
(2021) 10 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No.9327 Of 2016, Interim Application No.1988 Of 2021

Suresh Ramchandra Dhanu And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 19(6), 21
Maharashtra Marine Fishing Regulation Act, 1981 — Section 2(k), 3, 3(1), 3(2), 4, 4(1), 4(2), 6, 6(1), 8, 9, 13, 25, 25(1), 25(2)
Code Of Criminal Procedure, 1973 — Section 435(1)
Kerala Marine Fishing Regulation Act, 1980 — Section 4, 4(1)

Citation : (2021) 10 BOM CK 0086

Hon'ble Judges : Ujjal Bhuyan, J;Madhav J. Jamdar, J

Bench : Division Bench

Advocate : Y. H. Muchhala, Sagheer A. Khan, Mohd Taha, Sharique Nachan, Parth Zaveri, Mohd. Shoeb, Azeem Shaikh, Akif Patel, Ashutosh Kumbhakoni, Ashutosh M. Kulkarni, Gaurav Sharma, S. L. Babar, Aadesh Konde-Deshmukh, Gayatri Singh, Meenaz Kakalia, Zaman Ali

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Y. H. Muchhala, learned senior counsel for the petitioners; Mr. Ashutosh Kumbhakoni, learned Advocate General for respondent No.1 - State; and Ms. Gayatri Singh, learned senior counsel for respondent No.2.

2. By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of order dated 05.02.2016 passed by the Joint Secretary to the Government of Maharashtra in the Agriculture, Animal Husbandry, Dairy Development and Fisheries Department.

3. By the impugned order dated 05.02.2016 issued under section 4(1) of the Maharashtra Marine Fishing Regulation Act, 1981, respondent No.1 i.e., State of Maharashtra in the Fisheries Department has regulated fishing in the territorial

waters of the state in the manner indicated therein including non-granting of new licenses for purse seine/ ring seine fishing with the ultimate object of bringing down such fishing licenses to 182: allowing purse seine/ring seine fishing through mechanized vessel only during the period from September to December and that too within Zones II, III and IV as specified therein. In addition, certain other restrictions have been imposed such as mesh size.

4. Five petitioners have joined together and have instituted the present writ petition in a representative capacity representing 222 persons who carry on purse seine fishing in the coast of Maharashtra. A list of all those persons carrying on purse seine fishing in the State of Maharashtra has been annexed to the writ petition.

5. It is stated that petitioners belong to fishermen community. They are engaged in their traditional occupation of fishing in the coast of Maharashtra through which they earn their livelihood. Over the years they have improvised fishing techniques used by them and in course of time they started using purse seine net (referred to as 'PSN' for short).

6. State of Maharashtra enacted the Maharashtra Marine Fishing Regulation Act, 1981 (briefly 'the 1981 Act' hereinafter) to provide for the regulation of fishing by fishing vessels in the sea along the coastline of the State of Maharashtra and for matters connected therewith or incidental thereto. In exercise of the powers conferred by section 25 of the 1981 Act, the Maharashtra Marine Fishing Regulation Rules, 1982 (briefly 'the 1982 Rules' hereinafter) have been enacted.

7. According to the petitioners owing to local politics and business rivalry, respondent No.1 had issued notifications dated 10.12.1987 and 13. 10.1999 under section 4(1) of the 1981 Act prohibiting use of special type of fishing nets known as purse seine gear by mechanized fishing vessels within the territorial waters of the districts of Greater Mumbai, Thane, Raigad, Ratnagiri and Sindhudurg. The same was challenged before this Court by a group of petitioners in Writ Petition No.285 of 1988. It is stated that vide order dated 05.07.1988 this Court had admitted the writ petition for hearing and stayed the notification dated 10. 12.1987. Challenge to the second notification dated 13.10.1999 was incorporated in the writ petition by way of amendment. By the judgment and order dated 09.03.2004, a division bench of this Court allowed the writ petition by striking down the impugned notifications dated 10.12.1987 and 13.10.1999. The said decision has since been reported in 2004 (5) Bom.C.R. 766, Abdul Hamid Vs. State of Maharashtra.

8. Respondent No.1 challenged the said judgment of this Court dated 9. 03.2004 before the Supreme Court by filing Petition for Special Leave to Appeal (C) No.10316 of 2004. While the Special Leave Petition has been admitted and numbered as Civil Appeal No.8334 of 2004, Supreme Court declined to stay operation of the judgment and order dated 09.03.2004. It is stated that the said Civil Appeal is pending before the Supreme Court.

9. Petitioners and other traditional fishermen got their vessels registered under section 9 of the 1981 Act and applied before the Licensing Officer for grant of licence under section 6(1) for fishing by PSN. However, the licensing officer refused to grant licence vide his letters dated 11.06.2015 on the ground that Commissioner of Fisheries vide letter dated 08.08.2012 had directed not to issue any fresh licence for fishing by PSN. Such instructions were on account of a purported decision taken by the then Deputy Chief Minister and others in a meeting held on 03.08.2012. It is stated that such refusal to grant licence has adversely affected the traditional fishermen doing fishing by PSN. No reasonable opportunity of being heard was granted by the licensing officer before declining to grant licence.

10. At the instance of business rivals an application was filed bearing No.15 of 2015 before the National Green Tribunal, West Zone, Pune. National Green Tribunal by its order dated 28.05.2015 directed respondent No.1 not to issue any fresh licence for fishing by PSN. When the PSN operators moved the National Green Tribunal for impleadment and for vacation of the order dated 28.05.2015, National Green Tribunal passed order dated 02.09.2015 clarifying that in case such applications were to be decided by the competent authority on merit, order dated 28. 05.2015 passed by the National Green Tribunal would not influence the decision making authority and that the decision be taken independently on merit as per law.

11. The minutes of the meeting dated 03.08.2012 and the letter of the Commissioner of Fisheries dated 08.08.2012 came to be challenged before this Court in Writ Petition No.9115 of 2014 and Writ Petition No.10740 of 2015. In the proceedings of the aforesaid two writ petitions, this Court vide order dated 28.10.2015 held that the letter dated 8. 08.2012 was prima-facie illegal and directed the Licensing Officer to decide the applications for licence uninfluenced by the decisions taken in the meeting held on 03.08.2012.

12. However, the Licensing Officer vide letters dated 26.11.2015 refused to grant licence to the applicants. On appeal filed before the Commissioner of Fisheries, refusal letters dated 26.11.2015 of the Licensing Officer were set aside vide orders dated 28.01.2016. The Licensing Officer was directed to take fresh decision in accordance with law expeditiously.

13. It is stated that on one pretext or the other the Licensing Officer delayed the decision. Ultimately the Licensing Officer informed the applicants that Government of Maharashtra in the Fisheries Department had issued the impugned order dated 05.02.2016 which was duly published in the official gazette prohibiting issuance of new licenses for purse seine / ring seine fishing (including mini purse seine fishing).

14. Aggrieved by the aforesaid, petitioners have preferred the present writ petition challenging the legality and validity of the aforesaid order dated 05.02.2016 primarily on the grounds that the same is ultra vires the 1981 Act, it

violates the fundamental rights of the petitioners under Articles 14, 19(1)(g) and 21 of the Constitution of India, besides being actuated by malice.

15. Respondent No.1 has filed reply affidavit through Yuvraj Akaram Chougale, Assistant Commissioner, Fisheries, Mumbai City. It is stated that the impugned order was issued with due compliance to the provisions of the 1981 Act after consultation with the Advisory Committee constituted as per section 3 of the said Act. State government has validly exercised power under section 4 on the basis of exhaustive study by the Expert Committee. The Expert Committee headed by Dr. Somvanshi prepared the report after carefully evaluating, examining and scrutinizing the information and after conducting field visits followed by interaction with the stakeholders. Referring to section 3 of the 1981 Act, it is stated that the state government is empowered to constitute Advisory Committee for each coastal district for which members of the fishing community are to be co-opted. Under section 3(2), Advisory Committee may advise the state government on matters pertaining inter alia to regulation or prohibition of specified fishing in specified areas. Reference has also been made to section 4(1) of the 1981 Act to highlight the point that state government has been entrusted with the power to regulate / restrict or prohibit certain fishing activities within a specified area.

15.1. It is submitted that regulation of PSN fishing sought to be imposed by the impugned order is a reasonable restriction within the meaning of clause (6) of Article 19 of the Constitution of India. That apart, petitioners are not restricted from using other modes of fishing net except in the months of June and July. Restrictions on fishing during the months of June and July are for mechanized fishing boats and there is no restriction on non-mechanized fishing boats. Reliance has been placed on a decision of the Supreme Court in State of Kerala Vs. Joseph Antony, AIR 1994 SC 721 in which Supreme Court upheld the decision of the state government of Kerala prohibiting use of certain types of fishing nets, namely, purse seines, ring seines, pelagic and mid-water trawls. Supreme Court held that such restrictions imposed was a reasonable restriction within the meaning of Article 19(6) of the Constitution.

15.2. According to the deponent, by way of the impugned order dated 05.02.2016, state government has regulated PSN fishing within the territorial waters of Maharashtra. There is no complete ban on PSN fishing within the state territorial water. Only issuance of new PSN licences has been prohibited.

