



W.P(MD)No.18848 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.03.2024

Delivered on : 18.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.18848 of 2021

and

W.M.P(MD)No.15671 of 2021

and

W.M.P(MD)No.10120 of 2021

R.1372 Lalgudi Circle and Inland Fishermen
Co-operative Society,
Rep.by its President,
Sollin Selvan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Animal Husbandry Dairying and
Fisheries (FS-6) Department,
Fort.St.George, Chennai – 600 009.

2.The Director of Fisheries,
3rd Floor, Intergrated Animal Husbandry and
Fisheries Department,
Nandanam, Chennai 600 035.

3.The Assistant Engineer,
O/o.The Assistant Engineer,
Water Re-source Department-Irrigation Division,
Lalgudi, Trichy

... Respondents



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PRAAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari filed Mandamus, to call for the records of the fourth respondent's auction notice, dated 04.10.2021 and quash the same as illegal and consequently, direct the respondents to issue license for fishing right at Siruvayalur Village Tank, Lalgudi Taluk based on the petitioner's representation and resolution, dated 20.09.2021.

For Petitioner : Mr.Ananth C.Rajesh

For Respondents : Mr.P.Thambidurai,
Government Advocate

ORDER

This Writ Petition is directed against the auction notice, dated 04.10.2021 pertaining to Siruvayalur Village Tank, Lalgudi Taluk and for direction to the respondents to issue license for fishing right at Siruvayalur Village Tank, Lalgudi Taluk, based on the petitioner's representation and resolution, dated 20.09.2021.

2. The petitioner is a co-operative society having 600 members and getting income from the fishing rights in the lake, tank and pond situated within the Lalgudi Taluk. The petitioner's society has challenged the



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impugned action notice, dated 4.10.20201 mainly on the ground that the said notice has been issued in violation of G.O.Ms.No.332, Animal Husbandry and Fisheries Department, dated 17.11.1993 and Revenue Standing Order (RSO)211.

3. The main contention of the petitioner's society is that the respondents have issued auction notice calling for all the people to take part in the auction; that as per Government Order in G.O.Ms.332, Animal Husbandry and Fisheries Department, dated 17.11.1993, priority should be given to the Co-operative Societies of fishermen or of Harijans engaged in fishing and thereafter to the Panchayat of locality and thereafter, private individuals by public auction and that the fourth respondent has issued the impugned auction notice in total violation of G.O.Ms.No.332 and RSO 211 and issued the notice, without affording any priority to the petitioner's society and that therefore, the petitioner was constrained to approach this Court.

4. The fourth respondent has filed a counter statement that public auction was conducted from 2018 onwards; that the petitioner's society cannot claim any exclusive right over the said Lake and if public auction is



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not conducted and the same is given to the petitioner's society, it would cause heavy loss to the Government exchequer.

5. When the matter was taken up for hearing, the learned Government Advocate would submit that in another Writ Petition in W.P(MD)No.4992 of 2022 filed by the petitioner's society itself, this Court has passed an order, dated 22.03.2022, following the decision of Division Bench of this Court in W.A(MD)Nos.1251 of 2020 and 923 of 2020, in the case of ***The Director of Fisheries, Fisheries Department, Chennai Vs. S.T.Mani***, has directed the respondents to proceed with the impugned auction by imposing some directions and that the same directions may be issued in the present case also and the relevant passages are extracted hereunder:

“ 8.The exercise directed by the Division Bench in the aforesaid Judgment is in the interest of the Fishermen Society. Their priority rights as prescribed under G.O.Ms.No.332, which the petitioner relies upon has not been disturbed. Hence, the same direction as given by the Division Bench of this Court in the decision referred to supra can also be given in the present case also, which will only be in the interest of the petitioner's



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society. Ultimately, any auction is conducted to get the best possible price. At the same time, the petitioner's right as per G.O.Ms.No.332, should also not get defeated. By the aforementioned exercise, directed by the Division Bench, the rights of the petitioner's society to get priority as per G.O.Ms.No.332, has not been defeated.

