

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17580 of 2017

AND

WRIT PETITION No.4378 of 2019

COMMON ORDER:

The lease of fishing rights in Ryalampadu Balancing Reservoir being the bone of contention in both these writ petitions, they are analogously heard and taken up for disposal by this common order.

W.P.No.17580 of 2017

The averments in the writ affidavit, in brief, are that the petitioners are residents of Ryalampadu, Marlabeedu, Aluru villages of Dharoor Mandal, Jogulamba-Gadwal District, and their lands and houses have been acquired in the year 2009 for the purpose of construction of Ryalampadu Balancing Reservoir in Jogulamba-Gadwal District, and the villages were submerged under the Reservoir; thereby they are Project affected persons in the process of implementation of Ryalampadu Balancing Reservoir. It is their assertion that they are small farmers eking out their living by doing agricultural operations and, to supplement their income, they are also carrying on fishing operations in the tanks situated in respective villages. At the time of acquiring the Project, the respondent authorities assured the petitioners of permission to carry out fishing operations in the Reservoir once the Project work is completed. However, when the petitioners sought to carry out fishing operations, the 4th respondent-District Forest Officer and his subordinates, at the instance of the 6th respondent-Society, objected the petitioners stating that the 6th respondent-Fisheries

Cooperative Society alone is entitled to carry out fishing operations in the Reservoir. Moreover, the 4th respondent lodged a police complaint against the petitioners, resulting in their harassment by the 5th respondent-SHO, Dharur. It is their further assertion that in terms of the Rehabilitation and Resettlement (R&R) Policy of Government of Andhra Pradesh, issued in G.O.Ms.No.68, dated 08.04.2005, the Project affected persons are entitled to fishing rights in the Reservoirs; and the petitioners being the Project affected persons of the Ryalampadu Balancing Reservoir Project that was completed in 2013, they are entitled to fishing rights in the said Reservoir. It is further asserted that the 6th respondent-Society has only about 93 members and in terms of G.O.Ms.No.6, Animal Husbandry, Dairy Development & Fisheries (V&F) Department, dated 24.03.2016, "one acre water spread area to each member in case of perennial / canal fed water sources; and Two acres Water spread area to each member in case of all other water sources (Rainfed)," can be given as the Reservoir is spread over an extent of 1161 hectares (approx. 2868 acres), the petitioners can be accommodated as the area that may be required to accommodate the petitioners would be only about 100 acres as per G.O.Ms.No.6. Viewing from that angle, it is asserted that due to the vast extent of the Reservoir of about 1161 hectares, it would undoubtedly be feasible to accommodate the petitioners as well, to carry out fishing operations, and therefore any objections sought to be raised by 6th respondent are untenable.

The 4th respondent-District Fisheries Officer filed his counter affidavit on 20.07.2018, and the 6th respondent-Fisheries Cooperative Society on 03.10.2017.

Brief averments in the counter affidavits are that whatever compensation that is to accrue to their respective entitlement of the petitioners has already been paid to the petitioners and also other land losers and the dues as per the R&R Policy have also been paid to the petitioners. The assertion of the petitioners that they were carrying on fishing operations in the tanks present in the village prior to the construction of Ryalampadu Reservoir is denied. It is asserted that the petitioners are illegally carrying out fishing operations in the Reservoir without obtaining permission from the Department, and the allegation that the 6th respondent is paying lesser amount, is also not true. It is the further assertion of the respondents that when the respondent authorities objected the petitioners to carrying fishing operations in the Reservoir, it is only then the petitioners approached the Department seeking permission. The assertion of the petitioners that the Fisheries Department has given assurance to the petitioners to carry out fishing operations after completion of the Project is not true and the same is denied. It is asserted that the 6th respondent-Fisheries Cooperative Society of Ryalampadu Reservoir consists of 146 members and as per the Water spread area of the Reservoir being 1161 hectares, and as per the viability norms of the Department in G.O.Ms.No.6 dated 24.03.2016, the area under the Reservoir is sufficient for the 6th respondent-Fisheries Cooperative Society in terms of the Government Orders in G.O.Ms.No.74 dated 21.10.2011 and G.O.Ms.No.98 dated 22.01.1964. It is further asserted that as on the date of filing counter, as the Ryalampadu Reservoir is under Lease System, the petitioners could not be made as Members to the Fisheries Cooperative Society as per G.O.Ms.No.98 dated 22.01.1964. However, the case of the petitioners would be considered as and when the proposed Licensing System is introduced.

