



W.P. No.6819/2023, etc. Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
08.06.2023 & 15.6.2023	21.06.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NOS.6819, 790, 784, 2360, 3399, 8612, 14062,
15536 & 14593 OF 2023**

**W.P. NOS. 3364, 25371, 27144, 29794, 29975, 31027, 31100, 2743, 3510,
3393, 4181, 4584, 7331, 16183, 17649, 18157, 35067, 20288, 23701, 33602
OF 2022**

W.P. NOS. 22908 & 10737 OF 2021

AND

**W.M.P. NOS.14073, 2431, 5637 & 734, 730, 3467, 3475, 3476, 6912, 6913,
8782, 8784, 13695, 13697, 15055 & 15056 OF 2023**

**W.M.P. NOS. 34515, 34514, 14273, 18665, 30426, 29386, 29385, 29188,
29185, 26362, 2903, 2904, 3648, 3651, 3499, 3500, 4327, 4329, 4719, 4720,
7361, 15553, 16922, ,16923, 17521, 19509, 22640, 33060, 34339 &
24351 OF 2022 & 24111 OF 2021**

W.P. No.6819 of 2023

K-1546 Mettupalayam Meenavar
Co-operative Society Ltd., rep
By its Director, A.Nataraj
1/3, VOC Street, Mettupalayam
Coimbatore District 641 301.

.. Petitioner

- Vs -



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1. The Government of Tamil Nadu
Rep. by Secretary to Government
Animal Husbandry & Fisheries Dept.
Fort St. George, Chennai 600 009.
2. The Commissioner of Fisheries
Nandanam, Chennai 600 035.
3. The Assistant Director of Fisheries
Erode 638 012.
4. The District Collector
Coimbatore.

.. Respondents

W.P. No.6819 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the production of the records relating to the order dated 4.1.2022 made in Na. Ka. No.2702/E/2021 passed by the 3rd respondent, quash the same and direct the respondents to grant lease of fishing rights to the petitioner society as per G.O. Ms. No.332 of Animal Husbandry Dept., dated 17.11.1993.

For Petitioners : Mr. S.Shanmugasundaram, for
Mr. S.Senthilnathan in WP Nos.790, 784,
6819, 8612, 15536, 3399/2023 & 3364,
2743, 3510, 3393, 4181, 4584, 18157 &
33602/2022
Mr. A.E.Ravichandran in WP 7331/2022 &
17037/2021
Ms.Dakshayani Reddy, SC, for
Ms.Suneetha in WP 17649/2022



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Mr. V.Elangovan in WP 23701/2022
Mr. Anish Gopi in WP 14062/2023
Mr. M.B.Raghavan, for M/s. T.S.Gopalan
Associates in WP 16183/2022

For Respondents : Mr. V.Arun, AAG, assisted by
Mr. S.Balamurugan in WP 14062
& 15536/2023
Mr. V.Arun, AAG, assisted by
Mr. T.N.C.Kaushik, AGP &
Mr. R.Kumaravel, AGP in all other WPs

COMMON ORDER

Challenging the communication of the 2nd respondent dated 4.1.2022 in and by which the fishing rights to the tanks held by the Public Works Department were to be allotted based on the auction that is to be conducted by fixing the upset price, the present batch of writ petitions have been filed by the respective Fishermen Cooperative Societies.

2. The synoptic case of the petitioners in the various writ petitions flows on the following lines :-

The Co-operative Societies, which are the petitioners in the present petitions comprises of the members of the society, who are either Harijans or



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fisherman and the said co-operative societies were formed on the basis of certain directions by the appropriate authority, so that the fishing rights with regard to fishing pertaining to the tanks within the jurisdiction of the said society, falling under the control of the Public Works Department would be given on lease to the said society.

3. It is the further averment of the petitioners that the leasing rights with regard to fishing is governed by G.O. Ms. No.332, Animal Husbandry & Fisheries Department dated 17.11.1993, wherein there is a clear prescription that lease of fishing rights on first priority should granted to Cooperative Societies comprised of fisherman or Harijans engaged in fishing when the panchayat is not willing to take up the lease. It is the further averment of the petitioners that the said Government Order was being followed while granting lease in respect of fishing in the tanks maintained by the Public Works Department and the same is still in vogue.

