
(2011) 02 MAD CK 0208

In the Madras High Court

Case No : Writ Petition No. 23120 of 2010 and M.P. No. 1 of 2010

K. Panchatcharam

APPELLANT

Vs

The Executive Engineer, Water Resources Organization and
The Assistant Executive Engineer

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0208

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : K. Rajendraprasad, for the Appellant; P. Muthukumar, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner has approached this Court, with a prayer, for issuance of a writ in the nature of Certiorari, for

quashing the order dated 12.09.2005, passed by the first Respondent and for issuance of a writ in the nature of mandamus, directing the

Respondents to extend contract of ""fishing right"" by another four years.

2. The pleaded case of the Petitioner is, that at Ponnivadi Village, Dharapuram Taluk, Karur District, there is an irrigation Dam called Nallathangal

Odai. Though the object of Dam was for irrigation facilities of Ponnivadi and nearby Villages, but fisheries are also developed in the dam.

3. The case of the Petitioner is, that the Petitioner approached the State Government to auction the fishing rights as in the absence of auction, illegal activities of fishing were going on in the Dam.

4. In pursuance to the representation made by the Petitioner, the Government decided to auction the fishing rights to individuals. A public notice

was issued for harvesting of the fish for one year from 18.12.2008 to 17.12.2009.

5. The case of the Petitioner is that auction was widely publicized. The Petitioner along with seven others participated in the auction, held on

11.02.2008 after paying E.M.D. amount of Rs. 5,000/-. The Petitioner was the highest bidder in the auction, having offered a sum of Rs.

1,17,900/-. The bid of the Petitioner being highest, was accepted, and was given right to harvest fish for the auction period commencing from

18.12.2008 till 17.12.2009.

6. The case of the Petitioner is that Fisheries Department issued G.O. Ms. No. 332 dated 17.11.1993 stipulating therein as under:

ORDER:

The Commissioner of Fisheries has submitted proposal that the annual lease of fishery rights in Public auction, in Panchayat Irrigation/water spread

tanks may be enhanced to 10 years and that the panchayat Unions may be authorized to auction the waters spread tanks under their control, if the

Inland Fish Farmers Development Agencies are not interested to take on lease the tanks reserved for them for doing fish culture. She has also

suggested that auctioning the fish culture and fishing rights be done subject to the following conditions that the lease should undergo a training in fish

culture with the department of Fisheries and that the lessee should adhere to the advice tendered by Fisheries Department officials in regard to

stocking, conservancy and exploitation.

2) The Government have carefully examined the need for communicating the policy regarding the lease period for Public tanks for fisheries

purpose. Revenue Department Standing Order No. 211 and the Government Orders read above lay down the procedure by which Fisheries lease

is given by concerned authorities. Revenue department Standing order 211 stipulates that Fisheries in all public inland waters such as tanks, rivers,

estuaries, canals, drains, etc. whether in-charge of Revenue or Public Works or Rural development or Fisheries department should ordinarily be

disposed of by lease.

3) As per Revenue Department Standing Order all, while granting lease to fishing rights to the Coop. Societies comprised of fishermen 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 coop. Societies of Fisherman or Harijans engaged in fishing or the panchayats are not willing to take up the lease. The procedure envisaged in

Revenue department Standing Order 211 is still indicated in para 4 below regarding the period of lease which will be quinquennial instead of annual.

4) i) All fisheries lease shall be for a period of 5 years. Annual leases should not be restored to.

ii) There will be an automatic escalation of the lease rent by 10% over the previous year's rate during this five year period. The bids will be taken

for the base rate for the first year.

iii) The lessee must follow the directions given by the Fisheries Department with regard to stocking, management and exploitation of fish. He would

also be required to undergo a short period of training provided for by the Fisheries Department in this regard.

iv) The Fisheries department will depute officers as and when necessary to assist the other departmental officers to advice check and recommend

such action as necessary for ensuring good fish cultural practices.

v) The primary of the rights of irrigation to the irrigation related tanks will be recognized. The Fisheries development will be subordinated to such

rights.

vi) The Fisheries department will be intimated in advance of the tanks to be offered for fishing rights auction/assignment. That department will be

responsible for generating adequate number of fingerlings the required varieties in toile.

