

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION Nos.6186 and 13609 of 2022

COMMON ORDER:

The memo dated 31.01.2022 passed in File No.121/D/2020 is the subject matter in both the writ petitions. Therefore, they are taken up together and being disposed of by this common order.

Vide Circular Memo No.121/D/2020, dated 31.01.2022, The District Fisheries Officer/The Assistant Director of Fisheries, Nirmal District, has directed The Fisheries Development Officer, Nirmal, to collect the lease amount of the tank calling with four names as Pai Kunta, Shikam Cheruvu, Pedda Cheruvu and Torri Cheruvu existing in the Limba (B) Gram Panchayat area and issue fishing right to the Fishermen Coop. Society Ltd., Limba (B) of Kuntala Mandal for the year 2021-22.

The case of the petitioner in W.P. No.6186 of 2022 i.e. The Fishermen Cooperative Society Limited, Ola Village, Kuntala Mandal, in brief, is that the petitioner is a registered Society and the areas of business of the petitioner Society are the Fish Tanks situated in Ola, Suryapur, Limba (K) and Midnapur Villages of Kuntala Mandal, Adilabad District. It is further stated that out of the said four tanks, the total extent of one

tank situated in survey No.141 is about Acs.108-07 guntas of Limba (B) Village, Kuntala Mandal, Nirmal and the said tank exists between Limba (B) Village and Ola Village. It is the further case of the petitioner herein that said tank is also called as Pai Kunta, Shikam Cheruvu, Peda Cheruvu and Torra Cheruvu as confirmed by respondent No.6 *vide* proceeding dated 21.10.2021. It is further stated that the petitioner-Society is in possession of the above said four tanks including the tank by name Torra Cheruvu and the respondent authorities are collecting the lease amount in respect of said Torra Cheruvu along with other tanks from the petitioner-Society and the same is evident from the demand notices issued by the respondent authorities. Now, it is the grievance of the petitioner-Society that at the instance of respondent No.7-Society, the respondent Nos.4 and 5 are obstructing the petitioner-Society in its day-to-day activities in respect of Torra Cheruvu, Limba (B) Village. It is the grievance of the petitioner that respondent No.4 has issued the impugned proceedings dated 31.01.2022 directing the respondent No.5 to issue fishing rights to respondent No.7-Society for the year 2021-22. Hence, W.P. No.6186 of 2022 is filed.

W.P. No.13609 of 2022 filed by The Fishermen Cooperative Society Limited, Limba (B) Village, Kuntala Mandal,

which is arrayed as respondent No.7-Society in W.P. No.6186 of 2022, seeking a direction from this Court to implement the Memo No.121/D/2020, dated 31.01.2022.

A counter affidavit has been filed in W.P. No.6186 of 2022 by the official respondents mainly stating that the Limba (B) Village is a free Village and not included in the area of operation of any registered Fishermen Coop Society. The Mutharasi community persons of Limba (B) Village of Kuntala Mandal have come forward to organize into a Fishermen Coop. Society under the provisions of The Telangana Cooperative Societies Act, 1964 (in short 'the Act'). Hence, Primary Fishermen Coop. Society Ltd., Limba (B) has been registered with 15 members and the area of operation of said Society is Limba (B) Gram Panchayat only. As such, the respondent No.7-Society is entitled to get fishing rights over the two water bodies i.e. Torri Tank @ Pai Kunta/Pedda Cheruvu/ Shikam Cheruvu with water spread area admeasuring Acs.108.07 guntas and Kotha Cheruvu with water spread area of Acs.108.07. Therefore, the impugned Memo dated 31.01.2022 is issued. It is further contended that the petitioner Society of Ola Village having enjoyed the fishery wealth for a long period without any legal rights cannot claim to continue such unauthorized fishing rights. Hence, it is prayed to dismiss W.P. No.6186 of 2022.

Heard the learned counsel for the respective petitioners, the learned Government Pleader for Fisheries, learned Government Pleader for Revenue, learned Government Pleader for Home, the learned Government Pleader for Animal Husbandry, and Sri D.L. Pandu, learned counsel, for the respondents.

For the sake of convenience, the parties are hereinafter referred as to they are arrayed in W.P. No.6186 of 2022.

The subject matter of controversy in the present Writ Petition is the fishing tank by name 'Shikam Cheruvu', which is also known by the names of Pai Kunta, Peda Cheruvu and Torra Cheruvu. Admittedly, the said lake is situated in S.No.141 admeasuring about Acs.108-07 guntas within the area of Limba (B) Village. It is the specific case of the petitioner, which was registered in the year 1998, that the area of business operations of the Society are spread over the fish tanks situated in Ola, Suryapur, Limba (K) and Midnaur Villages of Kuntala Mandal, Adilabad District. As there was no other separate fishing society for Limba (B) Village, the petitioner Society also used to conduct the fishing operations in two tanks of Limba (B) Village i.e. Shikam Cheruvu and Kotha Cheruvu for more than two decades.

Learned counsel for the petitioner has stated that before issuing the impugned proceedings granting fishing rights to respondent No.7 Society, the petitioner was neither put on notice nor their objections were taken into account. That since last more than 22 years, the petitioner Society is conducting fishing rights in respect of Shikam Cheruvu. That more than 80% of the water spread area is falling within the limits of Ola Village and only 20% is falling in Limba (B) Village. Learned counsel has stated that the hasty approach taken by the authorities concerned in passing the impugned order is reflected by the way in which the note was approved by the District Collector. Learned counsel has drawn the attention of the Court to the proposal sent by the District Fisheries Officer and stated that the Collector having received the note on 10.01.2022 at 5.09 p.m. has approved the same on the very same day at 5.53 p.m., without going through the bye-laws of either the petitioner Society or the respondent Society. That the official respondents have passed the impugned order without following the procedure as contemplated under the Act and thereby affecting the fishing rights of the petitioner Society.