4. It is the further averment of the petitioner that when the society of fisherman or Harijans are not willing to take up the lease, only thereafter,



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auction should be resorted to, which practice is being followed since the issuance of the aforesaid Government Order.

5. It is the further averment of the petitioner that a writ petition in W.P. (MD) No.5485 of 2020 was filed before the Madurai Bench, wherein the issue related to grant of licence to the Fisherman Co-operative Society on payment of a certain amount, which licence was challenged before the Court stating that the price fixation has not been done by following G.O. No.201 dated 10.10.2017. In the said case, the learned single Judge went on to hold that when auction is conducted, a tender notification calling for offers should be issued by fixing the upset price and the lease should be granted to the highest tenderer. In the said case, the learned Judge further went on to hold that only if the 4th respondent society matches the highest bid, licence could be granted to them. In essence, the challenge made before the Court was not with regard to the fishing right granted to the society therein, but only with relation to fixation of price.



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6. It is the further averment of the petitioners that against the said order, writ appeals in W.A. Nos.1251/2020 and 923/2020 were filed by the Director of Fisheries and also by a private individual and the Division Bench, while proceeding to confirm the order passed by the learned single Judge, further held that the Fisheries Department should adopt a different methodology by fixing the upset price and, thereafter, call for tender and the highest offer should be accepted.

7. It is the further averment of the petitioner that pursuant to the order passed in W.A. Nos.1251/2020 and 923/2020, on an erroneous understanding of the said order, the impugned proceedings have come to be issued by the 3rd respondent dated 4.1.2022 by following the order of the 2nd respondent dated 22.12.2021, in and by which, the priority enjoyed by the society in virtue of G.O. Ms. No.332 has been set at naught and auction system was directed to be followed by referring to the order passed by the Division Bench in the aforesated case. The erroneous proceedings on a wrong interpretation of the order of the Division Bench has given rise to the filing of the present batch of writ petitions.



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8. The respective learned counsel appearing for the petitioners submitted that when G.O. Ms. No.332, Animal Husbandry & Fisheries Department dated 17.11.1993 still subsists and the said Government Order also has been upheld by this Court, without the said order being set aside, issuance of the impugned proceedings by the 3rd respondent is wholly arbitrary and perverse.

9. It is the further submission of the respective learned counsel that in fact what was agitated before the learned single Judge in W.P. (MD) No.5485/20 and the Division Bench in W.A. (MD) Nos.1251/2020 and 923/2020 was only with regard to fixation of upset price, when the leasing rights were auctioned and not the validity of G.O. Ms. No.332. Further, the said G.O. Ms. No.332 dated 17.11.1993 itself was not brought to the notice of the learned single Judge as also the Division Bench in the aforementioned cases and that being the case, when the learned single Judge and the Division Bench had merely directed fixation of upset price when the leasing rights are auctioned, the proceedings of the 3rd respondent that the leasing rights



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should be granted only by way of auction is wholly against the prescription provided for in G.O. Ms. No.332.

10. It is the further submission of the learned counsel that RSO 211 mandates the manner in which Fishery Rights should be granted and G.O. Ms. No.332 has been issued on the basis of RSO 211. Such being the case, the present proceedings issued in contravention of RSO 211 cannot stand the test of judicial scrutiny and is liable to be set aside.

11. It is the further submission of the learned counsel for the petitioners that in the case of ***A.G.Palanichamy – Vs – The Government of Tamil Nadu & Ors. (W.A. No.384 of 2017 dated 16.11.2017)***, another Division Bench of this Court had approved G.O. Ms. No.332 and the Special Leave Petition filed against the said order has been dismissed and in essence, G.O. Ms. No.332 has been upheld and approved. It is the further submission of the learned counsel that even as early as in the year 2012, in ***Thimmapuram Village Panchayat – Vs – The State of Tamil Nadu & Ors. (W.P. No.12977 of 2010 – Dated 30.07.2012)***, another learned single Judge



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of this Court had dealt with the aforesaid Government Order and held that the Government Order should be complied with in letter and spirit. The orders in W.P. (MD) No.5485/2020 and W.A. (MD) Nos.1251/2020 and 983/2020 having not dealt with G.O. Ms. No.332, the proceedings passed by the 3rd respondent in contravention of the said Government Orders, without properly appreciating the order passed in W.P. (MD) No.5485/2020 and W.A. (MD) Nos.1251/2020 and 983/2020 is wholly unsustainable and deserves to be set aside.

