



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.09.2018
CORAM
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

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W.P. (MD) Nos.22356 and 23059 of 2016, 13188 and 21498 of 2017
and
W.M.P (MD) Nos.16021 and 16516 of 2016, 10259 and 10260 of 2017

W.P. (MD) No.22356 of 2016

C.Periyathambi

... Petitioner

Vs.

1.The Commissioner of Fisheries,
Fisheries Department (Inland),
Administrative Buildings,
D.M.S. Compound,
Teynampet,
Chennai - 600 006.

2.The Assistant Director of Fisheries,
Fisheries Department,
O/o the Assistant Director of Fisheries,
Theni at Vaigai Dam,
Theni District.

3.Thanga Madhavan @ T.Madhavan
(R3 is impleaded vide court order
dated 06.12.2017 in WMP (MD) No.16570/17)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to issue confirmation order in favour of the petitioner's name based on the bid amount quoted in the Fishing Rights Tender Application for the years 2016-2019 in respect of Meenakshi Amman Tank, Bodinaickanoor Village, Theni District.

For Petitioner : Mr.R.Singaravelan
Senior Counsel for
Mr.M.Saravanakumar

For Respondents : Mr.A.Muthukaruppan
Addl. Govt. Pleader
(for R1 & R2)

Mr.M.Ajmalkhan
Senior Counsel for
Mr.K.Safar Badhusa (for R3)



W.P. (MD) No.13188 of 2017

Thanga Madhavan @ T.Madhavan

... Petitioner

Vs.

1.The Secretary,
Animal Husbandry and Fisheries Department,
Chennai.

2.The Commissioner of Fisheries,
Fisheries Department (Inland),
Administrative Building,
D.M.S. Compound,
Tenampet, Chennai.

3.The District Collector,
O/o Collector, Theni,
Theni District.

4.The Zonal Director,
Fisheries Department, Madurai.

5.The Assistant Director of Fisheries,
Fisheries Department,
Office of the Assistant Director of Fisheries,
Theni at Vaigai Dam, Theni District.

6.M.Prabhu

(R3 is impleaded vide court order

dated 06.12.2017 in WMP(MD)No.17700/17)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the fifth respondent impugned order vide Na.Ka.No.581/25/2016 dated 18.05.2017 and quash the same as illegal, improper, unlawful, unconstitutional and arbitrary, on the basis of the G.O.Ms.No.6 dated 10.01.2017.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel for
Mr.K.Safar Badhusha

For Respondents : Mr.A.Muthukaruppan
Addl. Govt. Pleader
(for R1 to R5)

Mr.V.Meenakshisundaram for
Mr.D.Nallathambi (for R6)



W.P. (MD) No. 21498 of 2017

M.Prabhu

... Petitioner

Vs.

1.The Commissioner of Fisheries,
Fisheries Department (Inland),
Administrative Buildings,
D.M.S. Compound, Teynampet,
Chennai - 600 006.

2.The Deputy Director of Fisheries (Regional),
58, 2nd Main Road, Vanamamalai Nagar,
Byepass Road, Madurai - 625 016.

3.The Assistant Director of Fisheries,
Fisheries Department,
Office of the Assistant Director of Fisheries,
Vaigai Dam, Theni,
Theni District.

4.Thanga Madhavan @ T.Madhavan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the third respondent in ந.க.எண்.581/ஆ/2016 dated 22.11.2016 and quash the same and further directing the third respondent to confirm the petitioner's tender process for lease of the Fishery Right in respect of Meenakshiamman Kanmai in the Bodi Ammapatti Village, Bodinayakkanur Taluk.

For Petitioner : Mr.V.Meenakshisundaram

For Respondents : Mr.A.Muthukaruppan
Addl. Govt. Pleader
(for R1 to R3)

Mr.M.Ajmalkhan
Senior Counsel for
Mr.K.Safar Badhusha (for R4)

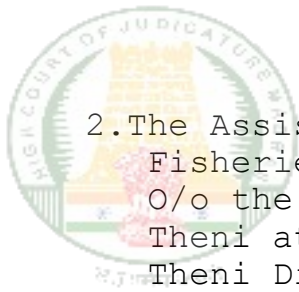
W.P. (MD) No. 23059 of 2016

N.C.Jegan

... Petitioner

Vs.

1.The Commissioner of Fisheries,
Fisheries Department (Inland),
Administrative Buildings,
D.M.S. Compound,
Teynampet, Chennai - 600 006.



