

APHC010200142021



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3328]

THURSDAY ,THE FIFTH DAY OF JUNE
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA
PRASAD**

WRIT PETITION NO: 11787 OF 2021

Between:

1.PITTIKAYALAGULLA GRAMA PANCHAYAT,, REP.BY ITS
SECRETARY, PITTIKAYALAGULLA VILLAGE, BESTAVARIPETA
MANDAL, PRAKASAM DISTRICT, PIN- 523346.

...PETITIONER

AND

1.THE STATE OF ANDHRA PRADESH, REP.BY ITS-SECRETARY,
FISHERIES AND ANIMAL HUSBANDARY-DEPARTMENT,
AMARAVATHI, STATE OF A.P.

2.THE COMMISSIONER OF FISHERIES, STATE OF ANDHRA
PRADESH, BUDER ROAD, PORANKI, VIJAYAWADA.

3.THE JOINT DIRECTOR OF FISHERIES, , PRAKASAM DISTRICT,
ONGOLE, PRAKASAM DISTRICT.

4.THE ASSISTANT DIRECTOR OF FISHERIES, CHIRALA, CHIRALA
MANDAL, PRAKASAM DISTRICT.

5.THE ASSISTANT INSPECTOR FISHERIES, CUMBAM, PRAKASAM
DISTRICT.

6.THE AMBEDKAR ASAYA SADANA SAMITI BESTA FISHERIES
COOPERATIVE SOCIETY LTD, REP.BY ITS-PRESIDENT, GULLA
CHINA SUBBAIAH, S/O. SUBBAIAH, AGED ABOUT 42 YEARS, R/O.
PAPAYAPALLI VILLAGE, BESTVARIPETA MANDAL, PRAKASAM

DISTRICT.

...RESPONDENT(S):

Counsel for the Petitioner:

1.G VIJAYA BABU

Counsel for the Respondent(S):

1.ANUP KOUSHIK KARAVADI

2.GP FOR FISHERIES

The Court made the following ORAL ORDER:

Heard Sri G. Vijaya Babu, learned Counsel for the Writ Petitioner; Sri M.V. Narasimham, learned Assistant Government Pleader for Fisheries appearing for the Official Respondents and Sri K. Ashok, learned Counsel appearing on behalf of Sri Anup Koushik Karavadi, learned Counsel for the Respondent No.6.

2. The prayer sought in the present Writ Petition is as under:

“It is therefore prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents 3 and 4 in granting Lease Hold Rights of Pittikayalapalli Chinna Cheruvu, which is having only 22 Hecteres (55 Acres) of Ayacut area and the same is a Minor Irrigation Tank under the control of the petitioner Grama Panchayat as per the guidelines issued in Memorandum No 1842/Pts. IV/74-4, Dated: 10.11.1975 affixed to G.O.Ms.No.100, Dated:18.01.1963 to the 6th respondent society as illegal arbitrary and contrary to Section 56 (b) of the A.P.Panchayat Raj Act, 1994 (Act No 13 of 1994) and also the Guidelines framed in G.O.Ms.No.100 and G.O.Ms.No.343 and as well as the procedure prescribed in G.O.Ms.No.343, Dt.10.04.1978 and consequently direct the respondents 2 to 5 not to interfere with the granting of Fisheries Rights in Pittikayalapalli China Cheruvu which is in the control of petitioner village limits and the petitioner has got right to lease out the fishery wealth in tank by following the procedure contemplated in G.O.Ms.No.343 and pass such other order or orders may deem fit and proper in the circumstances of the case.”

3. Pittikayalagulla Grama Panchayat had approached this Court challenging the action of the Fisheries Department through the Commissioner of Fisheries in granting Fisheries rights to the Ambedkar Asaya Sadana Samithi (Besta), Fisheries Co-operative Society Limited (Unofficial Respondent No.6).