vii) A schedule of discharges from the tank would be made available to the Fisheries department so that the fish cultural practice can be

recommended in accordance with that. Any change including short term variations because of monsoonal vagaries would be intimated to the

Fisheries department at the earliest possible moment so that the cultural practices can be altered as required.

viii) For larger tanks initially and progressively for all tanks, a standard management plan will be drawn up by Fisheries department incorporating

suitable culture practices.

ix) The lease would be terminable without compensation and with nothing more than a short simple notice for violation of good fishery cultural

practice as prescribed.

x) These restrictions should be applicable all tanks publically owned for all leases/ assignments for fish farming/culture, including these given on

priority basis to those lies Inland fish farmers agencies/Fisheries/ Marine Fishermen and Adi Dravidar Welfare Coop. Societies etc.

xi) The Collector of the district concerned shall continue to be the lessor in respect of the tanks under this control.

5) The Director of Rural Development and Commissioner of Fisheries are requested to and necessary amendment proposals to Fisheries rights

lease and licensing rules concerned to Government for approval. The Commissioner of Land Administration, Madras is requested to send suitable

amendment proposals, if any required to Revenue department Standing Order 221 to Government in Revenue department for approval early.

6) This order issues with the concurrence of the Public Works Department (U.O. No. 55439/S2/93 dt.29.6.93/Revenue Dept. (U.O. No.

64746/D2/93 dt.11.10.93) Rural Development G.O. No. 32967/P2/93 dated 8.7.93 Finance dept. vide U.O. No. 98121 AR&F dt.4.11.93.

7. The case of the Petitioner is that in view of G.O. referred to above, he made representation, to the Respondent for extending lease for another

four years. The Respondent had failed to take any action on the representation of the Petitioner.

8. The Petitioner thereafter filed W.P. No. 3065 of 2009 and 23991 of 2009, which were disposed of vide order dated 16.12.2009, by directing

the Respondents to dispose of the representation filed by the Petitioner in accordance with law within a period of four weeks. The status quo was

also ordered to be maintained till the disposal of the representation. A writ appeal filed against the order passed in writ petition was also dismissed.

9. The case of the Petitioner is that inspite of dismissal of the writ appeal, no order was passed on the representation given by the Petitioner.

Consequently, the Petitioner was forced to file contempt petition. It was after the filing of the contempt petition, that the impugned order was

passed rejecting the representation of the Petitioner. The order reads as under:

I am to inform that your request for extending the lease for fishing at Nallathangal Odai Reservoir is not accepted based on the prevailing

departmental rules in force at present. Therefore you are deemed to be vacated as per the agreement drawn previously with you and this

department.

10. The learned Counsel for the Petitioner challenged the impugned order on the ground that the order is in violation of G.O. Ms. No. 332 dated

17.11.1993, which provides that minimum lease for fishery right for a period five years.

11. The learned Counsel for the Petitioner also contended that because of the investment of huge amount, it will be against equity and good

conscience, to reject the request of the Petitioner for extension of lease.

12. On consideration, I find no force in the contention of the learned Counsel for the Petitioner. The G.O. on which reliance is placed, was issued

prior to the auction, in favour of the Petitioner, the auction itself was in violation of the Government order, as it was only for one year. The right

under the auction are only contractual, and the parties are governed by the terms of lease, which cannot be unilaterally changed.

13. The Petitioner has taken advantage of auction held against the G.O., by availing fishing right for one year. This would not make the contract

illegal for the simple reason that G.O. does not have any statutory force of law, and is merely in nature of guidelines, which gives no enforceable

legal right to a person.

14. It is well settled law that in the case of auction, parties are governed by the terms of the contract. There is no legal right vested with the

Petitioner, to claim extension of lease for another four years, as it would defeat the right of the other competing person to bid for auction as and

when held.

15. Even otherwise, contractual rights of the parties cannot enforceable in writ jurisdiction.

16. The contention of the learned Counsel for the Petitioner that the order is against equity and good conscience also cannot be sustained, as the

Petitioner only paid, as per the terms of the auction, for which he was permitted to harvest fish for the period of one year as per the agreed terms.

17. No ground is made out to interfere with the impugned order. The writ petition is dismissed, but with no order as to costs.