



WP(MD)No.21394/2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.21394/2014 &
MP(MD)Nos.1 & 2/2014

George @ Maria George

...Petitioner

Vs

1.The Joint Director of Fisheries (Zonal)/
Adjudicating Officer, Thoothukudi

2.The Deputy Director of Fisheries /
Authorised Officer,
The Deputy Director of Fisheries Office,
Kanyakumari Zonal at Nagercoil,
Kanyakumari District.

3.The Assistant Director of Fisheries/
Authorised Officer Kanyakumari (East),
Fishing Harbour Management Wing,
Chinnamuttom, Kanyakumari Districts.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned proceedings in Na.Ka.No.446/Aa/2013, dated 15.12.2014 passed by the second respondent and quash the same.



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For Petitioner : Mr.K.Vamanan
For Respondents : Mr.S.Shaji Bino
Special Government Pleader
for respondents

ORDER

The petitioner is a fisherman and he was imposed with penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 18 (1)(b) of the Tamil Nadu Marine Fishing Regulation Act, 1983 by the second respondent and the same is challenged in this writ petition.

2. The learned counsel for the petitioner submits that this petitioner is a fisherman and he is an illiterate. He is having a Vallam bearing Registration No.IND TN 14 MO 1147, registered with the third respondent. The third respondent has sent a communication dated 20.08.2014, as if this petitioner has violated the provisions of the Tamil Nadu Marine Fishing Regulation Act, 1983 (herein after referred as 'the Act') by using the prohibited 'purse seine net' for fishing. The third respondent has also forwarded a complaint to the Kanyakumari Police Station, based on which, a criminal case was registered in Crime No. 433/2014, dated 26.08.2014 for the offences under Sections 341, 294(b),



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353 and 506(ii) of IPC, alleging that this petitioner prevented the officials from discharging their duties. Thereafter, the respondents have contemplated an enquiry and issued summon on 08.10.2014 for the petitioner's appearance for enquiry on 10.10.2014. The petitioner has appeared for the enquiry along with his Advocate. However, the second respondent did not permit the petitioner to engage an Advocate and adjourned the case to 13.10.2014. Even on the subsequent hearings, the second respondent did not permit the petitioner to engage an Advocate. The petitioner needed the assistance of an Advocate, since most of the proceedings and the charges levied against him were in English. The learned counsel by referring to Section 21(2) of the Act submits that the Adjudicating Officer or the Appellate Authority shall, while exercising any power under this Act, be deemed to be a civil court for the purpose of Sections 345 and 346 of the Code of Criminal Procedure, 1973 and therefore, this petitioner is entitled to defend his case with an Advocate. However, without providing such an opportunity, the impugned order of penalty has been passed.

3. The learned Special Government Pleader appearing for the respondents submits that the penalty imposed as against this petitioner is



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only Rs.10,000/- (Rupees Ten Thousand only) and this petitioner is having an appeal remedy under Section 19 of the Act. Furthermore, the enquiry conducted by the second respondent is only a quasi judicial enquiry and therefore, this petitioner is not entitled to have an Advocate for his assistance.

4. This Court considered the rival submissions made and perused the materials available on record.

5. The concerned Authorities under the Tamil Nadu Marine Fishing Regulation Act, 1983 are empowered to regulate, restrict and prohibit fishing in a specific area and are also empowered to restrict use of prohibited fishing nets in any specific area. Any violation of the provisions under the Act are dealt with penalties. The Adjudicating Officer has to conduct an enquiry and impose penalty as per Section 18 of the Act. The penalty would be Rs.5,000/- (Rupees Five Thousand Only) along with impoundment of vessel. The powers of the Adjudicating Officer are enumerated under Section 21 of the Act, which is extracted hereunder:-



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"21. Powers of adjudicating officer and the appellate authority in relation to holding enquiry under this Act. -

(1) The adjudicating officer and the appellate authority shall, while holding an enquiry, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Central Act V of 1908) while trying a suit, in respect of the following matters, namely : -

- (a) summoning and enforcing the attendance of witnesses;*
- (b) requiring the discovery and production of any document;*
- (c) requisitioning any public record or copy thereof from any Court or office;*
- (d) receiving evidence on affidavits; and*
- (e) issuing commissions for the examination of witnesses or documents."*

6. The petitioner claims that he is a fisherman and an illiterate person. The proceedings of the enquiry and the charges levied against the petitioner are in English. Therefore, the petitioner can take assistance of an Advocate during the enquiry before the Adjudicating Officer. The petitioner has also made such a request on the date of hearings of the



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enquiry on 10.10.2014, 13.10.2014 and 02.12.2014. However, the second respondent, who is the Adjudicating Officer has imposed the penalty without considering the request of the petitioner. Considering the provisions of law and the denial of opportunity to this petitioner to make a proper representation through a counsel, this Court is inclined to set aside the impugned order. Accordingly, the order of the second respondent in Na.Ka.No.446/Aa/2013, dated 15.12.2014 is hereby set aside with a liberty to the respondents to conduct a fresh enquiry, after providing an opportunity to the petitioner to defend his case with the aid of an Advocate.

7. In the result, this writ petition is allowed. No costs..
Consequently, the connected Miscellaneous Petitions are closed.

14.03.2023

NCC: Yes / No
Index :Yes / No
Speaking Order : Yes / No

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To

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B.PUGALENDHI, J.

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