

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.10625 of 2020

and

W.M.P.Nos.12907, 12909 & 12910 of 2020

R.Shankar
Amman Koil Street
Nambiar Nagar
Nagapattinam
Nagapattinam District
Tamil Nadu - 611 001.

.... Petitioner

Vs

1.The Government of Tamil Nadu
Represented by its Secretary
Department of Animal Husbandry and Fishery Department
St. Fort George
Chennai.

2.The Commissioner and Director of Fishery Department
Teynampet
Chennai.

3.The Assistant Director of Fishery Department
Nagapattinam
Nagapattinam District.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent in G.O.Ms.No.40 Animal Husbandry and Fisheries (FS V) Department, dated 25.03.2000 and quash the same as illegal and consequently, directing the respondents to permit the petitioner to use purse seine fishing net as per the recommendation of the report of the technical committee of the Central Government.

For Petitioner	:	Mr.K.M.Vijayan Senior Counsel for M/s.K.M.Vijayan Associates
For Respondents	:	Mr.R.Govindasamy Special Government Pleader

O R D E R

This matter is taken up for hearing through Video Conferencing mode.

2. This writ petition is filed for Certiorarified Mandamus, challenging in G.O.Ms.No.40 Animal Husbandry and Fisheries (FS V) Department, dated 25.03.2000 and consequently, direct the respondents to permit the use of purse seine fishing net as per the recommendation of the report of the technical committee and pass appropriate orders.

3. Heard Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents.

4. When the matter was taken up for hearing on 13.08.2020, the learned Special Government Pleader, who took notice on behalf of the respondents, brought to the notice of this Court that the very same Government Order was already upheld by the order of the Division Bench of this Court made in W.P.No.3138 of 2019 dated 05.02.2019 and therefore, on that sole ground, this writ petition is liable to be dismissed. Hence, this Court directed the learned Special Government Pleader to produce the above said order of the Division Bench and accordingly, the matter was adjourned. Again, the matter is taken up for further hearing today and the order of the Division Bench made in W.P.No.3138 of 2019 dated 05.02.2019 is placed before this Court.

5. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner submitted that though this writ petition is filed challenging the Government Order, the grievance of the petitioner is that the respondents should consider the recommendation of the report of the technical committee and pass appropriate orders as has been directed by the learned Single Judge of this Court made in W.P.No.1862 of 2015 dated 12.03.2015 and W.P.(MD). No.22971 of 2019 etc., dated 27.11.2019. Therefore, he submitted that in view of the clear cut direction issued by the learned Single Judges in the above two writ petitions, the present order relied on by the learned Special Government Pleader viz., the order of the Division Bench, cannot stand in the way of this Court to consider the prayer of the present writ petition.

6. On the other hand, the learned Special Government Pleader submitted that the very same relief sought for in the earlier writ petition before the Division Bench, was dismissed on 05.02.2019 and therefore, this Writ Petition is also liable to be dismissed.

7. I have considered the rival submissions made by the respective parties and perused the materials placed before this Court.

8. It is not in dispute that W.P.No.3138 of 2019 was filed challenging G.O.Ms.No.40 dated 25.03.2020 viz., the present impugned G.O. and for consequential direction to the first respondent to pass such notification after holding detailed enquiry by providing opportunities to the villagers for submitting their submissions with regard to the fishing nets and their usage. The Division Bench, by an elaborate order, dismissed the said writ petition by specifically holding that this Court will not sit as an Appellate Court towards policy decision by exercising the jurisdiction under Article 226 of the Constitution of India. Therefore, it is evident that the challenge made in this writ petition viz., G.O.Ms.No.40 has already been upheld by the Division Bench in the above said order. No doubt, the learned counsel for the petitioner relied on two orders of the learned Single Judge as stated supra. First of all, it is to be noted that the order passed in W.P.No.1862 of 2015 is dated 12.03.2015, much prior to the order of the Division Bench dated 05.02.2019. Secondly, the other writ petition which was disposed of by the learned Single Judge in W.P.(MD). No.22971 of 2019 dated 27.11.2019, though, is after the order passed by the Division Bench, perusal of the said order would show that the order passed by the Division Bench was not at all brought to the notice of the Court. Therefore, I do not think that both the orders passed by the learned Single Judges will come to the rescue of the petitioner in any manner. Once the impugned G.O. in this writ petition has already been upheld by the Division Bench, I do not think that the petitioner herein is entitled to challenge the present G.O. on a different ground. Therefore, I find that this writ petition is liable to be dismissed in view of the order passed in W.P.No.3138 of 2019 dated 05.02.2019 as stated supra.

9. The learned Senior Counsel further submitted that the Division Bench has not gone into the question of the report of the technical committee and therefore, on that ground, this Court can interfere with.

10. If the petitioner wants to challenge the Government Order on a different ground, I do not think that it can be done by way of filing a fresh writ petition before the Writ Court and

it may be done by way of filing review petition before the Division Bench and not by way of filing a fresh writ petition. Accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Government of Tamil Nadu
Represented by its Secretary
Department of Animal Husbandry and Fishery Department
St. Fort George
Chennai.
- 2.The Commissioner and Director of Fishery Department
Teynampet
Chennai.
- 3.The Assistant Director of Fishery Department
Nagapattinam, Nagapattinam District.

+1cc to M/s.K.M.Vijayan Associates in SR.28463

W.P.No.10625 of 2020

KK (CO)
RV (10/09/2020)

सत्यमेव जयते

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