

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 14th OF DECEMBER, 2023

WRIT PETITION No. 24866 of 2021

BETWEEN:-

**RASHTRIYA MACHUA MANJHI JAL KRISHI
SAHKARI SANSTHA MARYADIT THR. ITS
PRESIDENT MR. RAMESHWAR KEWAT S/O SHRI
MADANLAL JI KEWAT, AGED ABOUT 39 YEARS,
OCCUPATION: FISHERMAN YASHWATN SAGAR
TEH. HATOD (MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI SUNIL JAIN – SENIOR ADVOCATE WITH SHRI RIZWAN
KHAN - ADVOCATE)**

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY BHOPAL
(MADHYA PRADESH)**
- 2. FISHERMAN WELFARE AND FISHERIES
DEVELOPMENT DEPARTMENT THROUGH
DEPUTY DIRECTOR INDORE DIVISION
(MADHYA PRADESH)**
- 3. INDORE MUNICIPAL CORPORATION
THROUGH COMMISSIONER NARAYAN
SING SAPUT MARG SQUARE, SHIVAJI
MARKET, NAGAR NIGAM (MADHYA
PRADESH)**
- 4. DEPUTY COMMISSIONER, WATER AND
DRAINAGE DIVISION INDORE MUNICIPAL
CORPORATION NARAYAN SING SAPUT
MARG SQUARE, SHIVAJI MARKET, NAGAR**

NIGAM (MADHYA PRADESH)

5. **THROUGH PRESIDENT MAA AMBAJI MATSYA UDHYOG SAHKARI SANSTHA MARYADIT CHOTA SIRPUR, INDORE SACHIN GAUD S/O SHRI GANESHJI GAUD, AGE 40 YEARS, OCCU FISHERIES 20, BHOI MOHALLA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MUKESH PARWAL – G.A. FOR STATE; SHRI P. R. BHATNAGAR – ADVOCATE FOR RESPONDENT NO.5; SHRI MANU MAHESHWARI – ADVOCATE FOR I.M.C.; AND MS. DIXITA GUPTA – ADVOCATE FOR INTERVENOR)

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This petition coming on for admission this day, the court passed the following:

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 09.11.2021 passed by the Deputy Commissioner, Water and Drainage Division, Indore Municipal Corporation, whereby, the lease dated 06.09.2019 allotted to the petitioner for fishing at Yashwant Sagar reservoir for a period of 10 years has been cancelled on account of violation of the lease condition.

3] In brief, the facts of the case are that the petitioner is a co-operative society registered under the Madhya Pradesh Co-operative Societies Act, 1960 and has approximately 280 members. Its primary objective is related to ensure that its members who are fishermen, gets the employment.

4] The case of the petitioner is that on 06.03.2019, the

respondent No.3 Indore Municipal Corporation floated an NIT for allotment of *patta* of Yashwant Sagar reservoir for fish farming and management for a period of 10 years and the petitioner also participated in the aforesaid tender and was granted a lease for a period of 10 years on 06.09.2019 and the lease agreement was executed on 07.09.2019 (Annexure P/5). Subsequently, the petitioner consented to allow the reservoir to be utilized by the respondent No.5 for the purposes of installation of fishery cages. The case of the petitioner is that the aforesaid cages were installed as per the scheme of the Central and State Government. The scheme is also placed on record as Annexure-P/3, in para 4.1 of which it is also provided that any person who is interested in installing the cages, shall have the lease for 10 years or can also take consent from such persons who has already got a lease for 10 years. In para 5.1 of the scheme it is also provided that such cages can be installed in the 1% of the total water area of lease. However, a notice was issued to the petitioner on 18.12.2020 in which the petitioner was asked to show cause as to why the lease shall not be cancelled. A reply to the aforesaid notice was also filed by the petitioner on 20.12.2020 (Annexure-P/9) in which the petitioner's contention was that it has not violated any condition of the lease and has given the consent to install the cages in accordance with the permission granted by the Fisheries Department, Bhopal so that the subsidy can be obtained by the respondent No.5. It was also specifically stated that the fishing is being done in the reservoir by the members of the petitioner society only and the respondent No.5 has been given

permission to install the cages. In the aforesaid reply, the petitioner has also contended that the aforesaid cages have been installed under the Project of the Central Government known as *Jalaashayon Mein Cage Culture Ikai Sthapana Hetu Anudan Sahayata*. Thus, it is submitted that the notice be recalled. However, vide order dated 09.11.2021, the lease executed in favour of the petitioner has been revoked after around 11 months on the ground that the petitioner has violated condition Nos.15, 18 and 19 of the lease document.

