

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1111 OF 2019.**

JOHN JOSEPH D'SOUZA ... Petitioner.
VS
THE COASTAL AQUACULTURE
AUTHORITY, GOVT. OF INDIA, THR. ITS
MEMBER SECRETARY AND 2 ORS. ...Respondents.

Mr. N. Sardesai, Senior Advocate with Mr. G. Panandiker,
Advocate for the petitioner.

Mr. R. Chodankar, Central Govt. Standing Counsel for the
respondent no.1.

Mr. S. Parab, Addl. Govt. Advocate for respondent no.2.

Mr. O. D'Costa, Advocate for respondent nos. 4 and 5.

CORAM: M. S. KARNIK, J
DATED: 26th APRIL 2023

ORAL ORDER:

1. Heard Mr. N. Sardesai, learned senior counsel for the petitioner and Mr. R. Chodankar, learned Central Govt. Standing Counsel for the respondent no.1.

2. It is the case of the petitioner that he is having in his favour registration of Aquaculture farm from the year 1982. The registration which was granted to the petitioner for conducting of pisciculture/aquaculture was cancelled by the respondent no.1. The said decision was challenged in an earlier round of litigation in this

Court being Writ Petition No.1031/2018. This Court disposed of the petition by an order on 6.3.2019. The operative part read thus:-

- (i) *The petition is allowed.*
- (ii) *The impugned order/communication dated 08.10.2018 and the Minutes of the Meeting dated 10.01.2018 are hereby quashed and set aside.*
- (iii) *The learned Counsel for the petitioner undertakes to file a reply before the first respondent, raising all such contentions as may be available in law and facts, within two weeks from today. On such a reply being filed, the first respondent shall hear the petitioner and the respondent nos.4 and 5 and thereafter pass appropriate order as may be deemed just and necessary.*
- (iv) *The rival contentions of the parties are left open.*
- (v) *The first respondent shall decide the matter within a period of eight weeks from the receipt of the reply.*
- (vi) *The petition is disposed off in the aforesaid terms with no order as to costs.*

3. Vide order dated 19.11.2019 passed by respondent no.1, the registration of the petitioner was cancelled. The Chairman, Coastal Aquaculture Authority at Chennai, gave a personal hearing in compliance with the order dated 18.1.2020 passed by this Court. By an order dated 24.5.2022 representation of the petitioner was rejected and cancellation of the rejection of the pisciculture/aquaculture farm was upheld.

4. The Impugned order is signed by Chairperson, Member Secretary and Director (Technical). Learned senior counsel for the petitioner submitted that having regard to the provision of the Coastal Aquaculture Authority Act, 2005,(hereinafter referred to CAA Act, 2005” for short), it is the authority constituted under the CAA Act which is empowered to cancel the registration.

5. Learned senior counsel submits that the petitioner was not heard by the Authority but by a Committee comprising of three members. The authority merely passed an order cancelling the registration on the basis of the recommendations of the committee consisting of three members which procedure is not in compliance with the provisions of the CAA Act. It is submitted by Mr. Sardesai that it is the authority which should have heard the petitioner. According to him, the three members who heard the petitioner do not constitute the Coram as required under the CAA Act. It is submitted that the impugned order is vitiated on this ground alone.

6. Shri Chodankar, learned advocate for the respondent no.1 supported the impugned order. It is submitted that in terms of the order passed by this Court, a proper hearing was given to the petitioner by a three members committee. It is further submitted that the order passed by the committee is a well reasoned order and for

good reasons it has come to the conclusion that registration needs to be cancelled.

7. My attention is invited to the resolution dated 3.6.2022 by the learned Counsel for the respondents which is an extract of the minutes of the 17th meeting of the Coastal Aquaculture Authority Committee, where it is noted thus:-

**RESOLUTION WP NO. 1031 of 2018 filed by
70.05.01 Shri John Joseph D'Souza in
the High Court of BOMBAY at
Goa, Panaji.**

***NOTED** that a personal hearing was convened at CAA on 24.5.2022 in compliance of the direction of Hon'ble High Court of Bombay, in W.P. No.1111 of 2019 filed by Shri John Joseph D'Souza, regarding cancellation of his shrimp farm by CAA. The Hon'ble Chairperson, CAA heard the petitioner. The written statement submitted by the respondent and the Goa Foundation was also considered in the personal hearing. Consequently, the Hon'ble Chairperson, CAA issued an order dated 24.05.2022, rejecting the representation of the petitioner and upholding the cancellation of the registration of the said coastal aquaculture farm.*

***RESOLVED** to accept the decision of the Hon'ble Chairperson, CAA.*

8. The resolution notes that the personal hearing was convened at CAA and the Authority resolved to accept the decision of the CAA. It is submitted by the learned advocate for the respondent no. 1 that this is sufficient compliance with the provisions of the CAA Act.

9. The admitted fact is that registration of the petitioner was cancelled. This Court had directed the respondent no.1- i.e. the Coastal Aquaculture Authority, Govt. of India, to hear the petitioner and then pass appropriate orders.

