

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 32417 of 2018

ORDER:

1) Challenging the action of the third respondent in issuing the show cause notice No.536/A2/2014-9 dated 13.08.2018 and the subsequent proceedings dated 01.09.2018, the present Writ Petition came to be filed.

2) The petitioner herein and his wife claim to be the owners of an agricultural land admeasuring Ac.6.00 in Sy.No.97/2, Sy.No.100-1 and in Sy.No.100/1 situated at Polamuru village, Penumantra Mandal of West Godavari District. In the year 2016 the petitioner is said to have made an application to the Chairperson of Fresh Aqua Water Culture, seeking permission for fresh aqua culture farm. Pursuant thereto, the authorities inspected the lands and made recommendations for conversion of his lands into fresh water aqua culture farm. Taking into consideration the recommendations made, a certificate of preliminary registration for fresh water aqua culture farm vide Registration No.PFR-011600008105 dated 30.05.2016 came to be issued to the petitioner. A self declaration was made stating that he will abide by the rules and regulations of the WALTA

Act. Thereafter, on 10.05.2018, he made an application along with the requisite fee for the grant of Final Registration of the New Aqua Fresh Water Aquaculture farm at Meeseva. But on coming to know about the same, the brother of the petitioner, who is the unofficial respondent herein made a complaint to the 3rd respondent alleging that the petitioner herein is cultivating prawn culture and as such lands which are on the western side of the lands of the petitioner are getting damaged and accordingly sought for cancellation of the registration certificate. Basing on the said complaint, the 3rd respondent issued a fresh show cause notice on 30.04.2018. The contents of the same were enquired into at field level and it was discussed in the 94th District Level Committee. Being satisfied with the contents of the complaint, the petitioner was directed to submit his explanation within 15 days from the date of receipt of notice. On 21.05.2018 the petitioner submitted an explanation raising various issues. Without considering the explanation, another show cause notice, dated 05.06.2018, came to be issued stating that as per the report of the Deputy Director of Fisheries, Bhimavaram, dated 12.05.2018, the petitioner has been cultivating the prawn culture and causing loss to the 7th respondent and accordingly the said issue was discussed in the 95th District Level Committee meeting

wherein it was also resolved to cancel the permission granted for Fresh Water Aquaculture Farm. Issuance of second show cause notice was challenged in W.P.No.22959 of 2018. On 05.07.2018 this Hon'ble Court directed the respondents not to take any coercive steps subject to petitioner undertaking only fish activity and posted the matter to 19.07.2018. Though the said writ petition is pending consideration, a third show cause notice dated 13.08.2018 was issued by third respondent stating that the petitioner has dug a borewell by cultivating prawn culture and caused loss to the adjacent ryoths and accordingly in the 97th District Level Committee it was resolved to disconnect the power supply. Pursuant thereto, the 6th respondent addressed a letter to the petitioner on 01.09.2018 about the disconnection of the power supply within one week. Aggrieved by the same, the present Writ Petition came to be filed. On 11.09.2018 this Court passed the following order:

"No coercive action pursuant to the impugned notices shall be taken. It is also made clear that the petitioner is entitled to take the existing crop only and shall not go for the new crop."

3) A counter came to be filed by the 3rd respondent disputing the averments made in the affidavit filed in support of the Writ Petition. It is stated that the provisional permission was granted

only for digging of fish pond but after digging the fish pond the petitioner herein, without applying for final registration resorted to L.Vannamei Shrimp culture, which is violative of G.O.Ms.No.7 dated 16.03.2013 and G.O.Ms.No.15 dated 26.05.2015. It is stated that the neighbouring plot owner made a complaint stating that his fields are getting badly affected due to discharge of saline water from the petitioner's aqua culture ponds. After receiving the petition, an enquiry came to be conducted on 21.04.2018 and again by the Joint Director of Fisheries, Eluru, Deputy Director of Fisheries, Bhimavaram, Fisheries Development Officer, Ganapavaram (i/c) and concerned Village Revenue Officer on 08.05.2018, in the presence of the petitioner and found the following:

- i) The petitioner having only provisional registration vide Registration No.PRF011600008105 dated 30.05.2016 to an extent of Ac.6.00 cents for only digging of the fresh water fish tank.
- ii) Without having final registration the petitioner resorted to L.Vannamei Shrimp culture in saline water.
- iii) The writ petitioner having one bore well in this pond. The water salinity is 7.0 ppt.
- iv) Power line was erected.

v) Aerators are used for pond aeration.

