



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)Nos.1251 of 2020

&

C.M.P. (MD)No.7124 of 2020

and

W.A. (MD)No.923 of 2020

&

C.M.P. (MD)No.5050 of 2020

W.A. (MD)No.1251 of 2020:-

1.The Director of Fisheries,
Fisheries Department,
Chennai.

2.The Deputy Director of Fisheries (Zonal),
Office of the Deputy Director of Fisheries,
Madurai,
Madurai District.

3.The Assistant Director of Fisheries,
Theni Vaigai Dam,
Theni District.

... Appellants/
Respondents 1-3

Vs.

1.S.T.Mani

...1st Respondent/Petitioner

2.FMD-10-Bodi Fisherman Co-operative Society,
Rep. by its President A.Sankar,
No.71-C, Solai Chokkalingam Nagar,
Karupasamy Kovil Street, Bodinayakanur - 625 513.

...2nd Respondent/4th Respondent

3.The Divisional Engineer,
Public Works Department,
Vaigai Dam,
Theni District.

... Respondents

[3rd respondent is *suo motu* impleaded vide order
dated 20.01.2021, made in W.A.(MD)Nos.1251 &
923 of 2020]

Prayer : Appeal filed under Clause 15 of the Letters Patent
against the order passed by this Court in W.P.(MD)No.5485 of 2020,
dated 31.08.2020.



Prayer in WP(MD). 5485/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to Call for the records pertaining to the Impugned order Na.Ka.No.605/A/2019 dated 3.3.2020 on the file of the Second respondent and quash the same as illegal and consequently direct the respondents no.1 to 3 to conduct the Tender for the Bodi Meenakshiamman Kanmoi, Ammapatti Village, Bodi Taluk, Theni District in light of G.O.Ms.No.201 Animal Husbandry Dairying and Fisheries (FS-6) Department dated 19.10.2017 within the time frame stipulated by this Honourable Court

For Appellants and for R3	:	Mrs.J.Padmavathi Devi Special Government Pleader
For R1	:	Mr.T.Lajapathi Roy for Mr.P.Athimoolapandian
For R2	:	Mr.M.Ajmalkhan Senior Counsel for Mr.V.Malaiyendran

W.A. (MD)No.923 of 2020:-

FMD-10, Bodi Fisherman Co-operative Society,
Rep. by its President (In-charge),
M.Thamilarasan,Thiruchendur, Kodangipatti,
Bodinayakkanur,Theni District. ... Appellant/4th Respondent

Vs.

1.S.T.Mani ...1st Respondent/Petitioner

2.The Director of Fisheries,
Fisheries Department,
Saidapet, Chennai.

3.The Deputy Director of Fisheries,
O/o. The Deputy Director of Fisheries (Zonal),
Madurai, Madurai District.

4.The Assistant Director of Fisheries,
Theni, Vaigai Dam,
Theni District.

...2 to 4 Respondents/
1 to 3 Respondents

5.The Secretary,
Public Works Department,
Government of Tamil Nadu,
Nammakkal Kavingar Maaligai,
Secretariat, Chennai - 600 009.



6.The Secretary,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

7.The District Collector,
Theni District.

8.The Revenue Divisional Officer,
Uthamapalayam, Theni District.

9.The Ayakkattudars Association of Bodi Meenakshiamman
Kanmoi,
Rep. by its President,
Ammapatti Village, Bodi Taluk,
Theni District.
(Respondents 5 to 9 are Suo Motu impleaded
as party respondents vide Order dated
12/10/2020 made in WA(MD)No.923/2020)

10.The Divisional Engineer,
Public Works Department,
Vaigai Dam,
Theni District.

[10th respondent is *suo motu* impleaded vide order
dated 20.01.2021, made in W.A.(MD)Nos.1251 &
923 of 2020]

11.Bodi Meenakshiamman Kanmoi Neerina
Payanpaduthuvor Sangam,
B.Ammapatti,
Rep. by its President,
G.Jeyaram, S/o.Govindarajan,
12-2-23, Therku Asariyar Street,
B.Meenakshipuram, Bodi Taluk,
Theni District.

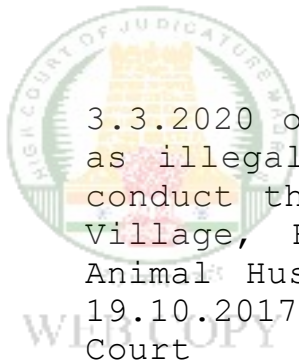
... Respondents

[11th respondent is impleaded vide order dated
03.02.2021, made in C.M.P.(MD)No.261 of 2021
in W.A.(MD)No.923 of 2020]

Prayer : Appeal filed under Clause 15 of the Letters Patent Act,
against the order passed by this Court in W.P.(MD)No.5485 of 2020,
dated 31.08.2020.