12. Learned Addl. Advocate General assisted by the learned Addl. Government Pleader appearing for the respondents, reiterating the contentions laid out in the counter affidavit filed by the respective respondents submitted that the impugned proceedings dated 4.1.2022 had come to be issued based on the directions given by the Division Bench of this Court in W.A. (MD) Nos.1251/2020 and 983/2020. Further, advertent to the various Government Orders, which have been issued from time to time by the Government, more particularly G.O. Ms. No.201, learned Addl. Advocate General submitted that it is only on the basis of the said Government Order,

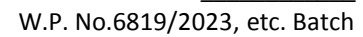


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which had mandated fixing of upset price and to give lease based on auction, the order of the Division Bench in the aforesaid case had come to be passed and, therefore, the impugned proceedings cannot be said to be illegal or perverse.

13. It is the further submission of the learned Addl. Advocate General that reliance placed on RSO 211 by the petitioners would not take within its fold all the water bodies in which fishing rights come into play and only in that backdrop, G.O. Ms. No.201 assumes significance as it covers leasing of fishery rights of various water bodies such as reservoir/dams and irrigation tanks to the Fisherman Cooperative Societies.

14. In fine, it is the contention of the learned Addl. Advocate General that the impugned proceedings being on the basis of the order passed by the Court in W.P. (MD) No.5485/2020 and W.A. (MD) Nos.1251/2020 and 983/2020, which orders have been passed in view of G.O. Ms. No.201, there is no infirmity in the order impugned herein and, accordingly, the present petitions deserve to be dismissed.



16. G.O. Ms. No.332 has been passed by the Government with respect to leasing of fishing rights in water spread tanks under the Public Works Department, Revenue Department and Panchayat Department. The aforesaid Government Order draws its genesis from RSO 211 and before adverting to the aforesaid for better appreciation, RSO 211 is quoted hereunder :-

The fisheries in all public inland waters such as tanks, rivers, estuaries, canals, drains, etc., whether in charge of Revenue or Public Works or Fisheries Department should ordinarily be disposed of by lease. Where such waters lie in or flow through municipal or panchayat limits, the right of fishing shall be exercised in such limits subject to the provisions of Section 223 of the Madras District Municipalities Act or Section 124 of the district Board Act, 1920 or Section 77 of the Madras Village Panchayats Act (Act X of 1950) as the case may be. Disposal of fishery rights otherwise than by lease shall be resorted to only under the circumstances mentioned in



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paragraph 2 below. The concession of lease without auction is not available to individuals. The lease should be given in the following order of preferences :-

- (i) Co-operative Societies of fishermen or of Harijans engaged in fishing;*
- (ii) Panchayat of the locality;*
- (iii) Private individuals as determined by the results of public auction*

The following procedure should be adopted in sanctioning the lease :-

- i) The cooperative societies composed of fishermen or of Harijans engaged in fishing should first be given an opportunity of taking the fishery on lease for a reasonable rental fixed by the Collector of the District or the authority concerned.*
- ii) If the cooperative society is not prepared to take the lease for the amount offered, opportunity should be given to the Panchayat working in the area to take the lease on the same amount.*
- iii) If neither the cooperative society nor the Panchayat is willing to take the lease, the fishery should be disposed of by public auction in the manner indicated in paragraph 2 below.*
- iv) In fixing the rentals the Collector or the authority concerned should take into account*



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not only the average revenue realised during the previous five years but also such circumstances as combination of bidders or reckless bidding affecting the rental in any of the previous years and any development of fishery by the Fisheries Department during the relevant period. The Collector or the authority concerned should consult the Assistant Director of Fisheries concerned before fixing the rentals. Where there is difference of opinion between the Collector and the Assistant Director of Fisheries, the Collector should refer the matter to the Board of Revenue and the Board should pass orders in the matter in consultation with the Additional Director of Industries and Commerce, if necessary.

- v) *As soon as the lease is sanctioned, an Agreement should be executed in the form prescribed in Appendix XVII. The lease shall ordinarily be sanctioned for fasli year in respect of river fisheries and for a calendar year in respect of tank fisheries. The period of lease shall not exceed one year. If the lease is to be granted for periods exceeding one year, the Collector should consult the Additional Director of Industries and Commerce and take orders*



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from the Board of Revenue. Proposals for the renewal of lease or disposal otherwise shall be sent by the Assistant Director of Fisheries concerned to the Collector two months in advance before the date of expiry of the current lease.