4) Having regard to the findings given above, the matter was placed before the 94th District Level Committee held on 25.04.2018, which instructed stoppage of illegal L.Vananmei Shrimp culture in saline water. Accordingly, a show cause notice came to be issued on 30.04.2018 giving 15 days time for explanation. While submitting the explanation on 21.05.2018, the petitioner filed an application for final registration of the above pond through Meeseva online dated 10.05.2018. Since the petitioner has violated the provisions of the G.O., the final registration was rejected. Again the matter was placed before 95th District Level Committee meeting held on 30.05.2018, which has cancelled the provisional permission as well. Accordingly, a second show cause notice was issued on 05.06.2018 and served on the violators through Fisheries Development Officer, Ganapavaram (i/c) giving 15 days time to submit his explanation. Without giving any explanation, the petitioner is said to have approached this Court vide W.P.No.22959 of 2018 wherein the interim order, which has been referred to above, came to be passed. Having regard to the above, the matter was placed before the 97th District Level Committee held on 01.08.2018. A show cause notice was issued to the authorities to disconnect the

power supply of the said pond. The petitioner again approached this Court vide W.P.No.32417 of 2018, wherein this Court passed an order stating that the petitioner is entitled to take the existing crop only and shall not go for new crop. In view of all the circumstances stated above, it is stated that the petitioner has no right or authority to have supply of electricity to the pond, for which provisional and final registrations have been canceled.

5) The learned counsel for the petitioner mainly relied upon the judgment of this Court in **T.Sree Rama Murthy and others v. Special Officer (District Collector, Nellore) of the Municipality, Nellore and others¹**, to show that disconnection of power supply by Electricity authorities at the instance of District Collector to force the petitioner's unit to be shifted to another place, is illegal. It would be useful to extract the relevant portion of the said judgment.

"12. '42.2' of APSEB Terms and Conditions of Supply, as it stood as on the date of the cause of action, reads as follows:

"Where the consumer requires a licence or permission from any statutory authority or any authority of Government to run the business/industry, or permission for lifting of water wherever necessary for purposes of irrigation, or

¹ 2002(2) ALD 731

for any other purpose for which he seeks or availing supply of electricity or for locating such business/ industry/pumpset or any other equipment at the place where he is receiving such supply and where the conduct of his said business/ industry/activity at such place becomes unlawful by reasons of his failure to obtain initially or secure the continuance of such license or permission, the Superintending Engineer of the Board may, if desired by the concerned statutory or any other competent authority of Government, after giving notice calling for explanation and after considering the same, discontinue supply without forfeiting the rights of the APSE Board under the agreement with the consumer."

As per '42.2' of the said conditions, "the Superintending Engineer of the Board may, if desired by the concerned statutory or any other competent authority of Government, after giving notice calling for explanation and after considering the same, discontinue supply without forfeiting the rights of the APSE Board under the agreement with the consumer". Hence, it is clear that while initiating such an action, notice has to be issued by the competent authority in this regard. It is needless to mention that the consumer and the APSEB are governed by the APSEB Terms and Conditions of Supply. It is also not in dispute that the respondent Nos. 3 to 5 had effected disconnection of the electricity supply on the instructions of the first respondent. No doubt, specific stand had been taken that it is a bona fide action done keeping in view of the public interest involved. It is, no doubt, true that the public interest involved in the matter also has to be given due weight while deciding the rights of the citizens in the

