



W.A.(MD)No.321 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)No.321 of 2022

and

C.M.P(MD)Nos.3164 & 3728 of 2022

R.1372 Lalgudi Circle Inland Fishermen

Co-operative Society,

Represented by its President,

Mr.Sollin Selvan,

S/o.Maruthappan,

Valadi Post,

Lalkudi Taluk,

Trichy District.

... Appellant / Petitioner

Vs.

1.The State represented by

The Secretary,

Animal Husbandry Dairying and

Fisheries (FS-6) Department,

Fort St.George,

Chennai – 600 009.

2.The Director of Fisheries,

3rd Floor, Integrated Animal Husbandry

and Fisheries Department,

Nandanam,

Chennai – 600 035.



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3.The Assistant Director of Fisheries,
(Inland Fisheries),
16/2, Samadu Palli Street,
Kaja Nagar,
Thiruchirapalli – 620 020.

4.The Assistant Engineer,
O/o.The Assistant Engineer,
Water Resource Department -
Irrigation Division,
Lalgudi,
Trichy.

... Respondents /
Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to
set aside the orders passed by the Hon'ble Judge in W.P(MD)No.
4992 of 2022 dated 22.03.2022 by allowing the Writ Appeal.

For Appellant : Mr.Ananth.C.Rajesh

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by G.R.SWAMINATHAN J.)

Heard both sides.



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2.The Assistant Engineer, WRD, River Protection Section,

Lalgudi issued notification dated 07.03.2022 proposing to conduct auction with regard to fishery lease. Challenging the same, the appellant herein filed W.P(MD)No.4992 of 2022. The writ petition was disposed of by the learned single Judge vide order dated 22.03.2022 in the following terms:

“5.The learned counsel for the petitioner drew the attention of this Court to a similar issue raised in another writ petition filed by another Fishermen Society in W.P.(MD).No.18848 of 2021 and would submit that by an order dated 20.10.2021, passed in W.M.P.(MD).No.15671 of 2021 in W.P.(MD).No.18848 of 2021, the auction notification issued on similar line without affording any priority, was directed to be stayed by the learned Single Judge. He also drew the attention of this Court to the G.O.Ms.No.332, in support of the contentions raised by the petitioner in this writ petition.

6.However, learned Special Government Pleader has placed before this Court a Judgment of the Division Bench of this Court, dated 03.02.2021, passed in W.A.(MD).Nos.1251 of 2020 and 923 of 2020, in the case of The Director of Fisheries,



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Fisheries Department, Chennai Vs. S.T.Mani, involving a similar issue. According to the learned Special Government Pleader, the grounds raised in this writ petition were also raised in the writ petition filed by another Fishermen Society.

7.The Division Bench after analyzing the case, came to the conclusion as seen from paragraphs 10 and 11 of the said Judgment that the highest amount offered by the successful bidder will have to be offered to the Fishermen Society to enable them to get the contract awarded in their favour. Paragraphs 10 and 11 of the said Judgment reads as follows:

“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 Fishermen Society. It is better to follow this methodology in future in all cases, as the Government would not lose 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



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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.

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.”

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



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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 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



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payment of the same, within a period stipulated by the respondents, the petitioner or its members can get the contract 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.”

Questioning the same, this Writ Appeal has been filed.

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of Appeal. According to him, the decision of the Hon'ble Division Bench rendered in W.A(MD)No.1251 of 2020 dated 03.02.2021 is *per incuriam*. He called upon this Court to set aside the impugned order and allow the Writ Appeal as prayed for.

4.The learned Additional Government Pleader appearing for the respondents submitted that even though pursuant to the direction given by the Hon'ble Division Bench in the aforesaid Writ Appeals, the Department issued G.O(Ms)No.52 Animal Husbandry, Dairying,



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Fisheries and Fishermen Welfare (FS6) Department, dated 08.07.2024, the same came to be recalled pursuant to the order dated 06.12.2024 in Cont.P(MD)Nos.3078, 3079 and 3080 of 2024 and G.O(Ms)No.5 dated 30.01.2025 has been issued thereafter.