- vi) *A panchayat or cooperative society cannot claim the lease of fisheries as a matter of right. The lease may be refused on adequate grounds like irregularities in working or financial unsoundness as reported by the Administrative authorities concerned. The Collector or the authority concerned should, before refusing the lease on any such ground consult the District Panchayat Officer concerned in the case of a Panchayat and the Deputy Registrar of Cooperative Societies concerned in the case of a cooperative society."*

17. A careful perusal of the aforesaid Revenue Standing Orders clearly reveal that lease of fishery rights is governed by RSO 211 and the methodologies to be adopted in granting the lease is provided therefor. Only on the strength of the aforesaid RSO 211, G.O. No.332 dated 17.11.1993 had come to be issued.



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18. In this backdrop, an analysis of G.O. Ms. No.332 dated 17.11.1993 establishes that while reiterating the methodologies provided for in RSO 211, the Government, on the recommendation of the Commissioner of Fisheries had extended the lease period from one year to five years, with some additional conditions. For better appreciation, the relevant portion of the Government Order is quoted hereunder :-

“.....

2. The Government have carefully examined the need for enunciating the policy regarding the lease period for public tanks for fisheries purpose. Revenue Department Standing Order No.211 and the Government Orders read above lay down the procedure which fisheries lease is given by concerned authorities. Revenue Department Standing Order 211 stipulates that fisheries in all public inland waters such as tanks, rivers, estuaries, canals or Rural Development of Fisheries Department should ordinarily be disposed of by lease.

3. As per Revenue Department Standing Order 211, while granting lease of fishing rights to the cooperative societies comprised of fishermen or of Harijans engaged in fishing should be given the first opportunity. Auctioning of fishery rights otherwise than by lease should be resorted to only if no Cooperative Societies of fishermen or Harijans engaged in



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fishing or the Panchayats are not willing to take up the lease. The procedure envisaged in Revenue Department Standing Order 211 is still in vogue and will continue to operate in future with the modification indicated in para 4 below regarding the period of lease which will be quinquennial instead of annual.

4.

(i) All fishery lease shall be for a period of 5 years. Annual leases should not be resorted to.

(ii) There will be an automatic escalation of the lease rent by 10% over the previous year's rate during this five year period. The bids will be taken for the base rate for the first year.

(iii) The leases must follow the directions given by the Fisheries Department with regard to stocking, management and exploitation of fish. He would also be required to undergo a short period of training provided for by the Fisheries Department in this regard.

(iv) The Fisheries Department will depute Officers as and when necessary to assist the other departmental officers to advise, check and recommend such auction as necessary for ensuring good fish cultural practices.

(v) The primary of the rights of irrigation to the irrigation related tanks will be recognized. The Fisheries Development will be subordinated to such rights.



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(vi) The Fisheries Department will be intimated in advance of the tanks to be offered for fishing rights auction / assignment. That Department will be responsible for generating adequate number of fingerlings of the required varieties in time.

(vii) A schedules of discharges from the tank would be made available to the Fisheries Department so that the Fish cultural practice can be recommended in accordance with that. Any change including short term variations because of monsoonal vagaries at the earliest possible moment so that the cultural practices can be altered as required.

(viii) For large tanks initially and progressively for all tanks, a standard management plan will be drawn up by Fisheries Department incorporating suitable culture practices.

(ix) The lease would be terminable without compensation and with nothing more than a short simple notice for violation of good fishery cultural practice as prescribed.

(x) These restrictions should be applicable to all tanks publically owned, for all leases / assignments for fish farming / culture, including these given on priority basis to those like Inland Fish Farmers Development Agencies / Fishermen / Marine Fishermen and Adi Dravidar Welfare Co-operative Societies, etc.



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(xi) The Collector of the district concerned shall continue to be the lessor in respect of the Tanks under his control.

* * * * *

19. From G.O. Ms. No.332 dated 17.11.1993, it can be safely concluded, without any contradiction that there is practical iteration of RSO 211 with minor modification insofar as the term of lease alone is concerned, which has been increased from 1 year to 5 years and also for escalation in price of lease amount every year. There has been no relaxation insofar as the manner in which the lease has to be granted, which follows the footsteps of RSO 211.