15.3. Adverting to the facts of the case, respondent No.1 has stated that petitioners are carrying on modern means of fishing by using fishing method of trawl net and purse seine net (PSN). Respondent No.1 has provided the status of 222 fishermen having different fishing licences including the five petitioners from which it is seen that both trawling and purse seine is carried out by the maximum i.e., 195.

15.4. Elaborating on the methodology of purse seine fishing, it is stated that PSN

is used to catch fish moving mainly in big shoals. However, due to PSN method, the fish catch comprises of big, small, juvenile fish and egg carrying brooders in huge quantities having adverse impact on marine life as well as on the socio-economic condition of traditional fishing community.

15.5. Vide Government Resolution dated 09.09.2011, a Study Committee was constituted under the chairmanship of Dr. V. S. Somvanshi, Ex-Director General of Fisheries Survey of India. One of the members of the Study Committee was Shri. Rambhau Patil, General Secretary of National Fish Workers' Forum, Mumbai representing the fishermen. The Study Committee was entrusted to look into the following aspects:-

- a. review of purse seine fishing in the State of Maharashtra;
- b. examine environmental and financial impact on traditional fishing due to purse seine fishing; and
- c. decide the number of purse seine fishing vessels based on the maximum sustainable yield (MSY).

15.6. The area of study was all maritime districts of Maharashtra. The Committee also reviewed the position of purse seine fishing in neighbouring states. Study Committee interacted with fishermen all along the coastline of Maharashtra which is 720 Kms long covering seven maritime districts, namely, Thane, Palghar, Mumbai City, Mumbai Suburban, Raigad, Ratnagiri and Sindhudurg. The Committee carried out in depth study as per the terms of reference and recorded 25 observations and recommendations.

15.7. Study Committee submitted detailed report dated 10.05.2012 to the Government of Maharashtra. It is stated that Government of Maharashtra accepted the report in its entirety on 16.05.2015.

15.8. In exercise of the powers conferred by section 3(1) of the 1981 Act, state government constituted advisory committees in six districts in the State of Maharashtra directing the Fisheries Department to place the report of the Study Committee before all the 6 District Advisory Committees. Additional Commissioner of Fisheries, Maharashtra vide letter dated 27.05.2015 directed involvement of actual fishermen in the consultation process. It is stated that the report of the Study Committee along with Marathi translated copies of the 25 recommendations were placed before the 6 District Advisory Committees. Advisory Committees in turn invited representations of fishermen including those using PSN method. Majority of Advisory Committees accepted the report of the Study Committee.

15.9. Acting on the report of the Study Committee headed by Dr. Somvanshi and after considering the minutes of meetings of Advisory Committees, Government of Maharashtra in exercise of powers conferred by sub-section (1) of section 4 of the 1981 Act and in supersession of previous orders dated 10.12.1987 and 13.10.1999 passed the impugned order dated 05.02.2016 regulating PSN fishing

in the territorial waters of the State of Maharashtra. Thereafter the deponent mentioned the various types of regulations brought into force by way of the impugned order dated 05.02.2016.

15.10. It is reiterated that the impugned order only seeks to regulate PSN fishing within the territorial waters of the State of Maharashtra and prohibits issuance of new PSN licences. There is no complete ban on PSN fishing within the territorial waters of Maharashtra. Impugned measures have been undertaken for the purpose of sustainable fishing, safeguarding the interest of traditional fishermen as well as coastal ecology.

15.11. While acknowledging that earlier notifications dated 10.12.1987 and 13.10.1999 were struck down by this Court and the issue is pending before the Supreme Court, it is stated that Dr. Somvanshi Committee Report and the impugned order dated 05.02.2016 have been brought to the notice of the Supreme Court by the state government by filing affidavit. Referring to the earlier notifications, it is stated that by those notifications, PSN was totally banned in Maharashtra state territorial water. However, by the impugned order dated 05.02.2016, PSN fishing has been regulated and only new PSN licences are not being issued. Petitioners are already holding PSN licences and they are also carrying out fishing operation by trawling in addition to PSN. Therefore, it cannot be said that the impugned order has adversely affected their livelihood.

15.12. Ban on PSN fishing from January to May is as per suggestion of the Somvanshi Committee Report because during these months purse seiners catch large number of juvenile fish. That apart, the months of June and July are declared as fishing ban period for mechanized fishing vessels as per the 1981 Act. The month of August falls within the monsoon period with water current at sea being very high. Therefore, considering all the above aspects, state government has taken decision to ban PSN fishing during the period from January to August.

15.13. Petitioner No.1 vide application dated 29.12.2016 and petitioner Nos.3 and 4 vide application dated 30.12.2016 had informed Assistant Commissioner of Fisheries, Mumbai and Ratnagiri respectively that they would continue fishing by PSN gear beyond 12 nautical miles where the state government has no jurisdiction to regulate and / or restrict any kind of fishing, further stating that they would not carry out PSN fishing within the territorial waters of Maharashtra.

15.14. Reverting to Dr. Somvashi Committee Report, it is stated that the report recommended categorizing coastal waters of Maharashtra into four zones. PSN fishing is prohibited only in Zone I from Zai to Murud but PSN fishing is permitted in Zones II, III and IV from September to December. In almost 60% of the coastline, PSN fishing is permitted. Therefore, the impugned order has struck a balance between traditional fishermen and modern fishermen.

15.15. All the 6 District Advisory Committees had submitted their minutes of meetings including remarks to the Government of Maharashtra. After a detailed

study of Somvanshi Committee Report including the recommendations made and minutes of all 6 District Advisory Committees, Government of Maharashtra took the view that recommendations of Somvanshi Committee is protecting the interest of both traditional and modern fishing sectors as well as for effective control of fish stock in the sea. After accepting the said report on 16.05.2015, the impugned order came to be issued on 05.02.2016.

15.16. Government of India vide order dated 07.05.2013 had constituted a Technical Committee to review the duration of the ban period and to suggest further measures to strengthen conservation and also to look into management aspects. The Technical Committee submitted its report in September, 2014 to the central government. It was observed that seasonal fishing ban should be applicable to both purse seine and ring seine fishing boats. Since peak spawning period of important pelagic species coincide with the monsoon, the ban on fishing by seiners would be helpful to the stock. It was further observed that the number of existing purse / ring seiners should be frozen and no fresh PSN licences should be issued. However, Government of Maharashtra has not completely banned purse seine but has only regulated PSN fishing within the territorial waters of Maharashtra. It is also stated that there are restrictions / regulations on PSN fishing in the states of Kerala, Goa and Daman and Diu.

15.17. Regarding Rambhau Patil, it is stated that he is the General Secretary of National Fish Workers' Forum, Mumbai and represented the fishermen. He was also a member of the Technical Committee constituted by the central government.

15.18. Due to over exploitation of resources by purse seiners and encroachment by purse seiners in the reserved area of traditional fishermen especially after the year 2004, the traditional fishermen came under financial stress. Regulation of purse seine fishing will help the traditional sector and traditional fishermen can revert back to their traditional occupation.

15.19. Explaining about the modus operandi during purse seine operation, it is stated that the net is spread only after a shoal of pelagic fish is sighted which depends largely on the skill of the man in the crow's nest who keeps watch on the fish shoal. Once the shoal is located, the net is spread and the shoal is surrounded by the purse net and hauled up by scooping. Respondent has denied the allegation that fixing the mesh size of 25 mm for sardines and 49 mm for mackerels is arbitrary and unreasonable. Somvanshi Committee Report suggested that the mesh size should be bigger to release the juveniles and thereby a chance to be given to such fish to breed at least once. The size of the mesh is based on scientific application and cannot be said to be arbitrary and unreasonable.

16. Petitioners in their rejoinder affidavit have reiterated the contentions advanced in the writ petition. Additionally, it is contended that there was no effective consultation. District Advisory Committees were told that state

government had accepted the recommendations of the Study Committee. In such circumstances, consultation with the District Advisory Committees or obtaining their views was a mere formality. Views of the PSN operators were not considered. Shri. Rambhau Patil, one of the members of the Study Committee, represented fishermen whose interest were opposed to that of PSN operators. The Study Committee Report had become stale when the state government acted on it.

17. Respondent No.1 has filed affidavit in sur-rejoinder. It is contended that the act of issuing the impugned order by the state government is a legislative action, being a delegated legislation. Therefore, the same cannot be assailed on the ground of mala fides.

17.1. On the contention of the petitioners that impugned order dated 05.02.2016 has violated their fundamental right under Article 19(1)(g) of the Constitution of India, it is submitted that the same is unsustainable in law in view of the decision of the Supreme Court in Joseph Antony (supra).

17.2. State government had carried out extensive consultation with the Advisory Committees. It is stated that Fisheries Commissioner vide letter dated 16.05.2015 had communicated acceptance of the recommendations of the Somvanshi Committee Report by the state government. State Government directed Commissioner of Fisheries to hold consultation with District Advisory Committees. All the 25 recommendations of the Somvanshi Committee Report were placed before the District Advisory Committees. Dates of meetings of the District Advisory Committees have been mentioned in the sur-rejoinder whereafter it is contended that there was effective consultation by the state government with the District Advisory Committees.

