

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**WRIT PETITION NOs.35282 of 2014, 29396 of 2014 and
9389 of 2015**

WP No. 35282 of 2014

Between:

Kotiki Yedu Kondalu S/o. Lakshmi Narayana, Aged about 40 years,
Occu: Sarpanch, Viswanadhapuram Gram Panchayat,
R/o. Viswanadhapuram Village, Tipurantakam Mandal,
Prakasam District.

.. Petitioner

AND

The State of Andhra Pradesh, rep.by its Principal Secretary,
Panchayat Raj Department, Secretariat, Hyderabad and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 12.08.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : / No
Be allowed to see the Judgments ? :
 2. Whether the copies of judgment may be marked: Yes
to Law Reporters/Journals :
 3. Whether Their Lordship wish to see the fair : / No
Copy of the Judgment ? :

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

**+WRIT PETITION NOS.35282 of 2014, 29396 of 2014
and 9389 of 2015**

% 12-08-2015

W.P.No.35282 of 2014

#Kotiki Yedu Kondalu S/o. Lakshmi Narayana, Aged about 40 years,
Occu: Sarpanch, Viswanadhapuram Gram Panchayat,
R/o. Viswanadhapuram Village, Tipurantakam Mandal,
Prakasam District.

... Petitioner

Vs.

\$ The State of Andhra Pradesh, rep.by its Principal Secretary,
Panchayat Raj Department, Secretariat, Hyderabad and others.

.... Respondents

!Counsel for the petitioner : Sri I.Koti Reddy counsel for
petitioners in WP Nos.34282 and
29396 of 2014
Sri M.Brahma Reddi counsel for
Petitioner in WP No.9389 of 2015

Counsel for the : Govt.Pleader for Fisheries(AP)
Respondents : for respondent No.3,
Govt.Pleader for Panchayat Raj
for respondents 1, 4 and 5,
Govt.Pleader for Revenue(AP) for
Respondent No.2 in
W.P.No.35282 of 2014;

Govt.Pleader for Fisheries (AP for
Respondents 1 and 3,
Govt.Pleader for Panchayat Raj
(AP) for respondents 4 and 5,
Govt.Pleader for Revenue (AP) for
Respondent No.2,
Sri M.Brahma Reddy for
respondent No.6 in WP No.29396
of 2014;

Govt.Pleader for Fisheries (AP)
For respondents in W.P.No.
9389 of 2015.

<Gist :

>Head Note:

? Cases referred:

1. 2000 (5) ALD 24

HONOURABLE SRI JUSTICE P.NAVEEN RAO
W.P.Nos.35282 of 2014, 29396 of 2014 &
9389 of 2015

COMMON ORDER:

In all three writ petitions the issue for consideration is whether the Gram Panchayats of Kankanalapalli and Viswanadhapuram have the competence to lease fishing rights in the respective village tanks or the Fisheries Department is alone entitled to grant leasehold rights. In view of the same, all three writ petitions are disposed of by this common order.

2. Heard learned counsels for petitioners in respective cases, learned Government Pleader for Fisheries and learned standing counsel for Gram Panchayats and with the consent of the learned counsels of respective parties, writ petitions are disposed of by this common order.

3. In W.P.No.29396 of 2014, petitioner is the Sarpanch of Kankanalapalli Gram Panchayat. Petitioner seeks declaration that respondents 2 to 4 erred in not acting on the representation made by the petitioner on 02.09.2014 and such action violates orders in G.O.Ms.No.343, P.R., dated 10.04.1978 and seeks consequential direction to respondents 2 to 4 to take appropriate steps for allotting tanks in Sy.Nos.637 and 546 in favour of the Gram Panchayat of the village.

4. In W.P.No.35282 of 2014, petitioner is the Sarpanch of Viswanathapuram Gram Panchayat. Petitioner seeks declaration on inaction of the respondents 2 to 4 in not taking action on the representation made by the petitioner on 20.01.2014 for allotment of minor irrigation tank situated in Sy.No.383/1 of Tripuranthakam village as contrary to G.O.Ms.No.42 Irrigation and Command Area Development (CAD IV) Department, dated 31.03.2003 and G.O.Ms.No.343, P.R., dated 10.04.1978.

