



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.03.2021
Pronounced On	28.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.3142 of 2018

and

W.M.P.Nos.3858 of 2018 & 19384 of 2019

(Through Video Conferencing)

FMR3 Hosur Meenavar
Co-operative Society
Rep. by its President V.Ravi
60/76, Nesavalur Street,
Hosur, Krishnagiri District.
Pin-635 109.

... Petitioner

Vs.

- 1.The Assistant Director,
Fisheries, Krishnagiri.
- 2.The Block Development Officer,
Sulagiri Panchayat Union,
Sulagiri, Krishnagiri District.
- 3.The Commissioner,
Sulagiri Panchayat Union,
Sulagiri, Krishnagiri District.
- 4.The Regional Assistant,
Block Development Officer (3)
Panchayat Union,
Sulagiri, Krishnagiri District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the production of the records relating to the proceedings dated 25.01.2018 made in Na.Ka.242/2017/A4 passed by the second respondent herein quash the same and direct the respondents to grant lease of fishing rights to the petitioner for the period of 5 years from 2017-2018.



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For Petitioner : Mr.S.Senthilnathan

For R1 : Mr.N.Inbanathan,
Additional Government Pleader.

For R2 to R4 : Mr.Thanga Vadhana Balakrishnan,
Additional Government Pleader.

O R D E R

This Writ Petition has been filed for a mandamus, to quash production of the records relating to the proceedings dated 25.01.2018 bearing reference Na.Ka.No.242/2017/A4 passed by the second respondent and to direct the respondents to grant lease of fishing rights to the petitioner for the period of 5 years from 2017-2018 to 2021-2022.

2. By a communication dated 11.10.2017, the second respondent recommended the first respondent to pass order for grant of fishing rights / lease for a period of five years from 2017-2018 to the petitioner. The first respondent thereafter also passed an appropriate order on 24.10.2017.

3. Pursuant to the order dated 24.10.2017 of the first respondent, the petitioner had also paid a sum of Rs.89,746/- on 25.10.2017. However, by the impugned order dated 25.01.2018, the fishing rights was cancelled by the second respondent.

4. It is case of the second respondent that this Writ Petition has become infructuous in as much as the fishing right was auctioned in a Public Auction which was proposed to be held on 31.01.2018. However, the said Auction could not be held on 31.01.2018 as there was "Eruthu Viduthal" ceremony in the village and therefore the auction was postponed to 08.02.2018. On 08.02.2018, the said auction was once again postponed due to the death of former Panchayat President. The Auction finally took place on 12.02.2018 after due formalities and in the presence of the Press and Public at the Panchayat Union Office. It is submitted that the petitioner however did not participate in the said auction.

5. It is submitted that in the auction held on 12.02.2018 Mr.P.Moses was declared as a successful bidder and the fishing rights was granted to the said Mr.P.Moses subject to the remittance of Rs.2,05,920/- (including all taxes) payable by 5.30 p.m. of the same day. However, he failed to pay the amount and thereafter fishing rights has not been given to anybody and the status quo continues. It is submitted that the fishing rights has to be given only in terms of G.O. (Ms) No.201 dated



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19.10.2017, wherein, it has been stated as follows:-

The local Fishermen Co-operative Society shall be given the priority for taking lease of fishing rights of intensive inland fish culture tanks before leasing through public tender by paying the upset price upfront.

6. By way of additional affidavit, the learned counsel for the petitioner drew my attention to the G.O.Ms.No.332, Animal Husbandry and Fisheries (FS.IV), Department, dated 17.11.1993, wherein, it has been stated that Auctioning of fishery rights, otherwise than by lease, should be resorted to only if no Cooperative Societies of Fishermen or Harijans engaged in fishing or the Panchayats are not willing to take up the lease. It is further submitted that the Division Bench of this Court in the case of A.G.Palanichamy Vs. The Government of Tamil Nadu, rep. by Secretary to Government and others, in W.A.No.384 of 2017, by its order dated 16.11.2017, disposed the Writ Appeal filed against the order in W.P.No.20182 of 2016. The said Writ Petition was filed to call for the production of the records relating to the proceedings dated 27.05.2016 made in Na.Ka.No.29400/F3/2014 passed by the Commissioner of Fisheries and quash the same and direct the Commissioner of Fisheries to grant fishing rights.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the second to fourth respondents and the learned Additional Government Pleader appearing for the first respondent.

8. The second respondent had originally recommended for grant of fishing rights to the petitioner. Thus, the first respondent granted such rights to the petitioner by an order dated 24.10.2017 fixing the rates payable for each of the financial years. Since the large scale irregularity was noticed and the public had sent communications to the District Collector, later ordered the second respondent to re-look into the irregularity in the fishing rights given to the petitioner. Thus, the fishing rights was cancelled by the second respondent. Thereafter, the second respondent held an auction on 12.02.2018.