In response to the order dated 17.04.2019, at the time of hearing, the petitioners filed a letter dated 18.04.2019 enclosing the details with regard to the procedure for introduction of Licensing system in any reservoir, and the timeframe for introduction of licensing system in Ryalampadu Reservoir by enclosing G.O.Ms.No.74 dated 14.08.2018, Guidelines dated 04.04.2019 and G.O.Ms.No.6 dated 24.03.2016.

A counter affidavit is filed sworn by the President of the 6th respondent Society wherein it is asserted that as W.P.No.17580 of 2017 was initially disposed of on 05.06.2017 without notice to the 6th respondent, an appeal came to be filed in W.A.No.1345 of 2017 and the Division Bench of this Court by order dated 19.09.2017 remanded the matter back to the learned single Judge for disposing W.P.No.17580 of 2017 in accordance with law. It is further asserted in the counter affidavit that the 6th respondent Society was registered in the year 2009 with 35 members and, as on date, there are 146 members in the Society whose livelihood is entirely dependent on fishing operations in the Reservoir. It is also asserted that the Ryalampadu Balancing Reservoir comes within the area of operation of the 6th respondent-Society and the 6th respondent has enrolled members of Fishermen Community Mudiraj/Telugu belongs to four villages i.e., Ryalampadu, Obulonipally, Aluru and Bhureddypally, and they have been carrying on the fishing operations from the year 2013-14 to 2016-17. It is also asserted that as some others who are not Members of the 6th respondent-Society are carrying out fishing operations in the Reservoir illegally, complaints were given to the Police and the cases are pending. It is further asserted that other writ petitions are also filed by the petitioners seeking granting of fishing rights and certain interim orders were also passed by this Court. It is further asserted that the petitioners

having enjoyed the benefit of R&R scheme, cannot seek additional benefit in the form of fishing rights and therefore the petitioners are not entitled to fishing rights in the Ryalampadu Balancing Reservoir which comes within the area of fishing operations of 6th respondent Society.

A reply affidavit is filed by the writ petitioners, in reply to the averments in the counter affidavit of the 6th respondent-Society. In the reply affidavit, while reiterating the contentions in the writ affidavit, it is further contended that the petitioners are entitled to fishing rights, particularly, in the light of G.O.Ms.No.6 and G.O.Ms.No.68.

Heard Sri N.S. Arjun Kumar, learned counsel representing Sri K. Kishore Kumar, learned counsel on record for the writ petitioners; Sri D.L. Pandu, learned counsel for the 6th respondent-Society; and Sri Tejavath, learned Government Pleader representing the official respondents.

This Court, in the process of hearing these matters, having noticed that there was a proposal of introducing Licensing System on account of a policy decision having been taken by the Government, directed the learned Government Pleader to get instructions. Learned Government Pleader, vide letter dated 09.04.2019, had placed on record the Minutes of Meeting held in the chambers of Secretary to Government, along with the Guidelines issued on 04.04.2019.

This Court, on 17.04.2019, passed the following order:

“G.O.Ms.No.74, though was issued on 14.08.2018, whereunder certain guidelines were directed to be framed, it was done only after this Court insisted for the same on the last occasion i.e. on 02.04.2019. Now, since the guidelines have been framed, in terms thereof, the department has taken a policy decision to introduce ‘licensing system’ as regards harvesting of the fish in the reservoirs. While the guidelines specify that ‘licensing

system' is introduced, what are the modalities to be followed have not been spelt out therein. As the uncertainty on account of this is leading to not harvesting the fish in the last as well this season, this should not be happened in future, as, admittedly, even as per the learned Government Pleader, fishing season is only between March and June every year.

In those circumstances, the learned Government Pleader for Fisheries shall get in touch with the Commissioner (Fisheries) and ascertain the time-frame within which the 'licensing system' will be put in place.

For the said purpose, list the Writ Petitions tomorrow at 02.15 P.M. along with Writ Petition No. 30141 of 2015."

Pursuant to the above order dated 17.04.2019, the learned Government Pleader, with all promptitude, and with the assistance of the 4th respondent-District Fisheries Officer, on 18.04.2019, had placed on record the details of procedure for introduction of Licensing System along with G.O.Ms.No.74 dated 21.10.2011. Having gone through the material, this Court directed the learned Government Pleader to get specific instructions with respect to the timeframe within which the modalities and guidelines for implementation of Licensing System would be framed and notified.

