



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
W.P.[MD].Nos.19807 of 2017 and 5840 of 2018
and
W.M.P. (MD)Nos.5706 and 9536 of 2018

W.P.[MD].No.19807 of 2017:

R.Raj

: Petitioner

Vs.

1.Deep Sea Machanized Boat Fishing

Development Association,
Rep. by its President,
Visuvasakappal Boat Yard,
South Beach Road,
Thoothukudi,
Thoothukudi District.

2.The Director General of Shipping -cum-

Secretary to Government,
Mercantile Marine Department,
Ministry of Shipping Road Transport and Highways,
Government of India,
9th Floor Beta Building, I-think Techno Campus,
Kanjurmarg East, Mumbai.

3.The Principal Officer in Charge/Surveyor,

The Marine Mercantile Department,
Ministry of Shipping and Transport,
Opp. World Trade Avenue,
Tuticorin-628 004.

4.The Assistant Director of Fisheries -cum-

Authorized Officer,
Fishing Harbor Management,
Department of Fisheries,
Thoothukudi.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 2 and 3 to take action under Section 336 of Merchant Shipping Act, 1958, against the first respondent and its illegal vessels mentioned in annexure one hereto, berthed in the sea presently impounded by the fourth respondent and take further action in accordance with law.



For Petitioner
For Respondent No.1
For Respondents 2&3

: Mr.M.Joseph Thatheus Jerome
: Mr.R.Amarnath
: Mr.V.Kathirvelu,
Assistant Solicitor General of India,
Assisted by,
Mr.K.Prabhu
: Mr.A.K.Baskarapandian,
Special Government Pleader

For Respondent No.4

W.P. (MD) No.5840 of 2018:

Deep Sea Mechanized Boat Fishing
Development Association,
Rep. by its Secretary,
Visuvasakappal Boat Yard,
South Beach Road,
Thoothukudi,
Thoothukudi District.

: Petitioner

vs.

- 1.The Director General of Shipping -cum-
Secretary to Government,
Mercantile Marine Department,
Ministry of Shipping Road Transport and Highways,
Government of India,
9th Floor Beta Building, I-Think Techno Campus,
Kanjurmarg East, Mumbai.
- 2.The Principal Officer (E&SS, MMD),
Mercantile Marine Department,
Anchor Gate Building, II Floor,
Rajaji Salai,
Post Bag No.5004,
Chennai-600 001.
- 3.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Fisheries,
Fort St. George, Chennai.
- 4.The Commissioner of Fisheries,
ADMIN Buildings,
Teynampet,
Chennai.
- 5.The District Collector,
Thoothukudi District,
Thoothukudi.
- 6.The Assistant Director of Fisheries -cum-
Authorized Officer,
Fishing Harbor Management,



Department of Fisheries,
Thoothukudi.

7.Susai Anthony

[R-7 impleaded as per the order of this
Court dated 08.10.2018, made in
W.M.P. (MD) No.6022 of 2018].

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in the proceeding in F.No.SR (20/FV General/Pt-II) of the second respondent dated 12.03.2018 and quash the same as illegal and consequently direct the first respondent herein to forthwith survey, certify and register the mechanized fishing boats of members of the petitioner Association as per their applications in accordance with order of first respondent in DGS Order No.3/2018, dated 14.02.2018.

[Prayer amended vide Court order dated 28.04.2018 in W.M.P. (MD) No.9535 of 2018]

For Petitioner : Mr.N.R.Elango,
Senior Counsel,

For Mr.Antony S.Prabahar

For Respondents 1&2: Mr.V.Kathirvelu,
Assistant Solicitor General of India,
Assisted by,
Mr.K.Prabhu

For Respondents 3to6 : Mr.A.K.Baskarapandian,
Special Government Pleader

For Respondent No.7 : Mr.M.Joseph Thatheus Jerome

C O M M O N O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

Considering the commonality of issues involved, both the Writ Petitions have been taken up together and disposed of by a common order.

2. This is a continuous dispute *inter se* deep sea fishing vessels and country boats.

3. A challenge has been made by the Deep Sea Mechanized Boat Fishing Development Association to the notification, by which, certain powers have been delegated to the sixth respondent in W.P.



(MD)No.5840 of 2018. This power includes issuance of Certificate of Registry.

4. This Court, on an earlier occasion, was pleased to pass an interim order, over which, a Special Leave Petition was filed in Petition(s) for Special Leave to Appeal (C) No.15759 of 2018. It was, accordingly, disposed of, by order dated 10.08.2018, which is appositely re-produced hereunder:

"Having heard learned counsel appearing for the parties, we consider it appropriate to direct that the arrangement made by the High Court shall continue in force till the final decision of the High Court in the pending writ petition.

We order accordingly.

The High Court is requested to dispose of the matter as expeditiously as possible preferably not later than six months from today.

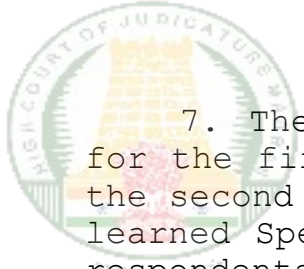
The State of Tamil Nadu may issue provisional certificate, the validity of which will be subject to the final result of the writ petition pending before the High Court.

The State of Tamil Nadu is given liberty to regulate the fishing condition including hours, time, area, etc., to prevent clash between the small boats and the bigger boats. It is also given liberty to make an application for protection and monitoring by the Coast Guard before the High Court.

With the aforesaid directions, these special leave petitions are disposed of."

