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Court : Allahabad

Decided On : Jul-21-2003

Reported in : (2003)2UPLBEC1728

Judge : R.K. Dash and ;Onkareshwar Bhatt, JJ.

Appeal No. : Civil Misc. Writ Petition No. 26701 of 2003

Appellant : Ramesh Kumar

Respondent : Union of India (Uoi), Through Betwa River Board, Through Its Secretary and ors.

Advocate for Def. : S.C. and ;K.K. Parekh, Adv.

Advocate for Pet/Ap. : S.F.A. Naqvi, Adv.

Judgement :

R.K. Dash and Onkareshwar Bhatt, JJ.

1. Heard learned Counsel for the petitioner. None appears for the respondents.
2. One Moti Lal has filed an application for impleadment as respondent. Prayer is refused and impleadment application is rejected.

3. This writ petition is filed seeking following reliefs :-

'(i) issue a writ, order or direction in the nature of certiorari quashing the impugned auction notice dated 30.5.2003, passed by respondent No. 2 (Annexure No. 2);

(ii) issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to allow the petitioner to perform his fishing rights, which were lost because of apathy of respondents between 16.6.2002 to 15.6.2003;

(iii) issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case; and

(iv) Award the cost of the petition in favour of the petitioner.'

4. Sri S.F.A. Naqvi, learned Counsel for the petitioner submits that the petitioner entered into a contract with the Superintending Engineer, Rajghat Dam Circle to undertake fishing work for a period of three years commencing from 2000 which was to expire on 15.6.2003. One Mohd. Akram filed a Writ Petition Bearing No. 24754 of 2002 urging that fishing right for the third year was extended to the petitioner in a clandestine manner without holding any public auction. By making such false statement he obtained interim order on 3.7.2002 restraining the petitioner to operate his fishing right. The petitioner challenged the order in the Apex Court and their Lordships by order dated 2.9.2002 stayed the operation of the said order. Ultimately, the Special Leave Petition filed by the petitioner was allowed and this Court's Order was set-aside. It is contended by the learned Counsel for the petitioner that because of the order of this Court he could not operate his fishing right for one year, that is, from 16.6.2002 to 15.6.2003 and therefore, auction notice given by the authorities dated 30.5.2003 be quashed and the petitioner be allowed to operate his fishing right for one year. In support of his contention he has relied upon a decision reported in (2003) 1 SCC 726, Beg Raj Singh v. State of U.P. and others.

5. We have considered the submissions of the learned Counsel for the petitioner. We have also gone through the judgment of the Apex Court referred to above. The

petitioner, in our opinion, cannot claim extension of fishing right for one year. Admittedly, in view of the interim order dated 3.7.2002 of this Court, petitioner could not operate his fishing right, but on 2.9.2002 the aforesaid order was stayed by the Apex Court. So, once this Court's Order was stayed by the Apex Court, there was no impediment on the part of the petitioner to continue his fishing right. If at all there was any restraint either by the authorities or anybody else he should have immediately approached this Court or the Ape Court for necessary orders. That was, however, not done and only after the lease period was over, he filed the present writ petition mainly seeking for quashing of the impugned auction notice dated 30.5.2003 and allowing him to operate his fishing right.

6. To repeat with, petitioner lost only two months to operate of his fishing right because of this Court's Order which was ultimately stayed by the Supreme Court. So, at best he can be allowed two months more to operate his fishing right.

7. In view of discussions made above, we dispose of the writ petition with a direction that the authorities will put the aforesaid reserved for auction on 1.10.2003. From today till 22.9.2003, the petitioner shall be allowed to operate his fishing right.

8. The petition is accordingly dispose of.

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