10. Chapter III of the Act provides for Coastal Aquaculture Authority. Section 4 of the CAA Act provides for establishment of authority, and appointment of chairperson and members. Section 4 which is relevant reads thus:-

4. *Establishment of Authority and appointment of Chairperson and members.—(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Act an Authority to be called the Coastal Aquaculture Authority.*
- 2 *The head office of the Authority shall be at such place as the Central Government may decide.*
- 3 *The Authority shall consist of the following members who shall be appointed by the Central Government, namely:*
 - a *the Chairperson who is, or has been, a Judge of a High Court; (b) one member who is an expert in the field of coastal aquaculture;*
 - b *one member who is an expert in the field of coastal ecology nominated by the Department of Ocean Development of the Central Government;*

- c one member who is an expert in the field of environment protection or pollution control nominated by the Ministry of Environment and Forests of the Central Government;*
 - d one member who is an expert in the field of environment protection or pollution control nominated by the Ministry of Environment and Forests of the Central Government;*
 - e one member to represent the Ministry of Agriculture of the Central Government;*
 - f one member to represent the Ministry of Commerce of the Central Government;*
 - g four members to represent the coastal States on rotation basis;*
 - h one member-secretary.*
- 4 The term of office of the Chairperson and every other member shall be three years.*
- 5 The salaries and allowances payable to, and the other terms and conditions of service of, the members shall be such as may be prescribed.*

11. So far as the meeting of the authority is concerned, the same is spelt out in Section 7. The same reads thus:-

- Meetings of Authority —(1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum thereat) as may be specified by regulations.*
- 2. If for any reason the Chairperson is unable to*

attend any meeting of the Authority any other member chosen by the members present at the meeting shall preside at the meeting.

3. *All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the members present and voting and in the event of an equality of votes, the Chairperson or in his absence the person presiding, shall have and exercise a second or casting vote.*

12. It is then material to refer to the provision of the CAA rules 2003 (hereafter “Rules 2005” for short). The functions of the authority are spelt out in Rule 5.

13. Clause (xv) of Rule 5 provides that one of the function of the authority is to cancel the certificate of registration where it is satisfied that any person has obtained a certificate of registration under sub-rule (1) of rule 11 by furnishing false information, he/she has contravened any of the provisions of these rules or the conditions mentioned in the certificate of registration, without any prejudice to any other action, that may be taken. Proviso thereto says that the person concerned must be given an opportunity to make representation. The second Proviso mentions that a copy of the order

together with the reasons for the cancellation shall be communicated to the person concerned.

14. It is thus seen that cancellation of the certificate of registration is the function of the 'Authority'. The cancellation of the certificate has to be after recording its satisfaction that said person has contravened any of the provisions of the rules or conditions mentioned in the certificate. The cancellation of the Certificate has to be done in compliance with the principles of natural justice. The person concerned has to be given any opportunity to make his representation. Further the order cancelling registration has to be a reasoned order. From reading of Rule 5 with Sections 4 and 7 of the CAA Act, it is clearly seen that while considering the aspect of cancelling the certificate of registration, the transaction of the business of the authority has to be in terms of Section 7.

15. It is further noticed that in exercise of powers conferred by Section 25 of the CAA Act, the CAA has made regulations called 'Coastal Aquaculture Authority Regulations, 2008' (Regulations for short). Clause 6 of the said Regulations provides for a Coram in respect of the business to be transacted at the meeting of the authority. Clause 6 reads thus:

6. Quorum,-1) No business shall be transacted at a

meeting of the Authority unless one-third of the members, including the Chairperson and the member secretary are present.

2 If at any time, the number of members present at a meeting Is less than the required quorum, the person presiding shall adjourn the meeting to a date not later than three days from that date.

3 It shall be lawful in such adjourned meeting to consider the agenda for the meeting even if there Is no quorum.

16. Reading of the order passed by this Court on 6.3.2019 reveals that it is the first respondent i.e. the Coastal Aquaculture Authority, Govt. of India which had to hear the 'petitioner and the respondent nos. 4 and 5' and thereafter pass appropriate order as may be deemed just and necessary. In my opinion, without any resolution being placed on record or any other material placed on record indicating the source of power of the three members committee to hear the petitioner while passing a reasoned order, it has to be held that the procedure adopted by the three members committee which passed the reasoned order as contrary to the order passed by this Court as well as in breach of provisions of the said Act, Rules and Regulations. The respondent no.1 has simply resolved to accept the decision of the Chairperson of CAA. This Court had directed the respondent no.1 to hear the petitioner and decide the matter. It

presupposes that decision has to be by the authority i.e respondent no.1 in terms of what is spelt out by the provisions of the Act, Rules and Regulations. It is the three members committee which had heard the petitioner and not the 'Authority' within meaning of CAA Act which governs cancellation of the registration.

17. Consequently the petition is allowed in terms of prayer clause (a), (b) and (f). It is clarified that prayer clause (b) refers to resolution dated 4.7.2019. All contentions are kept open to be decided on its own merits in accordance with law. I may not be understood to have made any observation on merits. It is open for the 'Authority' to pass appropriate orders in terms of the order passed by this Court in accordance with law. No order as to costs.

18. Petition stands disposed of in above terms.

M. S. KARNIK J.

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