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W.P.No.430 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.430 of 2022

PoomPuhar Traditional Fishermen Welfare Association
having its Registered Office at
1437, North Street,
Poombukar Kaveripattinam, Kizhaiyur,
Sirkzhi Taluk, Nagapattinam District,
Tamil Nadu Pin 609 105
rep. by the Secretary of the Society
Jambulingam Kabadikunju.

... Petitioner

Vs

1.The State of Tamil Nadu,
Through its Chief Secretary,
Fort St. George,
Govt. Secretariat, Chennai,
Tamil Nadu.

2.The Principal Secretary,
Animal Husbandry, Dairying & Fisheries Department,
Fort St. George,
Govt. Secretariat, Chennai,
Tamil Nadu.



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3. The Union of India,
Through the Principal Secretary,
Office of the Hon'ble Prime Minister of India,
South Block,
New Delhi – 110 001.

4. The Secretary,
Ministry of Law,
Government of India,
Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi – 110 001.

5. The Principal Secretary,
Ministry of Agriculture,
Krishi Bhawan,
Dr. Rajendra Prasad Road,
New Delhi – 110 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 and 2 to allow the traditional fisherman of Tamil Nadu to carry the purse seine net in their country crafts and mechanized vessels for Marine Fishing within the traditional waters and of Tamil Nadu and behind the traditional waters within the exclusive economic zones by lifting the prohibitions and banning of carry the purse seine net in the country crafts and the mechanized vessels for marine fishing in the sub-rule 7 of rule 17 of the Tamil Nadu Marine Fishing Regulation Rules, 1983 vide G.O.Ms.No.36, Animal Husbandry and Dairying and Fisheries (FS-4) on 17.02.2020.

For the Petitioner : Mr.J.Sushil Rajkumar

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent Nos.1 and 2



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ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

By this writ petition, the petitioner seeks a direction on respondents 1 and 2 to allow traditional fishermen of Tamil Nadu to carry the purse seine net in their country crafts and the mechanized vessels for marine fishing within the traditional waters and of Tamil Nadu and behind the traditional waters within the exclusive economic zones by lifting such prohibition/ban stipulated in Rule 17(7) of the Tamil Nadu Marine Fishing Regulation Rules, 1983 (for short, "1983 Rules") incorporated vide G.O.Ms.No.36, Animal Husbandry, Dairying and Fisheries (FS-4), dated 17.02.2020.

2. For ready reference, Rule 17(7) of the 1983 Rules is quoted hereunder:

"17. Regulation on use of gear.-

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...



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(6) ...

(7) No owner or master of any fishing vessel shall carry on fishing by pair trawling or fishing with purse-seine net using any fishing vessel or craft whether country craft or mechanized boat irrespective of their size and power of the engine in the entire coastal area of the State.”

3. Learned counsel for the petitioner submits that all neighbouring States are permitting fishing without any prohibition or restriction as imposed by the State of Tamil Nadu. In view of the above and in the absence of similar set of legislation in other States, a discrimination has been made and, accordingly, a direction is sought to allow the traditional fishermen of Tamil Nadu to carry the purse seine net in their country crafts and the mechanized vessels for marine fishing within the traditional waters and of Tamil Nadu by lifting the prohibitions as stated in Rule 17(7) of the 1983 Rules.

4. Learned counsel for the petitioner has made a specific reference to the regulations in existence in the State of Kerala, where no restrictions, as imposed by the State of Tamil Nadu exist.



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5. Learned Government Pleader has contested the writ petition and submits that the prohibition imposed in Rule 17(7) of the 1983 Rules is not unconstitutional, rather similar prohibition is in existence in other States. In reference to the State of Kerala, learned Government Pleader submits that similar prohibition exists and even a challenge to it before the Apex Court did not sustain. He further submits that the object sought to be achieved by issuance of the Government Order is in consonance with the scheme of the Animal Husbandry, Dairying and Fisheries Department. Earlier, a Government Order dated 25.03.2000 was issued prohibiting fishing by pair trawling or fishing with purse seine nets by any fishing vessels/craft, whether country craft or mechanical boat, irrespective of the size or power of the engine in the entire coast of Tamil Nadu in territorial waters. The prohibition, as referred to under Rule 17(7) of the 1983 Rules is in operation since 25.03.2000. The only difference is earlier it was by way of a government order, whereas now it is in the form of a Rule. The challenge to Rule 17(7) of the 1983 Rules has been made ignoring the aforesaid and without giving any justification as to why the Government Order dated 25.03.2000 was not challenged by the



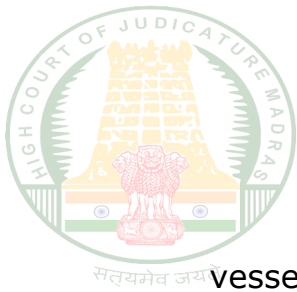
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petitioner for years together when the same prohibition was imposed and existing.