5] Counsel for the petitioner has also submitted that in the meanwhile, the petitioner was also issued a notice by the Fisheries Department (Annexure-P/10) on 08.09.2021, which was issued to the petitioner on a complaint that the petitioner has not obtained any permission from the Municipal Corporation, to which the petitioner also replied vide its reply dated 03.11.2021, in which it was informed by the petitioner to the Fisheries Department that the permission was to be obtained by the Department only. Thereafter, the Fisheries Department itself has written a letter to the Municipal Corporation on 16.11.2021 (Annexure-P/14) explaining that the petitioner is only partially responsible for not giving proper information on monthly basis regarding the fishing. However, it was also informed that so far as the installation of cage culture unit is concerned, as per para 4.1 of the Scheme, the petitioner and the respondent No.5 has properly followed the conditions of the Scheme and after the consent of the petitioner, the cages have been installed and thus, it was informed that the cages have been

installed as per the National Agricultural Development Scheme and thus, no illegality has been committed by the petitioner. It was also informed that a total sum of Rs.108 lakhs has already been provided as subsidy to promote cage culture, to the petitioner and respondent No.5.

6] So far as the respondent No.5 is concerned, who is also supporting the case of the petitioner, it is submitted by the counsel that the respondent No.5 is the Society who has installed the 48 cages as per the consent given by the petitioner, in Yashwant Sagar reservoir. It is also submitted that the respondent No.5 is also a registered co-operative society, the certificate of which is also placed on record. It is also submitted that the respondent No.5 Society is also availing the benefit of subsidy to the tune of Rs.72 lakhs from the Fisheries Department for installing the aforesaid cages in the reservoir. The document regarding which, dated 03.03.2020 is also placed on record. It is also submitted that the respondent No.5 has also invested similar amount of Rs.72 lakhs in the aforesaid project for which the cages have been obtained, the purchase invoice of which is also placed on record. Counsel for the respondent No.5 has also relied upon the letter dated 16.11.2021 issued by the Deputy Director, Fisheries, Indore to the Additional Commissioner, Indore explaining the installation of the cages for fishing to promote the cage culture wherein, it is also specifically informed to the Additional Commissioner that the cages have been installed as per the M.P. Government's Department of Fisheries Scheme implementing the National Scheme for installing the cages.

Counsel has also drawn the attention of this Court to the details of the beneficiaries converted under *Rashtriya Krishi Vikas Yojana*. It is further submitted that the members of the respondent No.5 Society have also obtained loan from the concerned bank through Kisan Credit Card, the document regarding which has also been placed on record. Counsel has further submitted that after installation of the aforesaid 48 cages in the reservoir, various teams have also visited from across the nation.

7] Counsel has also drawn the attention of this Court to the recommendation made by the Chief Executive Officer, New Delhi dated 02.12.2021, who had also visited the Yashwant Sagar reservoir. Counsel has also drawn the attention of this Court to the various photographs of various office bearers of the Fisheries Department of the State as well as of the Central Government and it is submitted that serious efforts have been invested in bringing about the aforesaid cages, which is in line with the National Policy. Thus, it is submitted that when the scheme itself has been promulgated by the Central Government and promoted by the State Government, the letter regarding which has also been sent by the State Government to the Municipal Corporation, there was no reason for the Municipal Corporation to issue the notice which is running contrary to the Central Government Scheme.

8] Counsel for the respondent No.5 has also submitted that the cages have been installed only in 20,000 sq.ft. area, which forms 0.001% of the entire reservoir and they are not carrying out any fishing activity in the other area of the reservoir in which the

members of the petitioner Society are carrying out the fishing activity.

