



W.P(MD)Nos.17020 and 17028 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.17020 and 17028 of 2022

and

W.M.P.(MD)Nos.12386, 12388, 12390, 12403, 12404 and 12406 of 2022

Rajan ... Petitioner in W.P.(MD)No.17020 of 2022

S.Eugine ... Petitioner in W.P.(MD)No.17028 of 2022

Vs.

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

2.The District Collector,
O/o. The District Collector,
Kanyakumari District.

3.The Deputy Director of Fisheries,
Department of Fisheries,
Nagercoil,
Kanyakumari District.

4.The Member Secretary/Assistant Director,
Director of Fisheries,
Thengapattanam Fishing Harbour
Management Board,
Kulachal, Kanyakumari District.

... Respondents in both W.Ps



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Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order / Notification issued by the 4th Respondent in Na.Ka.No.1/TPTMFHMS/2019 dated 22.07.2022 and quash the same as illegal and consequently direct the 4th Respondent to consider petitioner's Representation and consequentially for a direction directing the 4th Respondent to maintaining status quo of the existing composition of Thengapattanam Fishing Harbour Advisory Committee till their tenure expires.

For Petitioner : Mr.G.Anto Prince

For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate.

ORDER

Heard the learned counsel for the writ petitioners and the learned Government Advocate for the respondents.

2.The case on hand pertains to constituting the advisory committee and management committee for Thengapattanam fishing harbour. Thengapattanam fishing harbour covers as many as 15 villages. While constituting the aforesaid



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committee in the year 2019, in order to give wider representation, the officials have inducted two persons from each of the villages, one for the advisory committee and one for the management committee. This was questioned by one Antony Xavier by filing W.P.(MD)No.7778 of 2022. The said writ petition was disposed of on 24.02.2022 in the following terms:-

“2.According to the petitioner, the fourth respondent has notified only 7 unions and only as per the bye-laws of the respective unions, members can be inducted. It is the contention of the petitioner that by a resolution, duly elected members of the respective 7 unions are trying to induct new members belonging to other Villages. In such circumstances, the petitioner has given a representation on 23.02.2022, to the second and third respondents to ensure that the respective unions induct only members belonging to the respective unions and not induct any new members belonging to other villages and other unions. Admittedly, the petitioner's representation, dated 23.02.2022, has not been considered till date.

3.....

4.....

5.For the foregoing reasons, this Court directs the third respondent to consider the petitioner's representation, dated 23.02.2022, as stated supra and pass final orders on merits



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and in accordance with law, after affording a fair hearing to the petitioner, including granting him the right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this order.

Pursuant to the aforesaid direction of this Court, the impugned notices have been issued.

3.The learned counsel for the writ petitioners questions the impugned notices on the grounds set out in the affidavits filed in support of the writ petitions. According to him, the members concerned were inducted in the year 2019 and their tenure is for three years. Even before the expiry of their tenure, they are sought to be ousted without notice. He would further contend that when there are 15 villages, all the 15 villages must be represented and they must be duly notified. Per contra, learned Government Advocate submitted that no interference is called for.

4.I carefully considered the rival contentions and went through the materials on record. The Government of Tamil Nadu issued G.O.(Ms) No.73, Animal Husbandry, Dairying and Fisheries (Fs.1) Department, dated 24.07.2009 and it reads as follows:-



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ABSTRACT

120900

Fisheries - Formation of District Management Advisory Committee and Management Committee for Fishing Harbours and Fish Landing Centres in Tamil Nadu - Orders Issued.

Animal Husbandry, Dairying and Fisheries (Fs.1) Department

G.O.(Ms) No.73

Dated:24.7.2009

Read:

From the Commissioner of Fisheries, D.O. Letter No.39722/T1/2007 dated 03.08.2007.

ORDER:

The Commissioner of Fisheries in his letter read above has stated that in Tamil Nadu at present there are 3 major Fishing Harbours, 5 Medium Fishing Harbours and 13 Fish Landing Centres.

2. Apart from this, construction of Fishing Harbours at Colachel, Poompuhar, Thengapattinam, Muttom and Rajakkamangalamthurai are under progress. The Government of India have also approved the construction of 10 new Fish Landing Centres in Tamil Nadu under Tsunami Rehabilitation Programme(TRP).

