

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

Writ Appeal No.812 of 2016

JUDGMENT: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.M.P.No.28418 of 2016 in W.P.No.23084 of 2016 dated 10.08.2016.

The respondent-writ petitioner is the Gram Panchayat. They had earlier filed W.P.No.13800 of 2016. By way of W.P.M.P.No.17231 of 2016 in W.P.No.13800 of 2016, they sought an interim order to the 3rd respondent to lease out fishing rights of Pedda Cheruvu and Chinna Cheruvu in their favour duly receiving lease amount as per the letter of the Commissioner of Fisheries dated 14.02.2016. By the interlocutory order dated 25.04.2016, the Learned Single Judge, taking note of the submission of the Learned Government Pleader that fishing rights should be given to the Gram Panchayat or the eligible persons strictly following the procedure contemplated in G.O.Ms.No.776 dated 31.12.1990, directed the respondents to follow the procedure and priority notified in G.O.Ms.No.776 dated 31.12.1990 in exploiting the fishing wealth. Three days after this interim order was passed on 25.04.2016, the respondent-writ petitioner appears to have paid a sum of Rs.17,716/- on 28.04.2016. It is not even the case of the respondent-writ petitioner that the 3rd respondent had, in terms of the interim order in WPMP No.17231 of 2016 in WP No.13800 of 2016 dated 25.04.2016, granted them fishing rights following the procedure and priority notified in G.O.Ms.No.776 dated

31.12.1990. Their case, for seeking police protection by filing W.P.No.23084 of 2016, is based solely on the fact that they had made payment on 28.04.2016. By the interim order under appeal, the Learned Single Judge, having noted that the petitioner had the interim order in his favour on 25.04.2016, and he had paid the lease amount on 28.04.2016, granted interim directions as prayed for since Section 139 of the A.P. Panchayat Raj Act, 1994 ("the Act" for short) imposed an obligation on the police officer to aid the petitioner in discharge of its functions.

Learned Government Pleader for Home would contend, not without justification, that, in the absence of any order passed by the authorities concerned, pursuant to the interim order passed by this Court in W.P.M.P.No.17231 of 2016 in W.P.No.13800 of 2016 dated 25.04.2016, the respondent-writ petitioner is not entitled for grant of fishing rights and to police aid; and their right to seek police aid under Section 139 of the Act is only if there was a lawful order in their favour which necessitated implementation.

Sri A.Chandraiah, Learned Counsel appearing on behalf of the respondent-writ petitioner, would put forth his submissions on merits contending that, while the respondent-writ petitioner is entitled as of right for grant of fishing rights by virtue of G.O.Ms.No.48 dated 20.02.2016, the appellants herein sought to favour the unofficial respondents and to deprive the gram panchayat of its fishing rights.

In the light of the rival submissions, it is necessary for us to briefly consider the scope of Section 139 of the Act. The said provision requires every police officer, in whose jurisdiction the village is situated, to be bound to assist the gram panchayat and

its officers and servants in the exercise of their lawful authority. The obligation of the police officer to render assistance, to the gram panchayat and to its officers, is only in cases where either the gram panchayat or its officers have exercised their authority lawfully.

As the failure of the police officers to provide assistance resulted in the respondent-writ petitioner invoking the jurisdiction of this Court, it is only if a finding had been recorded in the order under appeal that the police aid sought, by the respondent-writ petitioner, was in exercise of their lawful authority could an interim order have been passed directing the police to assist the respondent-writ petitioner to discharge their official duties to enable them to catch fish and to conduct auction of the fishing wealth. No such finding had been recorded in the order under appeal.

While the Government Pleader for Home would contend that a counter-affidavit was filed before the Learned Single Judge long before the interim order was passed, it is wholly unnecessary for us to delve on this aspect as, in any event, no finding has been recorded in the order under appeal that failure by the police, to aid the respondent-writ petitioner, was despite their having exercised their authority lawfully.

The order under appeal is set aside and W.P.M.P.No.28418 of 2016 in W.P.No.23084 of 2016 is restored to file. The W.P.M.P. shall be heard on its merits after taking into consideration the contents of the affidavit filed in support of the Writ Petition and the contents of the counter-affidavit. Liberty is granted to the

respondent-writ petitioner to request the Learned Single Judge to take up the W.P.M.P. at an early date.

The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, ACJ

Dr.SHAMEEM AKTHER, J

Date:08.02.2017.

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