5. W.P.No.9389 of 2015 is filed by Sri Bala Tripurasundari Fishermen Cooperative Society seeking declaration that not granting leasehold rights of fishing in all tanks situated in the area of operation of petitioner society as illegal and seeks consequential direction to grant leasehold rights of fishing to the petitioner society in all the tanks situated within the jurisdiction of the petitioner society.

6. In W.P.No.29396 of 2014 by order dated 14.10.2014 this Court directed that pending consideration of the petitioner's representation dated 02.09.2014 *status*

quo obtaining as on the said date should be maintained in all respects. This order is extended from time to time.

7. The petitioner in W.P.No.9389 of 2015 filed petition to implead as 6th respondent in W.P.No.29396 of 2014. By order dated 12.02.2015, the said petition is ordered and the petitioner society has come on record as 6th respondent. Said 6th respondent filed W.V.M.P.No.550 of 2015 praying to vacate the interim order.

8. Learned counsel for the petitioner in W.P.No.9389 of 2015 submits that the petitioner is a registered society established on 05.01.1988 with head quarters at Viswanadhapuram village in Tripuranthakam Mandal. Initially the membership of the society was 28, but now it is increased to 121. The society members belonging to 10 villages including two villages, whose Sarpanchas filed the above two writ petitions.

9. Learned counsel submits that Fishermen society is entitled for grant of leasehold rights for carrying on fishing operations in the area of operation of society as per the lease price fixed by the Fisheries Department. According to learned counsel, for last 30 years, the Fisheries Department granted lease to the society for these two village tanks also along with other village tanks within the jurisdiction of the society on payment of lease amount prescribed by the Fisheries Department. However, on account of interim order passed by this Court in W.P.no.29396 of 2014, the fishing rights are not granted in four villages and on account of delay in granting fishing rights grave prejudice is caused to the members of the petitioner society. Learned counsel fairly submits that petitioner society is not concerned with the controversy as to who has control over the two tanks concerning these two villages i.e., whether the Fisheries Department/Irrigation Department or Gram Panchayat. Either way they are entitled to leasehold rights in respective tanks. Their grievance is only on account of pendency of the writ petition, there is delay in granting fishing rights affecting their right to livelihood.

10. Learned counsel Sri Koti Reddy submits that the subject tanks cannot be even classified as minor irrigation tanks; they are small tanks having small ayacut and small water spread area and these tanks belong to the Grampanchayats. When once these tanks belong to the Gram Panchayats, Gram Panchayats alone have right to conduct auction and to grant leasehold rights for fishing operations in

respective tanks and irrigation department or fisheries department have no say in such matters. Learned counsel further contends that insofar as Kankanalapalli village is concerned, the total ayacut is Ac. 66.60 cents and extent of the tank is Ac.79.19 cents. This is clear from the certificate issued by the Tahsildar, Tripuranthakam Mandal on 20.01.2014. He, therefore, submits that Ayacut of tank of this village is less than 100 acres and, therefore, the tank vests in the Gram Panchayat of the village. Only where the tank is classified as minor irrigation tank and the Ayacut is beyond 100 acres, it is permissible for the Government to vests the said tank to the control of irrigation department and such a case, leasehold rights to grant fishing operations in the concerned tank may vest in the Fisheries Department and not otherwise. Learned counsel further submits that G.O.No.288 dated 27.06.1983, relied upon by the Government has no application to the facts of this case. The said G.O., only deals with the maintenance of all minor irrigation sources, where Ayacut is above 100 acres to be vested in the Irrigation Department and seeks to transfer the same from the control of Panchayat Raj Department. The G.O., does not talk about entrustment of leasing of fishing rights to Fisheries Department. The impact of designation of a village tank as minor irrigation tank having more than 100 acres of Ayacut and covered by the G.O.Ms.No.288, Irrigation (Irrigation-VI) Department, dated 27.06.1983 is application of the provisions of A.P. Farmers Management of Irrigation Systems (Delineation and Formation of Water Users Association) Rules 2003. The Rules envisage constitution of water users association to regulate the use of water for irrigation purposes in a planned and systematic manner so that there is no misuse of water by any individual farmer and all the farmers within Ayacut area receive proportionate supply of water to irrigate their lands. Learned counsel further submits that insofar as Vishwanadhapuram village is concerned, as per the Certificate furnished by the Tahsildar, Ayacut is 86.24 acres.

