

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.18224 OF 2019

Date:23.08.2019

Between:

Fishermen Cooperative Society, Sarangapur,
Rep., by its President Thokala Ramesh,
S/o. Yellanna, aged 45 years, R/o. Sarangapur
Village and Mandal, Nirmal District (erstwhile
Adilabad District) .. Petitioner

And

State of Telangana, rep., by its Principal
Secretary, Department of Animal
Husbandry and Fisheries, Secretariat,
Hyderabad and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.18224 OF 2019****ORDER:**

Heard learned counsel for the petitioner, learned Government Pleader for Fisheries.

2. Petitioner is a Fishermen Society of Sarangapur Village, registered in the year 1980. When it was registered, the society was having jurisdiction over seven villages. Later, a separate society is formed in Koutla (B) Village, the 5th respondent – society, and except Sarangapur Village jurisdiction over other six village tanks was vested in the 5th respondent – society. Accordingly, this society was again registered in the year 1993. The society has a water spread area in Sarangapur and Yakarpally villages. It appears, the society has 95 members, who are dependent on fishing operations carried out in Ambabai Tank and Bandham Cheruvu, which come within the area of operation of the society. Petitioner is aggrieved by series of notices issued by the Assistant Director of Fisheries, Nirmal, the 3rd respondent, whereunder he called for objections as to his proposal to delete Yakarpally village from the area of operation of petitioner's society and to attach the said village to the 5th respondent – society. According to petitioner, notice dated 10.04.2019 was issued for the first time. In the notice dated 17.05.2019, the Assistant Director directed the petitioner - society to obtain resolution of the society to remove Bandham Cheruvu in Yakarpally village from the area of operation of the petitioner – society by convening a general body meeting. The society submitted its explanation along with the resolution of the

general body dated 01.05.2019. By the said resolution, the society opposed the proposal to delete Bandham Cheruvu from its area of operation. However, the Assistant Director persisted with his decision and went on issuing notice after notice. In this writ petition, petitioner is assailing the decision of the respondent authorities in issuing notices, latest being 13.08.2019, to remove Bandham Cheruvu from the area of operations.

3. According to learned counsel for the petitioner, before a decision is taken to add or delete cheruvu/tank, the Assistant Director has to undertake viability aspect of the existing society and/or new society and then only he can take a decision, whereas in the instant case, no viability exercise was undertaken, but straight away decision was taken to delete Bandham Cheruvu from the area of operation of the petitioner. It is also contended that in spite of raising objections, without considering the same and without taking decision on the objections, no justification is made out in issuing series of notices and the same amounts to arbitrary exercise of power and authority by the respondent authorities.

4. As contended by learned Government Pleader, from a reading of the notices issued, it appears that the Assistant Director is of the *prima facie* opinion that though the fishermen of Yakarpally village are members of the petitioner – society, that membership remained only on paper and they continue to be the members of the 5th respondent society and are attending to all the affairs of the society. Therefore, for nominal sake, the fishermen of that village cannot be continued with the petitioner – society and as they continue as members of the Koutla society, the Assistant Director

decided to delete the area of operation of Bandham Cheruvu from the petitioner – society and entrust it to 5th respondent – society. In other words, the decision is not to create a separate society of fishermen of Yakarpally village to carry on fishing operations of Bandham Cheruvu, but to delete the Bandham Cheruvu from the area of operations of the petitioner and to vest it in the 5th respondent – society.

5. The only reason assigned is that though the said fishermen are enrolled as members of petitioner – society, they never associated with the petitioner – society, but they have been associating with the 5th respondent – Society. However, these notices are silent as to how the fishing operations are carried out in Bandham Cheruvu and how proceeds of fishing operations in Bandham Cheruvu are distributed. The notices are also not clear as to whether the fishermen of Yakarpally village have membership in both the societies. If that is so, it would become illegal on the part of those persons to have membership of two societies. Therefore, the *prima facie* opinion expressed in the notices appear to be not in accordance with provision in Section 15-A of the Telangana Cooperative Societies Act, 1964 (for short, ‘the Act’) and issuing series of notices without finalizing the issue smacks of arbitrary exercise of power.

6. Section 15-A of the Act requires the competent authority to assess the economic viability of the societies and avoid overlapping or conflict of jurisdictions of the societies to ensure their proper management. He is also vested with extraordinary power to take decision under this provision, if it is in the public interest to

identify the viability and non-viability of societies to retain or divide with consequential restriction or area of operation or transfer of such area or amalgamate or liquidate, as the case may be. Thus, the primary requirement is to undertake the exercise of viability of the societies either for closing the societies or merging the societies to ensure viability. In other words, the objective of the scheme is to ensure that all the fishermen who undertake fishing operations have sufficient means to have comfortable living. Thus, if the yield capacity of a village tank is not good enough to cater to the needs of the members and if there is any other village tank which has better potential but that tank is under the control of different society, the competent authority may take measures to amalgamate these two societies. Similarly, if the potential of a particular village tank is very high, but there are only few members, he may attach other village fishermen.

7. Having regard to this objective, on a bare look at the notices, as noted above, there was no proper appreciation of the issue and exercise of power was not in accordance with the provision in Section 15-A of the Act. *Prima facie* and that the petitioner raised objections opposing the proposal to de-merge the Bandham Cheruvu from the area of operation of the petitioner and to merge with the 5th respondent – society, the Assistant Director ought to have considered the objections, but could not have issued series of notices without first deciding the scope of the aspect having regard to the power vested in him under Section 15-A of the Act.

8. Since the objections are already filed, the Assistant Director of Fisheries, Nirmal, the 3rd respondent, is directed to examine the

objections having regard to the provision in Section 15-A of the Act and take appropriate decision by assigning due reasons in support of the decision and pass orders and communicate the same to the petitioner – society. He may also put on notice the 5th respondent – society and consider its views before taking a decision. Till a decision is made, as directed above, *status quo* obtaining as on today shall be maintained by the parties. It is made clear that the 5th respondent – society is entitled to raise all objections as available in law. The 3rd respondent is also directed to consider the issue objectively uninfluenced by the observations made herein above and strictly in accordance with the provisions in Section 15-A of the Act through which he derives the power.

9. The Writ Petition is accordingly disposed of. Pending miscellaneous petitions shall stand closed.

Date:23.08.2019

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P. NAVEEN RAO, J