2.The Assistant Director of Fisheries,
Fisheries Department,
O/o the Assistant Director of Fisheries,
Theni at Vaigai Dam,
Theni District.

...Respondents

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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to issue confirmation order in favour of the petitioner name based on the bid amount quoted in the Fishing Rights Tender Application for the years 2016-2019 in respect of Meenakshi Amman Tank, Bodinaickanoor Village, Theni District is concerned.

For Petitioner : Mr.R.Mathiyalagan

For Respondents : Mr.A.Muthukaruppan
Addl. Govt. Pleader

COMMON ORDER

All the above writ petitions are in relation to award of fishing rights in respect of Meenakshiamman Tank, Bodinaickanoor Village, Theni District and therefore, they are taken up together for common disposal as under.

2.The facts as narrated in W.P(MD)No.22356 of 2016 are stated hereunder and which would govern all other writ petitions as well.

3.According to the petitioner, the second respondent issued tender notification in 2016 calling for applications in respect of fishing rights to be awarded in respect of eight tanks in Theni District. The last date of submission of application was fixed on 16.11.2016 at 13.00 hours. According to the tender notification, the applications will be opened on the same day at 14.00 hours in the second respondent office situated at Vaigai Dam.

4.According to the petitioner, the second respondent did not follow the procedure as contemplated in the Tender Transparency Rules, since the tender notification was not published in the daily newspaper. The petitioner has pointed out various shortfalls in meeting the requirements of the relevant rules while floating the tender by the second respondent. In any case, the petitioner had submitted his application to the second respondent office on 16.11.2016. But when he was submitting his application before the deadline, he was prevented by some persons at the instance of the third respondent, who, according to the petitioner, was a close relative of the second respondent and who had also participated in the tender. The tender, which was invited by the second respondent, was for the period of three years, namely, 2016-17, 2017-18 and 2018-19. The petitioner had quoted Rs.31,00,000/- for fishing rights in respect of Meenakshiamman Temple, Bodinaickanoor Village, Theni District.

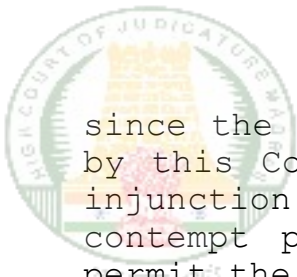


5. According to the petitioner, the third respondent by using his muscle power had prevented the entry of the petitioner and few others from submitting the tender application on 16.11.2016 in collusion with some of the officials in order to bag the contract, to the exclusion of the others, including the petitioner herein. According to the petitioner, the third respondent had quoted Rs.24,00,000/- as against Rs.31,00,000/- quoted by the petitioner for the fishing rights for the first year namely, 2016-17. In the above said circumstances, the petitioner immediately submitted a detailed representation to the second respondent highlighting the fact that he was prevented from entering the office of the second respondent. Though the said representation was received by the second respondent, no action was taken. Thereafter, a representation was also made to the District Collector, Theni District, namely, the first respondent herein seeking his intervention in the matter. Since no action was forthcoming in response to the representation, the petitioner is before this Court seeking a direction to issue work order in his favour on the basis of bid amount quoted by him, which is admittedly, the highest amount from among the participants in the tender process.

6. Notice was issued on the writ petition and the learned Judge of this Court had granted interim injunction restraining the official respondents from confirming the auction by order dated 22.11.2016. According to the petitioner, despite the grant of interim injunction, the third respondent was eventually granted the contract and he started executing the fishing rights granted in his favour.

7. In such circumstances, the petitioner has approached this Court by filing a contempt petition in Cont.P(MD)No.196 of 2018 and the learned Judge of this Court has passed an order by directing the second respondent not to permit the successful tenderer namely, the third respondent herein to conduct any fishing operation till 13.02.2018 vide his order dated 09.02.2018. The petitioner was constrained to move the contempt petition in view of the admitted fact that despite the injunction order passed by this Court at the time the writ petition was admitted, being well aware of the interim order, the third respondent was allowed to continue his fishing operation in the subject tank by wilfully disobeying the interim order passed by this Court. According to the petitioner, on behalf of the official respondents, no explanation was forthcoming as to why the third respondent was allowed to exercise his fishing rights in the face of the interim injunction granted by this Court.

