

**(1960) 06 KL CK 0005**

**In the High Court Of Kerala**

**Case No :** A. S. No's. 321 of 1956 (E) and 36 of 1956 (K)

Abdul Kadir Mashood

APPELLANT

Vs

Abdulla Ali Huck and Another

RESPONDENT

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**Date of Decision :** 08-06-1960

**Acts Referred:**

Travancore-Cochin Fisheries Act, 1950 — Section 4

**Citation :** (1960) KLJ 1005

**Hon'ble Judges :** M. A. Ansari, C.J; Anna Chandy, J

**Bench :** Division Bench

**Advocate :** K. P. Abraham, for the Appellant; P. Govindan Nair and P. K. Kurien For 1st Respondent and C. M. Kuruvilla, Government Pleader For State, for the Respondent

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## Judgement

Anna Chandy, J.—These appeals are from the order passed by our learned brother Justice Joseph in O. P. No. 25 of 1956. That petition was for quashing the Government Order No. Fd. 13-8204/53/FD dated 17--12--1955 and a rule of the same date made by the Government under the Travancore-Cochin Fisheries Act, XXXIV of 1950, whereby fishing with the aid of certain types of nets, viz., "Netholivala" and "Chanavala" were prohibited up to a distance of one mile from the sea front. The order and rule have been declared ultra vires the powers of the Government under the Fisheries Act and were quashed. A. S. No. 36 of 1956(K) is by the State and A. S. No. 321 of 1956(E) by one who intervened in the case to support the rule, he being a member of the class of fishermen to safeguard whose interests, the impugned order and rule were passed. A brief recital of the events culminating in the passing of the order by the Government will be of help in understanding the point in issue in this case. In the year 1124 M. E. certain fishermen from the coastal areas of Chirayinkil Taluk who were interested in the use a big type of fishing net known as "Kambavala" moved the District Magistrate, Trivandrura, for prohibiting the use of smaller types of nets in the coastal waters in their locality. On 1--8--1124 the District Magistrate passed an order u/s 142 of the Code of Criminal Procedure of Travancore corresponding

to Section 144 of the Indian Code prohibiting the use of such nets in the area. The validity of the order was challenged in revision and the High Court of Travancore-Cochin quashed the order of the District Magistrate. However the users of "Kambavala" continued to petition the Government for prohibiting the use of "Netholivala", After the High Court order was passed they presented a petition before the Government on 23--2--1953 praying that immediate steps be taken to remove the interference caused by the users of "Netholivala". The Government called for a report on the matter from the Director of Fisheries. The Director of Fisheries reported that "Netholivala" was not a new contrivance, that it was not detrimental to other nets and that he could not understand how its use could be prohibited, when other drift nets like "Chanavala" were in use along the coast. It was further stated that there was no justification for banning the use of "Netholivala" on the ground that only two or three men were needed to operate it whereas a large number of persons were required for catching fish with "Kambavala" and that it did not seem right to deprive the poor people (fishermen who use "Netholivala") of their livelihood to protect and encourage the rich net-owners (owners of "Kambavala"). However he concluded the report by stating that since "Kambavala" has to be operated from the shore unlike "Netholivala" which can be taken to any part of the sea, the only restriction that could be placed on the use of "Netholivala" on this account was to impose a limit on the distance from the shore where it could be operated. It was on the basis of this report that the impugned rule and order were passed by the Government.

2. The rule in question reads as follows:--

Fd. 13-8204/53/Fd-D.

In exercise of the powers conferred by Section 4 of the Travancore-Cochin Fisheries Act 1950 (XXXIV of 1950), Government hereby make the following rule, viz.,

Fishing by using "Netholivala" and "Chanavala" in the waters within one mile from the sea front is strictly prohibited.

By Order of His Highness the Rajpramukh, Sd/- C. Thomas, Secretary to Government

and the relevant portion of the impugned order is:--

Order Fd. 12-2204/43/Fd. D dated 17--12-1956.

The petitioners on behalf of the fishermen of Edava, Odayam, Chilakkoor, Vettoor, Peruman, Arivaiaam, Nedungandy, Kaikkaraand Anjengo, have complained against the operation of Netholivala and Chanavala in the sea off their coasts. Government consider that some restrictions on the operation of these nets is necessary to safeguard the interest of the fishermen in general. They are accordingly pleased to prohibit the use of Netholivala and Chanavala within one mile from the sea shore.