11. Learned Government Pleader submits that in accordance with the notification issued on 17.10.2007, published in the gazette, two tanks of the respective villages are notified as minor irrigation tanks and the area of water spread is shown as more than 100 acres. He, therefore, submits that both the tanks are vested in the irrigation department. Once the tanks belong to irrigation Department, Fisheries Department is alone competent to grant leasehold rights for carrying on fishing operations. Learned Government Pleader further submits that out of the revenue generated by granting lease, 20% alone goes to the Fisheries Department, whereas 50% of the amount goes to Water Users Association and 30% to the Gram Panchayat. He therefore submits that Gram Panchayat any way

gets its own share in the proceeds of the auction to carry on fishing operations in the respective tanks.

12. The point for consideration in these writ petitions is whether the power to grant lease of fishing rights in two villages concerned in these three writ petitions vests in the Fisheries Department or in the respective Gram Panchayats.

13. To appreciate rival contentions, it is necessary to analyze the relevant provisions of Panchayat Raj Act. Sections 56, 80 and 81 of the Act, read as under:

“56. Maintenance of irrigation works, execution of kudimaramat etc. :

(1) (a) Subject to such conditions and control as may be prescribed, the government may transfer to any gram panchayat the protection and maintenance of any village irrigation work, the regulation of turns of irrigation, or of distribution of water from any such irrigation work to the field depending on it.

(b) Subject to such restriction and control as may be prescribed, the fishery rights in minor irrigation tanks and the right to auction weeds and reeds in such tanks and the rights to plant trees on the bunds of such tanks and enjoy the usufruct thereof shall vest in the gram panchayat.

(2) The gram panchayat shall have power, subject to such restrictions and control as may be prescribed, to execute kudimaramat in respect of any irrigation source in the village and to levy such fee and on such basis for the purposes thereof as may be prescribed :

Provided that nothing in this section shall be deemed to relieve the village community or any of its members of its or his liability under the Andhra Pradesh (A.A.) Compulsory Labour Act, 1958, or any other law similar thereto for the time being in force in respect of any irrigation source in the village, in case the gram panchayat makes default in executing the kudimaramat in respect of that irrigation source.

80. Vesting of water works in gram panchayats :

(1) All public water-courses, springs, reservoirs, tanks, cisterns, fountains, wells, stand-pipes and other water works (including those used by the public to such an extent as to give a prescriptive right to their use) whether existing at the commencement of this Act or afterwards made, laid or erected and whether made, laid or erected at the cost of the gram panchayat or otherwise for the use or benefit of the public and also any adjacent land, not being private property, appertaining thereto shall vest in the gram panchayat and be subject to its control; Provided that nothing in this sub-section shall apply to any work which is, or is connected with, a work of irrigation or to any adjacent land appertaining to any such work.

(2) Subject to such restrictions and control as may be prescribed, the gram panchayat shall have the fishery rights in any water work vested in it under sub-section (1), the right to supply water from any such work for raising seed beds on payment of the prescribed fee, and the right to use the adjacent land appertaining thereto for planting of trees and enjoying the usufruct thereof or for like purpose.

(3) The Government may, by notification define or limit such control or may, assume the administration of any public source of water supply and public land adjacent and appertaining thereto after consulting, the gram panchayat and giving due regard to its objections, if any. 81. Setting apart of public tanks etc., for certain purposes :

(1) (a) The gram panchayat may, in the interests of public health, regulate or prohibit the washing of animals or of clothes or other articles or fishing in any public spring, tank or well or in any public spring, tank or well or in any public watercourse or part thereof and

may set apart any such place for drinking or for bathing or for washing animals or clothes or for any other specified purpose.

(b) The powers conferred by clause (a) may, in the case of any private spring, tank, well, or water-course, be exercised by the gram panchayat, with the consent of the owner of such place.

(c) The gram panchayat may, in the interests of public health, regulate or prohibit the washing of animals or of clothes or of other articles, in any private spring, tank, well or water-course from which the public have a right to take water for drinking purposes.