8. According to the petitioner, the second respondent was in collusion with the third respondent and therefore, wilfully disregarded the interim order passed by this Court and allowed the third respondent to exercise the fishing rights not only for the year 2016-17, for the subsequent year 2017-18 as well. The conduct of the second respondent was questioned in the contempt petition,



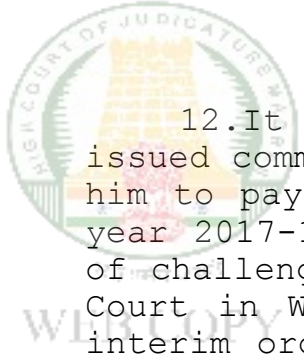
since the second respondent had wilfully disobeyed the order passed by this Court despite knowing the fact that there was an order of injunction operating against them and also the fact that in the contempt petition, this Court once again passed an order not to permit the successful tenderer not to conduct any fishing operation.

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9. Taking note of the conduct of the second respondent, this Court has issued notice in the contempt petition for appearance of the second respondent before this Court to explain as to how the third respondent was allowed to carry on the fishing operation despite the interim order operating against the official respondents. At this, the learned Special Government Pleader appearing for the respondents 1 and 2 had given an undertaking that they would not allow the third respondent herein to continue the fishing rights lease in respect of Meenakshiamman Tank, Bodinaickanoor Village, Theni District, for the present year i.e., 2018-19.

10. In view of the above development, this Court has to see whether the petitioner has made out a case for relief at least for the present year as he was prevented from being awarded the contract for the fishing operation and the third respondent successfully managed the operation for last two years.

11. The learned Senior Counsel Mr. R. Singaravelan appearing for the petitioner would strongly contend that admittedly the petitioner had quoted Rs. 31,00,000/- for the fishing rights for the first year namely, 2016-17 as against Rs. 24,00,000/- quoted by the third respondent. He would draw the attention of this Court to the crucial documents submitted by the petitioner i.e., the receipt of application form submitted by the petitioner on 14.11.2016 and submission of application form on 16.11.2016 wherein the petitioner had admittedly quoted Rs. 31,00,000/- for the year 2016-17 as against the base price of Rs. 11,00,000/-. The documents which are relied on by the petitioner, would categorically establish the fact that the petitioner's quote was very much higher than the quote of the third respondent and in order to prevent the competitors in the tender selection, the petitioner was prevented from submitting the documents before the deadline i.e., on 16.11.2016. However, the quote by the petitioner as evidenced by the document bears the date of 16.11.2016 and this position further strengthened by the fact that the petitioner on the same day had submitted a representation about how he was prevented from participating in the tender. This Court has no reason to disbelieve the said statement made by the learned Senior Counsel that the second respondent in collusion with the third respondent, has successfully prevented other tenderers from participating in the tender in order to favour the third respondent. This fact would further be fortified by the conduct of the second respondent, who despite the interim order in operation for all the time, had allowed the third respondent to enjoy his fishing rights.



12.It appears that in the meantime, the second respondent issued communication on 18.05.2017 to the third respondent directing him to pay the increased payment towards fishing rights for second year 2017-18. As per the original tender conditions, in the guise of challenging the said order, the third respondent approached this Court in W.P(MD)No.13188 of 2017 and without disclosing about the interim order passed by this Court had obtained interim order from this Court on 18.07.2017, wherein the learned Judge directed the authority concerned to receive the lease amount from the petitioner therein/third respondent herein for execution of the lease for the year 2017-18. On such being the amount received, the extension lease period will have to be considered. In pursuance of the order passed by this Court, the third respondent managed to obtain further extension of lease for the year 2017-18. These developments have taken place in complete disregard to the interim order passed by this Court in the petitioner's writ petition in W.P(MD)No.22356 of 2016 and the third respondent being the writ petitioner in W.P(MD) No.13188 of 2017, has suppressed all the facts and obtained interim order to legitimise his fishing operation, despite quoting much lower than the petitioner. In these circumstances, the learned Senior Counsel has implored this Court to grant fishing rights at least for the present year 2018-19 on the basis of his bid amount of Rs.31,00,000/-, which was originally quoted for the year 2016-17 and the petitioner is also willing to make any additional payment in terms of the original tender condition. According to the learned Senior Counsel, the denial of fishing rights to the petitioner is against the public interest, since admittedly the petitioner had quoted Rs.31,00,000/- as against Rs.24,00,000/- quoted by the third respondent. Therefore, he would submit that obviously the third respondent had been favoured by the authorities concerned in contravention of the public interest.