9. For the foregoing reasons, the impugned auction notification cannot be quashed by this Court. But instead, the writ petition is disposed of by issuing the following directions.

a) The respondents are permitted to proceed with the impugned auction and complete the same.

b)The petitioner's society and its members are also allowed to participate in the auction.

c) Once the Highest Bidder is determined under the auction, the price quoted by the Highest Bidder shall be intimated to the petitioner's Society and the petitioner's Society or its members if interested in getting a contract awarded in its favour, shall quote the price quoted by the Highest Bidder and on payment of the same, within a period stipulated by the respondents, the petitioner or its members can get the contract



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awarded in their favour in accordance with the decision of the Division Bench referred to supra.

d) In case, the petitioner's society is not willing to accept the offer of the respondents, the respondents are at liberty to award the contract to the Highest Bidder.”

6. But, the learned counsel appearing for the petitioner would submit that subsequently, a learned Judge of this Court in a batch of writ petitions at Principal Seat, taking note of the decision of the Division Bench, has come to a decision that priority has to be given to the Co-operative Societies of fishermen or of Harijans engaged in fishing and only in case, if the co-operative societies are not willing and local panchayat is also not willing, then they have to proceed with public auction for private individuals. It is necessary to refer the following passages in the said order, dated 21.06.2023 passed in W.P.No.6819 of 2023 and batch of cases ***(K-1546 Mettupalayam Meenavar Co-operative Society Ltd., rep By its Director, A.Nataraj Vs. The Government of Tamil Nadu Rep. by Secretary to Government Animal Husbandry & Fisheries Dept. Fort St. George, Chennai 600 009 and others)***

“ 31. Therefore, there can be no quarrel or parting away from RSO 211 and incidentally from G.S. Ms. No.332 with



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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 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



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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 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



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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.

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



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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.

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



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

38. For the reasons aforesaid, the impugned proceedings of the 3 rd 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 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.



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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.*

7. Considering the above, this Court is in entire agreement with the views and the finding arrived at by the learned Judge of this Court. In RSO 211, it has been specifically stated as follows :

The lease should be given in the following order of preference.

(i) *Co-operative Societies of fishermen or of Harijans engaged in fishing;*

(ii) *Panchayat of locality ;*

(iii) *Private individuals has determined by the results of public auction. The following procedures should be adopted in sanctioning of lease :*



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(i) The co-operative 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 co-operative 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 for the same amount.

(iii) If neither the co-operative 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.”

8. In Government Order in G.O.Ms.332, Animal Husbandry and Fisheries Department, dated 17.11.1993, para 3 is extracted hereunder :

“3. As per Revenue Department Standing Order 211, while granting lease of fishing rights to the Cooperative Societies comprised of Fisherman or of Harijans engaged in fishing should be given the first opportunity. Auctioning of Fishery rights otherwise than by lease should be restored to only if no Co-operative Societies of Fishermen or Harijans engaged



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in 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.”

9. Considering the above, this Court has no hesitation to hold that the fourth respondent has issued the impugned auction notice, in total violation of RSO 211 and G.O.Ms.No.332, dated 17.11.1993 and as such, the same is liable to be quashed and is quashed.

10. In the result, the Writ Petition is allowed with the following directions :

(i) The respondents are directed to give an opportunity of taking the fishery on lease for a reasonable rental fixed by the Collector of the District or authority concerned and in case if the cooperative society is not prepared to take the lease for the amount offered then, an opportunity should be given to the Panchayat working in the area to take the lease on the same amount and 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 RSO 211 by fixing the upset price.



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(ii) If neither the cooperative society nor the Panchayat is willing to take the lease, then to the private individuals as determined by the results of public auction.

(iii) The respondents are also 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. Consequently, connected Miscellaneous Petitions are closed. No costs.

18.04.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Animal Husbandry Dairying and
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Fort.St.George, Chennai – 600 009.
- 2.The Director of Fisheries,
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K.MURALI SHANKAR, J.

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Order made in
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and
W.M.P(MD)No.15671 of 2021
and
W.M.P(MD)No.10120 of 2021

Dated : 18.04.2024