

**HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**Writ Petition No.13601 of 2016**

**ORDER:**

Proceedings, dated 14-04-2016 of the District Panchayat Officer, the 2<sup>nd</sup> Respondent herein, are challenged as contrary to the G.O.Ms.No.776, dated 31-12-1990, apart being contrary to the Article 243G of the Constitution of India.

It is the allegation of the petitioner that in the process of issuing of proceedings pursuant to the orders of this Court, the 2<sup>nd</sup> Respondent had virtually dictating terms to Gram Panchayat, which the Gram Panchayat required to take, by directing the auction to be conducted with respect to fishing rights in the Abbiraju tank, which has been made over to the Gram Panchayat for exploitation of the fishing wealth. It is the contention of the petitioner that the Gram Panchayat is yet to take a decision how and in what manner the Gram Panchayat would exploit the Abbiraju tank, which has been leased out to the petitioner. In that view of the matter, the petitioner prays for setting aside the proceedings, dated 14-04-2016 to the extent of directing the Gram Panchayat to conduct open auction.

Heard the learned Government Pleader for Fisheries and also the learned Government Pleader for Panchayat Raj.

It is not in dispute that Abbiraju tank is approximately

covered over an extent of Ac.300.00. In the normal circumstances, it is the Irrigation Department, which has right to exploit the fishing wealth of any tank, which is more than Ac.100.00. For whatever reason, the Irrigation Department and Fisheries Department had decided to give preference to the Gram Panchayat in terms of G.O.Ms.No.776, dated 31-12-1990. Accordingly, fishing rights have been made over to the Gram Panchayat, Gottimukkala.

Now, the objection of the petitioner is only with respect to a direction given by the District Panchayat Officer to treat the lease amount of Rs.6,873/- as a basic upset price and conduct open auction for the fasli 1425 i.e., 01-07-2015 to 30-06-2016. The question before this Court is whether such a direction is not in consonance with G.O.Ms.No.776, dated 31-12-1990. On a careful reading of G.O.Ms.No.776, dated 31-12-1990, it is evident that the utmost importance has been given to the Gram Panchayat. The guidelines of exploitation of the fishing wealth are set out in G.O.Ms.No.776, dated 31-12-1990.

Para –3 of the G.O.Ms.No.776, dated 31-12-1990 deals with the procedure regarding tanks vested in the Gram Panchayat under Gram Panchayat Act, 1964, which reads as follows :

“3. Procedure regarding tanks vested in the Gram Panchayat under Gram Panchayat Act, 1964.

All the sources which stand vested in the Gram Panchayat under the Gram Panchayat Act, 1964 shall continue to be with the respective Gram Panchayats for the purpose of dispose of fishery rights.

The following procedure shall be adopted in leaving out the sources.

a) The lease period should be for a period of three years with an optional clause for extension for the further period of two years in the event of the Fishermen Cooperative Society making such a request provided they satisfy the Gram Panchayats regarding rental conditions as may be prescribed from time to time. First preference should be given to genuine Fishermen Cooperative Societies in consultation with Fisheries Department.

However the Gram Panchayat shall not offer the following categories of sources to the Fishermen Cooperative Societies before proceeding with auction.

(i) Tank earmarked by the District Collector for drinking water purpose and for washermen.

(ii) Non-ayacut tanks fed by either natural sources or by man made sources and

(iii) Other Non-ayacut sources.

b) Where the source is not excluded from the general procedure of offering it first to a Fishermen Cooperative Society and where either such society is absent or unwilling to exploit the source, the Gram Panchayat may itself may disposal it of by public auction. In case, rental is not remunerative, departmental exploitation may be taken up by the Gram Panchayats.

c) In respect of tanks excluded from the procedure of offering to the Fishermen Cooperative Society, the Gram Panchayat concerned can straight away put them to auction after following the procedure laid down for fixing the upset price. However, tanks earmarked by district collector as drinking water sources and washermen tanks shall not be exploited for the fishery wealth.”

A conjoint reading of para –2 and para –3, which is extracted above, makes it clear that though the rights of fishing have been vested with the Gram Panchayat, the method and manner of exploitation of the fishing wealth by the Gram Panchayat also has been specified. The question of Gram Panchayat itself undertaking exploitation of the fish wealth would arise only when the Gram Panchayat is unable to

conduct a public auction and fail to get a suitable person/agency to exploit the fishing wealth. The upset price, which has been fixed by the District Panchayat Officer, is only an indicative price based on the amount which was fetched in the previous year. In that view of the matter, the observation of the District Panchayat Officer to the extent that the Gram Panchayat to conduct public auction notifying the basic upset price as Rs.6,873/- cannot be found fault and it cannot be said to be in violation of the G.O.Ms.No.776, dated 31-12-1990. What all the District Panchayat Officer has communicated in the impugned communication is making more specific of what is contained in para -3 of the G.O.Ms.No.776, dated 31-12-1990, in particular clauses b) and c) of para -3 of the G.O.Ms.No.776, dated 31-12-1990.

In that view of the matter, the Writ Petition is disposed of directing the petitioner to abide strictly by the procedure prescribed in G.O.Ms.No.776, dated 31-12-1990 for exploitation of the fishing wealth through public auction, failing which only the method of exploitation by the Gram Panchayat on its own shall be undertaken. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the writ petition shall stand closed.

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**CHALLA KODANDA RAM, J**

Dated: 22.04.2016.

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