



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .Nos.21358 and 21946 of 2021

and

W.M.P. (MD) .No.17914 of 2021 in W.P. (MD) .No.21358 of 2021

W.M.P. (MD) .Nos.18518, 18519 and 18520 of 2021

in W.P. (MD) .No. 21946 of 2021

W.P. (MD) .No.21358 of 2021

A.Lakshmanan

... Petitioner

Vs.

1.The Commissioner of Fisheries and
Fisheries Welfare,
Tamil Nadu Fisheries and Fisherman
Welfare Department,
Nandanam,
Chennai - 600 035.

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned communication in Na.Ka.No.650/அ/2020 dated 14.06.2021 passed by the second respondent herein and quash the same as illegal and consequently direct the second respondent to grant the lease of Fishing rights on the basis of the representation dated 21.06.2021 for the Tank of Sirukulam, Kullapuram Village of Theni District as per the G.O.(Ms) No.201 dated 19.10.2017 within a stipulated period as fixed by this Court.

For Petitioner : Mr.K.Safar Badhusha
For Respondents : Mr.J.John Rajadurai
Government Advocate

W.P. (MD) .No.21946 of 2021

A.Lakshmanan

... Petitioner

Vs.



1.The Commissioner of Fisheries and
Fisheries Welfare,
Tamil Nadu Fisheries and Fisherman
Welfare Department,
Nandanam,
Chennai - 600 035.

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned Tender Notification No.Nil dated 22.11.2021 passed by the second respondent herein and quash the same as illegal and consequently direct the respondents to grant the lease of Fishing rights in the Tank of Sirukulam at Silvarpatti of Theni District to our society namely FMD-4, Kullapuram Fishermen Co-operative Socceity in the light of G.O.(Ms)No.201 dated 19.10.2017.

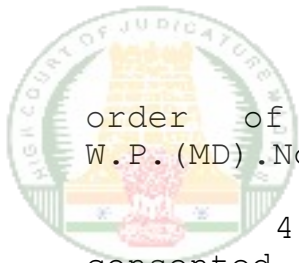
For Petitioner : Mr.K.Safar Badhusha
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

COMMON ORDER

Both the Writ Petitions had been filed by the same petitioner claiming to be the President of Kullapuram Fishermen Co-operative Society, Kovilpuram, Kullapuram in Theni District. They had been filed against the same respondents, the Commissioner of Fisheries and Fisheries Welfare, Tamil Nadu Fisheries and Fisherman Welfare Department, Nandanam, Chennai - 600 035 and the Assistant Director of Fisheries, Vaigai Dam, Theni, Theni District.

2. In the first Writ Petition aforesaid W.P.(MD).No.21358 of 2021, the relief sought for is Certiorarified Mandamus seeking to interfere with a communication of the second respondent dated 14.06.2021 and to direct the second respondent to grant lease of fishing rights based on the representation dated 21.06.2021 with respect to the tank at Sirukulam in Kullapuram Village of Theni District. The petitioner places reliance on G.O.Ms.No.201, dated 19.10.2017.

3. Subsequently, as event stands out, the respondents had taken a decision to auction the said fishing rights and a notification had also been issued. The petitioner had filed the second Writ Petition questioning such notification. The petitioner was also permitted to participate in the auction proceedings by



order of this Court. The second Writ Petition namely, W.P.(MD).No.21946 of 2021 was moved as a Lunch Motion.

4. In view of the fact that the petitioner had also consented to participate in the auction, extension of lease cannot be even considered by this Court and therefore, without entering into any further discussion, W.P.(MD).No.21358 of 2021 is dismissed.

5. The main challenge is to the auction Notification issued, which is the subject matter of W.P.(MD).No.21946 of 2021, which Writ Petition, had been filed again in the nature of Certiorarified Mandamus, seeking interference of the tender Notification, dated 22.11.2021 of the second respondent.

6. It is however seen that the auction had also been been conducted. This position that the auction had been conducted is also accepted by the petitioner herein. However, the procedure and the manner by which, the petitioner claims that he had been side lined during the auction, has been seriously questioned by the learned counsel for the petitioner.

7. There are two Government Orders and an order by a Division Bench which cover the present issue. The Government Order namely, G.O.Ms.No.201 Animal Husbandry, Dairying and Fisheries Department dated 19.10.2017, provides the procedure in which an auction should be conducted with respect to leasing the fishing rights in a particular tank. It had been stated that Fishermen Co-operative Societies should be given priority.

8. The procedure in which the actual auction is to be conducted, had been come up for discussion before a Division Bench of this Court in ***W.A.(MD).No.1251 of 2020, (The Director of Fisheries, Fisheries Department, Chennai and two others Vs. S.T.Mani) and W.A.(MD).No.923 of 2020, (FMD-10, Bodi Fisherman Co-operative Society, represented by the President)***. By common order dated ***03.02.2021***, the Division Bench entered into a discussion on the procedure to be adopted, keeping in mind the terms of the Government Order and the stipulation of the Government Order aforementioned that Fisherman Co-operative Societies should be given priority and their position should not be rejected or overridden by the official authorities.