SUBMISSIONS OF THE LD. COUNSEL FOR THE WRIT PETITIONERS:

4. It is the submission of the Ld. Counsel for the Writ Petitioner that there are two water tanks in Pittikayalagulla village by name Pittikayalapalli Pedda Cheruvu and Pittikayalapalli Chinna Cheruvu; that Pittikayalapalli Pedda Cheruvu is a Major Tank as per the classification given in Memorandum No.1842/Pts.IV/74-4 dated 11.10.1975. As per the said classification, all Irrigation Tanks with an ayacut area of Ac.25.00 cents up to 200 acres in the Andhra region are considered as 'Minor Irrigation Tanks' for the purpose of classification; that in the present case, Pittkayalapalli Chinna Cheruvu is a minor Irrigation Tank having an ayacut area of 22.00 hectares (Ac.55.00 cts) and therefore, it is a minor irrigation tank; that the said Pittikayalapalli Chinna Cheruvu is vested with the Grama Panchayat and the Grama Panchayat has right, ownership and control over the said minor irrigation tank for the purpose of conducting auction for conferring fishing rights on the successful bidders.

5. It is further submitted that on 18.10.2019, the 6th Respondent Society is registered with the area of operation of 1. Pata Mallapuram, 2. Pittikayalagulla, 3. R.Kottapalli, 4. Jennivaripalli Villages; that G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990 has no Application to the Pittikayalapalli Chinna Cheruvu since the same is a minor irrigation tank; that insofar as the minor irrigation tanks are concerned, they shall be under the control of Grama Panchayat as per Section 56 (1)(b) of the Andhra Pradesh Panchayat Raj Act, 1994; that under the G.O.Ms. No.343 Panchayat Raj (Ser.I) Department, dated 10.04.1978 (Ex.P.7) the Government of Andhra Pradesh has issued and published the rules relating to leasing of fishery rights

in minor irrigation tanks and other sources belonging to/vested in the Grama Panchayats under the Andhra Pradesh Grama Panchayat Act, 1964.

COUNTER-AFFIDAVIT OF OFFICIAL RESPONDENTS:

6. The Asst. Inspector Fisheries, Cumbum, Prakasam District (Respondent No.5) has filed Counter-Affidavit. It is stated in the Counter-Affidavit filed by the Asst. Inspector Fisheries, Cumbum that the Government is strictly following the G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990 for leasing out fishing rights of Pittikayalapalli Chinna Cheruvu (minor irrigation tank) in favour of the Unofficial Respondent No.6.

7. Ld. Counsel appearing for the Respondent No.5 has drawn the attention of this Court to the content of the G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990.

COUNTER-AFFIDAVIT OF UNOFFICIAL RESPONDENT NO.6:

8. The Unofficial Respondent No.6 had been granted Fishing Rights Lease by the Official Respondents. The Unofficial Respondent No.6 has filed Counter-Affidavit and contended that since the Government is following the rules under the G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990, the present Writ Petition is not maintainable because the Writ Petitioner did not challenge the G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990.

9. Ld. Counsel for the Writ Petitioner would submit that the Writ Petitioner is not challenging the validity of the G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990 inasmuch as the said G.O. deals with major irrigation tanks. It is submitted that as per the clarification given in the Memorandum No.1842/Pts.IV/74-4, dated 10.11.1975, Pittikayalapalli tank has an ayacut area of 22.00 Hectors (55.00 cents) and therefore is a minor irrigation tank, whereas, G.O.Ms.No.776 Food and Agriculture (Fish.II)

Department dated 31.12.1990 is applicable only to the major irrigation tanks, like the Pittakayalapalli Pedda Cheruvu. Ld. Counsel for the Writ Petitioner has taken this court through the G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990 and would submit that the said G.O cannot be applied to the Pittakayalapalli Chinna Cheruvu.