5.The learned Additional Government Pleader called upon this Court to take note of the order dated 21.06.2023 rendered in W.P. No.6819 of 2023 etc batch. He pointed out that the Hon'ble Judge had mandated that the preference as provided in RSO.211 which is reflected in G.O(Ms)No.332 dated 17.11.1993 should be scrupulously adhered to. He pointed out that the said order of the learned single Judge was confirmed by the Hon'ble First Bench in W.A.No.152 of 2024 on 18.01.2024. The stand of the Government is that they would abide by the orders of this Court.

6.We carefully considered the rival contentions and went through the materials on record.

7. The manner in which the fishery right should be leased out was laid down by the Hon'ble Division Bench in W.A.(MD)Nos.



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1251 of 2020 and 923 of 2020 on 03.02.2021. The learned single Judge in this case declined to grant relief to the appellant only in view of the aforesaid binding decision of the Hon'ble Division Bench. It is relevant to note that the learned single Judge was fully cognizant of what was set out in G.O.Ms.No.332 dated 17.11.1993. We are, therefore, clearly of the view that another single Judge in W.P.No.6819 of 2023 etc. batch could not have taken a contra view subsequently on 21.06.2023 on the ground that in W.A.(MD)No. 1251 of 2020, there is no reference to G.O.Ms.No.332 dated 17.11.1993. This is our definite opinion notwithstanding the fact that the order dated 21.06.2023 rendered in W.P.No.6819 of 2023 etc batch was confirmed by the Division Bench on appeal in W.A.No. 152 of 2024 on 18.01.2024.

8. It is true that RSO.211 which deals with disposal of fishery by lease is as follows:

“RSO.211

Disposal of Fisheries by Lease:- The fisheries in all public inland waters such as tanks, rivers, estuaries, canals, drains etc., whether in charge of Revenue or



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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 228 of the Tamil Nadu District Municipalities Act or section 124 of the District Board Act, 1920, or section 77 of the Tamil Nadu 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 paragraph 2 below. The concession of lease without auction is not available to individuals. 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 the locality;*
- (iii) Private individuals as determined by the results of public auction.”*

The above procedure was reiterated in G.O(Ms)No.332 dated 17.11.1993. The object of RSO No.211 and G.O.Ms.No.332 dated 17.11.1993 is to encourage Fishermen Cooperative Societies and Harijan Cooperative Societies engaged in fishing. Even though the RSO and the G.O were not explicitly mentioned in the order dated



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03.02.2021 in W.A.(MD)No.1251 of 2020 and 923 of 2020, the Hon'ble Division Bench was very much aware of the aforesaid RSO and the G.O and that is why, the Inland Fishermen Cooperative Societies were given the right to match the highest offer.

9. The RSO was introduced in the year 1956. The RSO authorised allotment of fishery lease without resorting to public auction. The discretionary power enjoyed by the Government in respect of disposal of state largesse was then unquestioned. The constitutional position underwent a drastic change following the pronouncement in ***R.D.Shetty Vs. The International Airport Authority of India (AIR 1979 SC 1628)***. The legal position became that the public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Their dealings should be aboveboard. Their transactions should be without



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aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders. That is why the Court repeatedly stated and reiterated that the State-owned properties are required to be disposed of publicly.

(Vide R.D.Shetty Vs. The International Airport Authority of India (AIR 1979 SC 1628), Haji T.M. Hassan Rawther v. Kerala Financial Corpn. [(1988) 1 SCC 166].

10. The moot question is whether an executive instruction that was issued before ***R.D.Shetty*** can still withstand the touchstone of Article 14. The answer is yes and no. Yes if RSO 211 and G.O.Ms.No.332 can pass muster if in their application, the outcome fulfils the test laid down in Article 39 of the Constitution of India. The said article states that the ownership and control of the material resources of the community must be so distributed as best to subserve the common good. The operation of the economic system should not result in the concentration of wealth and means of



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production to the common detriment. We say so because in some decisions, the Hon'ble Supreme Court had held that auction is not the only mode to deal with public properties. Equality jurisprudence has evolved beyond the purely technical analysis, embracing an approach that considers not only the intent behind legislation or policy but also its real world impact (*vide State of Andhra Pradesh Vs. Rao, V.B.J.Chelikani and Others 2024 INSC 894*).

