2026:AHC:156516-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 3483 of 2026

Matsya Jivi Sahkari Samiti Limited Merapur

…..Petitioner(s)

Versus

State of U.P. and 2 others

…..Respondent(s)

Counsel for Petitioner(s) : Sanjeev Kumar Saxena
Counsel for Respondent(s) : C.S.C.

Reserved
AFR

Court No. – 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Indrajeet Shukla, J.)

1. Heard Mr. Sanjeev Kumar Saxena, learned counsel for the petitioner and Mr. Girjesh Kumar Tripathi, learned Additional Chief Standing Counsel for the State respondents.

2. Feeling aggrieved by the order dated 15.12.2025 passed by Sub-Divisional Officer, Hamirpur, the petitioner has approached this Court challenging the denial of refund of bid amount. The petitioner has further prayed for issuance of writ of mandamus commanding the third respondent i.e. Sub-Divisional Officer Sadar, District Hamirpur, to refund the bid amount.

3. Undisputed facts giving rise to the present writ petition are that the petitioner's society participated in auction proceedings held on 29.11.2024 in pursuance of Auction notice dated 13.11.2024 for fishing

rights qua Sector 9 of Yamuna River flowing in Tehsil Sadar, District Hamirpur. The petitioner emerged as the highest bidder and deposited the bid amount accordingly, but the lease rights could not fructify into a formal lease agreement by giving it the shape of a formal agreement as warranted by paragraph no. 8 of Government Order dated 10th January, 2019, which requires that, if the allotment of fishing rights is as per rule and procedure prescribed, the District Magistrate shall accord his approval. The advertisement dated 13.11.2024 published for fishing rights of Sector 9 of Yamuna River was the subject matter of challenge in appeal, bearing no. 168 of 2025 under Section 207 of U.P. Revenue Code, before Commissioner Chitrakoot, Banda Division. The said appeal was allowed, and the auction notice dated 13.11.2024 was quashed. Thereafter, the order dated 13.11.2024 passed by the Commissioner was put to challenge by means of Writ Petition No. 10497 of 2025, and this Court stayed the operation and implementation of the order dated 21.03.2025 passed by the Commissioner. The fishing rights/lease allotted to the petitioner could not be settled in favour of the petitioner in the absence of approval by the District Magistrate, Hamirpur, owing to litigation before the Commissioner and thereafter before this Court.

4. Petitioner filed Writ Petition No. 23860 of 2025 before this Hon'ble Court seeking refund of the bid amount on the ground that despite being declared the highest bidder, he was prevented from lawfully exercising fishing rights owing to the absence of statutory approval by the District Magistrate. The said writ petition was decided vide order dated 06.08.2025 requiring the third respondent to take a decision on the representation of petitioner.

5. In compliance of the order dated 06.08.2025 passed in Writ Petition No. 23860 of 2025, the third respondent passed the order impugned dated 15.12.2025 declining refund of the bid amount only on the ground that once the petitioner was declared the highest bidder, he started enjoying fishing rights without waiting for a formal approval by the District Magistrate.

6. While challenging the impugned order, the learned counsel for the petitioner contended that once the order passed by Commissioner quashing the auction notice/advertisement dated 13.11.2024 was stayed, it was incumbent upon the second respondent/District Magistrate to approve the lease rights in favour of petitioner but on one hand, the petitioner was not permitted to fish and on the other hand, his bid amount has wrongly been withheld by the State authorities which is nothing but an unjust enrichment of the State at the expense of the petitioner.

7. The further submission advanced by learned counsel for the petitioner is that there is no question of fishing in the absence of approval accorded by the District Magistrate as warranted in terms of Government Order dated 10th January, 2019. The petitioner, having not done fishing, is entitled to his bid amount.

8. On the other hand, learned counsel for the State submitted that an inquiry was conducted to find out whether the petitioner had enjoyed the fishing rights or not. It is evident from the report submitted by the Chief Executive Officer, Department of Fisheries, Hamirpur that on the strength of receipt of the highest bid, the petitioner continued fishing throughout the period, based on tradition. Even the lease was sublet by Secretary of the petitioner's society, and those sublessees were found fishing in the river in question on 11.04.2025; as such, the petitioner has enjoyed the fishing rights. The said letter as submitted by the Chief Executive Officer, Department of Fisheries, Hamirpur addressed to the District Magistrate, Hamirpur, is on record in the shape of Annexure 5 to the counter affidavit. Further submission of learned counsel for the State is that in District Hamirpur, fishing in pursuance of receipt of highest bid is a tradition. Thus, having enjoyed fishing rights, it does not lie in the mouth of the petitioner to ask for a refund of the bid amount.