20. While that being so, the impugned proceedings has emanated from the 3rd respondent, based on certain communication of the 2nd respondent, which, according to the learned Addl. Advocate General is on the basis of certain directions issued by this Court in W.P. (MD) No.5485/2020 and W.A. (MD) Nos.1251/2020 and 983/2020.



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21. The submission being as aforesaid, it becomes imperative for this Court to look at W.A. (MD) Nos.1251/2020 and 983/2020 to find out whether any such positive direction has emanated from the Division Bench so as to negate RSO 211 and G.O. Ms. No.332. Therefore, for better appreciation, the relevant portion of the order is quoted hereunder :-

“7. Before us, we have three competing interests. Apart from filing the Writ Petition as Public Interest Litigation, the Writ Petitioner has challenged it on various grounds including the upset price. The appellant in W.A.(MD)No. 923 of 2020 seeks to sustain the awarding of licence with the upset price. The farmers want their interest to be protected. Even among the official respondents, the Public Works Department feels that the auction of the licence affects the farmers.

8. On the finding rendered by the learned Single Judge with respect to the upset price fixed, we are in respectful agreement. The earlier fixation of upset price through the intervention of this Court has not been taken into consideration. We are dealing with the larger interest of the water body, containing 81.43 Hectares. Now, water is sufficiently available. Unfortunately, this aspect was not gone into at the time of granting licence. The order passed by the Division Bench of this Court, dated 05.04.2019, has not been complied with in letter and spirit. The relevant factors have not been spoken, as rightly pointed out by the learned counsel



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appearing for respondent No.1/writ petitioner. Undervalued upset price has been fixed. Thus, to that extent, we are in agreement with the reasoning given by the learned Single Judge. On the methodology to be adopted also, the reasoning of the learned Single Judge is correct, though no challenge has been made to the Government Order. The Writ Petition was not on the public interest and there was no challenge to the Government Order passed and hence, the same cannot be set aside indirectly without even laying a challenge. The Court went on to say that the said Government Order has not been considered properly and the other procedures contemplated also have not been followed. Perhaps, the wisdom would prevail on the official respondent to modify the above said order as reasoned by the learned Single Judge. Suffice it to state that the present procedure does not require interference, especially, when the same has been given effect to with respect to the right conferred on the appellant in W.A.(MD)No.923 of 2020. Any such auction will have the prospective effect and therefore, the same will not take away the right accrued. Similarly, we uphold the objections of the learned Senior Counsel appearing for the appellant in W.A.(MD)No.923 of 2020 that the learned Single Judge ought not to have entertained the Writ Petition filed at the instance of the one of its Members, this being a fundamental principle of law.

9. However, in the case on hand, for the reasons best known, grossly inadequate upset price has been fixed,



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excluding the fact that a larger amount was fixed on the last occasion. The Government would be the looser and therefore, it is in Public Interest. To that extent, we find the reasoning of the learned Single Judge requires to be confirmed. Therefore, we call upon the official respondent to re-do the exercise, by keeping in view of the price augmented on the last occasion. The State largesse cannot be given to someone on a platter ignoring the financial implication. Accordingly, the official respondents are hereby directed to re-do the exercise of the upset price and offer the same to the appellant in W.A.(MD)No.923 of 2020, particularly, keeping in mind the price that was fixed for the last year.

10. For the ensuing years, we call upon the official respondents, including the Secretary to Government, Fisheries Department, to adopt a different methodology as suggested by the learned Single Judge, by fixing the upset price and thereafter, call for tender. The highest amount offered by the successful bidder will have to be offered to the Bodi Fisherman Society. It is better to follow this methodology in future in all cases, as the Government would not loose the revenue and in any case, fixation of the upset price is a starting point and the same will not be the actual price that will fetch in an auction. It is a price, which will facilitate somebody to take part in the auction, being the minimum value of the subject matter of the licence."