11. Applying the test of real world impact, on 26.03.2025, we directed the appellant as well as the Department to make a statement as to how the financial affairs of the appellant Society are being conducted. It was submitted that there are about 480 members in the appellant Society. If without conducting an auction, the appellant Society alone is to be given license, then, the benefit conferred on the appellant Society must be equally distributed among all its members. It goes without saying that all the members of the appellant Society must be fishermen by avocation. All that we wanted to know was whether the appellant Society has been evenly distributing the benefits availed by it by virtue of its status. When



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the case was taken up on the next hearing date, the learned counsel for the appellant submitted that he could not contact his client at all.

On the other hand, the learned Additional Government Pleader submitted that a Special Officer was appointed for the Society in the year 2023 and that in spite of their best efforts, they could not secure the records from the erstwhile president. It is not as if the appellant Society is in the fray for the first time. It was earlier granted fishery lease. There is nothing on record to show that the dividend or monetary benefit was equally distributed among its members. On the ground that the direction of this Court to disclose the manner in which its financial affairs are conducted has not been complied with, we dismiss this writ appeal. When a direction is issued and the petitioner / appellant refuses to comply with the same, the writ Court can non-suit the litigant on that sole ground even without going into the merits of the matter.

12. We have come across quite a few cases from Madurai and we take judicial notice of the fact that often a small clique controls the affairs of such Societies.



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13. One of the officials assisting the Additional Government Pleader submitted in person before us that after the license is given in favour of the Society, an auction is conducted among the members of the Society. He, however, was careful enough to clarify that this is the state of affairs prevailing in Trichy District.

14. When the Hon'ble Division Bench in W.A.(MD)Nos.1251 of 2020 and 923 of 2020 had made it clear that auction must be the mode of granting license and a fishermen_Society or Harijan Welfare Society can be given the right to match the highest offer, thus balancing their interests and the Government had also issued G.O(Ms)No.52 dated 08.07.2024 in compliance with such directions, we are clearly of the view that it was not open to the learned single Judge in W.P.No.6819 of 2023 etc. batch to have taken a contra view. We are not able to approve the approach adopted by the learned single Judge vide order dated 15.06.2023 in W.P.No.6819 of 2023 etc batch. However, in view of its confirmation by the First Bench in W.A.No.152 of 2024 and the



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consequent issuance of G.O(Ms)No.5 dated 30.01.2025, we issue the following directions:-

The Fisheries Department shall undertake a state wide comprehensive audit of every Inland Fishermen Society / Harijan Welfare Society engaged in fishing. It will be verified if such Societies are having sufficient number of active members engaged in fishing. The test laid down in Article 39 can be said to be met only if the number of members is truly large. Number is important because a Society can be formed with a minimum number of persons and those persons can corner the benefits. This would militate against the constitutional mandate set out in Article 14. Dispensing with public auction and allotment in favour of an individual body straightaway can be justified only if the beneficiaries belong to a deserving category(Fishermen / Harijans) and are large in number. We are of the view that the number should not be less than 100 and its membership should be open. For instance, a Harijan Welfare Society should admit any member belonging to Scheduled Caste who is engaged in fishing. No such Societies should turn out to be closed clubs. Each member should have individual bank account. The



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monetary benefit must be transferred from the central account of the Society to the individual accounts. If the Society is already in existence, the department must certify that its activities conform to the standards laid down above. If the Society has been newly formed and they seek allotment, they must give an undertaking to the Department that they would carry on their activities as envisaged above. Unless this threshold is met, notwithstanding G.O.Ms. No.332 dated 17.11.1993, RSO 211 and G.O(Ms)No.5 dated 30.01.2025, the fishery rights must be leased out only through public auction. We remind the Government that G.O.Ms.No.332 as well as RSO 211 are not statutory provisions. In any event, they have to give way before the law laid down by the Hon'ble Supreme Court. This writ appeal stands disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] [M.J.R., J.]
29.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA/ PMU



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To

- 1.The Secretary,
Animal Husbandry Dairying and
Fisheries (FS-6) Department,
Fort St.George, Chennai – 600 009.
- 2.The Director of Fisheries,
3rd Floor, Integrated Animal Husbandry
and Fisheries Department,
Nandanam, Chennai – 600 035.
- 3.The Assistant Director of Fisheries,
(Inland Fisheries),
16/2, Samadu Palli Street, Kaja Nagar,
Thiruchirapalli – 620 020.
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O/o.The Assistant Engineer,
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