9] The prayer is opposed by the counsel for the Municipal Corporation, and it is submitted that no case for interference is made out as the petitioner was bound by the agreement with the Municipal Corporation which was executed after the tender was opened in favour of the petitioner. Counsel has drawn the attention of this Court to the lease agreement dated 07.09.2019, in paras 15, 18 and 19 of which it is clearly provided that the petitioner is required to maintain the account regularly and also that the lease agreement shall not be transferred to any other third party and also that the fishing activity shall be conducted by the petitioner only and no other person shall be allowed to do the same, failing which, the lease agreement shall be liable to be rejected. Thus, it is submitted that it is an admitted fact that the respondent No.5 is carrying out the fishing activity in the garb of the consent letter given by the petitioner, which clearly runs contrary to the lease conditions, as even though the lease has not been transferred to the respondent No.5 in writing, however, the consent letter itself is more than sufficient to hold that the lease has actually been transferred.

10] Counsel has also drawn the attention of this Court to Annexure-R/1, which are the guidelines issued by the State Government for fishing purposes, in which it is clearly provided that fishing activities are supposed to be carried out by the persons who has taken the lease and if it is not done, then the agreement

would be terminated.

11] Counsel for the intervenor Ms. Dixita Gupta has also opposed the prayer and has submitted that the intervenors are the two registered societies, which have been formed for fishing purposes only and the intervenor No.1 *Matsya Udyog Evam Jal Krishi Sahkari Sanstha*, Depalpur is having more than 200 members whereas, the intervenor No.2 is having more than 500 members. Thus, their interest is equally involved in the matter as they had also participated in the tender process and were not allotted the tender. Counsel has also drawn the attention of this Court to the lease agreement to submit that the mandatory conditions of which have been clearly violated. It is also submitted that a notice was also issued by the State Government to the petitioner on the premise that there appears to be violation of condition Nos.18 and 19 of the lease agreement executed by the petitioner with the Municipal Corporation and also raised query if any No Objection was obtained from the Municipal Corporation and, whether any resolution was passed in this behalf by the Society and, whether any information was given to the bank and also that whether the information regarding the cage culture was not given to the Department and whether the cages are empty or being used for fishing purposes and, whether any rent has been received from the respondent No.5, Maa Ambaji Matsya Udyog Sahkari Sanstha Maryadit.

12] In rebuttal, counsel for the petitioner has submitted that the petitioner has already replied to the letter issued by the State Government on 08.09.2021 vide their reply dated 03.11.2021

informing the Department that the cages have been installed under the guidance of the Fisheries Department only and also informing that the responsibility to take permission from the Municipal Corporation was that of the Fisheries Department only and not of the petitioner. It was also informed that prior to installation of the cages, a resolution was also passed in this regard, and it was also stated that the cages which were installed, were of bad quality and hence, the information was not provided to the Municipal Corporation. It was also stated that the cages have been installed as per the National Agricultural Development Policy and its work completion certificate was also to be given by the Officers of the Department. It was also stated that the members of the society are the poor and illiterate fishermen, and they are being threatened and asked to give reply to the queries, which are being raised every now and then and efforts are being made to cancel their registration.

13] Counsel for the State has not opposed the prayer and the attention of this Court is drawn to the resolution passed by the petitioner Society giving consent to install the 48 cages and for this purpose the President of the Society Shri Rameshwar has also been appointed to take all the permissions from the various Departments.

14] Counsel for the State has also submitted that although there was some lapses on the part of the petitioner Society, however, considering the fact that the State Government has invested a huge amount to the tune of Rs.108 lakhs, a letter was written by the Deputy Director, Fisheries, Indore Division to the Additional Commissioner, Indore on 16.11.2021, in which the aforesaid facts

were also mentioned and it was also stated that the State Government has also invested Rs.108 lakhs through subsidy and the project is being carried out by the State Government's Fisheries Department as per the schemes of Central Government. Thus, it is submitted that a lenient view may be taken.

