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**(2000) 11 AP CK 0018**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 17710 of 1999**

Viruvuru Gram Panchayat

APPELLANT

Vs

Collector and Others

RESPONDENT

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**Date of Decision :** 18-11-2000

**Acts Referred:**

Andhra Pradesh Panchayat Raj Act, 1994 — Section 56(1), 65(1)

**Citation :** (2000) 6 ALT 732

**Hon'ble Judges :** Goda Raghuram, J

**Bench :** Single Bench

**Advocate :** Y.G. Krishna Murthy, for the Appellant; G.P. for Panchayati Raj for Respondent Nos. 1 to 3, G.P. for Fisheries for Respondent Nos. 4 to 6 and V.V.L.N. Sarma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Goda Raghuram, J.—The Viruvuru Gram Panchayati represented by its Sarpanch has instituted these proceedings seeking a direction to the respondent Nos. 1 to 4 to issue fishing rights to the petitioner in Nakkalagandi Reservoir (for short "the tank") situate within the limits of the village.

2. Asserting that the aforementioned tank is a minor irrigation tank situated within the limits of the petitioner-Grampanchayat and that for the past forty (40) years, the fishing rights in the tank were being enjoyed by the petitioner-Grampanchayat by obtaining lease from the State Government, the petitioner sought the relief already adverted to.

3. The petitioner is stated to have sent a representation to the respondent Nos. 1 to 4 on 13-04-1999 seeking permission for securing the lease-hold fishing rights in the tank. In the said representation it was also alleged that a bogus society has been brought forth at Ramapuram, whose members were intending to deprive the interest and rights of the petitioner over the fishing rights in the tank. It is further stated that the 6th respondent-Society was registered on

20-11-1998, in which, of the forty two (42) members, only thirteen (13) members belong to Kakulluvaripalle village, while eighteen (18) members belong to Rompidodla village; five (5) members belong to Vempadu village and the rest of the six (6) members belong to Mahanadapuram village. All these villages are quite at a distance of 8 to 12 K.Ms. from the tank and the villagers therein were having cultivation of their own lands from the tank water and they have no other rights. With a view to deprive the rights of the petitioner-Grampanchayat of its traditional fishing rights in the tank, the villagers of these villages have conspired to form the society and secure fishing rights for themselves, is the further contention in the writ petition.

4. As there was no response to the representation of the petitioner and there being no orders by the respondent Nos. 1 to 4 granting fishing rights to the petitioner in respect of the tank in question, the petitioner has approached this Court.

5. On behalf of the respondent Nos. 4 and 5, counter-affidavit has been filed by the Fisheries Development Officer, Kavali contending that the tank is a Major Irrigation Tank and that the fishing rights to lease out the tank in question is vested with the Fisheries Department in view of G.O.Ms. No. 100 P.W.D. dated 18-01-1963 and G.O.Ms. No. 879 P.W.D. dated 09-04-1964, according to which, the tank's Ayacut of Ac. 25-00 and upto Ac. 200-00 in Andhra region are considered as Minor Irrigation Tanks. Thus, the tanks having an Ayacut of Ac. 200-00 and above come under the category of Major irrigation tanks for the purpose of development of fishery and leasing out of fishing rights are vested to the Fisheries Department. The counter further says that as per G.O.Ms. No. 776 F & A Department dated 31-12-1990, preference has to be given to the Fishermen Cooperative Society in respect of grant of fishing rights and that in the absence of Fishermen Co-operative Society in the area alone, such fishing rights could be granted to the Gram Panchayat being the next in the order of preference. On the above basis, the counter contends that since the 6th respondent-Society was registered within the area of operation of the tank on 20-11-1998, the said society was preferentially entitled to the grant of fishing rights. The allegation in the writ petition that the members of the said society are not residents of the area within the tank area has been specifically denied and it is stated that all the villages included in the area of operation of society are located within the radius of 8 K.Ms, from the headquarters viz., Kakuluvaripalle village. The plea of the Grampanchayat is that it has been enjoying the fishing rights since forty years and it would forego the said income, if the lease is granted to Fishermen Co-operative Society. It is resisted by the respondent Nos. 4 and 5 stating that these facts themselves do not entitle the petitioner to have a preferential right of fishing over the tank in question, qua the sixth respondent in view of the guidelines issued in G.O.Ms. No. 776 F & A (Fish-II) Department dated 31-12-1990.

