



W.P(MD)No.20396 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.01.2022

Pronounced on : 21.07.2022

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.20396 of 2021
and
W.M.P.(MD)No.17045 of 2021

R.Murugendiran

... Petitioner

versus

1. The Executive Registrar/
Assistant Director,
Fishery Welfare & Fishermen
Welfare Department,
Theni at Vaigai Dam.

2. Fishery Welfare Inspector,
Manjalar Dam,
Fishery Welfare & Fishermen
Welfare Department,
Devathanapatti, Periyakulam,
Theni District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
seeking for the issuance of Writ of Certiorari, to call for the records
relating to the impugned order of suspension passed by the first
respondent herein in Na.Ka.No.119/A4/2021 dated 22.10.2021 and



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quash the same.

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For Petitioner : Mr.K.Appadurai

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

The petitioner, the elected President of DD-58, Periyakulam Fishermen Co-operative Society, Periyakulam, Theni District, has filed this writ petition against the order of suspension passed against him by the first respondent in Na.Ka.No.119/A4/2021, dated 22.10.2021.

2. The first respondent herein, namely, the Assistant Director, Fishery Welfare and Fishermen Welfare Department, Theni District, placed the petitioner under suspension for a period of six months by the impugned order of suspension under Section 76A of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as “the Act”).



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3. The Periyakulam Fishermen Co-operative Society is a Society registered under the Tamil Nadu Co-operative Societies Act and Rules and the petitioner is the elected President of the Society for the period of five years, i.e. from 24.08.2018 to 23.08.2023. The Government, in order to intensify inland fishing culture, passed a Government Order in G.O.(Ms)No.201, Animal, Husbandry, Dairying and Fisheries (FS-6) Department, dated 19.10.2017, giving priority for leasing fishery right of a public tank to any local Fishermen Cooperative Society without any tender. As per the said Government Order, the fishery lease right of the Thamaraiikulam Tank, Thamaraiikulam Village, Periyakulam Taluk, Theni District, was allotted to the petitioner's Society for a period of three years, i.e. from 01.07.2018 to 30.06.2021. The petitioner's Society, which obtained the lease right, sub-leased the fishery right to one Prasanth and one Duraipandi, Thamaraiikulam Village. Based on the complaint of the Members of the Society, the first respondent ordered for an enquiry under Section 82 of the Act, acted upon the enquiry report submitted by the Enquiry Officer and



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also passed the impugned order of suspension. Aggrieved over the same, the present writ petition is filed.

4. The learned counsel appearing for the petitioner submits that the first respondent has passed the impugned order of suspension based on the recommendations made by the second respondent and without independently analysing the findings of the second respondent. The order of suspension was passed on 22.10.2021 when the lease period itself was over on 30th June 2021. The lease was granted only for a period of three years, i.e., from 01.07.2018 to 30.06.2021 and the lease expired in the month of June 2021. Thereafter, the first respondent had taken control over the Thamaraikulam Tank, however, with an allegation that the petitioner has subleased the tank, suspended the petitioner. The learned counsel for the petitioner further submits that the petitioner had produced all the Accounts, Registers, Ledgers and Vouchers before the Enquiry Officer on 09.09.2021 under acknowledgement during the inspection under Section 82 of the Act.



However, the impugned order has been passed with general allegation that the petitioner has not properly maintained their Accounts, Registers and Vouchers. He further submits that the suspension has been invoked in a mechanical manner, without verifying the veracity of the complaint and report filed. Therefore, according to the learned counsel for the petitioner, the charge is politically motivated.

5. Mr.G.V.Vairam Santhosh, learned Additional Government Pleader, submits that the fishery right has been allotted to the petitioner's Society without any tender as per G.O.Ms.No.201, Animal, Husbandry, Dairying and Fishery (FS-6) Department, dated 19.10.2017, with the main object of uplifting the socio-economic status of the Fishermen/Fisherwomen Co-operative Society Members. As per the Society by-law (Rule No.6(7)(17)), the fishery rights of any tank undertaken by the Society from the Department should not be subleased to any one/private/body. But, the petitioner, the President of the Society, in violation of the above by-law, sub-leased the



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Thamaraikulam Tank to one Prasanth and one Duraipandi of Thamaraikulam Village, Periyakulam Taluk, Theni District and the same was detected on the complaint of one Muthiah and 11 others, who are the members of petitioner's Society. He further submits that based on the complaint, the first respondent ordered for an enquiry under Section 82 of the Act and suspended the petitioner for a period of six months, based on the enquiry report filed under Section 76A of the Act. He further submits that the petitioner was provided sufficient opportunities and he also admitted the same in the affidavit that he placed all the materials during the enquiry. In fact, the Enquiry Officer has recommended for permanent disqualification of the petitioner, however, a lenient punishment was imposed vide the impugned order dated 22.10.2021.

6. This Court considered the rival submissions made and also perused the materials placed on record.



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7. The Government framed a Rules called Tamil Nadu Inland Fisheries Lease and Licence Rules, 1972 (hereinafter called as 'Rules') in exercise of powers conferred under Section 6 of the Indian Fisheries Act, 1897. Rule 2 of the Rules prohibits conducting fishing operations, in any waters referred to in Annexure-I of the Rules except under a lease or licence granted by the Government or any other authority authorised by the Government. Rule 3 prohibits fishing in any water specified in Annexure II of the Rules without a valid lease or licence by the Government or local body with whom the water vests.