10. Ld. Counsel for the Writ Petitioner has placed reliance on the judgment of this Court in ***Ipur Gram Panchayat, Guntur District Vs. Government of Andhra Pradesh; 2000 Law Suit (AP) 452; 2000 (4) ALT 678***. Ld. Counsel for the Writ Petitioner has drawn the attention of this Court to Para Nos. 8 to 13 of the said Judgment. Relevant para Nos. 8 to 13 are usefully extracted hereunder:

“8. From this it is seen that the Government while continuing the policy of leasing out the fishing rights in the tanks to the fishermen Co-operative Societies under G.O.Ms. No. 343 as well as G.O.Ms. No. 776 the leasing or auction of fishing rights in the minor irrigation sources vested in the Water Users' Associations will be leased out by a competent authority of the Fishery Department not below the rank of Assistant Director of Fisheries. G.O.Ms. No. 71 was issued directing the payment of the rentals by the Fisheries Department to the Water Users' Association. From the reading of these two G.Os., it is clear that no representation was made by the Water Users' Association either for transfer of minor irrigation tanks that are vested in Gram Panchayat to them or permit them to enjoy the income derived from the leasing of fishing rights in these tanks. It is not known in whose mind this idea came all of a sudden and no reasons were given for directing the payment of the lease amounts to the Water Users' Association. At least, to find out whether the decision is supported by any statutory provision, I directed the Government Pleader to find out whether the Government passed any orders to transfer the irrigation tanks to the Water Users' Association, and the answer was in negative. When the minor irrigation tanks vested in Gram Panchayats by virtue of statute, it is not known how the Government can issue these two G.Os., in exercise of executive power under Article 162 of the Constitution of India when the field is squarely covered by the statutory provisions and the rules made therein under Gram Panchayat Act replaced by Panchayat Raj Act.

9. Coming to the facts of the case the Fisheries Development Officer in his letter No. 24/Societies/98-99, dated 16-3-1999 informed the Fishermen Society that the Fisheries Department fixed the upset price for leasing out the fisheries rights by 10% excess over and above the amount that was fetched during the previous year and directed the society to pay an amount of Rs. 1,92,500/- towards the lease amount for the Fasli 1408 (98-99) by way of a demand draft drawn in favour of President, Water Users' Association, Epur and the society need not pay the amounts to the Gram Panchayat. The letter also stated that orders for leasing out the fishing rights will be got issued by the Collector for Fasli 1408. The Gram Panchayat did not offer any explanation what it has done during the year 1998-1999 to assert its right over the tank. But on 19-4-1999 the Gram Panchayat issued another notice to the society to pay an amount of Rs. 1,85,000 for the year 1998-1999. The society having received the letter sent a reply on 3-5-1999 stating that the amount was already paid to the Water Users' Association and it need not pay the amount demanded by the Gram Panchayat. In those circumstances, the Gram Panchayat issued notice for leasing out fishing rights in the tank by way of auction. On that, the society seemed to have approached the DPO who in turn gave telegram on 11-5-1998 to the Grampanchayat not to conduct auction, and thereafter the Collector in his proceedings dated 28-7-1999 directed the Grampanchayat not to conduct auctions. Questioning the said order the petitioner-Gram Panchayat filed a revision before the Government on 26-5-1999 and though the Government initially passed interim stay of the order of the Collector on 2-6-1999, after hearing both the parties issued G.O.Rt. No. 1309 PR & PD (PTS TV) Department, dated 21-7-1999 vacating the interim stay granted earlier by holding that the Government felt that no interference is required without reference to the earlier orders passed by the Government in G.O.Rt. No. 710 (P & RD) Department, dated 3-7-1991.

10. Questioning the said proceedings, the Gram Panchayat filed WP No. 15825 of 1999 on 22-7-1999 and no interim order seemed to have been granted by this Court. Subsequently, the Grampanchayat filed another writ petition in WP No. 16970 of 1999 by engaging different Counsel questioning the validity of G.O.Ms. Nos. 70 and 71 dated 23-7-1998. While admitting the Writ Petition No. 16970 of 1999 by order dated 31-8-1999, I directed the Gram Panchayat to implead the Fishermen Society as respondent No. 7. In the meantime, the Society itself on its own filed an application to get itself impleaded

in the writ petition as it is very conscious of its rights. On 31-8-1999, I directed both the Grampanchayat as well as the Fisheries Department not to auction the lease hold rights for fishing in the tank pending disposal of the writ petition. Now, these two writ petitions came up for hearing before this Court.