3. He has further stated that, as the fees collected in the Fishing Harbours /Fish Landing Centres are credited into the treasury, no amount has been spent on maintenance or upgradation with a result, Fishing Harbours and Fish Landing Centres are not in a position to maintain the national standards prescribed for international trade. In this situation, it is felt that a sustainable management system should be put in position, so that, hygiene and sanitation in Fishing Harbours and Fish Landing Centres, a pre-requisites for Marine Products export could be maintained.

4. During the Budget speech (2007-08), the Hon'ble Minister for Fisheries has made an announcement that, the management of Fishing Harbours / Fish Landing Centres would be entrusted to the Management Committee involving the stakeholders.

5. In this connection, various meetings were held with the Fishing communities, Research institutions, Non-Governmental Organisations, Professional Consultants, Central and State Organisations and based on the above deliberations, the Director of Fisheries has sent a proposal for formation of a 2 tier Management Society for Fishing Harbours and Fish Landing Centres.



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6. The Commissioner of Fisheries has proposed to formulate a society, consisting of officials and non-official members, under the Chairmanship of Joint Directors / Deputy Directors concerned with the Fishing Harbours and Fish Landing Centres. The Society is responsible for collection of tolls / user fees etc., and that will be remitted into the account of the society. The maintenance of the Harbour will be the responsibility of the Management Society.

7. The proposed society will be responsible for managing the Fishing Harbours/Fish Landing Centres. It will have the right to levy fees, collect the same and utilize the money for maintenance and expansion when required. It will also prescribe and enforce the standards to be maintained at the Harbours / Fish Landing Centres. The committee should generate the revenue to meet the expenses by collecting user fees under different heads.

8. The Government have carefully examined the said proposal of the Commissioner of Fisheries and agree to form Management Committee for each Fishing Harbour /Fish Landing Centre as detailed below:-

- a) District Level Management Advisory Committee at district level and
- b) Management Committee with the Officials and Non-officials as given in the Annexures, subject to the following conditions:-
 - i) These Management Society shall be formed under the Tamil Nadu Societies Registration Act, 1975.
 - ii) The formation of the Management society will be done in stages, in a phased manner depending upon the success of the initial societies.
 - iii) As per Government of India's Instructions, all proposed Fishing Harbours will have a Management Society, before they become functional.
 - iv) The assets of the Fishing Harbours / Fish Landing Centres, including the infrastructure existing and proposed would be handed over to the Management Society by an agreement to be executed by the Society, with the Government. Ownership of all assets will remain with Government.
 - v) The Fishing Harbour/ Fish Landing Centres Management Committee will be authorized to levy and collect user charges like Berthing charges, slipway lease charges, transport / wharf handling charges, vehicle entry /parking charges, etc. as decided by the Society under the overall guidance of the Government.
 - vi) The Fishing Harbour/ Fish Landing Centre Management Committee, will be authorized to use this user charges for the maintenance of the Fishing Harbours/Fish Landing Centres.
 - vii) No funds would be given by Government for the operations and day-to-day running of the society. The society would have to



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increase revenue and restrict expenditure, to ensure that it remains viable.

- (vii) No posts shall be filled up through deputation from Government / Public Sector Undertakings, would be created in the society. If Fisheries Department officials are required to play a role in the society, they would do it on an additional charge basis.
- (viii) The existing Committee, headed by the Secretary to Government, Animal Husbandry, Dairying and Fisheries Department comprising of 6 members will review the functioning of the societies every quarter.
- (ix) This committee is authorized to draft and approve the standard bye-laws for the Fishing Harbours / Fish Landing Centres Management Society.

9. This order issues with the concurrence of the Finance Department vide U.O.No.35621/AH&F/2009 Dated 20.7.2009.

(By Order of the Governor)

C. Muthukumaraswamy,
Secretary to Government.

To

The Commissioner of Fisheries, Chennai-6.
The Superintending Engineer, Fishing Harbour Project Circle,
Chennai-6.
~~The~~ Regional Joint Directors Concerned,

Copy to:

The Joint Secretary to Government of India,
Ministry of Agriculture,
Department of Animal Husbandry, Dairying and Fisheries,
New Delhi.
The Chairman, Marine Products Export Development Authority,
Kochi.
The Finance(AH&F)Department, Chennai-9.
SF/SC

//Forwarded by order//

[Signature]
Section Officer. 4/8/09



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5.Pursuant to the said government order, the Tamil Nadu Marine Fishing Regulation Rules, 2020 have also been notified. The relevant part of the regulations is as under:-