Prayer in WP(MD). 5485/ 2020 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to Call for the records
pertaining to the Impugned order Na.Ka.No.605/A/2019 dated



3.3.2020 on the file of the Second respondent and quash the same as illegal and consequently direct the respondents no.1 to 3 to conduct the Tender for the Bodi Meenakshiamman Kanmoi, Ammapatti Village, Bodi Taluk, Theni District in light of G.O.Ms.No.201 Animal Husbandry Dairying and Fisheries (FS-6) Department dated 19.10.2017 within the time frame stipulated by this Honourable Court

For Appellant : Mr.M.Ajmalkhan
Senior Counsel
for Mr.V.Malaiyendran

For R1 : Mr.T.Lajapathi Roy
for Mr.P.Athimoolapandian

For R2 to R8 & R10 : Mrs.J.Padmavathi Devi
Special Government Pleader

For R11 : Mr.G.Prabhu Rajadurai

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

W.A.(MD)No.1251 of 2020 has been filed by the official respondents in W.P.(MD)No.5485 of 2020 and W.A.(MD)No.923 of 2020 has been filed by the private respondent, viz., FMD-10, Bodi Fisherman Co-operative Society.

2.The above said Writ Petition has been filed by respondent No.1 challenging the impugned order of the Deputy Director of Fisheries, Madurai, dated 03.03.2020, with a consequential direction to conduct the tender afresh. Respondent No.1/writ petitioner was admittedly a Member of the appellant Society in W.A.(MD)No.923 of 2020.

3.The learned Single Judge disposed of the said Writ Petition by directing the Secretary to Government, Fisheries Department, to issue a tender notice in tune with the other directions issued. The directions were given to the effect that after fixing the upset price, tender should be called for and the highest bid amount will have to be offered to the Fisherman Society. Therefore, the said exercise cannot be done before fixing the upset price. The learned Single Judge further found that the fixation of upset price is grossly inadequate and not in tune with the Government Order in G.O.(Ms)No.201, Animal Husbandry, Dairying and Fisheries (FS-6) Department, dated 19.10.2017.



4.Challenging the aforesaid order passed, the official respondents have filed W.A.(MD)No.1251 of 2020 and the private respondent has filed W.A.(MD)No.923 of 2020.

5.The learned Special Government Pleader appearing for the appellants in W.A.(MD)No.1251 of 2020 and the learned Senior Counsel appearing for the appellant in W.A.(MD)No.923 of 2020 submitted that the upset price has been fixed in accordance with the Government Order passed by the Government in G.O.(Ms)No.201, Animal Husbandry, Dairying and Fisheries (FS-6) Department, dated 19.10.2017. The Writ Petition itself was not maintainable, as it was filed by the Member of the Society. The learned Single Judge has converted the Writ Petition into Public Interest Litigation and set aside the Government Order passed by the Government in G.O.(Ms)No.201, Animal Husbandry, Dairying and Fisheries (FS-6) Department, dated 19.10.2017, when there is no challenge to the same. Thus, the order requires interference.

6.On the issue regarding the likelihood of Farmers Society being affected, who are represented by the Counsel, the learned Special Government Pleader submitted that the instructions from the Public Works Department requires consideration and therefore, any right in favour of the appellant in W.A.(MD)No.923 of 2020 is subject to the rights of the Bodi Meenakshiamman Kanmoi Neerinai Payanpaduthuvor Sangam. The learned Special Government Pleader also brought to the notice of this Court about the activities that is going on against the interest of the aforesaid Sangam. The same has been reiterated by the learned counsel appearing for respondent No.11 in W.A.(MD)No.923 of 2020.

7.Before us, we have three competing interests. Apart from filing the Writ Petition as Public Interest Litigation, the Writ Petitioner has challenged it on various grounds including the upset price. The appellant in W.A.(MD)No.923 of 2020 seeks to sustain the awarding of licence with the upset price. The farmers want their interest to be protected. Even among the official respondents, the Public Works Department feels that the auction of the licence affects the farmers.

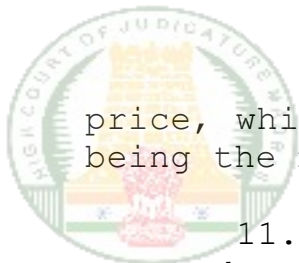
8.On the finding rendered by the learned Single Judge with respect to the upset price fixed, we are in respectful agreement. The earlier fixation of upset price through the intervention of this Court has not been taken into consideration. We are dealing with the larger interest of the water body, containing 81.43 Hectares. Now, water is sufficiently available. Unfortunately, this aspect was not gone into at the time of granting licence. The order passed by the Division Bench of this Court, dated 05.04.2019, has not been complied with in letter and spirit. The