11. *As far as the validity of these two G.Os. 70 and 71 are concerned, I have already adverted to the provisions of the Management of Irrigation System Act and nowhere I find a provision transferring the minor irrigation tanks which are vested in the Grampanchayat to the Water Users' Association. As I have already observed that these two G.Os., were issued by the Government in exercise of its executive power under Article 162 of the Constitution of India without passing any orders legal or illegal transferring the minor irrigation tanks vested in the Grampanchayat under Section 56 of the Panchayat Raj Act of 1994 to the Water Users Association purely under an imagination that these tanks vested in them without any authority of law.*

12. *Nextly, the Government Pleader placed reliance on G.O.Ms. No. 776. It is useful to refer to G.O.Ms. No. 776 Food and Agriculture (Fish. II) Department, dated 30-12-1990 wherein fresh guidelines were issued with regard to leasing of the fishing rights in the water sources in the State on the basis of the recommendations of an expert Committee appointed to go into the all the matters relating to fisheries, i.e., estimation of fishing wealth, potential for development, increase of production, development of markets etc., and in supersession of the executive orders issued from time to time for the water resources that are not vested in Gram Panchayats. In this G.O., it is stated that (16) reservoirs and tanks are under the control of the Director of Fisheries and he was directed to de-license these reservoirs and to give them on lease to Fishermen Co-operative Societies to exploit fishing wealth in a big way. It is also stated that instructions in that G.O. were given pending finalisation of policy regarding the development of fishing in the major reservoirs. Clause-I of the aforesaid G.O., speaks re-transfer of irrigation tanks which were under the control of Fisheries Department prior to 1987 from Panchayat Raj Department to Fisheries Department and the procedure to be followed for leasing out the fishing rights. Clause 3 of the said Governmental order says as under:*

“Procedure regarding tanks vested in the Gram Panchayat Act, 1964:—All the sources which

vested in the Gram Panchayat under the Gram Panchayat Act, 1964 shall continue to be with the respective Gram Panchayats for the purpose of disposal of Fishery rights.”

13. Evidently, there seems to be some confusion in the minds of the authorities responsible for issuance of the said G.O. From clause 3, it is very clear that the tanks vested in the Gram Panchayats under the Gram Panchayat Act, 1964 shall continue under the respective Gram Panchayats. But clause 1 which speaks of transfer of irrigation tanks that were transferred to Panchayat Raj Department in the year 1987 stands transferred to Fisheries Department. It is not known whether the Government is referring to the tanks vested in the Gram Panchayats or minor irrigation tanks or some other tanks. Be that as it may, it is suffice to state again that these orders are only executive orders issued under Article 162 of the Constitution of India and they cannot have overriding effect over the statutory provisions. At any rate, even after issuance of this G.O. the Fisheries Department was not exercising rights of ownership over the tanks in question leave apart transferring the tank, which vested in the Gram Panchayat as per the earlier order of the Government in 1991. As stated supra, if the intention of the Government is to transfer the ownership of the minor irrigation tanks to the Water Users' Associations, to augment its resources for taking up developmental activities, though the Legislation was enacted for a different purposes, atleast the Government is expected to transfer the minor irrigation tanks to these Associations. That can only be possible only by amending Panchayat Raj Act as well as Management of Irrigation System Act, but not otherwise.”

11. Ld. Single Judge of this Court has categorically held, referring to and placing reliance on the judgment of the Division Bench of this Hon'ble Court in W.A.No.997 and 1005 of 1997 dated 01.10.1997 that all minor irrigation tanks together with right to auction of weeds and reeds in such tanks and the right to plant trees on the bunds of such tanks and enjoy the usufruct thereof shall vest in the Gram Panchayat. This would make it clear that the fishing rights as regards the minor irrigation tanks, certainly vest with the Grama Panchayat only. Ld. Counsel for the Respondents have placed reliance on the judgment of the Division Bench in **Vaddavalli Fishermen Vs. Rayidi Krishna Kumari**

and Others; 2000 (4) ALD 259; 2000 (4) ALT 1. This Judgment of the Division Bench has been referred to by the Ld. Single Judge in Epuru Grama Panchayat's case, and clarified that the judgment of the Division Bench deals with the major irrigation tanks and therefore said judgment has no bearing on the facts relating to minor irrigation tanks.