8. In the year 1984, the Government framed a Scheme for Intensive Inland Fishing Culture and Marketing (hereinafter called as 'the scheme') in the erstwhile Madurai and South Arcot Districts, in G.O.Ms.No.1286, Forests and Fisheries Department, dated 09.11.1984, with a view to exploiting the available inland water resources for better fish production by intensively stocking with them with quick growing fish seeds.



9. The Government has decided to issue partial modifications in the Scheme and issued new Government Order in G.O.Ms.No.33, Animal Husbandry and Fisheries Department, dated 27.02.1995. As per the amended Government Order, the fishery rights available in the above Districts should be leased out to the individuals and the Inland Fishermen Co-operative Society for a period of three continuous years to the successful bidder in the public auction and while calling for tenders, the upset price should be fixed taking into account the cost of stocking of fish seeds, water retentivity and other facts in each tank by the Assistant Director of Fisheries with the approval of the Regional Joint Director or Deputy Director and Commissioner of Fisheries.

10. The Government Order in G.O.Ms.No.201, Animal Husbandry, Dairying and Fisheries Department, dated 19.10.2017 was issued substituting some new terms and conditions in G.O.Ms.No.33, dated 27.02.1995. As per the substituted conditions, the local fishermen co-operative society shall be given priority for taking lease



of fishery rights before leasing the same through public tender by paying upset price and the upset price shall be fixed once in three years by the Assistant Director of Fisheries concerned subject to approval of the Regional Joint/Deputy Director of Fisheries and Commissioner of Fisheries. The tanks shall be allotted exclusively to the concerned Inland Fishermen Co-operative Society for a continuous period of three years with 20% more than that of the upset price fixed by the Department for the first year. If the fishermen co-operative society does not come forward to take the lease of the fishery rights in a particular tank, then the Assistant Director of Fisheries shall lease out the fishery rights to the private parties by following public tender system.

11. In this case, the petitioner is the President of Periyakulam Fisherman Co-operative Society and the petitioner's Society obtained the fishing lease right of Thamaraikulam Tank in Thamaraikulam Village, Periyakulam Taluk, for a period of three years, i.e. from



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01.07.2018 to 30.06.2021.

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12. The petitioner was elected as President of Periyakulam Fisherman Co-operative Society only on 24.08.2018 and the documents placed before this Court reveal that the Society itself was registered before the Assistant Director of Fisheries, Theni, on 04.12.2018.

13. The enquiry under Section 82 of the Act was contemplated based on the complaint of one Muthiah of Periyakulam Fishermen Co-operative Society on 05.08.2021 admittedly, after the period of lease. The enquiry was conducted on 24.09.2021 and certain statements have been recorded that the petitioner, the President of the Fishermen Society, has sub-leased the fishing right of Thamaraikulam Village to one Prasanth, who is the brother's son of Duraipandi, for a sum of Rs.8,00,000/- for the year 2018, Rs.8,00,000/- for the year 2019 and Rs.9,00,000/- for the period 2020-21. A similar statement was also recorded from one Murugan, S/o.Chinnaiyagounder and two others.



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According to their statements, the said Prasanth was inducted as a Member of the Society after the grant of lease of fishing right and the fishing right has been subleased to Prasanth in a Stamp Paper of Rs.100/-. Based on the statement, the Enquiry Officer has recommended for disqualification under Section 36 of the Act, however, the first respondent has imposed a lenient punishment suspending the petitioner for a period of six months.

14. The G.O.Ms.No.201 was issued with certain noble intention to uplift the socio economic status of fishermen. The fishing right of the tanks vested with the Department and leased out to the Society by fixing an upset price without any public action. The upset price should be fixed taking into account the cost of stocking of fish seeds, water retentivity and other factors depending on each tank by the Assistant Director of Fisheries with the approval of the Regional Joint Director/Deputy Director and by the Commissioner of fisheries. In this case, the department as well as the petitioner have conveniently omitted



to state the upset price fixed. The available materials expose the society itself was registered only after the grant of lease. The petitioner was also elected as the President after the lease.

15. The Department after conducting an enquiry under Section 82 of the Act found that the petitioner who obtained the lease, subleased the fishing right to one Prasanth for higher amount and the said Prasanth was also added as a member to the Society. The Assistant Director and the field officers of the Department have not detected the fraud played by the Society. The enquiry was contemplated only on the complaint of 11 members of the Society. They also waited for the completion of the lease period and lodged the complaint when their due share was not given to them. The enquiry report reveal the manner in which the concerned officers fixed the upset price. The Society is having only 83 members. The enquiry report reveals that several lakh of public money was exploited by the society with the connivance of the Officer. The existing Scheme is benefitting few individuals. The



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Government shall reconsider the Scheme and frame new Scheme after reviewing the benefits accrued on this Scheme.

16. Since the lease period is over and the punishment is also for a period of six months, which is also over by this time, the writ petition is disposed of with a direction to the Government to reconsider the Scheme and ensure that the public money is not exploited by certain individuals. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet: Yes / No
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B.PUGALENDHI, J.

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Pre-delivery order made in
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