9. Though the auction was conducted and notice was issued to the petitioner, the petitioner failed to participate in the said auction. One of the participants, namely Moses who was a successful bidder, failed to deposit the auction amount. As a result of which, for the last three years, there has been no fishing rights given to anybody.



10. The fishing rights ought to have been given in terms of G.O.(Ms.) No.201, Animal Husbandry, Dairying and Fisheries (FS-6), Department, dated 19.10.2017. It provides for complete code regarding the manner in which, the fishing rights has to be given. The said G.O.(Ms.) No.201, Animal Husbandry, Dairying and Fisheries (FS-6), Department, dated 19.10.2017 amended G.O. (Ms.) No.33, Animal Husbandry, Dairying and Fisheries (FS-6), dated 27.02.1995. The paragraph 4 of the said G.O.(Ms.) No.33, dated 27.02.1995 reads as under:-

4. After careful consideration, the Government accept the proposal of thte Commissioner of Fisheries and in partial modification of the orders issued in the Government orders fist above, they direct that the fishery rights of the tanks taken over under the Intensive Inland Fish Culture and Marketing Scheme in Madurai South Arcot Vallalar and Villupuram-Ramasamy Padayachiar District be auctioned by the concerned Assistant Director of Fisheries, subject to the following terms and conditions with immediate effect.

- i. The Assistant Executive Engineer (Public Works Department) and Tahsildar will be present.
- ii. These tanks be leased to individuals and Inland Fisherman Cooperative Societies for a period of three continuous years to the successful bidder. While calling for tender, upset price (minimum lease amount) should be fixed for each tank taking into account the cost of stocking, productivity of the tank water retentivity and other factors by the Assistant Director of Fisheries concerned subject to approval by the Regional Joint Director / Deputy Director.
- iii. Minimum lease rent be fixed by the Assistant Director of Fisheries concerned based on
 - a) Quantity of water received in a tank, in a give year and the likely duration of culture period available in the tank and,
 - b) Cost of fingerlings stocked by the Government in that tank whenever departmental hatcheries are unable to stock these tanks, parameter (a) alone will determine the lease rent. Staff sanctioned under Intensive Inland Fish Culture and Marketing Scheme will collect data on water



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availability of major long seasonal tanks the scheme area and furnish it to the concerned Assistant Director thereby enabling him to fix the minimum lease rent. (The above fixation of lease is subject to approval by the concerned Regional Joint Director / Deputy Director of Fisheries)

- iv. With reference to production capacity of the departmental hatcheries, only certain identified tanks will be stocked with fingerlings reared by departmental units. If it may not be possible to stock all the tanks adequately due to late monsoon and non-availability of the seed during stocking season the Fisheries Department should take all possible efforts to stock as major tank as possible before the end of September / October. Come the beginning of October / November the fisheries right may be either auctioned or disposed off by tender wherever the tanks could not be stocked fully or partially, the highest bidder / lessee can stock in these tanks after the lease is confirmed. A firm link up between hatcheries and tanks will be established in advance.
- v. While lease period is for 3 years, lease rent fixation will be done by the Assistant Director of Fisheries in charge of the scheme every year.
- vi. Lease rent should be paid by the lessee in advance (i.e.) at the beginning of the year it will be credited to the head "0405 FISHERIES 011 RENTS AB LEASE OF FISHERIES" (D.P.Code No.0405 00 011 AB 0004).
- vii. If there is keen competition among various parties to take a particular tank on lease, the Assistant Director of Fisheries will lease it to that party which offers to pay the highest lease rent.
- viii. In case no one comes forward for giving tender or no one take part in the public auction for any of these tanks or if the bid amount is less than the upset price, the fisheries of such of those tanks will be exploited by department itself by giving 50% of the share to the local Fishermen Cooperative Society members as usual.
- ix. In the case of tanks, which are considered



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not fit for fish culture on account of reduced in flow of water into the tank or due to lesser duration of water retention period or due to other factors such of those tanks will be surrendered to the owners of the tanks concerned Viz., Public Works Department and remaining tanks available under the scheme be made as a compact unit.

- x. Individuals and Fishermen Cooperative Societies will participate in bidding for lease rights on equal footing.