9. Having heard learned counsel for the parties, it comes out that despite being the highest bidder, the lease in favour of the petitioner for fishing rights was never approved, which is a condition precedent for enjoying fishing rights in terms of paragraph no. 8 of Government Order dated 10th January, 2019, which reads as under :

> **"यदि जिलाधिकारी का समाधान हो जाता है कि मत्स्य आखेट क्षेत्र को आवंटित करने का निर्णय नियमों के उपबन्धों के अनुसार किया गया है तो जिलाधिकारी पट्टा/नीलामी की की स्वीकृति बिन्दु संख्या *12* में निर्धारित शर्तों के अधीन प्रदान कर देगें।"**

10. We fail to understand how in the absence of any approval as required by the Government Order dated 10th January, 2019, the authorities permitted the petitioner to enjoy fishing rights, particularly in the absence of the requisite approval and formal lease deed. The fishing done, if any, at the end of petitioner was nothing less than an offence of theft of state property. If fishing without lease rights were carried out (but same requires stricter proof) but admittedly no report of theft was ever lodged by the authorities, it is an indication of either connivance of authorities with the petitioner or their lackadaisical attitude; and, in both eventualities the responsibility of erring officials was required to be fixed.

11. The Approval contemplated under paragraph 8 of the Government Order dated 10 January 2019 is not an empty formality but constitutes a condition precedent for the accrual of any enforceable right in favour of the highest bidder. Unless such approval is granted and the lease is formally executed, no legal right can be said to have vested in favour of the petitioner.

12. Once the Government Order requires execution of lease in a particular manner and mandates permission for fishing rights, the same is required to be done in that manner only.

13. The Government order, admittedly holding the field governing fishing lease, not only creates a right, but simultaneously prescribes the authority competent to exercise such power and the manner in which it is to be exercised. The prescribed procedure, therefore, becomes an indispensable condition precedent to the validity of the proceedings. Any deviation therefrom strikes at the very root of jurisdiction and renders the consequential action legally unsustainable.

14. It is trite law that where the law prescribes a procedure for doing a thing, the thing has to be done in that manner alone and other ways are necessarily forbidden. This principle has been echoing the horizon of jurisprudence since a very long time, not only in this country but virtually the world over wherever there is an establishment managed under a Constitution with an independent judiciary. As far back as in the year 1936 in the case of **Nazir Ahmad Vs. King Emperor**[1]; the Privy Council held that a thing required to be done in a particular way has to be done in that way or not at all. This principle consistently has been accepted and adopted by the Indian Courts including the Supreme Court in a catena of decisions, such as, **State of U.P. Vs. Singara Singh,**[2] and **Prabha Shanker Dubey Vs. State of M.P.**[3]

15. A larger Bench of the Supreme Court comprising of three Hon'ble Judges, in the case of **Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. & others,**[4] has held that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner. In this case, the Supreme Court held:

> *"It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authority while acting under the said Act are only creator of Statute. They must act within the four-corners thereof."*

1 AIR 1936 Privy Council 253
2 AIR 1964 SC 358
3 (2004) 2 SCC page 56, Para 11
4 2003) 2 SCC 111

16. No prevailing administrative practice or local tradition can override mandatory requirements prescribed under the Government Order dated 10 January 2019.

17. Fishing in the absence of a lease by the petitioner, if at all, done, requires the State to take suitable recourse to law may be penal action or recovery of loss and damages permissible under the law.

18. Fishing in the absence of a lease, by the petitioner, if at all, done, is nothing less than an offence. No tradition can legitimize the same having no sanctity of law. The lease rights having not been crystallized as no approval by the District Magistrate was granted, the respondents do not have authority to withhold the bid amount.

19. In view of the foregoing reasons, the impugned order dated 15th December, 2025 passed by the Sub-Divisional Officer, Hamirpur, is unsustainable and is accordingly quashed. The writ petition is allowed. The respondent no. 3 is directed to refund the bid amount to the petitioner forthwith.

20. No order as to costs.

21. It is needless to mention that if fishing has been done by the petitioner without any authority of law and there is concrete evidence in this regard, the State is always at liberty to seek appropriate remedy prescribed by the law.

Order Date : 28.07.2026
Pratima

(Indrajeet Shukla,J.) **(J.J Munir,J.)**

Digitally signed by :-
PRATIMA AGRAHARI
High Court of Judicature at Allahabad