

**Prithvi Nath Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Dec-04-2001

**Reported in :** 2002(1)AWC799

**Judge :** Sudhir Narain and ;V.M. Sahai, JJ.

**Acts :** [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 126; [Constitution of India](#) - Article 14

**Appeal No. :** C.M.W.P. No. 37301 of 2001

**Appellant :** Prithvi Nath

**Respondent :** State of U.P. and ors.

**Advocate for Def. :** K.K. Singh, S.C. and ;H.R. Mishra, Adv.

**Advocate for Pet/Ap. :** Tarun Varma, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Sudhir Narain, J.**

1. The petitioner has sought to quash the entire auction proceedings in regard to settlement of fisheries rights in favour of respondent No. 6.

2. The version of the petitioner is that he is a fisherman by caste and was granted fisheries rights in respect of the plots in question covering an area 62.43 acres situate in village Matlyariya, Block Siswa. Tehsil Nichlaul, District Mahrajanj on 23.8.1991 for 10 years. The period came to an end on 23.8.2001. The Naib Tahsildar, tehsil Nichlaul, district Mahrajanj, respondent No. 4 auctioned the pond in question for fisheries rights in favour of respondent No. 6 on 2.11.2001 and it has been approved by the Sub-Divisional Magistrate, Nichlaul, district MahraJganj on 3.11.2001 for a sum of Rs. 3,04,000 for ten years.

3. The petitioner has challenged the auction proceedings on the ground that the auction is in violation of the Government Orders dated 2.5.1981 and 17.10.1995 and secondly the procedure prescribed for holding the auction was not followed.

4. The fisheries rights in respect of a pond situate in village is granted in accordance with the Government Orders and directions issued under Section 126 of U.P. Zamindari Abolition and Land Reforms Act, 1950. The Government had from time to time, issued orders in this respect. The Government by its order dated 2.5.1981 provided the manner of allotment of fisheries rights to various applicants. It gave preference to certain person and societies. This was amended by Government Order dated 17.10.1995. It provides that in case the area of a pond is more than 2 hectares, the preference in allotment shall be given to the registered Co-operative Society and duly approved by the fisheries department of the State Government and registered in the Gram Panchayat concerned.

5. Respondent No. 6 is the President of Matsya Jivi Sahkari Samitl, Matlyariya. This is the only the society registered in the Gram Panchayat, Matiyariya. The petitioner is not a member of any registered society.

6. Learned counsel for the petitioner contended that the preference given to a Co-operative Society is discriminatory and violative of Article 14 of the Constitution.

7. The Government order dated 17.10.1995 makes it clear that if the area of a pond is more than 2 hectares, the preference should be given to a registered society duly approved by the fisheries department and in the village. It is the policy of the Government that in settling fisheries rights the preference is to be given to a

Co-operative Society and not to the individual so that the members of the Society may get benefit of fishing rights in the pond. The preference given to a society does not amount to discrimination. This question was considered by a Division Bench of this Court in *Ajai Sonkar v. State of U.P. and Ors.*, 1997 (1) AWC 138, where the Court made the following observations :

'Pursuant to above Rules, notice dated 17.6.1996 (Annexure-1) was published in Clause (2) of which it has been specifically mentioned that in granting lease, Co-operative Matsya Societies of same village or Gaon Sabha are to be given preference. The idea behind it is to promote the cooperative movement. Thus, if by giving preference to co-operative societies applications for granting lease are invited, it is settled that it does not amount to discrimination attracting Article 14 of the Constitution but is in consonance with the co-operative jurisprudence. Therefore, the submission made by the learned counsel for the petitioner that the petitioner who belongs to a general category has been discriminated, has no legs to stand.'

8. The second submission of the learned counsel for the petitioner is that there was another society known as Matsya Shree Sahkari Samitl Ltd., Gopala, district Mahrajganj. Secretary Jai Ram had also filed an application making offer to the tune of Rs. 4,80,000 for grant of the fisheries rights. This petition has not been filed on behalf of Matsya Shree Sahkari Samitl Ltd.. Gopala, district MahraJganj. It may further be noted that the Naib Tehsildar submitted a report on 2.11.2001 to the Sub-Divisional Magistrate, Nlchlaul, district Mahrajganj, respondent No. 2 that no other society had participated in the auction proceedings. The Sub-Divisional Magistrate, after examining the report of the Tehsildar, has approved the auction in favour of respondent No. 6.

9. The last submission of the learned counsel for the petitioner is that the procedure for holding the auction was not followed in accordance with the directions given in the Government order dated 17.10.1995. Respondent No. 6 has filed a counter-affidavit and has annexed auction notice dated 22.10.2001 which indicates that the auction will be held in the tehsil premises on 2.11.2001 at 10.30 a.m. The conditions were specified. The auction was held on the said date

in which only respondent No. 6 participated. The Tehsildar submitted a report in this respect on 2.11.2001, which has been accepted by the Sub-Divisional Magistrate, respondent No. 2. There is nothing to show that there was any other society having preferential right to get allotment of the pond in question which made assertion that it was deprived of any opportunity to bid in auction because it had no sufficient notice to participate in the auction proceedings.

10. In view of the above, we do not find any merit in the writ petition and it is, accordingly, dismissed.

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