3. Aggrieved by this order, the respondents representing the users of the prohibited types of nets moved the High Court of Travancore-Cochin for a writ quashing the order. Though the petitioners attacked the order on many grounds, the one on which Joseph J. based his decision and the ground urged before us in appeal was that the rule is ultra vires the rule-making powers conferred on the Government by Section 4 of the Travancore-Cochin Fisheries Act. The rule is purported to have been made by the Government in the exercise of the powers granted to them u/s 4 of the Fisheries Act and the purpose for which the rule was made is stated in the order as safeguarding "the interests of fishermen in general". The purpose is described in clearer terms in the counter-affidavit filed by the State where the object of the rule is stated to be "to avoid excessive and unfair competition and to enable the class of fishermen in the coastal areas to carry on their respective avocations in well-regulated and wholesome condition without occasion for conflicts and in the interests of the general welfare and good order in the community".

4. The decision of Joseph J. was that Section 4 of the Travancore-Cochin Fisheries Act empowers the Government to make rules for one purpose only, viz., the protection and preservation of fish and as such rules made for the purpose of avoiding unhealthy competition between classes of fishermen would be outside the scope of the rule-making powers granted by the Section.

5. Now therefore the only question for consideration in this appeal is whether rules made for the purpose of protecting not fish but certain classes of fishermen are within the powers delegated to the Government by Section 4 of the Travancore-Cochin Fisheries Act.

6. Section 4 of the Travancore-Cochin Fisheries Act reads as follows:--

4. (1) The Government may make rules for the purposes hereinafter in this section mentioned and may, by a notification in the Gazette, apply all or any of such rules to such waters, not being private waters, as the Government may specify in the said notification.

(2) The Government may, also by a like notification, apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) Such rules may prohibit all fishing in any specified water except under a licence granted by the Government and in accordance with such terms and conditions as may be specified therein.

(4) Such rules may also prohibit or regulate either permanently, or for a time or for specified seasons only, all or any of the following matters, that is to say:--

(a) the erection and use of fixed engines;

(b) the construction of weirs;

(c) the dimension and kind of contrivances to be used for taking fish generally, or

any specified kind of fish and the modes of using such contrivances;

(d) the minimum size or weight below which no fish of any prescribed species shall be killed;

(c) the variety, description or power of lights used for fishing; and

(f) the destruction of fish or depletion of fisheries by pollution, by trade or industrial effluents.

(5) Notwithstanding anything contained in Sub-section (1), (2), (3) or (4), the Government may for the purpose of preserving or protecting fish in any area, make rules restricting, regulating or otherwise controlling fish in private waters generally, and they may by notification in the Gazette apply all or any of such rules to such private waters as they may specify in the said notification after giving notice to the owners thereof and to all persons having or believed to have an exclusive right of fishing therein and after hearing their objections, if any.

(6) In making any rule under this section, the Government may provide for:

(a) the seizure, forfeiture and removal of any fixed engines erected or used or nets or other contrivances used for fishing in contravention of the rules, and

(b) the forfeiture of any fish taken by means of any such fixed engine or nets or other contrivances.

7. The words "The Government may make rules for the purposes hereinafter in this section mentioned" direct our search for the "purposes" to the section itself. The line of reasoning adopted by Joseph J. in coming to the conclusion that the section authorises the making of the rules only for the purpose of protecting and preserving fish is given below :--

Sub-section (1) states that the Government may make rules for the purposes mentioned in the section. The purposes are mentioned only in sub-section 5 which confers powers on the Government for making rules relating to private waters. This being the only part of the section where "purposes" are mentioned, the reference in sub-section (1) has to be taken as referring to these purposes, viz., "for the purpose of preserving or protecting fish in any area"- These are the only purposes for which the Legislature had delegated authority to Government u/s 4, for making rules. It was contended on behalf of the State that while section 4(1) refers to "purposes", sub-section (5) mentions only one purpose and that purpose mentioned in subsection 5 cannot control the power of the Government to make rules. This argument does not appear to be correct. The plural number appears to have been used in subsection (1) having reference to "preservation and protection of fish" contemplated in sub-section 5.