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22. The Division Bench, in the aforesaid decision, while approving the finding of the learned single Judge in W.P. (MD) No.5485/20 insofar as the necessity for fixing an upset price is concerned, however, the Government Order, which was struck down was not approved. Further, curiously it is also to be noted that neither the learned single Judge nor the Division Bench had considered RSO 211 as also G.O. Ms. No.332 and in conspicuous absence of consideration of RSO 211 and G.O. Ms. No.332, which is the fulcrum of the case of the petitioners herein, necessarily, this Court is required to conduct a deeper examination of the issue.

23. Be that as it may. The petitioners place reliance on the decision of the learned single Judge of this Court in the case of ***Thimmapuram Village Panchayat – Vs – State of Tamil Nadu & Ors. (W.P. No.12977/2020 – Dated 30.07.2012)***. In the said decision, the preferential right of the petitioner therein was the subject matter of issue and in support of the said stand, the petitioner therein had placed heavy emphasis on G.O. Ms. No.332 dated 17.11.1993 and dissecting the aforesaid Government Order with reference to



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the various decisions, which were placed before the Court, the learned single Judge, held as under :-

“62. Reading of G.O., makes it clear that the intention of the Government is to grant fishing rights to the weaker sections of the society, particularly, fishermen and harijans engaged in fishing, without any auction, as they cannot compete with people, who can afford to pay higher rent. By adopting to direct lease, economic justice is sought to be achieved. Deviation from the same is provided only if they are not willing to take up the lease. As rightly contended, the limitations provided in the G.O., cannot be undone by a Mandamus. The interpretation made by the petitioner is a misconstruction to the very object and intention behind the G.O.”

24. The aforesaid G.O. Ms. No.332 was the basis of the order of the Division Bench in the case of **A.G.Palanichamy – Vs – The Government of Tamil Nadu & Ors. (W.A. No.384/2017 – Dated 16.11.2017)** and the Division Bench of this Court, pointing to the fact that while granting fishing rights in the said petition, the conditions laid down in G.O. Ms. No.332 were not followed, the Division Bench went on to hold as under :-



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“4. While issuing the notification for the grant of fishing rights in respect of Varattupallam Tank in Erode District, the Director of Fisheries has not taken note of the Government Order in G.O.Ms.No.332 dated 17 November, 1993. In fact, there was a condition in the notification, which prohibited the Fishermen Cooperative Societies from participating in the tender. The appellant was therefore prevented from submitting its bid.

5. The Government appears to have realised the mistake at a later point of time and the same resulted in taking a decision by the Director of Fisheries to cancel the auction and to grant the lease to the Fishermen Society by way of sharing fishing rights. There is nothing wrong in the said decision on account of the Government Order in G.O.Ms.No.332 dated 17 November, 1993, which prescribes that the Fishermen Society should be given preference while granting the fishing rights. In view of the decision taken by the Government to grant fishing rights to the Fishermen Society, there is no need for a further adjudication.

6. We direct the Director of Fisheries, Chennai to pass appropriate orders in accordance with the relevant Government Orders and in tune with the instructions given by him to the learned Special Government Pleader, dated 14 November, 2017 indicating the decision taken by the Government to cancel the auction in question and the lease given to the 4th respondent. The process of giving lease to the



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Fishermen Society should be undertaken forthwith and it should be completed within a period of one month from the date of receipt of a copy of this judgment. The amount paid by the 4th respondent shall be returned to him forthwith.”

25. By the aforesaid decision, the Division Bench had held the necessity for adherence to G.O. Ms. No.332 dated 17.11.1993 and direction was issued accordingly. The said decision and the necessity for adherence with the aforesaid Government Order was tested before the Apex Court, which upheld the order passed by the Division Bench. Therefore, in effect, not only the decision of the Division Bench in *Palanichamy's case* had attained finality, but G.O. Ms. No.332 in and by which the methodology by which leasing rights have to be granted and the order of preference were given a seal of approval by the Apex Court. Therefore, there can be no backtracking from the ratio laid down in the aforesaid decision.

26. In the light of the above, it becomes necessary for this Court to look at the order passed by the Division Bench in W.A. (MD) Nos. 1251 of 2020 and 923 of 2020, which arose out of the order in W.P. (MD) No.5485/2020.



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27. In W.A. (MD) Nos. 1251 of 2020 and 923 of 2020, which arose out of the order in W.P. (MD) No.5485/2020, the main ground on which the order came to be passed is in the manner in which upset price has to be fixed so that the exchequer is not put to loss. In the said backdrop, orders were passed by placing reliance on G.O. Ms. No.201 in and by which the factors that come into play for fixing the upset price are prescribed.