relevant factors have not been spoken, as rightly pointed out by the learned counsel appearing for respondent No.1/writ petitioner. Undervalued upset price has been fixed. Thus, to that extent, we are in agreement with the reasoning given by the learned Single Judge. On the methodology to be adopted also, the reasoning of the learned Single Judge is correct, though no challenge has been made to the Government Order. The Writ Petition was not on the public interest and there was no challenge to the Government Order passed and hence, the same cannot be set aside indirectly without even laying a challenge. The Court went on to say that the said Government Order has not been considered properly and the other procedures contemplated also have not been followed. Perhaps, the wisdom would prevail on the official respondent to modify the above said order as reasoned by the learned Single Judge. Suffice it to state that the present procedure does not require interference, especially, when the same has been given effect to with respect to the right conferred on the appellant in W.A.(MD) No.923 of 2020. Any such auction will have the prospective effect and therefore, the same will not take away the right accrued. Similarly, we uphold the objections of the learned Senior Counsel appearing for the appellant in W.A.(MD)No.923 of 2020 that the learned Single Judge ought not to have entertained the Writ Petition filed at the instance of the one of its Members, this being a fundamental principle of law.

9.However, in the case on hand, for the reasons best known, grossly inadequate upset price has been fixed, excluding the fact that a larger amount was fixed on the last occasion. The Government would be the looser and therefore, it is in Public Interest. To that extent, we find the reasoning of the learned Single Judge requires to be confirmed. Therefore, we call upon the official respondent to re-do the exercise, by keeping in view of the price augmented on the last occasion. The State largesse cannot be given to some one on a platter ignoring the financial implication. Accordingly, the official respondents are hereby directed to re-do the exercise of the upset price and offer the same to the appellant in W.A.(MD)No.923 of 2020, particularly, keeping in mind the price that was fixed for the last year.

10.For the ensuing years, we call upon the official respondents, including the Secretary to Government, Fisheries Department, to adopt a different methodology as suggested by the learned Single Judge, by fixing the upset price and thereafter, call for tender. The highest amount offered by the successful bidder will have to be offered to the Bodi Fisherman Society. It is better to follow this methodology in future in all cases, as the Government would not loose the revenue and in any case, fixation of the upset price is a starting point and the same will not be the actual price that will fetch in an auction. It is a



price, which will facilitate somebody to take part in the auction, being the minimum value of the subject matter of the licence.

11.The incidental issue is with respect to the impleaded respondents. On a perusal of the status report filed by respondent No.4, it is clear that various violations took place. These violations are with respect to contamination with the water and reaction to facilitate the highest fishing. The rights of the appellant in W.A.(MD)No.923 of 2020 is certainly subject to the rights of the impleaded respondent. Therefore, the official respondents shall make sure that their rights are not affected, which is inclusive of contaminating the water by polluting it for facilitating the larger capture of fishing and letting the water out, much to the suffering of the farmers. If such activities are carried on, the respondents are expected to cancel the licence.

12.There is one another issue which we need to consider. This is with respect to other living beings. The learned Special Government Pleader appearing for the official respondents will have to instruct the officials to make sure that the appellant in W.A.(MD)No.923 of 2020 shall not involve in any illegalities, by using crackers to shy away the birds, which go there to catch fish.

13.We find considerable force in the said submissions made. The official respondents will make sure that the birds are not made to go away by the usage of crackers.

14.The official respondents shall undertake the exercise as aforesaid within a period of four weeks from the date of receipt of a copy of this judgment. If the appellant in W.A.(MD)No.923 of 2020 is not inclined to take the fishing rights, it can be brought up for auction.

15.These Writ Appeals are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

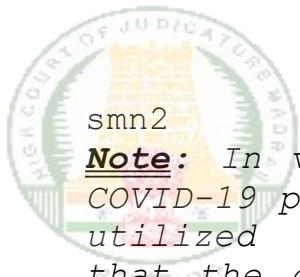
Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Director of Fisheries,
Fisheries Department,
Saidapet, Chennai.
- 2.The Deputy Director of Fisheries,
O/o. The Deputy Director of Fisheries (Zonal),
Madurai, Madurai District.
- 3.The Assistant Director of Fisheries,
Theni, Vaigai Dam,
Theni District.
- 4.The Secretary,
Public Works Department,
Government of Tamil Nadu,
Nammakkal Kavingar Maaligai,
Secretariat, Chennai - 600 009.
- 5.The Secretary,
Municipal Administration and Water Supply Department,
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- 6.The District Collector,
Theni District.
- 7.The Revenue Divisional Officer,
Uthamapalayam, Theni District.
- 8.The Divisional Engineer,
Public Works Department,
Vaigai Dam, Theni District.

+1 CC to SGP (SR-3354[F] dated 04/02/2021)

+1 cc to Mr.G.Prabhu Rajadurai , Advocate SR.No.3387

Common judgment in
W.A. (MD) Nos.1251 and 923 of 2020
03.02.2021

KM (22.02.2021) 8P 11C

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