13.On behalf of the respondents 1 and 2, a detailed counter affidavit has been filed. The substance of the counter affidavit as found in paragraphs 6, 7 and 8 are reproduced hereunder:-

"6.It is submitted that is denied the allegation of the petitioner stating in respect of tender process was not published in newspapers by the authorities. It is pertinent to note that the tender process was published in various newspapers specifically in Dinakaran, Dinamani and Hindu Tamil on 02.11.2016. The tender forms with conditions would be obtained from the office of the 2nd respondent from 01.11.2016 to 16.11.2016 (upto 1.00 p.m,) last date for submission of Tender forms in the o/o Assistant Director of fisheries Theni on 16.11.16 at 1.00 pm and the opening of the tenders would be on 16.11.2016 at about 2.00 p.m and it will be finalized on same day.

7.It is submitted that in so far as Meenakshiamman Tank is concerned, twenty one persons are received tender forms for participating in the tender process in connection with the said tank. Out of that 3 tender bids received to persue by the 2nd respondent office, by (i) K.Thangadurai, S/o Karuthaiah Thevar, (ii) M.Prabhu, S/o



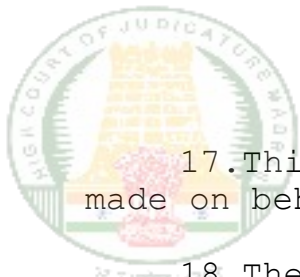
Maayee and (iii) T.Thangamadhavan, S/o Thangaraj. It is necessary to state here that as per the tender conditions dated 31.10.2016 the upset price fixed by the 2nd respondent in respect of Meenakshiamman Tank was Rs.11,00,000/-.

8.It is submitted that K.Thangadurai has offered Rs.11,01,000/-, M.Prabu has offered Rs.11,10,505/-, whereas T.Thangamadhavan has offered Rs.24,00,000/-. Since T.Thangamadhavan was a highest bidder, he was confirmed successful bidder in respect of Meenakshamman tank. In terms of the tender conditions, the highest bidder has submitted all the necessary payments by demand drafts. On accepting the said amount, the 2nd respondent has also entered into a lease deed with the highest bidder T.Thangamadhavan No.5060/2016 dated 21.11.2016. It is registered with the registration department on 21.11.2016. Thereafter, having completed all the legal formalities, he was granted with confirmation order by the 2nd respondent herein vide his order made in favour of T.Thangamadhavan in Na.Ka.No.581/Aa/2016 dated 22.11.2016."

14.According to the learned Special Government Pleader, out of the three participants, the third respondent's offer was highest and therefore, he was selected for grant of fishing rights and the petitioner herein did not even participate in the selection and therefore, it is not open to the petitioner to challenge the contract being awarded to the third respondent. In regard to the violation of the interim order passed by this Court nothing has been whispered in the counter affidavit, nor any explanation was forthcoming for disobedience on the part of the officials concerned in implementing the interim order passed by this Court. In any event, the learned Special Government Pleader has given an undertaking on instructions that the third respondent would not be allowed to continue fishing rights for the present year at least.

15.On behalf of the third respondent, Mr.M.Ajmalkhan, learned Senior Counsel appeared and submitted that the agreement was entered into between the third respondent and the second respondent prior to the interim order passed by this Court on 22.11.2016. Therefore, the third respondent was rightly allowed to exercise his fishing rights and on being awarded the contract, the third respondent had made huge investment and he cannot be certainly displaced at the instance of the petitioner who did not even participate in the tender selection.

16.According to the learned Senior Counsel, out of three participants, the third respondent was admittedly the highest bidder and therefore, contract was rightly granted in his favour. The petitioner having chosen not to submit his application within the time fixed, cannot be heard his complain about the grant of contract to the third respondent.



17. This Court has given anxious consideration to the submission made on behalf of the petitioner as well as the respondents.

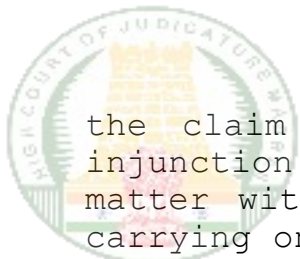
18. The petitioner has admittedly quoted Rs.31,00,000/- for the fishing rights in the subject tank for the year 2016-17 as against the quote by the third respondent of Rs.24,00,000/-. Therefore, it stands to reason that the second respondent ought to have granted the fishing rights to the petitioner in order to uphold the public interest. Obviously there was something amiss about the grant of contract in favour of the third respondent, when the petitioner had quoted higher price than the third respondent for the same contract.