9. It had been stated by the Division Bench, that the upset price must be first fixed. Thereafter, tenders must be called for. During the course of tender, the highest bid offered, must be offered to the Society and an opportunity must be given to the Society, to give, if possible, a higher amount. If they do so, then they will be considered, if they don't, then they cannot be considered.



10. One primary requirement for a Co-operative Society to participate in the auction, a pre-requisite actually, is that there must be a resolution to that effect by the Society. It must be kept in mind that a Co-operative Society is a collection of individual members, who contribute for each one's benefit and therefore, whenever any decision is taken to participate in an auction, then a resolution will have to be passed in manner known to law. Learned counsel for the petitioner had stated that the petitioner's Society had not passed any such resolution to participate in the auction.

11. The second aspect is that, during the auction, the petitioner must be present. In this case, they were not present. They did not participate during the auction. My attention has been drawn to a letter issued to the petitioner herein, even prior to the conducting of the auction, dated 09.11.2021 by the second respondent wherein, he had stated that a Notification for auction had been issued in the news papers on 28.10.2021 and therefore, on 19.11.2021, the auction is to be conducted and therefore, the petitioner may participate in the auction strengthened with the resolution of the Society.

12. It had been stated by the learned counsel for the petitioner that since the Court had granted permission to participate in the auction, since the matter was moved as Lunch Motion, there was no possibility of a resolution being passed. But however if, the petitioner had an inclination to seek fishing rights in that particular tank, then they should have passed a resolution much well in advance.

13. It had been further contended by the learned counsel for the petitioner that the auction procedure stands vitiated owing to the fact that the upset price was not fixed by the respondents. This has been countered by the respondents by pointing out that for the very fishing tank which the petitioner sought to participate, the upset price had been fixed as Rs.2,22,000/- and that detail was available in the tender cum auction notice itself.

14. The steps therefore can now be crystallized to the following points:-

- (i) Issuance of notice,
- (ii) Calling for tenders
- (iii) In the Notification, fixing the upset price,
- (iv) Inviting the petitioner to participate in the auction
- (v) While inviting also calling upon the petitioner to produce the resolution permitting the petitioner to participate in the auction and thereafter also to abide with the terms of the auction.
- (vi) It is only during the auction that the highest bid will be known. The bids will be opened. They will be examined. The highest bid will be then determined.



(vii) At that particular point of time, if the petitioner is physically present, the bids can be shown to the petitioner and their response can be sought.

15. In the instant case, there was no resolution passed for the petitioner's society to participate in the auction. The petitioner also did not participate in the auction. They were not physically present.

16. It is imperative on the part of the respondents that once they open the bid, they must declare and announce the results. They cannot hold it back forever and await the presence of any other person including the petitioner. It is for the petitioner to participate and be present during the auction.

17. It must be kept in mind that a tender is an invitation and the petitioner is the offeror and the respondent are the ones who accept. Therefore, the person who offers the highest amount or equals the highest amount should be present during the auction.

18. I hold, the Court cannot come to the rescue of the petitioner. The petitioner should have participated in the auction, since much prior to the auction date, the period of their lease had expired. The petitioner should have been prepared and should have passed a resolution to participate in the auction proceedings. That is a basic requirement which has not been satisfied. The Court cannot come to the rescue of the petitioner. The individual members of the petitioner Society, if they want to participate in the auction, should pass necessary resolution in that regard.

19. In this particular case, the Notification had been issued. The auction had been conducted. Applications had been issued. Upset price had been fixed. The petitioner had been put on notice inviting them to participate in the auction. But, the petitioner did not participate in the auction.

20. It must also be kept in mind that the petitioner had been permitted by the Court to participate in the auction. Still the petitioner had not taken any steps to participate.

21. The rights of the successful bidder will have to be kept in mind. It is no longer *res integra* and it has been well established that once the results have been declared and the successful bidder has been identified, no order can be passed by the Court questioning the tender or the said process in the absence of the successful bidder.



22. In view of all these reasons, I have no other alternative except to dismiss the Writ Petitions. Accordingly, these Writ Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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 Commissioner of Fisheries and
Fisheries Welfare,
Tamil Nadu Fisheries and Fisherman
Welfare Department,
Nandanam,
Chennai - 600 035.

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

+1 CC to M/s.SPL GP (SR-40478[F] dated 27/12/2021)

**W.P. (MD) .Nos.21358 and 21946 of 2021
23.12.2021**

srk(CO)

TR(06.01.2022) 6P 4C