17.3. By letter dated 10.09.2015, Commissioner of Fisheries forwarded the views of the 6 District Advisory Committees to the state government whereafter the impugned order was issued by the state government. In the circumstances, it is asserted that the procedure laid down under the 1981 Act was duly followed while issuing the impugned order.

17.4. Refuting the contentions of the petitioners that once a vessel meant for trawling is converted into PSN then it cannot thereafter be utilized for trawling, it is submitted that such a boat can easily be converted by changing net etc. This change can be done by minor mechanical process which may take not more than a couple of days. While nature of fishing by both the methods is different, what is important is that in case of fishing by trawling the drugging / scratching bottom of the sea can be avoided. On the other hand, there can be surface fishing and / or column fishing by trawling method. According to respondent No.1, petitioners have in fact converted their PSN vessels to trawling vessels.

17.5. Regarding credibility of Shri. Rambhau Patil, respondent No.1 has reiterated the statements made in this connection in the reply affidavit. However, it is stated that the Somvanshi Committee had consulted all the stakeholders

including PSN operators, which is a matter of record.

17.6. Finally respondent No.1 has justified passing of the impugned order dated 05.02.2016 and contends that no interference is called for.

18. Respondent No.2 in its reply affidavit has stated that it is a registered organization representing about 20000 traditional fishermen engaged in fishing and allied activities in the coastal districts of Maharashtra including Thane, Mumbai, Ratnagiri, Raigad and Sindhudurg. These fishermen are the original inhabitants of the seven islands comprising the city of Mumbai. Their forefathers were engaged in traditional fishing in the coastal areas of Mumbai since time immemorial. The traditional fishermen are engaged primarily in rampani fishing, gill-net fishing, small hand and net fishing. Respondent No.2 has alleged that the traditional fishermen have been greatly affected by the use of purse seine net gear which began in the 1980s and continued unabated leading to substantial decline in fish stock besides adversely impacting marine ecology thus affecting the livelihood of traditional fishermen.

18.1. Supporting the impugned order, it is stated that the same was issued after consultation with the Advisory Committees constituted as per section 3 of the 1981 Act. Impugned notification was based on an exhaustive study by the Expert Committee which had prepared the report after carefully evaluating, examining and scrutinizing the information and after conducting field visits and interacting with the stakeholders. Thereafter the impugned order was issued by the state government in exercise of powers under section 4 of the 1981 Act. Relying on the decision of the Supreme Court in Joseph Antony (supra), it is stated that by the impugned order no fundamental right of the petitioners under Article 19(1) (g) of the Constitution of India has been violated. As per the Expert Committee Report, PSN fishing has an adverse impact on the marine and coastal ecology as well as on the livelihood of traditional fishermen. Therefore, regulation on PSN fishing vide the impugned order falls within the ambit of reasonable restriction under clause (6) of Article 19 of the Constitution of India.

18.2. Respondent No.2 has denied that petitioners are and represent traditional fishermen. It is alleged that petitioners are engaged in commercial fishing using sophisticated equipments and mechanized boats. Use of PSN has seen the pelagic fish stock declining rapidly in the coastal districts of Maharashtra.

18.3. Respondent No.2 has denied contention of the petitioners that the impugned order is a result of local politics. Regulation of PSN fishing has been done to safeguard the interest of traditional fishermen as well as to protect the coastal ecology.

18.4. Impugned order was issued after following the due process. There was effective consultation with the Advisory Committees in which representatives of PSN operators were present.

18.5. Regarding the notifications of 1987 and 1999, it is stated that those were

struck down by this Court as those were not based on expert committee report. On the other hand, the impugned order is based on an expert committee report.

18.6. PSN fishermen use mechanized nets whereby much more fish than the traditional nets are caught. PSN has close meshes which catches even the smallest fish and their eggs leading to depletion of stock. Such a method of fishing is ecologically harmful. PSN kills juvenile fish and fish eggs thereby impeding fish breeding. In this connection, reference has been made to a report published by the National Human Rights Commission called 'The Coasts, the Fish Resources and the Fish Workers' Movement, 2006'.

18.7. Fish stocks in the sea face serious threats of depletion due to the rampant use of PSN. Fish catch in Maharashtra has almost halved in recent years from 449000 tonnes in 2002 to 244000 tonnes in 2010. There is a direct link between PSN fishing and reduction in pelagic fish stock. Fish catch by PSN comprises of juvenile fish in large quantity. Mesh size in PSN being extremely fine and the nets being spread across a radius of 3 kms., they are responsible for large scale destruction of eggs and juveniles.

18.8. Merely because the Study Committee submitted its report in May, 2012 while the state government issued the impugned order in February, 2016 does not make it arbitrary, unreasonable or illegal. The report cannot be said to have become stale as it formed the basis of wide consultation leading to the impugned order.

18.9. Respondent No.2 has justified constitution of the Study Committee vide Government Resolution dated 09.09.2011 and supports the recommendations made by the Committee. Regarding the allegation against Rambhau Patil, it is the contention of respondent No.2 that it would be highly unreasonable and absurd to suggest that Rambhau Patil would influence the other members of the Study Committee.

18.10. Finally, it is contended that the impugned order was passed in due compliance to the provisions of the 1981 Act and does not suffer from any legal infirmity. No case for interference is made out. Writ petition should, therefore, be dismissed.

19. Mr. Muchhala, learned senior counsel for the petitioners has opened his argument by strongly assailing the impugned order dated 5. 02.2016 as being completely unconstitutional being in violation of Articles 14, 19(1)(g) and 21 of the Constitution of India. He submits that petitioners are traditional fishermen and over the years they have improvised their fishing technique and now they are carrying on their trade by using PSN to catch pelagic fish. Placing reliance on the decision of the Supreme Court in *Sodan Singh Vs. New Delhi Municipal Corporation*, (1989) 4 SCC 155, he submits that petitioners are entitled to carry on their trade of fishing by using PSN, it being their fundamental right. The prohibition on issuance of new licences for using PSN and drastically reducing the period for PSN fishing besides limiting to some geographical regions amounts to

interference in the lawful business of the petitioners. Those cannot be construed as reasonable restrictions under Article 19(6) of the Constitution. On the point of reasonable restriction, learned senior counsel has placed reliance on the following decisions:-

- a. Chintaman Rao Vs. State of M.P., AIR 1951 SC 118;
- b. State of Madras Vs. V. G. Raw, AIR 1952 SC 196;
- c. Cellular Operators Association of India Vs. Telecom Regulatory Authority of India, (2016) 7 SCC 703;

19.1. Learned senior counsel has also assailed the impugned order as ultra vires the provisions of the 1981 Act. In this connection, he first attacked constitution of the Somvanshi Committee. The committee comprised of eight members out of which five were from the government departments; two were academics; and one member Rambhau Patil who had purportedly represented the interest of the fishermen. However, learned senior counsel submits that Rambhau Patil represented the interest of those fishermen who carry on the trade of fishing by use of trawlers and other traditional fishing nets and strongly opposed to PSN fishing. At one point of time, he was Chairman of respondent No.2 which is opposing the writ petition. It is stated that in Civil Appeal No.8334 of 2004 pending in the Supreme Court, Shri. Rambhau Patil had filed intervention application supporting the notifications dated 10.12.1987 and 13.10.1999. His contention is that the sole agenda of Shri. Rambhau Patil was to oppose PSN fishing and to ban the same. In such circumstances, formation of the committee itself lacked fairness. Mr. Muchhala has also assailed the Somvanshi Committee Report on various other grounds particularly on the ground that there was no proper consultation.

19.2. Referring to the report of the Somvanshi Committee, he submits that the report was submitted to the government along with recommendations on 05.10.2012. The impugned order which is based on this report was issued almost four years thereafter on 05.02.2016. Referring to recommendation No.22 of the Somvanshi Committee, Mr. Muchhala submits that even as per the said report, the government is required to review the status of fish stock and fishing efforts every five years so as to take appropriate decision with regard to quantum of fishing that can be permitted during subsequent five years. The five year period as per recommendation of the Somvanshi Committee had expired on 09.05.2017. Therefore, continuance of the impugned order beyond 09.05.2017 would be contrary to the recommendation and hence arbitrary. In fact at this stage, such recommendations of the Somvanshi Committee have become totally irrelevant and otiose.

19.3. Adverting to the impugned order Mr. Muchhala submits that PSN fishing has been totally prohibited in Zone I from Zai to Murud which covers a distance of more than 320 kms. of the coastline of Maharashtra covering the districts of Palghar, Thane and Raigad. Even in the other three zones i.e., Zones II, III and

IV, PSN fishing is permitted to existing licence holders only from September to December i.e., for four months in a year. This he submits is a drastic and a disproportionate measure.

19.4. Further, the direction to reduce PSN licence holders from 502 to 262 and thereafter to 182 without laying down any criteria is arbitrary and unreasonable.

