated in Telibandha village and it is known as Telibandha Irrigation pond, therefore, the preference should be given to the society which is operative in Telibandha area, In the present case, it is admitted that the bundh is situated in Telibandha village but more than 80% of the water pondage area is in Kurrubhata. Thus, granting of fishing rights to Respondent society is more viable and both the societies are operative within the periphery of 8 K.M.

10. With regard to the registration of the society at an earlier point of time, it is true that the difference of few months is there but looking into overall requirement and the magnitude of submergence of Kurrubhata village, it is just and proper to grant fishing rights to the Respondent society. The guidelines and the policy have to be understood keeping in view the intention and it should not be followed so as to defeat its objective which was sought to be achieved by the policy.

11. Having regard to the facts of the case, I am of the considered opinion that the grant of lease of fishing right to the Respondent society is legal and proper. The findings regarded by the authorities below is unexceptionable.

12. The question of second revision is not necessary to be examined in the present case.

13. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

14. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the impugned orders passed by the authorities below.

15. Thus, this petition is dismissed. No order as to costs.