



W.P(MD)No.1102 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1102 of 2023

and

W.M.P(MD)No.1014 of 2023

Senthaneri Kanmai Farmers Society,
Represented by its President,
R.Sitharaman,
S/o.Ramasamy Nadar,
Krishnapuram,
Rajapalayam Taluk,
Virudhungar District.

... Petitioner

Vs

The Executive Engineer,
Water Resource Department,
Upper Vaippar Basin Division,
Rajapalayam,
Virudhunagar District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondent from conducting any auction of the fishery rights of Senthaneri Kanmai at Kollankondan Village, Rajapalayam Taluk.



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For Petitioner : Mrs.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

For Respondent : Mr.B.Saravanan
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The writ petition was listed for admission on 20.01.2023. The writ petitioner is a water users association. It wants this Court to forbear the authorities from conducting any auction of the fishery rights in respect of the petition mentioned kanmoi. I made it clear that the issue on hand is no longer *res integra*. The Hon'ble Division Bench had already made it clear in W.A(MD)No.1251 of 2020 etc batch (*The Director of Fisheries & Others Vs S.T.Mani & Others*) dated 03.02.2021 that fishery rights will have to be auctioned and that license will be given only to the highest bidder. In the case of Fisherman Co-operative Societies, a concession has been given that they can match the highest bid. That was because the Government Order had already been issued in that regard. However, no such provision exists in favour of the water users association. Even while declining to restrain the respondents from conducting the auction, I permitted the writ petitioner to take



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part in the auction which was to be held on the same day. The petitioner took part in the auction but the license has been issued in favour of the person who had bid for a higher amount. In my view, no exception can be taken to the award of license in favour of the highest bidder.

3. Even while declining to grant the relief sought for in the writ petitioner, I need to make certain clarifications. The Hon'ble Division Bench in the aforesaid Writ Appeal had held as follows:

“11. The incidental issue is with respect to the impleaded respondents. On a perusal of the status report filed by respondent No.4, it is clear that various violations took place. These violations are with respect to contamination with the water and reaction to facilitate the highest fishing. The rights of the appellant in W.A.(MD)No.923 of 2020 is certainly subject to the rights of the impleaded respondent. Therefore, the official respondents shall make sure that their rights are not affected, which is inclusive of contaminating the water by polluting it for facilitating the larger capture of fishing and letting the water out, much to the suffering of the farmers. If such activities are carried on, the respondents are expected to cancel the licence.

12. There is one another issue which we need to consider. This is with respect to other living beings. The learned Special Government Pleader appearing for the official respondents will have to instruct the officials to make sure that the appellant in



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W.A.(MD)No.923 of 2020 shall not involve in any illegalities, by using crackers to shy away the birds, which go there to catch fish.”

4.The learned counsel appearing for the petitioner draws my attention to the provision set out in Chapter III of the Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000. Sections 22 to 24 of the said Act read as follows:

“CHAPTER III

FUNCTIONS OF FARMERS ORGANISATION

22. The Water Users Association shall perform the following functions, namely: -

(a) to prepare and implement an operational plan and a rotational water supply for each irrigation season, consistent with the operational plan, prepared by the Distributory Committee and the Project Committee, and based upon the entitlement, area, soil and cropping pattern as approved by the managing committee or Distributory Committee, as the case may be, of the Project Committee;

(b) to prepare a plan for the maintenance of irrigation system in the area of its operation at the end of each crop season and carry out the maintenance works of both distributory system, water courses and field drains in its area of operation with the funds of the Water Users Association, from time to time;



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(c) to regulate the use of water among the various sluices under its area of operation according to the rotational water supply;

(d) to promote economy in the use of water allocated;

(e) to assist the authorities of the Revenue department of the Government, in the preparation of demand and collection of water charges;

(f) to maintain a register of water users, as published by the Revenue department of the Government;

(g) to prepare and maintain an inventory of the irrigation system within the area of operation;

(h) to monitor flow of water for irrigation;

(i) to resolve the disputes, if any, between the members of the Water Users Association in its area of operation;

(j) to raise resources;

(k) to maintain accounts;

(l) to cause annual audit of its accounts;

(m) to assist in the conduct of elections to the managing committee;

(n) to maintain such other records, as may be prescribed;

(o) to abide by the decisions of the Distributory Committee and Project Committee;

(p) to conduct general body meetings in such manner as may be prescribed;



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(q) to encourage avenue for plantation on canal and tank poramboke, and to protect and maintain such plantations;

(r) to conduct regular water budgeting and also to conduct periodical social audit, as may be prescribed; and

(s) to remove the encroachments on canal, drains and tank poramboke in the area of jurisdiction of the Water Users Association.

23. The Distributory Committee shall perform the following functions, namely:-

(a) to prepare an operational plan based on its entitlement, area, soil, cropping pattern at the beginning of each irrigation season, consistent with the operational plan prepared by the Project Committee;

(b) to prepare a plan for the maintenance of branch canals, distributories and medium drains within its area of operation at the end of each crop season and execute the maintenance works with its funds, from time to time;

(c) to regulate the use of water among the various Water Users Associations under its area of operation;

(d) to resolve disputes, if any, between the Water Users Associations in its area of operation;

(e) to maintain a register of Water Users Association in its area of operation;



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- (f) to maintain an inventory of the irrigation system in the area of its operation, including drains;*
- (g) to promote economy in the use of water allocated;*
- (h) to maintain accounts;*
- (i) to cause annual audit of its accounts;*
- (j) to maintain such other records as may be prescribed;*
- (k) to monitor the flow of water for irrigation;*
- (l) to conduct general body meetings as may be prescribed;*
- (m) to abide by the decisions of the Project Committee;*
- (n) to cause regular water budgeting and also the periodical social audit, as may be prescribed;*
- (o) to assist in the conduct of elections to the managing committee;*
- (p) to encourage avenue for plantations in its area of operation; and*
- (q) to remove the encroachments on canal, drains and tank poramboke in the area of jurisdiction of the Distributory Committee.”*

The aforesaid provisions are statutory in character and will have to be enforced by the authorities. The highest bidder will have to exercise his fishery rights only in consonance with the aforesaid statutory provisions and the law laid down by the Hon’ble Division Bench in the aforesaid Writ Appeal.



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5. With these observations, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.01.2023

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA

To

The Executive Engineer,
Water Resource Department,
Upper Vaippar Basin Division,
Rajapalayam,
Virudhunagar District.



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G.R.SWAMINATHAN, J.

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