19.5. Mr. Muchhala has also attacked the impugned order on the ground of hostile discrimination against those fishermen using PSN and thus violating Article 14. He submits that PSN is eco-friendly and is the most efficient gear for pelagic fishing. Since the gear is for targeted fishing, it catches pelagic fish which are found on the surface of the water and, therefore, does not touch the bottom of the sea. As such, it does not disturb the flora and fauna found at the bottom of the sea. By eliminating one fishing gear i.e., PSN and permitting other more harmful mechanized gears, the danger to ecology is not mitigated. Submission of Mr. Muchhala is that PSN catch targeted species like mackerel and sardine. If mackerel and sardine are not caught due to ban imposed on PSN, those would migrate to other places where they would be caught. Respondent No.1-State has not come up with any convincing data as to why it is singling out only PSN. The number of PSN boats is less than 4% of the total number of mechanized boats operating in the coastline of Maharashtra. PSN catch is also less than 7% of the total catch. Therefore, such restriction on PSN fishing is without any justification being wholly unreasonable and manifestly arbitrary. On the point of manifest arbitrariness, he relies on the decision of the Supreme Court in *Shayara Bano Vs. Union of India*, (2017) 9 SCC 1.

19.6. In so far decision of the Supreme Court in *Joseph Antony (supra)* is concerned, learned senior counsel submits that was a case which was confined to the facts and circumstances prevailing along the Kerala coastline at that point of time. He submits that the topography of Kerala coastline and that of Maharashtra coastline are totally different. While there is no gradual gliding of the seacoast in the Kerala coastline and thus there is no significant continental shelf in the Kerala coastline, in the Maharashtra coastline there is a large continental shelf. That apart, in the Kerala case, PSN fishing was carried out by entrepreneurs who were not traditional fishermen.

19.7. Referring to section 4 of the 1981 Act, Mr. Muchhala submits that there was no effective consultation by the state government with the Advisory Committees before the impugned order was passed. The whole process of purported consultation with the Advisory Committees is nothing but a sham. Before consulting the District Advisory Committees, the state government had already accepted the findings and recommendations of the Somvanshi Committee Report. The government officers who constituted the majority in the Advisory Committees were determined to implement the recommendations. Thus there was no meaningful and effective consultation. That apart, the report was in English language. It was, therefore, obligatory on the part of the state government to circulate the Marathi translation of the report and the

recommendations; but that was not done, which has also vitiated the decision making process.

19.8. He, therefore, submits that the impugned order may be set aside and the state be directed not to cause any interference in the legitimate business of the petitioners.

20. Mr. Kumbhakoni, learned Advocate General appearing for respondent No.1 at the outset submitted a brief note which he termed as Brief Note No.I. From this he explained that exclusive economic zone of India is upto 200 nautical miles from the shoreline. It also includes state territorial water zone of 12 nautical miles. While the state territorial water zone is under the jurisdiction of the state government, the remaining portion of exclusive economic zone is under the jurisdiction of the central government. From this he submits that the state government is authorized to control and regulate fishing activity within the state territorial water zone of 12 nautical miles. Beyond the said 12 nautical miles, the central government is authorized to control and regulate fishing activity within the exclusive economic zone.

20.1. In order to regulate marine fishing activity within the state territorial water zone, the state legislature in terms of Entry 21 of List II of the Seventh Schedule to the Constitution enacted the Maharashtra Marine Fishing Regulation Act, 1981 (already referred to as 'the 1981 Act' hereinbefore).

20.2. Learned Advocate General submits that Maharashtra has a coastline of 720 kms. Based on scientific study and administrative convenience, the coastline has been divided into four zones.

20.3. Referring to the impugned order dated 05.02.2016, he submits that by way of the said order the state is only regulating fishing activities within the state territorial water zone. It regulates fishing by way of purse seine / ring seine. Thereafter learned Advocate General has highlighted the restrictions imposed by the impugned order, at the same time highlighting the aspect that there is no complete prohibition of PSN fishing.

20.4. He submits that before the impugned order was issued an expert committee was constituted headed by Dr. Somvanshi. The Expert Committee after exhaustive field visits, interaction with stakeholders and after a study of all relevant aspects submitted its report on 14.12.2012 making certain recommendations. The report was accepted by the state government on 16.05.2015. Thereafter, the recommendations were circulated amongst the 6 District Advisory Committees appointed under section 3 of the 1981 Act. This was followed by effective consultations.

20.5. Mr. Kumbhakoni submits that to undertake fishing activity within the exclusive economic zone from 12 nautical miles upto 200 nautical miles coming under the jurisdiction of the central government, there was a provision for issuance of letter of permission by the central government vide order dated

12.11.2014. To obtain such letter of permission, central government had issued certain well defined guidelines. After obtaining letter of permission, any fisherman of India could undertake fishing within the exclusive economic zone beyond 12 nautical miles. He submits that the above order and guidelines have since been rescinded by the Government of India. Presently, there is no specific policy or guidelines for fishing beyond the state territorial water zone within the exclusive economic zone.

20.6. Thereafter learned Advocate General presented what he called Brief Note No.II. He submits therefrom that purse seine / ring seine fishing can be operated by any mechanized fishing vessels during the period from September to December from the zones from Murud to Banda having specification of nets as mentioned in the impugned order. According to him, pursuant to the impugned order the concerned fishermen are operating their vessels using trawl or other gears within and beyond the state territorial waters from January to May as presently there is no specific policy / guidelines of the central government for fishing beyond the state territorial waters.

20.7. Elaborating further learned Advocate General submits that all the purse seine operators have converted their vessels for trawl fishing. This dual method of fishing is an age-old practice for converting purse seiners into trawlers. Only minor changes are required that too on the deck of the fishing vessel. Learned Advocate General has submitted a statement giving details of the licences involving the petitioners and other fishermen using PSN wherefrom he submits that in Ratnagiri district as many as 196 licence holders are using both purse seine and trawling methods. From this he submits that purse seine vessels can easily be converted into trawlers and those are also sea worthy for fishing beyond the state territorial water zone.

20.8. Continuing his submissions, learned Advocate General submits that the impugned order dated 05.02.2016 issued under section 4 of the 1981 Act is a piece of delegated legislation. Refuting the grounds of challenge to the impugned order made by the petitioners, he submits that what the petitioners are doing is hunting or killing of fish in the sea on a very large scale leading to alarming depletion of fish stock. This is nothing but commercialization of natural resources which is a national wealth. Thus what the petitioners are claiming as a right is nothing but destruction of natural resources and appropriation of the profits thereof to themselves.

20.9. He submits that there is no violation of Articles 14, 19(1)(g) and 21 of the Constitution of India as all that the impugned order does is to regulate purse seine fishing. Disputing the contention of the petitioners that the impugned action is arbitrary, he submits that challenge to a legislation or a delegated legislation can be made only on the ground of manifest arbitrariness, which is not only not pleaded but is also otherwise not available to the petitioners. In so far as assault under section 4 of the 1981 Act is concerned, he submits that the Somvanshi Committee was appointed as an expert committee on 09.11.2011. It

submitted its report to the state government on 10.05.2012. On 16.05.2015, the state government accepted the report along with the recommendations. District Advisory Committees constituted under section 3 were consulted on various dates whereafter the impugned order was passed on 05.02.2016. From this, he submits that due process was followed. There is nothing in the 1981 Act which says that advisory committees constituted under section 3 of the 1981 Act should be consulted before accepting or rejecting the report. State government is required to consult the advisory committees constituted under section 3 before issuing any order under section 4 and not before accepting the report of an expert committee. Until and unless, the government accepts the report of the expert committee, there would be no occasion to consult the advisory committees.

20.10. He submits that though the report of the expert committee was in English language, Marathi translation of all the recommendations were provided to every member of the advisory committees in advance. In addition, copies of the entire report of the expert committee were also made available to the advisory committees.

20.11. Learned Advocate General has also justified the impugned order on the basis of public trust doctrine as spelt out by the Supreme Court in Association for Environment Protection Vs. State of Kerala, (2013) 7 SCC 266 and in Common Cause Vs. Union of India, (2017) 9 SCC 499.

20.12. Learned Advocate General points out that in so far as purse seine method of fishing is concerned, the period from September to December is most suitable for such type of fishing when the fishermen obtain maximum sustainable yield (MSY).

20.13. Learned Advocate General submits that various states such as Karnataka, Kerala, Tamil Nadu and the union territory of Daman and Diu have placed similar restrictions on PSN fishing like the State of Maharashtra. In fact notification dated 25.03.2000 was issued by the State of Tamil Nadu prohibiting fishing by pair trawling or fishing with PSN. This was challenged before the Madras High Court by way of a public interest litigation, M. G. Santhanaraj Vs. Secretary, Government of Tamil Nadu. By order dated 06.03.2019, a division bench of Madras High Court dismissed the challenge holding that the impugned order was issued on the basis of a policy decision and there was no good reason to interfere with such policy decision. He, therefore, submits that no interference with the impugned order dated 05.02.2016 is called for and therefore, the writ petition should be dismissed.

21. Ms. Gayatri Singh, learned senior counsel appearing for respondent No.2 at the outset submits that though the writ petition has been filed by five persons claiming to represent the interest of 222 fishermen using PSN, no details as to how the impugned order will impact them have been furnished. No details have been provided within which zone the petitioners operate, whether in Zone I where PSN operations have been prohibited or in the other three zones where

PSN operations are merely regulated.

