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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2023

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.4598 of 2023

and

W.M.P.Nos.4607 & 4608 of 2023

FMR.21, Morappur Fishermen Co-operative Society,
Kuppachiammal Ilam,
Mariyamman Koil Street,
Harur - 636 903,
Dharmapuri District,
Rep.by its elected President,
M.Buvaneswari

.. Petitioner

Vs.

- 1.State of Tamil Nadu rep.by its
Principal Secretary to Government,
Fishermen Welfare & Animal Husbandry,
Secretariat,
Chennai – 600 009.
- 2.The Commissioner of Fisheries,
Nandanam,
Chennai – 600 009.
- 3.The Executive Engineer,
Public Works Department (WRO),
Melpennayaru Basin Division,
Dharmapuri - 5.



4.The Assistant Director of Fisheries,
(Inland Fisheries),
Ottapatti, Collector Office Post,
Dharmapuri - 636 705

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in Na.Ka.No.19310/F4/2021 dated 22.12.2021 on the file of the 2nd respondent and for consequential order of cancellation passed in proceedings in Na.Ka.No.2077/E/2019 dated 31.01.2023 on the file of the 4th respondent and quash the same insofar as the petitioner is concerned.

For Petitioner .. Mr.S.Doraiswamy

For Respondents .. Mr.V.Arun,

Additional Advocate General

Assisted by Mr.S.J.Mohammed Sathik,

Government Advocate

ORDER

This writ petition has been filed in the nature of Certiorarified Mandamus seeking the records relating to the proceedings in



Na.Ka.No.19310/F4/2021 dated 22.12.2021 on the file of the 2nd respondent / the Commissioner of Fisheries, Chennai and also the consequential order of cancellation in proceedings in Na.Ka.No.2077/E/2019 dated 31.01.2023 on the file of the 4th respondent / the Assistant Director of Fisheries, Dharmapuri, insofar as the petitioner society is concerned.

2.Let me not enter into a detailed discussion of the facts, since the fundamental facts are neither denied nor disputed.

3.The petitioner, Morappur Fishermen Co-operative Society at Harur in Dharmapuri District, was the beneficiary of lease rights to fish in four lakes, namely, Varataaru Vallimadurai Tank, Parayapatti lake, Vachathi lake and Harur big lake. The lease period ran from the year 2020 onwards for a period of five years, till 2025. Suffice to point out that, as on date, the period of lease is still in force. While being so, the petitioner was served with a notice that the rights in the aforementioned lakes / tanks would be auctioned. Questioning that particular notice, the petitioner has come before this Court.



4.It is contended by the Mr.S.Doraisamy, learned counsel for the petitioner, that there has been violation of principles of natural justice. He also stated that the notice was issued on the strength of the order of the Division Bench of the Madurai Bench in W.A.(MD) No.1251 of 2020 and W.A.(MD) No.923 of 2020 but charged that the said order would not be applicable to the facts and circumstances of the present case.

5.With respect to the issue of violation of principles of natural justice, the learned counsel stated that having a subsisting lease, the petitioner should have been put on notice before any decision was taken to frustrate the lease and to put the rights to auction. It was therefore contended that this decision taken when the lease period was pending should necessarily be interfered with by this Court.

6.In this connection, the learned counsel placed reliance on the judgment of a Division Bench of this Court reported in *AIR 75 Mad 81, Papanasam Fisherman Co-operative Society Ltd. by its President Rajagiri, Papanasam Taluk & Another Vs. the Collector of Thanjavur & others*. The Division Bench was also concerned with issuance of an order



passed by the Collector. As a matter of fact, the order in that particular case was passed by the Collector on instructions given by the Government, but still the Division Bench held that the Collector should have applied his mind independently and should have issued notice to the parties affected by such an order, hear them and then pass necessary orders. The relevant portion of the said order, which is extracted below:

*“5. We then pass on to a consideration of the impugned orders of the Collector. There are two matters which immediately arise for consideration. One is the direction of the Government to the Collector to cancel the lease. This obviously was irregular and the Government ought not to have issued such instruction to the Collector. The power to cancel was with the Collector. The fact that the Government while making the direction asked the Collector to issue a show cause notice to the appellant, **would only be paying lip service to the requirement of the principles of natural justice**, for the Government's direction went further that the Collector, after cancellation of the licence of the appellant, should grant it to the third respondent. In the circumstances, the Collector would be in a very embarrassing position. The Collector's order merely said that the elaborate explanation of the appellant was unsatisfactory. This is not surprising. It is obvious that that was not compliance with the requirement of*



