



W.P(MD)No.7451 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)No.7451 of 2011
and
M.P(MD)Nos.1 & 2 of 2011**

M.Mohammed Mohideen

... Petitioner

VS.

- 1.The Assistant Director of Fisheries (Marine Wealth),
Tuticorin.
- 2.The Joint Director of Fisheries (Regional),
Thoothukudi District.
- 3.The Commissioner of Fisheries,
DMS Teynampet,
Chennai.
- 4.The President,
Thoothukudi District Anna Sangukuli,
Thozhilalar Sangam,
Thirespuram,
Thoothukudi – 628 001.
- 5.The President,
Sangukuli Thozhilalar Sangam,
Thirespuram,
Thoothukudi.



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6.The Superintendent of Police,
Thoothukudi.

7.The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi.

8.Vadagambakkam Nattupadagu Meenavar
Podhu Panchayattar,
Represented by R.Raj.

9.Thoothukudi Nattupadagu Eralmeenpidi
Thozhilalar Nala Sangam,
Represented by M.Johnson.

10.Thoothukudi Mavatta Visaipadagu Thozhilalar
Nala Sangam,
Represented by K.Johnson.

11.Ramnad District Fish Workers Trade Union,
Velipattnam, Ramanathapuram – 623 504.

12.Kanavai Thozhilalar Sangam,
Represented by M.Naburaj.

13.Thoothukudi Vadapagam Fiber Boat,
Meenavar Sangam,
Represented by Alex.

14.Thenpagam Nattupadagu Meenavar Sangam,
Represented by R.Selvam.

15.Thenpaga Kattumara Meenavar Sangam,
Represented by S.Soosaia.

... Respondents

(RR 6 & 7 are *suo motu* impleaded vide order dated 08.07.2011)

(RR 8 to 15 are impleaded vide order dated 09.01.2013
in M.P(MD)No.1 of 2013)



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in Na.Ka.No.3662/4/2010 dated 29.06.2011 on the file of the first respondent and quash the same and further direct the respondents to permit chank fishery with the help of the air hose as a protective device.

For Petitioner	: Mr.G.Prabhu Rajadurai
For Respondent Nos.1 to 3, 6 & 7:	Mr.S.P.Maharajan Special Government Pleader
For Respondent No.4	: Mr.N.Subramani
For Respondent No.5	: Mr.M.P.Senthil
For Respondent Nos.8 to 15	: Ms.D.Geetha

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

The petitioner has filed the present Writ Petition to quash the proceedings in Na.Ka.No.3662/4/2010 dated 29.06.2011 on the file of the first respondent and further direct the respondents to permit chank fishery with the help of the air hose as a protective device.



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2. According to the petitioner, the first respondent has issued a licence to the boats to carry out chank fishery operations and to the persons to collect chanks. Due to some enmity, the fourth and fifth respondent's Association had started trouble to the petitioner and made a false complaint to the respondents 1 to 3. According to the petitioner, based on the aforesaid complaint preferred by the respondents 4 and 5, the first respondent passed the impugned order prohibiting the collection of chank using an air hose. Challenging the said impugned order, the present Writ Petition has been filed.

3. Though the petitioner has raised several grounds in the aforesaid Writ Petition, the only contention raised by the petitioner is that without giving an opportunity to him, the first respondent has passed the impugned order by depriving the right of the livelihood of the petitioner for the right of fishing of chanks using the said air hose. Therefore, the petitioner's livelihood has been affected because of the impugned order and more than 300 families are at stake.



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4.The first respondent filed the counter-affidavit contending that there is a law and order problem between skin divers and divers using artificial equipment and therefore, the respondent has considered the same and passed the impugned order. Further, it is stated that the air inhaled is contaminated by the oil used in the compressor which in due course will corrode the lungs of the divers and also the compressed air contains a certain amount of Nitrogen which may at times lead to blockage of blood vessels resulting in death or total physical disability. Taking into consideration the aspect of the law and order problem and also the damages caused to the life of the divers, the said order has been passed.

5.The learned Government Advocate reiterated the averment made in the counter-affidavit and contended that the order passed by the first respondent is perfectly correct and the same does not warrant any interference.

6.The learned counsel appearing for the fourth and fifth respondents would submit that the members of the petitioner Association have been creating much disturbance among the fishermen in the locality in general, which resulted in lodging complaints. Therefore, the impugned



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order passed by the first respondent is correct and prays for dismissal of the Writ Petition.

7.After elaborate arguments on the side of the learned counsel appearing on either side, all the parties have agreed that without providing an opportunity to the parties concerned, the first respondent has passed the impugned order, dated 29.06.2011.

8.Further, we also find that the impugned order has been passed by the first respondent without providing an opportunity to the petitioner or the private respondents. In such circumstances, the impugned order cannot be sustained. However, the learned counsel appearing for the petitioner would submit that the said licence period is granted for one year and every year, a fresh licence has to be issued as per the Rules.

9.It is also admitted by the parties concerned that at the time of granting a fresh licence, the authorities concerned have to give an opportunity of hearing to the parties concerned and thereafter, the authorities concerned shall consider the same for granting the fresh licence to the petitioner or other persons as per Rules. Further, this Court has also allowed



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the Writ Petition in W.P(MD)No.4316 of 2013, dated 22.02.2024 wherein this Court has held that, based on the statement made by the fourth respondent therein, there is a prohibition for carrying chank diving in the areas particularly in the National Park or Sanctuary. While considering the application for granting licence to the parties concerned, the authority concerned has also taken into consideration the order passed in W.P(MD)No.4316 of 2013, dated 22.02.2024.

10.In view of the above, this Court is inclined to pass the following order:

(i) If any application is submitted by the petitioner or any other persons concerned for issuance of licence for chank divers, the authority concerned shall consider the same strictly adhering to the Tamil Nadu Chank Fisheries Rules, 1981.

(ii) At the time of considering the application for granting licence to the parties concerned, the authority concerned, as observed in paragraph No.9, shall grant an opportunity to the fourth respondent/Chief Wildlife Warden,



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Panagal Maaligai, Saidapet, Chennai and also ensure that the licence shall not be issued within the prohibited area.

11.With the above directions, this Writ Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
22.02.2024
(2/3)

NCC : Yes / No
Index : Yes / No
ps

To

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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)No.7451 of 2011

DATED : 22.02.2024
(2/3)

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