6. An additional counter affidavit has also been filed by the Fisheries

Development Officer purported to be on behalf of the respondent Nos. 4 and 5, stating that the tank is having an Ayacut of Ac. 1200-00 as per the memorandum dated 21-12-1999 of the Superintending Engineer, Irrigation Department, Nellore and that in the circumstances, the tank can be said as Major Irrigation Tank, the fishing rights of which rests with the Fisheries Department and allocable to a Fishermen Co-operative Society, if there is one in the locality of the tank in question on a priority basis.

7. In the memorandum dated 10-11-1975, the State Government responding to the clarification sought for by the Director of Fisheries, Andhra Pradesh, in the context of provisions of Section 65 (sic. 56) (1)(a) and (b) of the A.P. Panchayat Raj Act, 1994 (for short "the Act") clarified that all irrigation tanks with an Ayacut of Ac. 25-00 and upto Ac 100-00 in Telangana Region and Ac. 25-00 and upto Ac. 200-00 in Andhra Region are considered as Minor Irrigation tanks for the purpose of classification. This memo also states that as far as the Minor Irrigation Tanks are concerned, the fishing rights will automatically vest in the Gram Panchayat under Clause (b) of Sub-section (1) of Section 65 of the Act. Whereas in respect of the Major Irrigation Tanks, the right to licence of these fishing rights vests with the Fisheries Department. Revised orders constituting the guidelines for allotment of fishing rights in the water courses in the State were issued by the State Government in G.O.Ms. No. 776 F & A (Fish. II) Department dated 31-12-1990. As per para-2 of the said Government Order, the procedure to be followed for granting of fishing rights states that while granting lease, first preference should be given to the genuine Fishermen Co-operative Societies; and that in the case of absence of genuine Fishermen Co-operative Societies or unwillingness on the part of the identified Fishermen Co-operative Society to take up exploitation at the rentals fixed, next preference should be given to Grampanchayat/Municipality followed by public auction and departmental exploitation.

8. In the light of the above orders of the State Government and the clarification issued by the State in the Memorandum dated 10-11-1975," the fishing rights of the tank, which is a major irrigation tank, are obligated to be given on the priority basis, in the first instance, to the existing Fishermen Co-operative Society of the village. In the above circumstances, the claim of the petitioner-Grampanchayat for preferential right to fishing in the tank, even as against the sixth respondent-Fishermen Co-operative Society, is misconceived and untenable. The mere fact that the petitioner-Grampanchayat has been enjoying the fishing rights for a long time, forty years as contended, does not entitle it to the grant of fishing rights again particularly when a Fishermen Co-operative Society has come into being on 20-11-1998.

9. A Division Bench of this Court in Vaddavalli Fishermen Co-operative Society Ltd. Vs. Rayidi Krishna Kumari and others, . has clearly held construing Section 80 of the A.P. Panchayat Raj Act, 1994 that the Grampanchayat has been vested with the fishing rights only in respect of the water course tanks etc., mentioned

in Sub-section (1) of Section 80 of the Act and which have been specifically vested with the Grampanchayat and that no fishing rights have been vested in respect of the irrigation works which have been specifically excluded in the proviso. Therefore, the petitioner-Gram Panchayat, which has no power and control over the irrigation tank in question, cannot claim any fishing rights.

10. For all the reasons above, there are no merits in the Writ Petition. Accordingly, the writ petition is dismissed. No costs.