8. While agreeing with the conclusion that the impugned rule is ultra vires we would view the matter in a slightly different manner. Sub-section (1) gives the Government the power to make rules (for the purposes mentioned in the section) in respect of waters other than private waters. Sub-section (2) permits the

Government to apply such rules to private waters also, if the owners of such waters consent to it. Sub-section (6) empowers the Government to provide certain penalties for non-compliance with the rules made under this section. We are therefore left with Sub-sections (3), (4) and (5) wherein to look for the "purposes hereinafter in this section mentioned". It will be seen that apart from Sub-section (1) the only other place where the word "purpose" is used, is in sub-section (5). However while the word used in Sub-section (1) is "purposes" the word used in Sub-section (5) is "purpose". The argument of the learned counsel for the respondent, which was accepted by Joseph J. is that in the absence of any reference to purposes in other parts of the section the purposes referred to in Sub-section (1) and the purpose of protecting and preserving fish mentioned in Sub-section (5) are identical. The difference in the number of the word "purpose" in the two sub-sections is explained by saying that the plural number used in Sub-section (1) refers to two purposes; namely, the purpose of protecting fish and the purpose of preserving fish, though these two purposes are jointly referred to in sub-section (5) as the purpose of protecting and preserving fish. It appears to us that the words "purposes hereinafter in this section mentioned" indicate, that more "than one purpose is mentioned in the section, and the purpose of protecting and preserving fish referred to In Sub-section (5) is only one of such purposes. A reading of the sub-sections (3) to (5) will indicate that Sub-section (3) authorises the Government to make rules for the purpose of licensing fishing in specified waters and sub-section (4) authorises the making of rules for the purpose of protection and preservation of fish by regulating the types of fishing contrivances and operations specified in clauses (a) to (f) of the Sub-section, while Subsection (5) authorises the Government to make rules and apply them to private waters without the consent of the owners thereof if such rules are for the purpose of protecting and preserving fish. In other words Section 4 empowers the Government to make rules in respect of "public waters" for the two purposes of licensing of fishing and for protecting and preserving fish while in respect of private waters the Government may for the sole purpose of protecting and preserving fish make rules and apply them without the consent of the owners of such waters. According to this interpretation the word "purposes" used in Sub-section (I) refers to the two purposes contemplated in Sub-sections (3) and (4) while only one purpose, viz., protection and preservation of fish is specified in Sub-section (5) because rules made for the. purpose of licensing fish cannot be applied to private waters without the consent of the owners thereof. The learned counsel for the appellant further argues that apart from the two purposes mentioned above, the six items referred to in clauses (a) to (f) of Sub-section (4) would each by itself constitute a purpose for which the Government may make rules and as such the present rule which prohibits the use of certain types of nets in specified areas is covered by clause (c) of Sub-section (4) which relates to "the dimension and kind of the contrivances to be used for taking fish generally, or any specified kind of fish and the modes of using such contrivances". We are unable to accept this argument. Though sub-section (4) refers to the rules regarding the control of six different

matters, it is clear that the object sought to be achieved through the regulation of those items is only one, namely, the protection and preservation of fish. For instance there seems to be no point in prescribing the minimum size or weight under which no fish of particular species shall be killed (clause (d)) unless the rule is considered to devise to ensure the protection and preservation of fish. Similarly, rules regulating "the dimension and kind of contrivances to be used for taking fish generally, or any specified kind of fish and the modes of using such contrivances (clause (c)); the variety, description or power of lights used for fishing (clause (e)) and the prohibiting of the destruction of fish or depletion of fisheries by pollution, by trade or industrial effluents (clause (f)) are manifestly for the purpose of protecting fish. Moreover if each of these six items was intended to be treated as a separate purpose for which the Government may make rules, it is difficult to see the reason why the purpose of licensing fishing is given a Sub-section to itself, instead of being mentioned as one of the items under Sub-section (4). We therefore are of the opinion that Section 4 contemplates only two purposes for which the Government may make rules (1) for the purpose of licensing fishing and (ii) for the purpose of protecting and preserving fish.

9. The scheme of the Act and the policy underlying it also lend support to the interpretation we have given to the word "purposes" in Section 4. A reading of that section in the light of the other parts of the Act (e. g. Sections 8, 9, 19, 20 and 21), the circumstances with reference to which the word "purposes" was used in the section, the object appearing from those circumstances which the Legislature had in view, all point to the same conclusion. The history of the legislation and in particular the statement of the object and reason for investing the Government with rule-making powers in Section 4 as "enabling the Government to frame rules with regard to the protection of fish" also justify the conclusion.

10. The impugned rule and order which are purported to have been made u/s 4 of the Travancore-Cochin Fisheries Act and which are avowedly for the purpose of avoiding unhealthy competition between classes of fishermen are therefore clearly in excess of the powers conferred on the Government by the section. A. S. No. 36 of 1956 (K) is hence dismissed with costs including Advocate's fee Rs. 100/-. We make no separate order as to costs in A. S. No. 321 of 1956 (K).