6. Learned Government Pleader further submits that a writ petition, being W.P.No.17171 of 2018 (*S.Harikrishnan v. The Secretary to Government, Department of Fisheries, Fort St. George, Chennai-600 005 and others*), was filed to seek enforcement of G.O.Ms. No.40, Animal Husbandry and Fisheries (FS.V) Department, dated 25.03.2000 and the said writ petition was disposed of by the order dated 04.09.2018 after issuing directions for enforcement of the Government Order.

7. Learned Government Pleader has cited the judgment of the Apex Court in the case of ***State of Kerala v. Joseph Antony, reported in (1994) 1 SCC 301*** to support his arguments. The challenge to the similar prohibition was not accepted by the Apex Court even in reference to Article 19(1)(g) of the Constitution of India. The judgment in the case of the ***State of Kerala*** (supra) covers the issue. There, the fishing vessels were not allowed to operate within 10 kilometres till reconsideration of the issue. The fishing by mechanized



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vessels in territorial waters by use of purse seine, ring seine, pelagic trawl and mid-water trawl in territorial waters was prohibited. Highlighting the judgment in the case of **State of Kerala** (supra), a prayer is made by learned Government Pleader to dismiss the writ petition.

8. We have considered the rival submissions and perused the materials on records.

9. Rule 17(7) of the 1983 Rules was incorporated by Government Order dated 17.2.2020. But, the prohibition was in operation from 25.03.2000, namely, for more than 20 years. In view of the above, the respondent State has not introduced a new prohibition, but only incorporated it in the form of a rule. It was otherwise for the object sought to be achieved and as narrated in the judgment in the case of **S.Harikrishnan** (supra). Paragraphs 3 to 5 of the judgment are quoted hereunder:

“3. It is the case of the petitioner that he is a fisherman, in Cuddalore District and there are about 15,00,000 fishermen, in and around Tamil Nadu.



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According to him, most of the small fishermen use country boat, and small catamaran, for fishing. In many cases big fishing vessels, are used in deep sea fishing, and boats, which are not prepared, in accordance with the rules, and regulations, are using Purse - Seine nets and by pair trawling, are used to catch the entire fishes, without allowing the small fishermen, to catch fish, and thus, the above said fishermen try to clear the entire area, without even allowing the small fishermen, in conservation of fishery. According to the petitioner, these unauthorised boats, were purchased, illegally from Kerala.

4. It is the further contention of the writ petitioner that Government of Tamil Nadu have created, pearl rock for breeding of fishes, and these pearl rocks are corned, but fishes are removed, without any provision for breeding. According to the petitioner, because of using, the above said types of boats, and fishing nets, several cases of the death of dolphins, and tortoise, were reported in the newspaper, television and in other medias. According to the petitioner, the Government of Tamil Nadu, to prohibit and control the use of pair trawling or fishing net with Purse - Seine nets issued G.O. Ms. No.40 Animal Husbandry and Fisheries (FS.V) Department dated 25.03.2000, prohibiting fishing by



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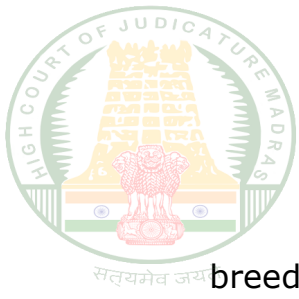


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pair trawling or fishing with Purse - Seine nets, by any fishing vessels/craft, whether country craft or mechanical boat, irrespective of the size or power of the engine in the entire coast of Tamil Nadu in territorial waters as a measure to conserve the area of fishing. Provision of the Tamil Nadu Marine Fishing Regulation Act, 1983, empowers the Government to regulate, restrict or prohibit certain matters and in the present case, according to the petitioner, Section 5(c) and (d) of the said Act, would apply.

5. It is the further case of the petitioner that in boats, where 50 to 60 persons, are engaged, they threatened and bet fishermen, in small boats, and in some cases, they were thrown out of their boats, catamarans, and thus harassed them. It is also the submission of the writ petitioner that, those who use bigger boats, also use modern equipments, to trace fishes, and make full catch, without any provision, for small fishermen. Though on several occasions several complaints were made, the authorities have turned deaf ears, and not taken any action."

The reason for imposition of prohibitions has been given in the paragraphs quoted above. It is not only to save small fishermen but also to avert death of dolphins and tortoises etc. and to promote



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breeding of small fish.