28. The scenario of fixing the upset price comes into play only when the leasing rights are contested between two parties. However, RSO clearly mandates the preference in which the lease for fishing rights to be given. In that, RSO 211 clearly prescribes that lease would not be available to individuals and that the lease would be given in the following order of preference :-

- (1) Co-operative Societies of fishermen or of Harijans engaged in fishing;*
- (2) Panchayat of the locality;*
- (3) Private individuals as determined by the results of public auction*



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29. From the above, it is clear that in the area, where the Revenue Department or Public Works Department or Fisheries Department intends to lease out the tanks, rivers, estuaries, canals, etc., under their control for the purpose of fishing, preference would be given first to *the cooperative societies composed of fishermen or of Harijans engaged in fishing should first be given an opportunity of taking the fishery on lease for a reasonable rental fixed by the Collector of the District or the authority concerned. If the cooperative society is not prepared to take the lease for the amount offered, opportunity should be given to the Panchayat working in the area to take the lease on the same amount. If neither the cooperative society nor the Panchayat is willing to take the lease, the fishery should be disposed of by public auction in the manner indicated in paragraph 2 of RSO 211.*

30. Thus it is evident that the procedure to be adopted for granting the fishing rights by way of lease has been codified as early as in RSO 211, which had also been reiterated by the Government by issuing G.O. Ms. No.332 only with a subtle modification with regard to the lease period and the lease



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rentals. As aforesaid, the said G.O. No.332 has since been approved and no challenge has been made to the said order.

31. Therefore, there can be no quarrel or parting away from RSO 211 and incidentally from G.S. Ms. No.332 with regard to the procedure to be adopted while giving lease of the fishing rights with respect to the tanks, rivers, estuaries, canals, etc., belonging to the Revenue or Public Works Department or the Fisheries Department. It is incumbent on the part of the authorities to follow the prescription provided for under RSO 211 and reiterated in G.O. Ms. No.332.

32. In the backdrop of G.O. Ms. No.332, a careful perusal of the decision of the Division Bench in W.A. (MD) Nos.1251/2020 and 983/2020, which are the off-shoot of the order in W.P. (MD) No.5485/2020, even a bare perusal of the parties to the *lis* therein show that before the learned single Judge, the parties were an individual, who was a member of the Co-operative Society and the Co-operative Society. RSO 211 mandates that lease cannot be given to individuals and only Co-operative Societies of fishermen or of



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Harijans engaged in fishing in the locality alone would get preferential treatment.

33. In fact, in the *lis* before the learned single Judge, the whole gamut of the case was with relation to fixing the price much lower than the previous two years, which warranted the learned single Judge to issue a direction to fix an upset price in consonance with G.O. Ms. No.201. However, it is to be pointed out that G.O. Ms. No.332 prescribes the manner in which the lease amount is to be fixed. The question of upset price would come only when a tender is floated for public auction, which is the third preference, which is envisaged under sub-clause (iii) of Para (1) of RSO 211. So long as the lease is given to co-operative societies of fishermen or of Harijans engaged in fishing, it is only rental fixed by the District Collector, as envisaged in RSO and reiterated in G.O. Ms. No.332 that would govern the lease and there arises no question of fixation of upset price. Thus, the order of the learned single Judge as also the Division Bench could be only inferred to be premised on sub-clause (iii) of Para 1 of RSO 211, which pertains to a public auction to be conducted in case of private individuals fighting for lease of fishery rights, as in the said



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case, the fight was between a private individual, who was, admittedly, a member of the co-operative society, which was the respondent therein. Had RSO 211 and G.O. Ms. No.332 been brought to the notice of the learned single Judge as also the Division Bench and also the earlier orders in the case of *Thimmapuram Village Panchayat* and *A.G.Palanichamy (supra)*, definitely the learned single Judge and the Division Bench would have been guided by RSO 211 and G.O. Ms. No.332.

34. In case, in a particular village, there are two or more co-operative societies of fishermen or of Harijans engaged in fishing, the said co-operative societies would get the first preference with regard to grant of lease and in such a case, an tender may be floated between the said co-operative societies by fixing an upset price. However, so long as there is no competition in a particular village and it is only a single co-operative society of fisherman or of Harijans engaged in fishing come forward to take the lease, then necessarily, by following the prescription made under RSO 211 and G.O. Ms. No.332, fixing the rental, the District Collector is bound to grant lease.