15] Heard counsel for the parties and perused the record.

16] On perusal of the record, it is found that the petitioner Society entered into the lease agreement with the respondent Indore Municipal Corporation vide agreement dated 07.09.2019, the relevant paras of the same read as under:-

“15. द्वितीय पक्षकार जलाशय में संचित मछलीबीज तालाब से उत्पादित मछली, विक्रय की गई मछली एवं सदस्यों को वितरित लाभ का सम्पूर्ण लेखा-जोखा निर्धारित पंजी में नियमित रूप से रखेगा तथा उसे प्रथम पक्षकार एवं मछलीपालन विभाग के अधिकारियों को उनके निरीक्षण के समय दिखाने के लिए बाध्य होगा। द्वितीय पक्षकार प्रतिमाह निर्धारित प्रपत्र में तालाब से मत्स्य पालन एवं उत्पादन की जानकारी प्रथम पक्षकार को देगा।

18. द्वितीय पक्षकार को तालाब का पट्टा अन्य व्यक्ति अथवा संस्था को हस्तांतरित करने का अधिकार नहीं होगा यदि ऐसा किया जाता है तो प्रथम पक्षकार द्वारा जलाशय का पट्टा निरस्त किया जा सकेगा।

19. यशवंत सागर तालाब/जलाशय में मत्स्य पालन का कार्य पट्टा धारक द्वारा ही कराया जावेगा, यदि यह कार्य पट्टाधारक द्वारा अन्य व्यक्ति से अनुबंध संपादित कर कराया जाता है तो उस तालाब/जलाशय का पट्टा निरस्त किया जावेगा।”

(emphasis supplied)

17] It is also found that the lease amount is fixed at Rs.95,100/- per annum, it is also found that the respondent No.5 *Maa Ambaji Matsya Udyog Sahkari Sanstha Maryadit* applied to the Fisheries Department, Bhopal for installing 48 cages in the Yashwant Sagar reservoir stating therein that they have already obtained the consent

from the lease holder *i.e.*, the petitioner herein. The consent letter executed between the petitioner and the respondent No.5 dated 30.09.2019 is also placed on record in which the President of the petitioner, on behalf of the petitioner has consented to the installation of the cage culture unit in Yashwant Sagar reservoir stating that they do not have any objection if the said unit is installed. Subsequently, the Director, Fisheries, Indore Division sanctioned a subsidy of Rs.1.5 lakhs per cage for 48 cages under the scheme promoted by the Central Government Fisheries Department, New Delhi under Neelkanti scheme for the financial year 2019-2020. Subsequently, on 18.12.2022, the Municipal Corporation, Indore has issued a notice to the petitioner for cancellation of the lease on account of violation of condition No.18 and 19 of the lease agreement stating that the petitioner Society has allowed respondent No.5 *Maa Ambaji Matsya Udyog Sahkari Sanstha Maryadit* to install 48 cages.

18] So far as the guidelines issued by the Fisheries Department, State of M.P. in respect of the establishment of cage culture unit in the reservoir under the Rashtriya Krishi Vikas Yojana is concerned, the relevant paras of which reads as under:-

“4. पात्रता हेतु शर्ते :-

4.1 शासकीय/निजी क्षेत्र में प्रोजेक्ट अन्तर्गत सभी वर्ग की इच्छुक सहकारी संस्था/समूह (गरीबी रेखा एवं जाति का बंधन नहीं) पात्र होंगे, जिनके पास जलाशय मछली पालन/मत्स्याखेट हेतु मत्स्योद्योग हेतु मत्स्योद्योग विभाग द्वारा 10 वर्ष हेतु पट्टे पर दिया गया हो या पट्टा धारक द्वारा जलाशय में केज स्थापना हेतु स्टाम्प पेपर पर लिखित सहमति दी गई हो।

4.2 उपयुक्त गहरी खदानों एवं तालाबों में भी केज कल्चर इकाई की स्थापना की जा सकेगी।