“Composition of the District Level Management Advisory Committee (DLMAC).-

The District Level Management Advisory Committee shall consist of the following members:-

1. *The District Collector -Chairman*
2. *The Superintendent of Police - Member*
3. *Special nominee from Port (if located inside/ adjacent to Port) - Member*
4. *Regional Joint Director of Fisheries/ Deputy Director of Fisheries. - Member*
5. *Assistant Director of Fisheries (Fishing Harbour) - Member Secretary*
6. *Assistant Executive Engineer (Fishing Harbour Division) - Member*
7. *Special invitee from Tamil Nadu Fisheries University/ Research Institution. - Member*
8. *One representative each from Indian Coast Guard and Marine Police to be nominated by the Government - Member*
9. *One representative from Electricity Board to be nominated by the Government. - Member*
10. *One representative from TWAD Board/ Local municipality to be nominated by the Government. - Member*
11. *One representative from the Association of Deep Sea Fishing Vessel to be nominated by the Government. - Member*
12. *One representative from the Association of Mechanised Fishing Vessel to be nominated by the Government - Member*



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13. One representative from the Association of Motorized country craft to be nominated by the Government. - Member

14. One representative from the Association of Country craft to be nominated by the Government. - Member

15. One representative from Fisherwomen cooperative society to be nominated by the Government. - Member

16. One representative from Fishing Labourers to be nominated by the Government. - Member

17. One representative from Exporters/ Processors to be nominated by the Government. - Member

Composition of Fishing Harbour Management Committee(FHMC).-

(1) The Fishing Harbour Management Committee shall consist of the following members:-

1. Regional Joint Director of Fisheries/ Deputy Director of Fisheries. - Chairman

2. Assistant Director of Fisheries (Fishing Harbour). - Member Secretary

3. Assistant Executive Engineer or Junior Engineer (Fishing Harbour Division). - Member

4. One representative from Tamil Nadu Fisheries University/ Research Institutes to be nominated by the authorized officer. - Member

5. One representative from the Association of Deep Sea Fishing Vessel to be nominated by the authorized officer. - Member

6. One representative from the Association of Mechanised Fishing Vessel to be nominated by the authorized officer. - Member

7. One representative from the Association of Motorized Country craft to be nominated by the authorized officer. - Member

8. One representative from the Association of Country craft to be nominated by the authorized officer. - Member



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9. *One representative from Fisherwomen cooperative society to be nominated by the authorized Officer. - Member*

10. *One representative from Fishing labourers to be nominated by the authorized Officer. - Member*

11. *One representative from Fish merchants to be nominated by the authorized officer. - Member*

12. *One representative from Exporters/ Processors to be nominated by the authorized officer. - Member”*

6. Thengapattanam fishing harbour management society was also registered under the Tamil Nadu Societies Registration Act, 1975 in May 2018.

7. I find considerable force in the petitioner's counsel's contention that when they are going to constitute committees namely, advisory committee and management committee and 15 persons can find place in both the committees and when there are 15 villages, attempt should be made by authorities to ensure that all the 15 villages are represented in one form or other. The authorities will give wide publication and notice so that information reaches all the 15 villages about the proposed constitution of the two committees. I find that first noticee in the impugned proceedings are the parish priests. I fail to understand as to why religion should be mixed in these secular matters. The relevant rules speak of representatives of various fishermen societies/sangam. Therefore, the respondents would do well to avoid the participation of the parish priest. They



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are men of religion and when the relevant statutory rules do not contemplate issuance of notice to the parish priest, the respondents shall not issue such a notice hereafter in future.

8.It is true that the tenure of the members inducted in the year 2019 is yet to be over. However, the fact remains that the constitution of the committees in the year 2019 was not in accordance with the government order. When as per the government order there can only be a given number of members on the committees, the number cannot be exceeded. Probably for democratic reasons, just as there are jumbo cabinets, the respondents have also constituted jumbo committees. Pursuant to the direction given by this Court, the officials now want to bring the constitution of the committees in line with the statutory regulations. This cannot be faulted.

9.These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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O/o. The District Collector,
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3. The Deputy Director of Fisheries,
Department of Fisheries,
Nagercoil,
Kanyakumari District.
4. The Member Secretary/Assistant Director,
Director of Fisheries,
Thengapattanam Fishing Harbour Management Board,
Kulachal, Kanyakumari District.



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G.R.SWAMINATHAN, J.

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