10. In such view of the matter, we do not find any violation of the constitutional provision, rather an identical issue, as raised by the petitioner was brought before the Apex Court in the case of **State of Kerala** (supra), wherein a challenge to the similar restriction or prohibition was not accepted even in reference to Article 19(1)(g) of the Constitution of India. The relevant paragraph of the said judgment is quoted for ready reference:

“28. By monopolising the pelagic fish stock within and by indiscriminate fishing in the territorial waters they are today denying the vast masses of the poor fishermen their right to live in two different ways. The catch that should come to their share is cordoned off by the giant closely meshed gears leaving negligible quantity for them. Secondly, ***the closely meshed nets kill indiscriminately the juvenile with the adult fish and their eggs as well. That is preventing breeding of the fish which is bound in course of time to lead to depletion and extinction of the fish stock. There is thus an imminent threat to the source of livelihood of the vast section of the society. The State is enjoined***



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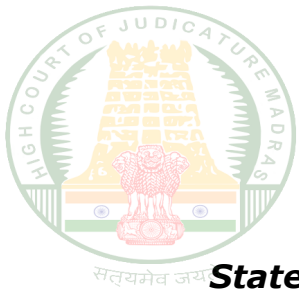


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under Article 46 of the Constitution in particular to protect the poor fisherman-population. As against this, the respondent-operators are not prohibited from fishing within the territorial waters. They are only prohibited from using certain types of nets, viz., purse seines, ring seines, pelagic and mid-water trawls. There is, therefore, no restriction on their fundamental right under Article 19(1)(g) to carry on their occupation, trade or business. They cannot insist on carrying on their occupation in a manner which is demonstrably harmful to others and in this case, threatens others with deprivation of their source of livelihood. Since, in the circumstances, the protection of the interests of the weaker sections of the society is warranted as enjoined upon by Article 46 of the Constitution and the protection is also in the interest of the general public, the restriction imposed by the impugned notifications on the use of the gears in question is a reasonable restriction within the meaning of Article 19(6) of the Constitution."

[emphasis supplied]

11. In view of the judgment of the Apex Court in the case of

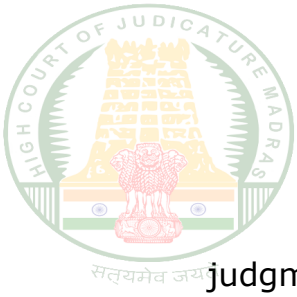


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State of Kerala (supra) on the same issue, which is binding, even if the other neighbouring States have not imposed similar restrictions, we do not propose to interfere with the prohibition/ban imposed in the State for the object sought to be achieved. From the judgment of the Apex Court in the case of **State of Kerala** (supra), it becomes clear that a similar prohibition exists in the State of Kerala. Thus, the statement of learned counsel for the petitioner that there was no similar restriction or prohibition in the State of Kerala cannot be accepted.

12. In fact, in the case of **S.Harikrishnan** (supra), this court in reference to the Government Order dated 25.03.2000 imposing prohibition of the similar nature or of the same nature, as now under challenge, issued direction for effective implementation of the Government Order dated 25.03.2000. A challenge made to the Government Order dated 25.03.2000 was dismissed by a Division Bench of this court vide judgment dated 05.02.2019 in W.P.No.3138 of 2019 (M.G.Santhanaraj v. The Secretary, Government of Tamil Nadu, Department of Fisheries, Chennai-600 005 and others). We find that Rule 17(7) of the 1983 Rules has been enacted in tune with the



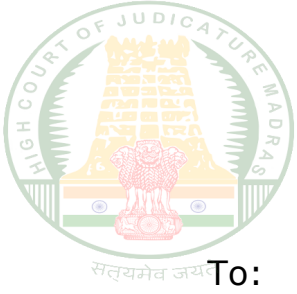
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judgment in the case of **S.Harikrishnan** (supra). In view of the above, we find no reason for questioning the Government Order dated 17.02.2020. Rule 17(7) of the 1983 Rules does not offend any of the constitutional provisions and each State is empowered to prescribe its own policy for fishing.

13. For the foregoing reasons, we find no illegality or unconstitutionality in Rule 17(7) of the 1983 Rules which imposes prohibition/ban on using certain varieties of nets. Accordingly, the writ petition fails and it is dismissed. No costs. Consequently, W.M.P.No.487 of 2022 is closed.

(M.N.B., ACJ) (P.D.A., J.)
19.01.2022

Index : Yes/No
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To:

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- 1.The Chief Secretary,
State of Tamil Nadu,
Fort St. George,
Govt. Secretariat, Chennai,
Tamil Nadu.
- 2.The Principal Secretary,
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M.N.BHANDARI, ACJ
AND
P.D.AUDIKESAVALU,J.

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