The sum and substance of the developments which have taken place in the last one month is to the effect that as on date the State, representing through the Fisheries Department, in coordination with the Irrigation Department, had taken a policy decision to introduce "Licensing System", particularly with respect to harvesting of Fish wealth in the Reservoirs. To implement the same, necessary instructions and System have been formulated and a Notification to that effect has also been issued in terms of G.O.Ms.No.74 dated 14.08.2018. G.O.Ms.No.74 has taken into consideration the earlier G.O.s and further with respect to the factum of submerging or subsuming of smaller tanks into the Reservoir, whatever

may be the position earlier to issuance of G.O.Ms.No.74 dated 14.08.2018, henceforth the fishing rights, insofar as the Reservoirs are concerned, would be governed by the guidelines/procedure prescribed or to be prescribed under the G.O.Ms.No.74 dated 14.08.2018.

In the context of the above G.O.Ms.No.74 dated 14.08.2018, the claim of the petitioners that they are land oustees and Project affected parties, can be considered by the authorities and if the authorities are satisfied that the petitioners are entitled to be considered for extending benefit under G.O.Ms.No.74, dated 14.08.2018, necessary orders can be passed; particularly, considering the fact that as per G.O.Ms.No.6, dated 24.03.2016, insofar as Reservoirs having perennial source of water are concerned, one acre per individual can be allocated. Furthermore, considering that Ryalampadu Reservoir is spread over 1161 hectares (approx. 2868 acres), there should be no impediment for the authorities to consider the case of the petitioners, however, subject to their eligibility.

Insofar as the objections of the 6th respondent-Society that fishing rights in the Reservoir is exclusive prerogative of their Society or Community, cannot be accepted as Fish wealth is the wealth of the State and the 6th respondent-Society cannot claim exclusive prerogative, especially in the light of G.O.Ms.No.6, dated 24.03.2016 and also considering the area in the Reservoir being very vast.

In those circumstances, the writ petition is disposed of by leaving it open to the petitioners to approach the authorities by way of submitting clear representation, setting out the details with respect to their entitlement to carry out fishing operations in the Ryalampadu Balancing Reservoir, and the same shall be considered by the respondent authorities,

subject to the conditions that may be imposed by the Department with respect to payment of requisite charges as may be determined. No costs. Miscellaneous petitions, if any pending, shall stand closed.

W.P.No.4378 of 2019

This writ petition is filed seeking a direction to the respondent authorities to receive the lease amount and permit the petitioner-Fisheries Cooperative Society to catch fish in Ryalampadu Balancing Reservoir, Jogulamba-Gadwal District.

Learned Government Pleader Sri Tejavath has placed on record the Lease Notice No.2018-19 dated 19.04.2019. As per the Lease notice, a decision was taken to lease out fishing rights in favour of the petitioner-Society for Faslis, 2017-18 and Faslis 2018-19, subject to the payment of lease rentals stated therein. The petitioner-Society was given time to deposit the money till 28.04.2019. A copy of the same was also served on the learned counsel for the petitioner-Society.

Sri D.L. Pandu, learned counsel for the petitioner submits that in the light of the Lease Notice dated 19.04.2019 issued by the respondent authorities, the relief sought for by the petitioners in the writ petition stood granted and, therefore, the writ petition may be closed.

At this juncture, Sri N.S. Arjun Kumar, learned counsel representing Sri K. Kishore Kumar, learned counsel on record for the petitioners in W.P.No.17580 of 2017, requests that it may be clarified that the fishing rights for Fasli 2018-19 are restricted for the period upto June, 2019, and the fishing rights do not extend beyond June 2019.

Sri Tejavath, learned Government Pleader and Sri D.L. Pandu, learned counsel for the petitioner-Society, would concur with the submission made by Sri N.S. Arjun Kumar, and submit that they have no objection in clarifying the aspect that the fishing rights granted in favour of the petitioner-Fisheries Cooperative Society, for the Fasli 2018-19, are restricted upto June, 2019 and shall not operate beyond June, 2019.

In view of the submission made with respect to clarification of the aspect of fishing rights granted in favour of the petitioner-Fisheries Cooperative Society for the Fasli 2018-19, it is clarified that the fishing rights granted in favour of the petitioner-Fisheries Cooperative Society for the Fasli 2018-19, shall stand restricted upto June, 2019 and shall not operate beyond June, 2019.

Subject to the above, the writ petition is closed. No costs. Miscellaneous petitions, if any pending, shall also stand closed.

JUSTICE CHALLA KODANDA RAM

24th April, 2019

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