realm of the public law field, but at the same time, a balance has to be maintained in this regard. When specifically the Terms and Conditions of Supply provide for the issuance of a notice and further, inasmuch as, such action on the part of the authorities of APSE Board lands the concerned consumers into serious trouble, the authorities are expected to observe the principles of natural justice. In any view of the matter, in a matter of this nature, proceeding with the action of the disconnection of the electricity supply without issuance of any notice to the concerned consumers cannot be said to be sustainable in law. It is needless to mention that the concerned authorities under the Municipality are at liberty to initiate appropriate action relating to the shifting of the Units under the relevant provisions of the A.P. Municipalities Act. It is also made clear that if the respondent Nos. 3 to 5 intend to initiate any action in this regard, further, at the instance of the respondent Nos. 1 or 2 or any other statutory authority or competent authority, it is needless to mention that the authorities have to follow the procedure as specified under '42.2' of the APSEB Terms and Conditions of Supply."

- 6) As stated by me earlier, the provisional permission was granted for doing fresh water aqua culture. The petitioners herein was directed to comply with the provisions of G.O.Ms.No.7 dated 16.03.2013 and the amendment issued vide G.O.Ms.No.15 dated 26.05.2015. The said provisional permission also states that after completion of digging of the farm, the owner shall inform in Form "C", for final registration and also state that the

unit will not do fishing aqua/prawn culture till he gets the licence from the authority concerned. Later on, the 7th respondent is said to have made a complaint to the authorities alleging that the petitioner is doing prawn culture, because of which, his lands, where paddy is growing, got damaged due to discharge of saline water. Pursuant thereto, a show cause notice came to be issued, to which the petitioner submitted his explanation and thereafter the matter came to be placed before the District level committees, who after enquiry and after making field inspection, found violation of G.O.Ms.No.7 dated 16.03.2013 and G.O.Ms.No.15 dated 26.05.2015 by the petitioner. In the 95th District Level Committee held on 30.05.2018 recommended for cancellation of provisional permission granted to the petitioner. As such another show cause notice dated 05.06.2018 came to be issued stating as to how the petitioner could do prawn culture by obtaining permission for fish culture and thereby causing loss to the adjacent lands. The petitioner was asked to give explanation within 15 days. But, without giving any explanation, the petitioner filed W.P.No.22959 of 2018, wherein this Court initially granted interim orders. Thereafter, the matter was placed before 97th District Level Committee on 01.08.2018 wherein show cause notice was issued to the DEE and the Assistant Engineer in

Electrical Department for disconnection of the power supply and then the Department issued notice for disconnection. The same is challenged in present Writ Petition.

7) The grievance of the petitioner relates to disconnection of the power supply by the electricity authorities. The sequence of events, if noted, would clearly reveal that since the petitioner has violated the provisions of G.O.Ms.No.7 and 15, the authorities after issuing a notice to the petitioner, called for his explanation and then cancelled the provisional licence. As per the counter filed by R-3, the final registration application also came to be rejected. The petitioner herein appears to have filled the pits and started prawn culture, while his application was for fish culture. The adjacent land owner made a complaint about these acts as her crop was getting damaged due to out flow of saline water. When once the provisional licence is cancelled and the subsequent final registration application is rejected, the question of petitioner carrying on with fish or prawn culture would not arise, unless the same is stayed or set-aside. But, in the instant case, the show cause notice dated 13.08.2018 addressed to the Electricity Department, for disconnection of the power supply, was based on the decision taken by the District Level Committee. The Electricity Department which has granted the power

connection ought to have issued a show cause notice calling for an explanation, as to the violation of provision under which the connection was given before disconnecting the power supply.

8) As the same is not done, which violates principles of natural justice, the order disconnecting the power supply is set-aside. Accordingly, the Department shall forthwith issue a notice calling for the explanation of the petitioner and then pass orders in accordance with law. The entire exercise of issuing the notice, submission of an explanation and passing of orders shall be completed as early as possible, preferably within a period of two weeks from the date of receipt of the order.

9) With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:10.12.2018

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