(2) The executive authority on receipt of a certificate from any health or medical officer in the service of the Government, the gram panchayat or the Mandal Parishad or Zilla Parishad stating that the water in any well, tank-spring or other sources of water-supply to which the public have access in the village, is likely to endanger or cause the spread of any dangerous disease, shall by public notice, prohibit the use of such water, such notice shall be served by affixing a copy of it near the source of water-supply and by beat of drum stating the number of days during which such prohibition shall last. The executive authority may modify the notice or extend the period of operation thereof without the production of a further certificate."

14. The principal objective to bring out Panchayat Raj Act is to strengthen and revitalize Panchayat Raj bodies. It intends to ensure that the Gram Panchayats are effectively constituted and are provided financial resources so that they serve the residents of the villages effectively. All issues relevant to the village primarily vests in the gram panchayat of the village. It is a local self Government. The provisions of Sections 56, 80 and 81 have to be seen in the context of the object with which 1994 enactment is made.

15. As envisaged in Sections 56, 80 and 81 regulation of maintenance of irrigation works, tanks, execution of kudimaram etc., right to auction for fishing, weeds and reeds, right to plant trees on the bunds of village tank and enjoy the usufruct thereof and incidental thereto vests in the gram panchayat. Section 80(3) empowers the Government to divest the power of control of Gram Panchayat or define the extent of control thereof or can directly assume the administration of any public source of water. However, Section 80(3) presupposes consultation with the Gram Panchayat and giving due regard to its objections. This provision is an exception to normal rule and may be exercised in exceptional circumstances and not as a matter of course.

16. It appears from material on record, there was no exercise undertaken to determine the status of tanks of the petitioners' villages as neither minor irrigation tanks nor Gram Panchayats were consulted before its power to auction fishing rights was divested by the Government. To classify the tank as a minor irrigation tank, the requirement prescribed by the Government is that the tank should have the capacity to irrigate minimum of 100 Acres. No material is placed on record to show that detailed exercise was carried on before the tanks of petitioners' villages

were classified as minor irrigation tanks. As noticed herein above, there has been variation in specifying the extents of ayacut covered by these tanks, which raises a genuine doubt as to the exact extent of the ayacut covered by these tanks. The certificates issued by jurisdictional Tahsildar disclose that the ayacut of both village tanks is less than 100 acres.

17. Though reliance is placed on the gazette notification dated 17.10.2007 to show that these particular tanks are treated as minor irrigation tanks, no proceedings issued by the competent authority identifying the village tanks as minor irrigation tanks is placed on record. Thus, the contention of the learned counsel for the petitioners that the control of the tanks from the Gram Panchayats of petitioners' villages are not divested cannot easily be brushed aside.

18. It is one thing to say that the tanks are classified as minor irrigation tanks, but as per Sections 56, 80 and 81, the tanks of a village vest in the gram panchayat, unless a decision is taken by the Government in terms of Section 80(3). These provisions do not make a distinction based on ayacut of the tank. Tanks in issue are village tanks, whose ayacut extent is not properly determined. Assuming Government's stand is correct, at the most these tanks are minor irrigation tanks and it is nobody's case that it is a major irrigation tanks. In terms of Section 56(2) fishing rights vests in the gram panchayat. Therefore, the Government takes a decision in accordance with Section 80(3) of the Act, no fetters can be imposed on the village gram panchayat. Unless such power is exercised and an order is passed in accordance there with, after following due procedure as envisaged, Gram Panchayat can not be divested of power to auction lease of fishing rights.

19. It is pertinent to note that the proceeds of fishing rights, weeds and reeds, right to plant trees on the bunds etc., are major sources of income to the gram panchayat and when one of such major source of income is sought to be withdrawn, it is necessary to put the gram panchayat on notice, consider its objections and take a decision.