Per contra, the learned Government Pleader for Fisheries has vehemently opposed the very maintainability of the Writ Petition and stated that as admitted by the petitioner Society

themselves in the writ affidavit, the fishing rights of the petitioner Society are only in respect of the fish tanks situated in Ola, Suryapur, Limba (K) and Midnapur Villages of Kuntala Mandal and not in respect of the two fish tanks situated in Gram Panchayat jurisdiction of Limba (B) Village. Learned Government Pleader has further stated that merely because the petitioner Society is conducting fishing rights, the same does not confer any vested right on the petitioner, more so, when respondent No.7 is registered within the area of Limba (B) Village. Learned Government Pleader has further stated that the official respondents have scrupulously followed the procedure contemplated under the Act in issuing the impugned proceedings. That the Collector has only approved the note submitted by the District Fisheries officer and no *mala fides* can be attributed against the Collector. It is further stated that Limba (B) Village is a free Village and not included in the area of operation of any registered Cooperative Society. That only after the formation of respondent No.7 Society, the impugned proceedings are issued in favour of respondent No.7 in respect of Shikam Cheruvu and Kotha Cheruvu situated in Gram Panchayat limits of Limba (B) Village. That once a fishing Society is registered in respect of a particular Village, the tanks falling within the area of that Village will have to be necessarily

allotted to that Village Society only. The petitioner Society does not have any vested right to demand that the fishing rights have to be continued in their favour, more so, when the respondent No.7 has already been registered for Limba (B) Village. Learned Government Pleader has also stated that the impugned proceedings are in consonance with G.O.Ms.No.268, Panchayat Raj and Rural Development (GP-FIN) Department dated 23.07.2021.

Though no counter has been filed on behalf of respondent No.7, the learned counsel appearing on its behalf has stated that the official respondents have followed the procedure contemplated under the Act. That respondent No.7 Society is formed with 15 members belonging to Limba (B) Village and as per the provisions of the Act and also the guidelines issued by the Government, the tanks which are falling within the jurisdiction of a particular Village have to be allotted to the Society registered with the Villagers residing in that particular Village. That admittedly, Shikam Cheruvu and Kotha Cheruvu are falling within the Gram Panchayat jurisdiction of Limba (B) Village and therefore the question of granting any rights to the petitioner Society which is registered with the villagers of Ola Village does not arise and therefore prayed the Court to dismiss the Writ Petition.

Perused the material on record.

A perusal of the record reveals that till the formation of respondent No.7 Society, the petitioner Society was conducting fishing rights in respect of Shikam Cheruvu which is also known as Pai Kunta, Pedda Cheruvu and Torri Cheruvu. The correspondence between the Tahsildar and the District Fisheries Officer and the demand notices issued to the petitioner Society reveals that the petitioner Society was conducting fishing rights. Even though a specific stand has been taken by the petitioner that no notice was served on the petitioner before issuing the impugned order, there is no specific denial in the counter filed by the official respondents rebutting the said contention. Irrespective of the fact whether the petitioner is having any written permission to conduct the fishing rights in respect of the Shikam Cheruvu till date, or not, the fact remains that the petitioner was conducting the fishing operations in respect of Shikam Cheruvu till the impugned order was passed. When valuable rights of the petitioner Society are sought to be terminated, the minimum that is expected from the authorities concerned is to put the petitioner on notice before taking such a decision. In the present case, the same is absent. Therefore, the impugned order is hit by the principles of natural justice and equity.

This Court as well as the Hon'ble Supreme Court in a catena of cases have held that the principles of natural justice and equity are inviolable and fundamental to the rights of the parties, and they should be given an opportunity of being heard before any orders are passed against them when there is a violation of the same. This Court sitting under Article 226 of the Constitution of India can exercise its judicial power to review the decisions made by the said subordinates/*quasi* judicial authorities to see whether the principles of natural justice are violated or not. And if warranted, the Court will step-in to correct the same. The power of judicial review has been held to form the basic structure of the Constitution and the said power cannot be controlled or excluded by any provision of Statute or Rules made thereunder.

In ***State Bank of India vs. M.S. Basi & Ors.***¹, the Hon'ble Supreme Court has held that the order is liable to be set aside if no opportunity of hearing is afforded to the parties who are adversely affected.

Further, in ***Mariamamma Roy vs. Indian Bank & Ors.***², the Hon'ble Supreme Court has held that even if an alternative remedy is available, if violation of the principles of natural

¹ (2004) 11 SCC 347

² (2009) 16 SCC 187

justice is alleged, the writ petition is maintainable and the High Court can interfere.

Having regard to the above, the impugned order is set aside and the matter is remanded back to the authorities concerned for taking into consideration the objections of the petitioner Society and passing necessary orders duly taking into consideration the G.O.Ms.No.268 and G.O.Ms.No.6, Animal Husbandry, Dairy Development & Fisheries (V&F) Department, dated 24.03.2016.

Accordingly, W.P. No.6186 of 2022 is allowed to the extent indicated above.

Having regard to the order passed in W.P. No.6186 of 2022, the relief sought for in W.P. No.13609 of 2022 cannot be granted for the present and the same is accordingly dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date : 18-04-2022.
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