4.3 पट्टा धारक संस्था/समूह/सोसायटी किसी अन्य समूह/व्यक्ति को

जलाशय में केज लगाने की अनुमति देता है, तो पट्टा धारक राशि रू. 50.00 प्रति घन मीटर जलक्षेत्र के मान से केज का किराये ले सकेगा।

5. प्रस्तावित कार्य :-

प्रोजेक्ट अन्तर्गत पात्र हितग्राही द्वारा निम्नलिखित कार्य/अधोसंरचना निर्मित/स्थापित की जावेगी :-

5.1 जलाशय के अधिकतम 1 प्रतिशत जलक्षेत्र में केज इकाई स्थापित किये जा सकेंगे।

5.2 जी.आई. पाईप, ड्रम या माड्यूलर पॉन्टून में से किसी भी एक प्रकार अथवा मिश्रित रूप से भी केज स्ट्रेक्चर का निर्माण/स्थापना किया जावेगा।”

(emphasis supplied)

19] On the aforementioned facts and circumstances, this Court is required to see if the petitioner has leased out the reservoir to the respondent No.5 and secondly, whether the petitioner is carrying out the fishing activities through the respondent No.5.

20] A perusal of the guidelines issued under the *Rashtriya Krishi Vikas Yojana* clearly reveals that the benefit under the same can be availed by a co-operative society, who either has 10 years lease of any water body for fishing *or, has obtained consent from the lease holder to install the cages*. It is also provided that if any society gives such consent for utilization of the reservoir, in that case, such society can also take rent at the rate of Rs.50/- per cubic meter. It is also provided in the scheme that only 1% of such reservoir can be utilized for the purposes of installation of cage. The documents which have been placed on record by the respondent No.5 clearly reveals that it is under strict supervision of the Officers of the Central Government and the Officers of the Fisheries Department of the State Government. Thus, it cannot be said that there is any violation of such conditions as prescribed under the Scheme. This Court is of the considered opinion that the act of the petitioner

society to give consent to the respondent No.5 to install cages for fishing purposes cannot amount to violation of condition No.18 or 19 of the lease agreement between the petitioner and the respondent Municipal Corporation as the respondent No.5 has admitted that cages have been installed only in 20000 sq.ft. area, which forms 0.001% of the entire reservoir, and except for the aforesaid area, the respondent No.5 is not carrying out any fishing activity in the rest of the Yashwant Sagar reservoir.

21] At this juncture, it is also relevant to note here that fish farming is a method of fishing, it is promoted for better utilization of the water bodies, which have been underutilized. The fish which are reared in the cages remain in those cages only until they are fished out and it cannot be said that by rearing the fish in the cages spread in a very minuscule portion of the reservoir, it would amount to pisciculture (fish farming) in the entire reservoir. Thus, the objection raised by the respondent Municipal Corporation that the petitioner has sub-leased the reservoir to the respondent No.5, cannot be accepted and similarly, their further objection that the respondent No.5 is carrying out the fishing activity in the reservoir is also liable to be rejected. Thus, it is held that there was no violation of the condition Nos.18 and 19 of the Lease agreement. Similarly, the objection raised by the intervenor also cannot be sustained in the light of the aforementioned facts and circumstances of the case and are hereby rejected.

22] So far as, the violation of the condition No.15 is concerned, which is regarding keeping and furnishing the proper account of the

fishing activity to the respondent Corporation, it cannot be used against the petitioner society to terminate their lease.

23] This Court is also of the opinion that the petitioner is a society of fishermen who are poor, and illiteracy amongst them is also not ruled out, in such circumstances, it cannot be expected from them to adhere to and comply with the terms and conditions of the lease agreement with military precision, and considering the fact that the petitioner's acts of omissions have resulted in the implementation of the scheme of fishing by cage culture promoted by the Central Government, the penalty of termination of the lease agreement is not at all justified.

24] Resultantly, the **impugned order dated 09.11.2021**, passed by the Deputy Commissioner, Water and Drainage Division, Indore Municipal Corporation **is hereby quashed**.

With the aforesaid, the petition stands *allowed* and *disposed of*.

No costs.

(SUBODH ABHYANKAR)
JUDGE

Bahar