20. I am fortified in my view by a Division Bench decision of this Court in W.A. Nos.997 and 1005 of 1997, dated 01.10.1997. The Division Bench was pleased to hold as under :

“As already seen under Section 56(1)(b), the fishery rights in minor irrigation tanks together with the right to auction weeds and reeds in such tanks and the right to plant trees on the bunds and enjoy the usufruct thereof shall rest in the Gram Panchayat

subject to such restriction and control as may be prescribed as such tanks are vested in the Gram Panchayat. Gram Panchayat has the right to enjoy the fishery rights subject to such 'restrictions and control' as may be imposed by the government. The words restriction and control as employed in the said section refer to the enjoyment of fishery rights by the Gram Panchayat. Control cannot mean interference with the right of the Gram Panchayat in which the tank is vested for all purposes. Only regulation or control can be had by the Government with regard to the manner of exercise of the right in the tank or enjoyment of the said right by the Gram Panchayat. Therefore, we are unable to accept the contention of the writ petitioner that the Gram Panchayat has no right to auction the fishery rights in the tank in question and the first respondent-Assistant Director of Fisheries is entitled to lease out the tank to the petitioner Society."

21. The said decision is followed in the case of "**Ipur Gram Panchayat, Guntur District v. Government of Andhra Pradesh**" reported in 2000 (5) A.L.D. 24. It is held as under :

"In the light of Section 56(1) of the Panchayat Raj Act and judgments of this Court referred to, if any contra view is taken, it is nothing but amounts to defeating the very intention of the Legislature."

22. These two decisions are considered by this Court in W.P.No.28812 of 2008, wherein identical issue has fallen for consideration. No other contra decision is placed before this court.

23. Learned Government Pleader placed reliance on the District Gazette Notification issued on 17.10.2010. The said notification was issued in exercise of power vested in the District Collector by Rule 3(1) of A.P. Farmers Management of Irrigation Systems (Delineation and Formation of Water Users Association) Rules, 2003 which provision is relatable to Section 3(1) of A.P. Farmers Management of Irrigation System Act, 1997. The object of this enactment is to involve farmers in the management of irrigation systems, so that efficient and equitable supply and distribution of water can be ensured and optimum utilisation of available water resources can be achieved which would result in improvement in the agricultural production. Thus, the identification of village tanks and formation of Water Users Association, the delineation of area of jurisdiction of water users association are for enforcement of the said objective and is nothing to do with the management and control of village tanks and exercise of fishing rights. In view of mandate of Sections 56, 80 and 81 of A.P. Panchayat Raj Act, 1994 unless control of the village tank is divested in accordance with Section 80(3) of the Act from the gram panchayat, the proceeds of the tank cannot be appropriated to the Water Users Association.

24. Thus, Gram Panchayats of Kankanalapalli and Viswanadhapuram villages

are entitled to grant lease of fishing rights in the respective village tanks and the Fisheries Department has no authority to interfere with the powers of the respective Gram Panchayats in this regard. W.P.Nos.35282 and 29396 of 2014 are accordingly disposed of. In view of the final orders passed in W.P.No.29396 of 2014, the W.V.M.P.No.550 of 2015 is dismissed. W.P. No.9389 of 2015 is disposed of leaving it open to the petitioner society to seek for grant of lease hold rights of fishing in the Kankanalapalli and Viswanadhapuram village tanks from the respective Gram Panchayats. As stated by the respondent-Fisheries Department in paras 6 and 7 of the counter-affidavit filed in this writ petition, petitioner society requested for grant of fishing rights in only four tanks i.e., Kankanalapalli, Viswanadhapuram, Medipi and Pamulavagu Check Dam and though the issue was processed, but due to pendency of W.P.Nos.29396 of 2014 and 35282 of 2014, fishing rights were not granted in all the four villages. Since the above writ petitions are now disposed of, there is no bar for the Fisheries Department to grant fishing rights in Medepi and Kankanalapalli Check Dam of Kankanalapalli village if petitioner's society is otherwise entitled to. The Kankanalapalli and Viswanadhapuram village Gram Panchayats shall conduct auction to grant lease of fishing rights as expeditiously as possible, preferably within four weeks from the date of receipt of the order by following the norms prescribed for granting fishing rights by the Gram Panchayats.

Miscellaneous petitions if any pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 12.08.2015

Note: Issue C.C. in (5) days.

B/o.

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HONOURABLE SRI JUSTICE P.NAVEEN RAO

**W.P.Nos.35282 of 2014, 29396 of 2014 &
9389 of 2015**

Date: 12-08-2015

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