19. From the materials and the facts as disclosed in the writ petition, it could be seen that the petitioner was a bona fide participant in the tender selection, but it appears that at the instance of the some vested interest, he was prevented from submitting his application before the deadline of 16.11.2016. In any event, as evidenced by the documents, it is brought to the knowledge of this Court, the submission of application by the petitioner bear the date as 16.11.2016 and in the application, it was clearly mentioned that the bid amount is Rs.31,00,000/-. Moreover, the facts as disclosed in the counter filed on behalf of the second respondent, it could be reasonably inferred that the other two of the three participants participated in the tender had quoted little over the base price of Rs.11,00,000/- which creates genuine doubt as to the conduct of the auction in a fair and proper manner.

20. From the records and materials as disclosed it is obvious that the authority concerned had acted in favour of the third respondent and that is probably the reason that despite the interim order passed by this Court time and again the third respondent was allowed to continue his fishing operations. As stated earlier that there was no explanation either from the third or the second respondents as to why such fishing operation was allowed to continue despite the operation of the injunction order against him as this would only show that no matter whether there was any interim order in operation, the third respondent was to be allowed to exercise his fishing rights.

21. In the above said circumstances, it is very clear that the entire action of the second respondent in awarding the contract to the third respondent is tainted with mala fide and the same cannot be countenanced either in law or on facts.

22. When the petitioner being the highest bidder as evidenced by the documents filed in support of the writ petition, this Court is unable to appreciate that how the third respondent was preferred to the petitioner herein and was allowed to exercise his fishing rights for two three years. When this Court prima facie satisfied about



the claim of the petitioner, thought fit to grant an order of injunction as early as in 22.11.2016, but despite the same, no matter with regard to the interim order, the third respondent was carrying on the fishing operation for two three years, namely, 2016-17, 2017-18. Even after the contempt petition, the third respondent was allowed to continue which would only disclose as to how the authority concerned had acted collusively in order to favour the third respondent. In any case, the Special Government Pleader has gives an undertaking that the third respondent will not be allowed to continue fishing operation for the present year and in such event, this Court is of the considered view that the petitioner being admittedly highest bidder is entitled for grant of fishing rights at least for the present year 2018-19.

23.The other writ petitions, namely, W.P(MD)Nos.23059 of 2016 and 21498 of 2017 are by other participants in the tender, but whose quote were admittedly lower than the petitioner herein and therefore, in view of the conclusion reached by this Court that for the present year that the petitioner ought to be granted the contract, their challenge to the award of contract to the third respondent fails and therefore, their writ petitions stand dismissed. As regards as the writ petition filed by the third respondent, namely, W.P(MD)No.13188 of 2017, the same is without merits and substance and hence, the writ petition is dismissed. As stated above that the petitioner in that writ petition namely, the third respondent herein has not approached this Court with clean hand, and therefore, he is not entitled to relief. Even otherwise on merit, the third respondent has no case as the bid amount was far lower than the petitioner.

24.For the above said reasons, the writ petition in W.P(MD) No.22356 of 2016 is allowed and there shall be a consequential direction to the respondents 1 and 2 to grant fishing rights to the petitioner based on the bid amount quoted by him originally for the year 2016-17, for the present year 2018-19 for a period of twelve months with increase of tender amount as originally envisaged in the tender condition in respect of Meenakshiamman Tank, Bodinaickanoor Village, Theni District. The respondents 1 and 2 are directed to pass orders complying with the direction within a period of two weeks from the date of receipt a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

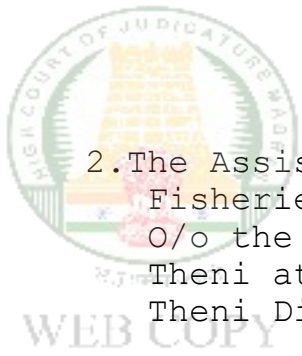
Assistant Registrar(CO)-

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Commissioner of Fisheries,
Fisheries Department (Inland),
Administrative Buildings,
D.M.S. Compound, Teynampet,
Chennai - 600 006.



- 2.The Assistant Director of Fisheries,
Fisheries Department,
O/o the Assistant Director of Fisheries,
Theni at Vaigai Dam,
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Fisheries Department,
Madurai.
- 6.The Deputy Director of Fisheries (Regional),
58, 2nd Main Road,
Vanamamalai Nagar,
Byepass Road,
Madurai - 625 016.

+2CC to Mr.M.SARAVANAKUMAR, Advocate, SR.No.84824, 85133
+1CC to Mr.K.SAFAR BADHUSHA, Advocate, SR.No.84718
+1CC to Mr.D.NALLATHAMBI, Advocate, SR.No.85138

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