21.1. Referring to various provisions of the 1981 Act, more particularly to sections 3 and 4, she submits that the impugned order cannot be termed as ultra vires the 1981 Act, not to speak of being unconstitutional. Impugned order lays down the extent of prohibition and regulation of fishing by PSN in specified areas having regard to the ecological impact and the impact PSN operations will have on traditional fisher folk.

21.2. Ms. Singh has laid great emphasis on the distinction between PSN operators and traditional fisher folk, also called artisan fishermen, and submits that PSN operators are not traditional fisher folk. In this connection, she has referred to and relied upon a report by the National Human Rights Commission. According to her, PSN involves high power boats and fine mesh fishing nets which conforms to the definition of 'industry fishing'. PSN operators catch approximately 600 to 800 tonnes of fish per annum in contrast to traditional fisher folk whose fish catch per annum is approximately 5 tonnes.

21.3. Highlighting the adverse impact of PSN fishing, learned senior counsel for respondent No.2 has placed heavy reliance on the decision of the Supreme Court in Joseph Antony (supra).

21.4. Terming the operations of PSN operators as harmful for the ecology and adversely affecting traditional fishermen, she submits that prohibition and regulation brought about by the impugned order are fully justified and those satisfy the test of reasonable restrictions under Article 19(6) of the Constitution of India.

21.5. Supporting the submissions of learned Advocate General, learned senior counsel for respondent No.2 submits that PSN operators are also carrying on fishing by trawling. In fact, most PSN operators have applied for dual type of fishing gear i.e., PSN and trawling. Therefore, the argument that their livelihood would be impacted by the impugned order does not hold good. She also submits that three of the petitioners have written to the Assistant Fisheries Commissioner stating that they will continue to fish beyond 12 nautical miles where the impugned order does not apply.

21.6. Learned senior counsel for respondent No.2 has also placed before the Court statistics to show what she alleges to be the harmful effects of PSN fishing.

21.7. She has also placed reliance on the Somvanshi Committee Report comprising of technical experts and various stakeholders. On the question of inclusion of Rambhau Patil in the Expert Committee, she submits that Rambhau Patil as the President of the apex fishing union of all coastal states of the country represents the interest of traditional fisher folk who are key stakeholders. As a matter of fact, he was also a member of the Technical Committee constituted by the central government whose report has been relied upon by the petitioners themselves.

21.8. In conclusion, learned senior counsel for respondent No.2 submits that due process was followed by the state by having report from the Expert Committee and thereafter having consultation with the Advisory Committees on the recommendations given by the Expert Committee. It is for this reason that some amount of time was consumed before issuance of the impugned order on 05.02.2016 but that does not make or mean that the Somvanshi Committee Report had become stale or could not have been acted upon by the state. She, therefore, submits that the writ petition is completely misconceived and is as such liable to be dismissed.

21.9. Learned senior counsel for respondent No.2 has submitted written arguments as well as a compilation of judgments.

22. Mr. Muchhala, learned senior counsel for the petitioners has at the outset questioned the use of or application of the theory of maximum sustainable yield (MSY) highlighted by learned Advocate General. He submits that Somvanshi Committee Report had calculated the maximum hours of fishing for maximum sustainable yield in a very presumptive manner which is devoid of common sense. To highlight this argument, he has explained as to how such calculation is humanly impossible.

22.1. He also highlights that there was lack of effective / due consultation with the District Advisory Committees as a result of which the state has ignored the socio-economic condition of PSN operators. In fact in the Somvanshi Committee Report, there is no reference to the socio-economic condition of PSN operators. This is due to the fact that no PSN operators were made members of the Somvanshi Committee while those fishermen having hostility towards PSN operators were represented in the Somvanshi Committee. He asserts that the consultative process has to be meaningful and not merely a formality.

22.2. On the doctrine of public trust, Mr. Muchhala submits that there is no dispute to the proposition that the state being the public trustee of the natural resources of the country is entitled to legislate to protect the natural resources. Petitioners have also not questioned constitutional validity of section 4 of the 1981 Act. It is the simple case of the petitioners that either as public trustee or as the authority endowed with the power to make subordinate legislation in respect of public trust, the power has to be exercised in accordance with the principles of constitutionalism and within the limitations of the principles of constitutional law which has not been done in the instant case.

22.3. In so far submission of learned Advocate General that States of Tamil Nadu, Kerala etc. have also prohibited carrying on PSN fishing, he submits that reasonableness of restrictions will depend upon the facts of each case.

22.4. Mr. Muchhala referred to the Division Bench judgment of this Court in Abdul Hamid (supra) and submits that restrictions as imposed vide the impugned order have been held to be violative of Article 19(1) (g) of the Constitution of India. He submits that this decision still holds good and is squarely applicable to the facts

of the present case.

22.5. On the reliance placed by learned senior counsel for respondent No.2 on the report of the National Human Right Commission regarding the alleged harmful effects of PSN fishing, Mr. Muchhala submits that those were the views of the individual authors and not that of a statutory body like National Human Rights Commission. Therefore to portray those as views of the Commission is wrong.

23. Submissions made by learned counsel for the parties have received the due consideration of the Court.

24. At the outset we may advert to the Maharashtra Marine Fishing Regulation Act, 1981 (already referred to as the '1981 Act' hereinabove). The 1981 Act has been enacted by the state legislature to provide for the regulation of fishing by fishing vessels in the sea along the coastline of the State of Maharashtra. Section 2(k) defines 'state' to mean the State of Maharashtra and includes the territorial waters along the entire coastline of Maharashtra.

24.1. Section 3 provides for constitution of advisory committee. This section being relevant, the same is extracted hereunder:-

"3. Constitution of Advisory Committees.- (1) The State Government may by order constitute an Advisory Committee for each coastal District, with the District Magistrate as the Chairman and the Assistant Director of Fisheries of the District as the member-secretary, with representatives of the State Port Department and the Police Department as members. The Chairman shall co-opt representatives of other Government Departments and of the fishermen and the trade as he may deem fit. The Committee shall recommend to the State Government the regulations to be enforced under Chapter II.

(2) The Committee shall advise the State Government on the following issues which may come up for consideration while enforcing the Act:-

(i) reservation of specified areas of the sea for fishing by vessels of a specified type;

(ii) prohibition of vessels of specified type or specified types from fishing in any specified area;

(iii) laying down maximum number of fishing vessels of specified type to be allowed for fishing in specified areas;

(iv) laying down the maximum number of fishing vessels of specified types to be registered in each of the ports in the District;

(v) regulation or prohibition to catch specified species of fish in any specified area;

(vi) regulation or prohibition of specified fishing gear in specified areas;

- (vii) prescribe timings for fishing operations where necessary;
- (viii) any other matter which would facilitate effective enforcement of the provisions of the Act."

24.2. From the above we find that as per sub-section (1), the state government may by order constitute an advisory committee for each coastal district with the District Magistrate as the Chairman and Assistant Director of Fisheries as Member Secretary. The Chairman has the power to co-opt representatives of other government departments, fishermen and the trade. The committee is empowered to recommend to the state government the regulations to be enforced under Chapter II which deals with regulation of fishing. Then sub-section (2) mentions the issues on which the committee shall advise the state government.

24.3. As noticed above, Chapter II deals with regulation of fishing. It comprises of section 4 to section 13. Section 4 of the 1981 Act is relevant for our present deliberation. Section 4 reads as under:-

"4. Power to regulate, restrict or prohibit certain fishing activities within specified area:- (1) The State Government may, having regard to the matters referred to in sub-section (2), and after consultation with the Advisory Committee, by order notified in the Official Gazette, regulate, restrict or prohibit,-

(a) the fishing in any specified area by such class or classes of fishing vessels as may be specified ; or

(b) the number of fishing vessels which, may be used for fishing in any specified area ; or

(c) the catching in any specified area of such species of fish and for such period as may be specified in the orders; or

(d) the use of such fishing gear in any specified area as may be prescribed.

(2) In making an order under sub-section (1), the State Government shall have regard to the following matters, namely:-

(a) the need to protect the interests of different sections of persons engaged in fishing, particularly those engaged in fishing using traditional fishing craft such as country craft or canoe;

(b) the need to conserve fish and to regulate fishing on a scientific basis;

(c) the need to maintain law and order in the sea;

(d) any other matter that may be prescribed."

24.4. As per sub-section (1) of section 4, the state government may having regard to the matters referred to in sub-section (2) and after 'consultation' with the advisory committee by order notified in the official gazette regulate, restrict

or prohibit fishing in any specified area by such class or classes of fishing vessels as may be specified or the number of fishing vessels which may be used for fishing in any specified area etc. As per sub-section (2) of section 4, in making an order under sub-section (1) the state government shall have regard to the need to protect the interest of different sections of persons engaged in fishing particularly those engaged in fishing using traditional fishing craft, the need to conserve fish and to regulate fishing on a scientific basis.