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*the principles of natural justice. We do not agree with Mr. V, P. Raman that, because a show cause notice was served on the appellant, the latter submitted an explanation, and the same was considered by the Collector, there was compliance with the principles of natural justice. **The compliance should be a substantial one that is to say, it should be not merely in form: the opportunity given must be complete, reasonable and adequate which includes also that, when an explanation is submitted by the person who was asked to show cause, the authority concerned should apply its mind to the explanation and not merely say that it is unsatisfactory. Also, once the orders of the Collector are subject to a review by this court under [Article 223](#) of the Constitution the non-speaking order of the Collector does not show its reasonableness or compliance with the principles of natural justice.***

(Emphasis Supplied)

7. With respect to the earlier order of the Division Bench of the Madurai Bench, the learned counsel, pointed out the same and stated it was only a principle stated that it would always be better that fishing rights are auctioned and if it is so auctioned, then the amount quoted by the highest bidder should be offered to the society and if the society matches that amount, preference should be given to the fisherman.



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8.Mr.V.Arun, learned Additional Advocate General on behalf of the respondents, however, pointed out the order granting lease to the petitioner herein. It is pointed out that though there were conditions in the lease, particularly with respect to payment of amount every year, it was pointed out that the petitioner herein had failed to honour such payment of the lease amount. In fact, it is pointed out that the lease amount had been paid after two years or even when paid, only half the amount was paid. With respect to one particular lease, the amount was paid within the year.

9.Pointing out these facts, the Additional Advocate General stated that the petitioner has been a chronic defaulter in payment of the lease amounts. Therefore, the respondents had taken a conscious decision in order to generate funds to auction the rights. The learned Additional Advocate General, also pointed out that the petitioner society which is represented by its President, though had filed the writ petition had, in turn granted the rights to fish to individual members and also pointed out the orders of the learned Single Judge of this Court, granting police protection to those individual members to continue to fish. It is also pointed out by the learned



Additional Advocate General, though this fact may not be directly germane to the facts of this case, that proceedings had been initiated against the President of the society.

10.Let me not delve further into that particular aspect.

11.On hearing the learned Additional Advocate General, one aspect is clear, namely, the petitioner society was not put on notice prior to taking the decision to curtail the lease during the period of lease and to auction the fishing rights. This, as stated by the Division Bench in the aforementioned judgment, is a clear violation of principles of natural justice. The petitioner should have been put on notice. The petitioner should have been given an opportunity to put forth their representations. The petitioner should have been given an effective hearing on their representations and thereafter, a decision should have been taken.

12.I would therefore, set aside the order now impugned, but at the same time, grant right to the 3rd respondent / Executive Engineer, Public Works Department (WRO), Melpennayaru Basin Division, Dharmapuri, to



issue fresh notice to the petitioner herein pointing out the various breaches of conditions in the lease as granted to the petitioner herein over the past two or three years and also pointing out any other reason, why the lease should be curtailed by the respondents. It must also be pointed out that even in the lease given to the petitioner, it had been very clearly stated that if there is violation of anyone of the conditions, the respondents have a right to frustrate the lease.

13. At any rate, let the petitioner be put on notice of all these aspects and let the petitioner also give a reply on all these aspects. But let the time given to the petitioner be determined and let it be a time bound process. Therefore, let notice be issued within a reasonable period of time and let a response be obtained within a reasonable period of time and after that opportunity is granted considered orders be passed.

14. The learned Additional Advocate General, stated that a notice would be issued to the petitioner. If that notice is issued on or before 28.02.2023, then the petitioner would have two weeks time to give their response and an enquiry on the same shall be concluded on or before 10.04.2023.



15.The impugned order is set aside and in view of the further directions are given, the writ petition stands disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

16.02.2023

Index:Yes/No
Internet:Yes/No
smv

To,

1.The Principal Secretary
Government of Tamil Nadu Government,
Fishermen Welfare & Animal Husbandry,
Secretariat,
Chennai – 600 009.

2.The Commissioner of Fisheries,
Nandanam,
Chennai – 600 009.

3.The Executive Engineer,
Public Works Department (WRO),
Melpennayaru Basin Division,
Dharmapuri - 5.

4.The Assistant Director of Fisheries,
(Inland Fisheries),
Ottapatti, Collector Office Post,
Dharmapuri - 636 705



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C.V.KARTHIKEYAN,J.

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