5. The learned Senior Counsel appearing for the petitioner in W.P.(MD)No.5840 of 2018 would submit that though a larger relief has been sought for, it would suffice, if the sixth respondent is directed to take a final call on the applications filed seeking Certificates of Registry in accordance with Section 435-G of the Merchant Shipping Act, 1958. The learned Senior Counsel would also fairly submit that this would mean the compliance of Section 435-K, which speaks about the Certificate of inspection before Indian Fishing Boats venture into the sea.

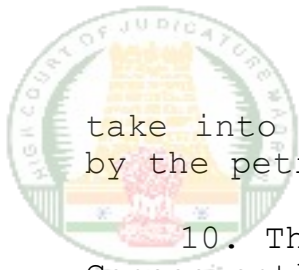
6. The learned counsel appearing for the petitioner in W.P.(MD) No.19807 of 2017, who is also contesting the prayer in W.P.(MD) No.5840 of 2018, would submit that there is a continued disobedience of Sections 435-G, 435-J and 435-K of the Merchant Shipping Act, 1958. What is between the rights of the parties, livelihood will have to be seen, as observed by the Hon'ble Apex Court in State of Kerala v. Joseph Antony [1994(1) SCC 301]. Here is a case, where the interest of rich and powerful vessel owners is sought to be espoused against that of the source of fisherman, who is solely depending upon the sea.



7. The learned Assistant Solicitor General of India appearing for the first and second respondents in W.P.(MD)No.5840 of 2018 and the second and third respondents in W.P.(MD)No.19807 of 2017 and the learned Special Government Pleader appearing for the other official respondents would submit that the consequence of notification would flow and, therefore, the petitioner in W.P.(MD)No.5840 of 2018 will have to comply with the rigour of Sections 435-G and 435-J and 435-K of the Merchant Shipping Act, 1958. In compliance with the order of the Hon'ble Apex Court, of the 61 applications, 50 vessels have been granted Provisional Certificates. The learned Special Government Pleader also would submit that sufficient steps would be taken to see to it as there is compliance and thus, the boats, which are not registered and do not have Certificates of inspection, would not be allowed to ply.

8. The issue now lies in a very narrow campus. It is agreed upon that there has to be a mandatory compliance of Sections 435-G, 435-J and 435-K of the Merchant Shipping Act, 1958, before a deep sea vessel ventures into the sea. Under section 435-G and in accordance with the notification under challenge, the sixth respondent is the competent authority. Therefore, it is incumbent upon the sixth respondent to take into consideration of the relevant materials before issuing a Certificate of Registry. Not stopping with that, the compliance of Sections 435-J and 435-K also will have to be satisfied. Thus, we direct the sixth respondent to consider the case of the members of the petitioner in W.P.(MD)No.5840 of 2018 and issue Certificates of Registry, after satisfying with the requirement of Section 435-G. After doing that, the compliance of Sections 435-J and 435-K will have to be satisfied before allowing a deep sea vessel into the sea. We also make it clear that Certificate of inspection, as mandated under Section 435-K, has to be in accordance with Section 449. The sixth respondent shall also see to it that the State enactment and the rules are complied with while verifying the compliance enactment under the Merchant Shipping Act, 1958. Apart from the same, the other regular requirements are also to be complied with, when deep sea fishing vessel leaves the shore.

9. As and when the sixth respondent in W.P.(MD)No.5840 of 2018 receives the applications seeking Certificates of Registry, they will have to be disposed of, within a period of eight weeks from their receipt. While disposing of these Writ Petitions, we make it clear that it can never be construed that a mere compliance of Section 435-G, which speaks about Certificate of Registry, alone would be sufficient, without the mandatory requirement under Section 435-K, which deals with Certificate of inspection. Therefore, a duty is imposed upon the authorities including the sixth respondent to see to it that due compliance as aforesaid is made. We make it clear that we have not expressed anything on the merits and demerits of the Provisional Certificates issued including the grievance of the petitioner in W.P.(MD)No.5840 of 2018 over the conditions imposed thereunder. We also make it clear that before issuing Certificate of Registry, the sixth respondent in W.P.(MD)No.5840 of 2018 shall



take into consideration of the grievances as sought to be espoused by the petitioner in W.P.(MD)No.19807 of 2017.

10. The Writ Petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

WEB COPY

Sd/

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-I)

To

- 1.The Director General of Shipping -cum-
Secretary to Government,
Mercantile Marine Department,
Ministry of Shipping Road Transport and Highways,
Government of India,
9th Floor Beta Building, I-Think Techno Campus,
Kanjurmarg East, Mumbai.
- 2.The Principal Officer (E&SS, MMD),
Mercantile Marine Department,
Anchor Gate Building, II Floor,
Rajaji Salai,
Post Bag No.5004,
Chennai-600 001.
- 3.The Secretary,
State of Tamil Nadu,
Department of Fisheries,
Fort St. George, Chennai.
- 4.The Commissioner of Fisheries,
ADMIN Buildings,
Teynampet,
Chennai.
- 5.The District Collector,
Thoothukudi District,
Thoothukudi.
- 6.The Assistant Director of Fisheries -cum-
Authorized Officer,
Fishing Harbor Management,
Department of Fisheries,
Thoothukudi.

+2cc to Mr.M.JOSEPH THATHEUS JEROME, Advocate, SR.No.89323,89322

+1cc to Mr.K.PRABHU, Advocate, SR.No.89553

+1cc to Mr.ANTONY S.PRABAHAR, Advocate, SR.No. 89571

W.P.[MD].Nos.19807 of 2017 and 5840 of 2018

Dated: 08.10.2018

(2/2)