25. While on the 1981 Act, we may mention that section 6 deals with licensing of fishing vessels; section 8 provides for cancellation, suspension and amendment of licences; and section 9 deals with registration of vessels. Section 25 is the rule making provision.

25.1. In exercise of the powers conferred by sub-sections (1) and (2) of section 25 of the 1981 Act, Government of Maharashtra has framed a set of rules called the Maharashtra Marine Fishing Regulation Rules, 1982.

26. Sections 3 and 4 of the 1981 Act came up for consideration before a division bench of this Court in Abdul Hamid (supra). In that case, challenge was made to two notifications dated 10.12.1987 and 13. 10.1999 issued by the Government of Maharashtra under section 4(1) of the 1981 Act prohibiting use of purse seine gear by mechanized fishing vessels within the territorial waters of the districts of Greater Mumbai, Thane, Raigad, Ratnagiri and Sindhudurg. This Court after referring to sections 3 and 4 of the 1981 Act more particularly constitution of Advisory Committee observed that the object of co-opting representatives of the fishermen obviously is to give to the fishermen who are likely to be affected by the order an opportunity of being heard in the meetings of the Advisory Committee which is required to be consulted before an order regulating, restricting or prohibiting any particular method of fishing is passed. In the facts of that case, it was noticed that persons who were interested in imposing the prohibition and who were the beneficiaries of the notification were given representation while the persons likely to be affected by the notification were denied representation on the Advisory Committee, thus, frustrating the very object of co-opting representatives of fishermen. It was in that context, this Court held that section 3 of the 1981 Act has to be interpreted keeping in mind provisions of Articles 19 and 21 of the Constitution of India. It was held that if the statute (section 4 of the 1981 Act) requires consultation with the Advisory Committee and also requires representative of the fishermen to be included in the Advisory Committee (section 3 of the 1981 Act) then the representative to be co-opted must be of the fishermen likely to be affected by imposition of the restriction. In the facts of that case, it was found that the Advisory Committee did not include representative of fishermen using purse seine gear with mechanized boats. Therefore, it was held that constitution of the Advisory Committee was not proper and there was no proper and effective consultation with the properly constituted Advisory Committee before issuance of the two notifications. It was held as follows:-

7. * * * * *

We find it difficult to accept the submission of the learned AGP that the Advisory Committee was properly constituted! because the very object of coopting the representative of fishermen was to give an opportunity to the persons who were likely to be affected by the regulation, restriction or prohibition to be imposed under Section 4 and considering their views. The persons who were interested in imposing the prohibition (and who are the beneficiaries of the notification) were given representation while the persons who were likely to be affected by the notification were denied representation on the Advisory Committee denying the very object of co-opting the representative of the fishermen. We must interpret Section 3 of the Act keeping in mind the provisions of Article 19 and 21 of the Constitution of India. Article 21 of the Constitution of India confers a right to life which has been interpreted not more physical existence but the right to live with human dignity. Means of livelihood are necessary to live with human dignity. Though right to life is yet to be expanded to include right to work, any state action which deprives a person of his existing or traditional source of livelihood and work would have to strictly pass the test of reasonableness embodied in Clause (6) of Article 19 of the Constitution of India. Any state action making an inroad on the persons's right to carry on his usual occupation, trade or business would be eschewed unless the restriction is strictly required in the interest of general public and strictly satisfies the test of reasonableness. Restriction would not be reasonable if it is more than necessary. If the Statute (Section 4 of the Act) requires consultation with the Advisory Committee and also requires the representative of the fishermen to be included in the Advisory Committee (Section 3 of the Act) then the representative to be coopted must be of the fishermen likely to be affected by imposition of the restriction. Such a construction of Section 3 of the Act would be in consonance with the spirit of Article 19 and 21 of the Constitution of India and rules of natural justice. As the Advisory Committee did not include the representative of the fishermen using purse seine gear with mechanized boats the constitution of Advisory Committee was not proper and there was no proper and effective consultation with the properly constituted Advisory Committee before issuing of the impugned notifications banning and prohibiting use of purse seine gear with mechanised boats.

27. Let us now briefly analyze sections 3 and 4 of the 1981 Act in the light of the interpretation given by this Court in Abdul Hamid (supra). As we have seen, section 3 provides for constitution of Advisory Committee for each coastal district with the District Magistrate as the Chairman with power to co-opt representatives from fishermen amongst others. The Advisory Committee shall advise the state government on the issues mentioned therein while enforcing the 1981 Act. The issues include reservation of specified areas of the sea for fishing by vessels of a specified type; prohibition of vessels of specified type or prohibition of specified type of fishing in any specified area etc. The use of the word 'shall' is significant. The import of section 3 is that the Advisory Committee so constituted shall

advise the state government on the issues mentioned therein which may arise for consideration while enforcing the 1981 Act.

27.1. Section 4 stipulates that the state government having regard to the need to protect the interest of different sections of persons engaged in fishing particularly those engaged in traditional fishing, the need to conserve fish and to regulate fishing on a scientific basis etc. and after consultation with the Advisory Committee regulate, restrict or prohibit fishing in any specified area by such class or classes of fishing vessels as may be specified, the number of fishing vessels which may be used for fishing in any specified area, catching in any specified area of such species of fish and for such period as may be specified, and the use of such fishing gear in any specified area as may be prescribed. Thus before passing an order regulating, restricting or prohibiting fishing in any specified area, the state government is required to hold consultation with the Advisory Committee. The word 'shall' appearing in section 3(2) whereby the Advisory Committee shall advise the state government, when read in conjunction with the word 'consultation' appearing in section 4 as per which the state government may pass an order of regulation, restriction or prohibition after consultation with the Advisory Committee would imply not only the obligatory character of the consultation but also the bindingness of the advise of the Advisory Committee.

27.2. In Abdul Hamid (supra), this Court had held that co-option of representative in the advisory committee must be of fishermen likely to be affected by imposition of the restriction.

28. Having analyzed the above, we may pause for a moment to deliberate upon what do we understand by the word 'consultation'. Consultation implies a conference of two or more persons or an impact of two or more minds. It requires the meeting of minds between the parties involved in the process of consultation on the basis of material facts and points to evolve a correct or at least satisfactory solution. Consultation has to be meaningful to serve the intended purpose. If the power can be exercised only after consultation then such consultation must be conscious, effective, meaningful and purposeful. As Supreme Court has held the party must disclose all the facts to the other party for due deliberation. The consultee must express his opinion after full consideration of the matter. Consultation or deliberation is not complete or effective before the parties thereto make their respective points or view known to the other or others and discuss and examine the relative merits of their views.

29. In Union of India Vs. V. Sriharan, (2016) 7 SCC 1, one of the questions before the Supreme Court was whether the term 'consultation' appearing in section 435(1) of the Criminal Procedure Code, 1973 implies concurrence. Section 435(1) of the Criminal Procedure Code, 1973 requires the state government to consult the central government in respect of grant of remission or commutation of sentence under certain circumstances. It was in that context Supreme Court observed that the expression 'consultation' may mean differently

in different situations depending on the nature and purpose of the statute. Meaning of 'consultation' varies from case to case depending upon the fact situation and the context of the statute as well as the object it seeks to achieve. However, it was explained that when it came to appointment of judges to the High Court and to the Supreme Court since it pertains to high constitutional office, the status of the Chief Justice of India assume greater significance and primacy. Therefore, in that context, the expression 'consultation' would only mean 'concurrence'. In *V. Sriharan* (supra), it was held that the expression 'consultation' appearing in section 435(1) of the Code of Criminal Procedure, 1973 ought to be read as 'concurrence' and primacy must be accorded to the opinion of the central government.

30. Viewed in the above context and use of the word 'shall' in section 3 read in conjunction with the word 'consultation' as used in section 4, a reasonable view may be taken that in such a consultative process, the view(s) expressed by the District Advisory Committee would have primacy and consultation in such a case may mean concurrence with the advice of the District Advisory Committee. However, it may not be necessary for us to render a definitive finding on this aspect of the matter in view of the order that we propose to pass.

31. However, before that it would be appropriate to refer to the report of the Study Committee also known as the 'Somvanshi Committee'.

32. As we have seen the Study Committee was constituted by the State Government of Maharashtra vide Government Resolution dated 9. 09.2011 with the following members:-

1. Dr. V. S. Somvanshi, Ex-Director General, Fishery Survey of India;
2. Dr. V. D. Deshmukh, Principal Scientist, Central Marine Fisheries Research Institute, Mumbai;
3. Dr. S. K. Chakraborty, Professor, Central Institute of Fisheries Education, Mumbai;
4. Dr. M. M. Sridhankar, Professor, Konkan Krishi Vidyapeeth, Dapoli, Ratnagiri;
5. Shri. Rambhau Patil, General Secretary, National Fish Workers' Forum, Mumbai;
6. Shri. Vinod V. Nayak, Deputy Director of Fisheries (Marine), Mumbai;
7. Dr. S. N. Gandaje, Deputy Director of Fisheries (Statistics), Mumbai; and
8. Dr. Sunil S. Kulkarni, Regional Deputy Director of Fisheries, Konkan Region, Mumbai.