12. Ld. Single judge in Epuru Grama Panchayat's case placed reliance on the judgment of the Division Bench in W.A.No.997 and 1005 of 1997 dated 01.10.1997 that specifically deals with minor irrigation tanks and held that the right to auction of weeds and reeds of such tanks is vested with Grama Panchayat. Ld. Counsel for the Writ Petitioner would submit that the case of the Writ Petitioner herein is squarely covered by the judgment of Epuru Grama Panchayat's case.

13. From the above discussion, it so emerges that the issues relating to major irrigation tanks are covered under G.O.Ms.No.776 Food and Agriculture (Fish.II) Department dated 31.12.1990. Admittedly, the minor irrigation tanks which are covered under the Panchayat Raj Act are vested with the Grama Panchayat and the Grama Panchayats alone have the right and control for exploiting the fishing rights. Section 56 (1)(b) of the Andhra Pradesh Panchayat Raj Act, 1994 confers power on the Panchayat to maintain irrigation tanks. This statutory right that is vested with the Gram Panchayat cannot be taken away by the State by way of an Executive Order.

14. In the above premise, this Court is of the opinion that the Pittikayalapalli Chinna Cheruvu is a minor irrigation tank, as per the Proceedings of the Asst. Executive Engineer dated 27.05.2018 with an ayacut area of 22.00 Hectors (Ex.P.1). As per the Memorandum No.1842/Pts.IV/74-4 dated 10.11.1975 (Ex.P.6), it is clear that the irrigation tanks with ayacut area of 25.00 Hectors are classified as Minor Irrigation Tanks. Minor Irrigation Tanks are vested with the Grama Panchayat as per Section 56 (1) (b) of the Andhra Pradesh Panchayat Raj Act, 1994. It is also the opinion of the Court that G.O.Ms. No.776 dated 31.12.1990 is inapplicable to the facts of the present case and

inasmuch as the said G.O. deals with major irrigation tanks and medium irrigation tanks and that the said G.O. does not specifically mention about the coverage with respect to the Pittikayalapalli Chinna Cheruvu, which is admittedly a minor tank. Even assuming that the G.O.Ms.No.776 dated 31.12.1990 covers the minor irrigation tanks including the Pattikayalapalli Chinina Cheruvu, the same cannot be held to be legally valid in as much as the privilege of exclusive fishing rights conferred on the Gram Panchayat under the statute cannot be frustrated by the Government through an Executive Order. This Court is also of the opinion that the Judgment rendered by the Ld. Single Judge of this Court in Epuru Grama Panchayat's case is also squarely applicable to the facts of the case wherein, Ld. Single Judge of this Court has considered and distinguished two Division Bench orders and had further held that the Order of the Division Bench in W.A.No.997 and 1005 of 1997 dated 01.10.1997 would squarely apply to the facts of the said case.

15. Since the facts in the present case are identical to the facts in the Judgment rendered by the Division Bench in W.A.No.997 and 1005 of 1997, this Court is of the view that the Department of Fisheries have no domain over Pittikayalapalli Chinna Cheruvu, which is admittedly a minor irrigation tank with an ayacut area of 22.00 Hectors and that the Writ Petitioner Panchayat alone has the right to grant fishing rights by conducting auction.

16. In the above premise, this Writ Petition stands allowed. No order as to costs.

17. Interlocutory Applications, if any, stand closed in terms of this order.

GANNAMANENI RAMAKRISHNA PRASAD, J

Dt: 05.06.2025

Mnr

41

HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No.11787 OF 2021

Dt: 05.06.2025
Mnr