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35. It is pertinent to point out that the order of the Division Bench in W.A. (MD) Nos.1251/2020 and 983/2020 and also the learned single Judge in W.P. (MD) No.5485/2020, have been passed without reference either to RSO 211 or G.O. Ms. No.332 as neither the said RSO 211 nor G.O. Ms. No.332 were placed before the Court when the orders came to be passed. The learned single Judge as also the Division Bench not oblivious of RSO 211 or G.O. Ms. No.332 dated 17.11.1993, had passed the aforesaid order. The said provision in the RSO 211 or the issuance of G.O. Ms. No.332, which is governing the field, not having been brought to the notice of the Court, thereby, the Division Bench as also the learned single Judge, on the facts of the said case, which was premised on a fight between two entities with regard to grant of leasing rights related to fishing, had directed fixation of upset price so that there is no loss caused to the exchequer. The said decision cannot be the basis to pass the impugned proceedings, as the issue relatable to grant of lease of fishing rights are governed by RSO 211 and G.O. Ms. No.332.



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36. However, insofar as the directions issued by the Division Bench in W.A. (MD) Nos.1251/2020 and 923/2020 with regard to the incidental issue of contamination of water, the Division Bench had categorically held that the respondents shall make sure that contamination of water for the purpose of facilitating larger capture of fish and letting the water out in detriment to the farmers are not carried on and in such cases leasing rights granted are liable to be cancelled, this Court is in respectful agreement with the same and the above directions needs to be complied with by the respondents in letter and spirit.

37. The impugned proceedings of the 3rd respondent dated 04.01.2022 on the basis of the orders passed in W.P. (MD) No.5485/2020 and W.A. (MD) Nos.1251/2020 and 983/2020 is wholly on a misinterpretation of the order passed in W.P. (MD) No.5485/2020 and W.A. (MD) Nos.1251/2020 and 983/2020 and the aforesaid proceedings cannot be allowed to survive, which are wholly contrary to RSO 211 and G.O. Ms. No.332 dated 17.11.1993, which govern the field relating to lease of fishing rights in the tanks, rivers, estuaries, canals, etc., of the Revenue, Public Works and Fisheries



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Department and, therefore, the impugned proceedings deserve to be set aside.

38. For the reasons aforesaid, the impugned proceedings of the 3rd respondent dated 4.1.2022 is set aside and the writ petitions are allowed with the following observations and directions :-

- i) *The cooperative societies composed of fishermen or of Harijans engaged in fishing should first be given an opportunity of taking the fishery on lease for a reasonable rental fixed by the Collector of the District or the authority concerned.*
- ii) *If the cooperative society is not prepared to take the lease for the amount offered, opportunity should be given to the Panchayat working in the area to take the lease on the same amount. If there are more than one co-operative society in a particular area relatable to fishing, then public auction shall be conducted in the manner indicated in paragraph 2 of RSO 211 by fixing the upset price.*
- iii) *If neither the cooperative society nor the Panchayat is willing to take the lease, the fishery*



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- should be disposed of by public auction in the manner indicated in paragraph 2 of RSO 211.*
- iv) *The preference, as provided in RSO 211, which has been followed in G.O. Ms. No.332 dated 17.11.1993 shall be scrupulously adhered to.*
- v) *The respondents are directed to ensure that contamination of water by polluting it for facilitating larger capture of fish and letting the polluted water to the farmer, thereby causing detriment to agriculture, is not resorted to by the leaseholder and if any such infraction is noticed, steps shall be taken by the respondents for cancelling such of the leases granted to such of the lessee.*
- vi) *Consequently connected miscellaneous petitions are closed.*

21.06.2023

Index : Yes / No

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To

1. The Secretary to Government
Animal Husbandry & Fisheries Dept.
Fort St. George, Chennai 600 009.
2. The Commissioner of Fisheries
Nandanam, Chennai 600 035.
3. The Assistant Director of Fisheries
Erode 638 012.
4. The District Collector
Coimbatore.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.6819 OF 2023,
ETC., BATCH**

Pronounced on



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W.P. No.6819/2023, etc. Batch

21.06.2023