32.1. Dr. Somvanshi was the Chairman and Dr. Kulkarni was the Member Secretary. In so far Rambhau Patil is concerned, he certainly did not represent the interest of PSN fishermen. From the facts and materials on record, it transpires that he in fact represented those fishermen who were opposed to PSN fishing.

32.2. Terms of reference of the Study Committee or the Somvanshi Committee were as follows:-

- a. review of purse seine fishing activity in Maharashtra;
- b. to examine environmental and financial impact on traditional fishing due to purse seine fishing; and
- c. to decide the number of purse seine fishing vessels based on the maximum sustainable yield (MSY).

32.3. From the details of meetings held by the Study Committee and visits to various fishing centres, it is not discernible that Study Committee held meetings or discussions with PSN fishermen. After collation of data and analysis on the basis of the same, the Study Committee made 25 recommendations. As per recommendation No.1, there should be judicious exploitation of the pelagic shoaling fish stock by adopting effective management tools. There should be restriction in further investment in purse seine fishing industry. As per the second recommendation, the Committee recommended curtailment of such fishing gears and not to allow mesh size of less than 25 mm for oil sardine. Accordingly the Committee recommended vide recommendation No.4 that purse seine gear should not be allowed to use mesh size less than 25mm for sardine and 49mm for mackerel to ensure escape of young fish. The Study Committee made recommendation No.6 for stopping the present practice of fishing during January to May by purse seiners.

32.4. In terms of recommendation No.10, Study Committee opined that along the Maharashtra coast, it would be prudent to review the status of fish stock and fishing efforts exerted on them periodically every five years by the Department of Fisheries and thereafter, appropriate decision may be taken about the quantum of fishing effort that can be permitted during subsequent five years. Recommendation No.10 is extracted hereunder:-

"Recommendation-10 In view of maintaining the sustainability of the fishery, it is essential to conserve the fish stocks through best management practices. The most effective measure of best managing the fishery is controlling the fishing effort. In the present scenario along the Maharashtra coast, it would be prudent to review the status of fish stock and fishing efforts exerted on them periodically every five years by the Department of Fisheries and take appropriate decision with regard to the quantum of fishing effort that can be permitted during subsequent five years. "

32.5. In its recommendation No.15, the Study Committee expressed the view that ring seine and purse seine specifications were needed to be standardized. Committee recommended creation of four zones as follows:-

1. Zone - I, Zai to Murud;
2. Zone - II, Murud to Burundi;

3. Zone - III, Burundi to Jaigad; and

4. Zone - IV, Jaigad to Banda;

32.6. Committee recommended the length and height of the nets zone-wise. Based on such recommendation, the Committee further recommended as per recommendation No.17 that Zone I should be reserved exclusively for traditional fishing.

32.7. As per recommendation No.22, to maintain sustainability of fishing it is essential to conserve the fish stock through best management practices. The most effective measure of managing such fishing is controlling the fishing effort. In the context of increased fishing pressure on the fish stock along the Maharashtra coast it would be prudent to review the status of fish stock and fishing efforts periodically every five years by the Department of Fisheries so as to take appropriate decision with regard to quantum of fishing effort that can be permitted during subsequent five years. Recommendation No.22 reads as under:-

"Recommendation-22 In view of maintaining the sustainability of the fishery, it is essential to conserve the fish stocks through best management practices. The most effective measure of best managing the fishery is controlling the fishing effort. In the present scenario of increased fishing pressure on the fish along the Maharashtra coast, it would be prudent to review the status of fish stock and fishing efforts exerted on them periodically every five years by the Department of Fisheries so as to take appropriate decision with regard to quantum of fishing effort that can be permitted during subsequent five years. "

32.8. From the above, we find that wordings of recommendation Nos.10 and 22 are identical and repetitive; in fact, import of both the recommendations is the same. Be that as it may, in addition to the above, the Committee made certain other recommendations.

33. From an analysis of the above, we find that in addition to making various recommendations, the Study Committee had also recommended as per recommendation Nos.10 and 22 that there should be periodical review every five years by the Department of Fisheries about the status of fish stock and fishing efforts so that appropriate decision with regard to quantum of fishing effort that may be permitted during subsequent five years can be taken.

34. We may also note that Government of India had constituted a Technical Committee to review duration of ban period and to suggest further measures to strengthen conservation and management aspects (relating to fishing in sea) vide order dated 07.05.2013. The Technical Committee submitted report to the Government of India in September, 2014. The terms of reference of the Technical Committee was amongst others to suggest ban on purse seine fishing operation in the Indian coast. Interestingly, Shri. Rambhau Patil was also a member of the said Technical Committee as Chairperson of National Fish Worker's Forum, Mumbai. As per the Technical Committee, the proposal for total ban on purse

seine was not found reasonable considering the heavy investment already made. Banning purse seine was not advisable as this would be an extreme measure with undesirable consequences. According to the committee investments made in purse seiners and ring seiners was quite significant. The fact that any investment made in a fishing vessel cannot be put to equally viable alternate use was especially applicable to seiners. Therefore, total ban of purse seine would be equal to sinking the entire investment made by the enterprising fishermen. Also optimum harvest of a significant biomass of small pelagic could not be efficiently achieved by alternate fishing methods. Instead strict regulation on purses and ring seines was considered an ideal way out. One of the key recommendations made by the Technical Committee was that the seasonal fishing ban should continue to be observed in the Indian exclusive economic zone from 15th April to 14th June (61 days) along the east coast and from 1st June to 31st July (61 days) along the west coast.

35. In the circumstances, the Technical Committee suggested that seasonal fishing ban may be made applicable to both purse seine and ring seine fishing boats as a regulatory measure to prevent substantial damage to the fish stock.

36. Having noticed the above, we may now advert to the impugned order. The impugned order dated 05.02.2016 reads as under:-

"

AGRICULTURE, ANIMAL HUSBANDRY, DAIRY

DEVELOPMENT AND FISHERIES DEPARTMENT,

Madam Cama Marg, Hutatma Rajguru Chowk,

Mantralaya Annexe, Mumbai 400 032, dated the 5th February 2016.

Order

MAHARASHTRA MARINE FISHING REGULATION ACT, 1981

No. MATSYAVI-1115/CR-282/ADF-14.- Whereas the Government of Maharashtra has appointed the Committee under the Chairmanship of Late Dr. V. S. Somvanshi to study the status of purse seine fishing and its impact on the traditional fishing and ecology along Maharashtra Coast; And Whereas, the said Committee has submitted the report after detailed study to the Government on the 10th May 2012 with recommendations;

And Whereas, the Government of Maharashtra has accepted the recommendations of the said Committee;

And Whereas, the Government of Maharashtra has decided further to protect the interest of different sections of persons engaged in fishing particularly traditional fishing and to conserve the fish stocks by adopting best management practices such as controlling of the fishing efforts;

And Whereas, it is necessary to apply precautionary approach to restrict purse seine fishing so as to avoid catching huge quantities of juveniles and oil sardines, mackerel and other targeted species as most of the fishes are caught before reaching the minimum size of maturity and not even having opportunity to reproduce once during their lifetime thereby affecting the next year's production from the fishery. The purse seine operation in shallow water and in breeding season of the fishes have adverse ecological impact due to disturbance of bottom benthic flora and fauna which affects the Maximum Sustainable Yield level of fishing;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Maharashtra Marine Fishing Regulations Act, 1981(Mah. LIV of 1981), and the supersession of Government Order, Agriculture and Co- operation Department, No.MATSYAVI.1085/46082/ CR-228/FISH-2, dated 10th December 1987 and Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, No. Lavesu-499/14141/(CR-88)/ADF-14, dated the 13th October 1999, the Government of Maharashtra hereby having regard to the matters referred to in sub-section (2) of Section 4 of the said Act, after consultation with the Advisory Committee constituted under section 3 of the said Act, hereby regulate the fishing in the territorial waters of the State as follows:-

(1) No new licenses for purse seine/ring seine (including mini-purse seine) fishing shall be issued. The number of existing/operational purse seine/ring seine (including mini-purse seine) fishing licenses shall be brought down upto 262 step-by-step and finally to be brought down upto 182.

(2) The purse seine/ring seine (including mini-purse seine) gear shall be operated by any mechanized vessel, during the period September to December only and within the Zones II, III and IV specified in clause (3).

(3) In order to conserve the existing fishery and considering the configuration of coastline as well as continental shelf profile, purse seine fishing shall be regulated in four Zones specified below,-

(a) Zone (I) - Zai to Murud - Area shore to 12 NM (Nautical Miles) shall be reserved for traditional fishing. The purse seine/ring seine (including mini-purse seine) fishing shall be prohibited in this Zone.

(b) Zone (II) - Murud to Burundi - Area upto 10 m (? 5 fathom) depth from shore shall be reserved for traditional fishing. The purse seine/ring seine (including mini-purse seine) fishing shall be permitted beyond the 10 m (? 5 fathom) depth.

(c) Zone (III) - Burundi to Jaigad - Area upto 20 (? 5 fathom) depth from shore shall be reserved for traditional fishing. The purse seine/ring seine (including mini-purse seine) fishing shall be permitted beyond the 20 m (? 10 fathom) depth.