11. The said paragraph 4 of the said G.O. was later amended by he said G.O.(Ms.) No.201, Animal Husbandry, Dairying and Fisheries (FS-6), Department, dated 19.10.2017 as follows:-

- i. The local Fishermen Co-operative Society shall be given the priority for taking lease of fishing rights of intensive inland fish culture tanks before leasing through public tender by paying the upset price upfront.
- ii. Upset price should be fixed once in 3 years for each tank taking into account the cost of stocking, productivity of the tank, water retentivity and other factors by the Assistant Director of Fisheries concerned subject to approval by Regional Joint / Deputy Director of Fisheries and Commissioner of Fisheries.
- iii. The Fishermen Co-operative Society shall be required to give its consent to take the lease rights for the tanks under its area of operation in written form to Assistant Director of Fisheries concerned before 30th June of every year.
- iv. Such tanks shall be allotted exclusively to the concerned Inland Fishermen Co-operative Society for a period of three continuous years provided the lease amount shall be 20% more than that of the upset price fixed by the Department for the 1st year.
- v. The Fishermen Co-operative Society who have got the lease rights of the particular tank by allotment shall not sublet the lease rights to others. If the lease rights of the particular tank is found to have been sub-leased to others, the Assistant Director of Fisheries is empowered to cancel the lease rights awarded to the Fishermen Co-operative Society and go for public tender.



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this regard is final in the above matter. Engaging non-Fishermen Co-operative Society members shall be resorted to after getting written permission from the Assistant Director of Fisheries concerned only if the Fishermen Co-operative Society members are not coming forward for fishing.

- xiii. In case, no one comes forward for giving tender or no one take part in the public Tender for any of these tanks of if bid amount is less than the upset price, the fishery of those tanks shall be exploited by Department itself by giving 50% of the share to the local Fishermen Co-operative Society members as usual.
- xiv. In case of tanks, which are not fit for fish culture on account of reduced inflow of water into the tank or due to lesser duration of water retention period or due to other factors, such of those tanks will be surrendered to the owners of the tanks concerned namely, Public Works Department and remaining tanks available under the scheme be made as compact unit.
- xv. During the lease period, if any one of the years is declared as Drought Year by the Government and the lease amount has been paid by the lessee for the particular year in advance, then the lease period shall be extended by one year without lease amount.
- xvi. The Fishermen Co-operative Society / lessee should also pay a sum equivalent to 5% of the annual lease amount every year towards the contribution to the Tamil Nadu Fishermen Welfare Board through the Assistant Director of Fisheries concerned.
- xvii. The Fishermen Co-operative Society / successful tenderer shall be required to pay a Security Deposit of 10% of the first year annual lease amount during the 1st year lease.
- xviii. The species which are banned by State / Central Government should not be stocked in the tanks under this scheme.
- xix. The lease would be terminable without compensation and with a short simple notice for violation of proper fisheries practices as prescribed.
- xx. Irrigation is the primary rights of irrigation tanks and it will be recognized. Fisheries development will be subordinate to such rights.
- xxi. The Commissioner of Fisheries / Director of



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Fisheries shall continue to be "lesser" in respect of the tanks under this scheme.

xxii. The leasing of fishing rights shall be carried out by Fisheries Department in the tanks where fishing rights are at present leased out by the Department. Similarly, the Revenue Department shall continue to lease out fishing rights in the tanks where such procedure is carried out by the Revenue Department at present. The leasing rights in all other tanks as ordered shall be with the Public Works (Water Resources) Department only.

xxiii. The Fisheries Department shall strictly ensure that the water in the tanks is not polluted by the lessee.

xxiv. Irrigation and Drinking Water supply requirements, wherever necessary, shall be given top most priority rather than Fish Culture.

12. Therefore, the second respondent has only acted in accordance with the said G.Os. The conduct of the petitioner is not genuine as is evident from the fact that the original lease amount appears to have been negotiated across the table. Since the said Moses set up by the petitioner also failed to come forward to exercise his rights as a successful bidder, the fishing rights has not been given for the last three years to anybody.

13. The respondents are therefore directed to take steps to auction the fishing rights as per the said G.Os., within period of one month from the date of receipt of a copy of this order. The respondents are also directed to refund the amount of Rs.89,746/- paid by the petitioner on 25.10.2017 together with interest at normal lending rates adopted by the bank, within a period of two months from the date of receipt of a copy of this order.

14. The petitioner is therefore called upon to furnish the bank account details for refund of the amount deposited by the petitioner, within a period of thirty days from the date of receipt of a copy of this order.

15. If the petitioner fails to co-operate with the respondents for refund of aforesaid amount, the amount paid by the petitioner shall stand forfeited.



16. This Writ Petition stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To :

- 1.The Assistant Director,
Fisheries, Krishnagiri.
- 2.The Block Development Officer,
Sulagiri Panchayat Union,
Sulagiri, Krishnagiri District.
- 3.The Commissioner,
Sulagiri Panchayat Union,
Sulagiri, Krishnagiri District.
- 4.The Regional Assistant,
Block Development Officer (3)
Panchayat Union,
Sulagiri, Krishnagiri District.

+lcc to Mr.S.Senthilnathan, Advocate sr.26504

+lcc to M/s.Thangavadhana Balakrishnan, Advocate Sr.26505

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W.M.P.Nos.3858 of 2018
& 19384 of 2019

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