

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.11770 of 2016

and

WMP.No.10168 of 2016

Libert

... Petitioner

Vs.

1. The Commissioner of Fisheries/
the Appellate Authority
O/o.The Commissioner of Fisheries
Teynampet, Chennai - 6.
 - 2 The Joint Director of Fisheries/
Adjudicating Authority (Region)
Tuticorin.
 - 3 The Assistant Director of Fisheries/
The Competent Authority
(Extension and Training)
Radhapuram, Tirunelveli District.
 - 4 The Assistant Director of Fisheries
Chinna Muttam
Kanniyakumari District.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the order passed by the 2nd respondent herein in Na.Ka.No. 146/A3/2016 dated 29.02.2016 and confirming the same by the order passed by the 1st respondent in Case No.01/2016 dated 16.03.2016 and quash the same as null and void.

For Petitioner : Mr.P.Subramanian

For Respondents : Mr.P.Sanjay Gandhi
Additional Government Pleader

O R D E R

By consent, the writ petition itself is taken up for final disposal.

2. The petitioner would state that he is a poor and illiterate fisherman eking out his livelihood by carrying out fishing by catching fishes by using the permitted fishing nets and also by permitted practice and customs. So far, he has not been visited with any compliant whatsoever. The petitioner would further state that on 09.12.2015 at about 2.30 p.m, when he went out to purchase fishes for his personal and domestic use in his country boat (Vallam) bearing registration No.IND-TN-13-Mo 478, suddenly an official attached to the office of the fourth respondent took photograph of the petitioner and his country boat and went away. The petitioner was served with summons under Section 5(3) of the Tamil Nadu Marine Fishing Regulations Act, 1983, calling upon him for enquiry on 08.02.2016 at 11.00 a.m alleging that the petitioner has committed the offence by using ''Surukku Madi'' nets for fishing and the same is in violation of Sections 5(1) A, 1(D) and 2(B) of the Tamil Nadu Marine Fishing Regulations Act, 1983 read with Rule 6(12) of the Rules. The petitioner could not appear on the original date of hearing on 08.02.2016. However, on the subsequent date of hearing on 22.02.2016, the petitioner appeared before the second respondent and submitted his explanation that he did not commit the said offence and prays for acquittal from the charge. However, the second respondent without considering the submissions made by the petitioner and in violation of the above cited statutory regulations passed the impugned order, imposing a penalty of Rs.10,000/- and also cutting kerosene subsidy for a period of six months. The petitioner aggrieved by the order of the original authority dated 29.02.2016 preferred an appeal before the first respondent, however, the first respondent vide order dated 16.03.2016 dismissed the same. Challenging the legality of the said order, the petitioner filed this Writ Petition.

3. The learned counsel for the petitioner has drawn the attention of this Court to the provisions of the Tamil Nadu Marine Fishing Regulations Act, 1983, and submitted that even for the sake of the argument, if the petitioner has used the banned net, penalty of Rs.5,000/- can be imposed under clause 18 (c) of the Act, whereas the penalty imposed was Rs.10,000/-. It is further submitted by the learned counsel for the petitioner that the principles of natural justice have not been adhered to at all for the reasons copy of the alleged

photographs have not been furnished and prayed for necessary orders.

4. Mr.P.Sanjay Gandhi, the learned Additional Government Pleader, who accepts notice on behalf of the respondents submitted that the original authority scrupulously followed the relevant provisions and rightly imposed the penalty and cut the kerosene subsidy and therefore, prays for dismissal of the Writ Petition.

5. This Court heard the submissions of Mr.P.Subramanian, learned counsel appearing for the petitioner and Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents.

6. It is relevant to extract Section 18 of the Tamil Nadu Marine Fishing Regulations Act, 1983, which reads as under:-

Penalty:

18. (1) The adjudicating officer shall, after the enquiry under Section 17, decide whether any person has [used any fishing vessel without buoy, first aid box, equipment for communication and life saving and fire fighting appliances in conformity with the rules made under the Act or has] used, or caused or allowed to be used, any fishing vessel in contravention of any of the provisions of this Act, or of any notification issued or of any rule made thereunder or any of the conditions of the licence granted under this Act and any such person, on being found guilty by the adjudicating officer, shall be liable to such penalty not exceeding -

(a) five thousand rupees, if the value of fish involved is one thousand rupees or less;

(b) five times the value of the fish, if the value of the fish involved is more than one thousand rupees; or

(c) five thousand rupees, in any other case, being a case not involving any fish; as may be adjudged by the adjudicating officer.

(2) In addition to any penalty that may be imposed under sub-section (1), the adjudicating officer may direct that -

(a) the certificate of registration of the fishing vessel which [does not carry buoy, first aid box, equipment for communication and life saving and fire fighting appliances or which] has been used, or caused or allowed to be used, in the manner referred to in sub-section (1) or the licence, any condition of

which has been contravened, shall be -

(i) cancelled or revoked, as the case may be; or

(ii) suspended for such period as the adjudicating officer deems fit; or

(b) the fishing vessel or fish that may have been impounded or seized, as the case may be, under Section 15 or the proceeds of the fish disposed of, and deposited in the office of the adjudicating officer, under sub-section (2) of Section 16 shall be forfeited to the Government:

Provided that no fishing vessel shall be forfeited under clause (b), if the adjudicating officer after hearing the owner of such fishing vessel or any person claiming any right thereto is satisfied that the owner or such person had exercised due care for the prevention of the commission of such offence."

7. A perusal of the impugned order would disclose that reliance has been placed upon the photographs, the copy of which has not been furnished to the petitioner. That apart, the penalty of Rs.10,000/- has been imposed, whereas the statutory limit is Rs.5,000/- as per Section 18 of the Tamil Nadu Marine Fishing Regulations Act, 1983. In the light of the above, the impugned order is warranting interference and the matter is to be remanded to the second respondent for further adjudication.

8. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the second respondent for fresh adjudication and consideration and the said official is directed to give copy of the photograph taken by one of the officials to the petitioner and the petitioner is at liberty to submit his explanation to the summons/ charge sheet dated 22.02.2016, within a period of two weeks and the second respondent on receipt of the same is directed to consider the said explanation on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner and conclude the enquiry within a period of eight weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

mra

To

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the Appellate Authority
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+2 ccs to Mr.P.Subramanian Advocate sr.30993
+1 cc to the Government pleader sr.30928

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