(d) Zone (IV) - Jaigad to Banda - Area upto 25 (? 12.5 fathom) depth from shore shall be reserved for traditional fishing. The purse seine/ring seine (including

mini-purse seine) fishing shall be permitted beyond the 25 m (? 12.5 fathom) depth.

(4) No purse seine/ring seine (including mini-purse seine) gear having less than, 25 mm mesh size for oil sardines and 49 mm mesh size for mackerels shall be operated by mechanized fishing vessels within the territorial waters of the State.

(5) No purse seine/ring seine (including mini-purse seine) gear other than specifications mentioned below shall be operated by any mechanized fishing vessel in the territorial waters of the State.

(6) To conserve the fish stock the use of hydraulic winch (Boom) shall be prohibited for purse seine/ring seine (including mini-purse seine) fishing operation.

(7) Any indiscriminate activity such as use of chemicals to tranquilize fish catch shall be prohibited in the territorial waters of the State.

By order and in the name of the Governor of Maharashtra.

Sd/-

C. N. Suryavanshi,

Joint Secretary to Government."

37. From a perusal of the impugned order we find that Government of Maharashtra had accepted the recommendations of the Study Committee or the Somvanshi Committee. To avoid catching of huge quantities of juveniles, sardines, mackerels etc. it was decided to restrict purse seine fishing. Exercising powers under sub-section (1) of section 4 of the 1981 Act and in supersession of the previous orders dated 10.12.1987 and 13.10.1999 and after consultation with the Advisory Committee, Government of Maharashtra in the Fisheries Department has regulated the fishing in the territorial waters of the state in the manner indicated in the impugned order.

37.1. Before dealing with the method of regulation we may point out two crucial aspects. Firstly, Government of Maharashtra had accepted the recommendations of the Study Committee. The impugned order does not say that Government of Maharashtra had accepted only some recommendations of the Study Committee. In other words, what is deducible is that Government of Maharashtra has accepted all the 25 recommendations of the Study Committee which includes recommendation Nos.10 and 22 requiring the Fisheries Department to carry out a review exercise after five years so as to decide the steps to be taken for the next five years. This would mean that the regulatory steps taken vide the impugned order may not be required after five years or may require relaxation after five years or may be required to be continued depending upon the outcome of the review exercise. But what is important is that the study carried out cannot be a one-time exercise. It has to be carried out periodically and regulatory measures taken are required to be reviewed periodically. As per the Study

Committee, it should be after five years. The report was submitted in the year 2012 and was accepted by the government in the year 2015. Either way, the five period is over. Therefore, a review exercise is called for at this stage as to whether the regulatory measures mentioned in the impugned order are required to be continued for the next five years or are required to be relaxed / modified or are required to be altogether done away with.

37.2. The second aspect is that though the impugned order mentions about 'consultation' with the Advisory Committee before issuance of the said order, the nature and contours of such consultation have not been spelt out. We have already taken a prima facie view that opinion / advice of the Advisory Committee may have primacy having regard to the language and object of the statute. Even otherwise also, the 'consultation' has to be a conscious and a meaningful effort and ought to have been reflected in the impugned order.

38. The regulatory measures provided by the impugned order includes the following:-

1. No new licences for purse seine / ring seine (including mini purse seine) fishing shall be issued. Number of licences shall be brought down step by step, firstly to 262 and finally to 182;

2. The Maharashtra coastline has been divided into four zones. In so far Zone-I i.e., from Zai to Murud is concerned, purse seine / ring seine (including mini purse seine) fishing shall be prohibited. However, in the other three zones purse seine / ring seine (including mini purse seine) fishing shall be permitted with certain restrictions;

3. Purse seine / ring seine (including mini purse seine) gear shall be operated by any mechanized vessel in Zones-II, III and IV during the period from September to December only;

4. Purse seine / ring seine (including mini purse seine) gear should have minimum 25mm mesh size for oil sardines and 49mm mesh size for mackerels;

5. The size of the nets is mentioned which are to be strictly maintained while carrying out such fishing operations in Zones-II, III and IV.

6. In addition to the above, two other restrictions have been imposed.

39. From the above it is evident that the state has imposed prohibition and regulation without any timeline, as if for perpetuity. As we have already discussed above, as per the recommendations of the Study Committee itself which have been accepted by the Government of Maharashtra in toto, there is requirement for periodical review every five years. This aspect has been completely overlooked by the state while passing the impugned order. That apart, the nature of consultation with the Advisory Committee does not find any reflection in the impugned order. Further, the impugned order in its present form adversely affects the rights of PSN fishermen. It was, therefore, necessary to

have taken into account their views by incorporating their representatives either in the Study Committee or in the District Advisory Committees. Though the state has contended that the District Advisory Committees did comprise of representatives of PSN fishermen and that their objections were forwarded, the impugned order is totally silent as to how the objections were dealt with. It is in this context, even at the cost of repetition, we say that the consultation envisaged in section 4(1) of the 1981 Act is not a mere formality. Such consultation has to be genuine and meaningful. It must be conscious and effective.

40. It is trite law that in the exercise of the power of judicial review, the writ court is concerned with the decision making process. The decision making process has to be fair and reasonable. It should not be arbitrary. Principles of natural justice are required to be complied with. In other words, persons likely to be affected by the impugned order or action are required to be heard. It is true that while exercising the power of judicial review, the High Court does not sit as a court of appeal. But if it finds that the above principles have been breached, certainly interference is called for.

41. Before parting with the record, we may advert to Joseph Antony (supra). State of Kerala had issued two notifications dated 29.11.1980. By one of the notifications, specified area was defined as the territorial waters of the state and as per the other notification use of gears like purse seine, ring seine, pelagic trawl and mid-water trawl was prohibited along the coastline together with other regulatory steps. The above two notifications were successfully challenged by operators of mechanized vessels using purse seine in the Kerala High Court, and the two notifications were struck down by the High Court. While clarifying that government may re-examine the whole question and take a fresh decision, it was directed that till fresh decision was taken by the government, mechanised fishing vessels should be allowed to operate only beyond 10 kms from the shore. Supreme Court took the view that the steps taken by the Government of Kerala was to protect the vast majority of the fishermen who belonged to the weaker sections of the society. There was no infraction of the statute. It was held that restrictions imposed by the impugned notifications were reasonable restrictions within the meaning of Article 19(6) of the Constitution of India. Supreme Court also took the view that High Court was not justified in confining the operation of the notifications only to 10 kms from the base coastline.

41.1. We may mention that the two notifications dated 29.11.1980 were issued by the Government of Kerala under section 4 of the Kerala Marine Fishing Regulation Act, 1980 (Kerala Act). Section 4 of the Kerala Act empowers the state government to regulate, restrict or prohibit certain matters within specified area. The matters are referred to in sub-section (2) of section 4, which are similar to the ones in sub-section (2) of section 4 of the 1981 Act. However, there is a significant difference in sub-section (1) of section 4 of the Kerala Act and sub-section (1) of section 4 of the 1981 Act. As per sub-section (1) of

section 4 of the Kerala Act, the state government may having regard to the matters referred to in sub-section (2) regulate, restrict or prohibit -

(a) the fishing in any specified area by such class or classes of fishing vessels as may be prescribed; or

(b) the number of fishing vessels which may be used for fishing in any specified area; or

(c) catching in any specified area of such species of fish and for such period as may be specified in the notification; or

(d) the use of such fishing gear in any specified area as may be prescribed.

41.2. However, what is to be noted is that in sub-section (1) of section 4 of the 1981 Act, the requirement is that the state government may pass such an order of regulation , restriction or prohibition but only after 'consultation' with the advisory committee constituted under section 3 of the 1981 Act. This difference in the statutory requirement in the Kerala Act vis-a-vis the 1981 Act is the distinguishing feature and has a significant bearing on the present lis as discussed above.

42. We may also mention that the division bench judgment of this Court in Abdul Hamid (supra) was challenged by the state before the Supreme Court which it is stated is presently pending as Civil Appeal No.8334 of 2004. It is further stated that Supreme Court had declined to stay the judgment of this Court in Abdul Hamid (supra) which would mean that the ratio laid down in Abdul Hamid (supra) would be operative in so far the State of Maharashtra is concerned.

43. Thus on a thorough consideration of all aspects of the matter, we are of the view that the matter is required to be remanded back to the first respondent to consider afresh continuation of the regulatory and prohibitory measures imposed vide order dated 05.02.2016.

44. Consequently, we remand the matter back to respondent No.1 for taking a fresh decision on review, as the period of five years has lapsed as per the recommendation of the Study Committee, in accordance with law after due consultation with the District Advisory Committees and after giving an opportunity of hearing to the petitioners or representatives of the PSN fishermen, having regard to the discussions made above. While carrying out the review exercise on remand, respondent No.1 shall examine the need to either continue with the regulatory and / or prohibitory measures or to relax / modify those measures or to withdraw the same. Let the above exercise be carried out within a period of three months from the date of receipt of a copy of this order. Till such decision is taken, the present arrangement shall continue.

45. Writ petition is disposed of accordingly. Interim Application is also disposed of. However, there shall be no order as to costs.