
**Harijan Fishermen Mutually Aided Co-operative Society Ltd. Vs
Commissioner and Director of Fisheries and Others**

Writ Petition No. 14055 of 2004

Court: Andhra Pradesh High Court

Date of Decision: Dec. 5, 2005

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 & Section 56(1)#Constitution of India, 1950 & Article 14

Citation: (2006) 1 ALD 281 : (2006) 1 APLJ 54

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: P. Govind Reddy, for the Appellant; Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G. Rohini, J.

The writ petitioner is a Society registered under the provisions of the A.P. Mutually Aided Co-operative Societies Act, 1995

(hereinafter referred to as "the 1995 Act"). It is claimed that the petitioner-Society is operating within the local area of Kakani village. This Writ

Petition is filed seeking a declaration that the alleged action of the respondents in not considering the claim of the petitioner-Society for grant of

fishing lease in respect of Kakani Major Irrigation Tank situated in Kakani village, Narasaraopet, Guntur District, as arbitrary and illegal.

2. The petitioner contends that the action of the 2nd respondent-Assistant Director of Fisheries, Guntur, in refusing to consider the case of the

petitioner for grant of fishing lease in respect of the said tank on the ground that the petitioner-Society, which was registered under the 1995 Act, is

not entitled to the rights and privileges that are available to the Societies registered under the A.P. Co-operative Societies Act, 1964 is not in

accordance with law and liable to be declared as arbitrary and illegal.

3. As can be seen from the counter-affidavit filed by the 2nd respondent, it is not in dispute that the Kakani Major Irrigation Tank is under the

control of the Fisheries Department and as such the power to grant the lease of fishery rights is vested with the Fisheries Department only.

However, it is pleaded by the 2nd respondent that whereas the petitioner-Society, which is admittedly registered under the 1995 Act, consists of

voluntary self-financing autonomous bodies formed with the members of all castes, including forward castes, the Fishermen Co-operative Societies

are registered only with the members of weaker sections by conducting fishing skill tests. Hence, the Kakani Major Irrigation Tank under the

control of the Fisheries Department has been rightly leased out to the 4th respondent-Society, which was registered u/s 6(3) of the Andhra

Pradesh Co-operative Societies Act, 1964.

4. The 4th respondent-Society in its counter-affidavit has pleaded that since the registration of the Society in the year 1972 onwards it has been

enjoying the fishery rights in the tank situated in Kakani village, which is the only Major Irrigation Tank in the village. It is also claimed that till

1995-1996 the 4th respondent-Society was granted lease and they exercised the fishery rights by paying the lease amount regularly. It is also the

case of the 4th respondent that as per G.O. Ms. No. 343 Panchayat Raj, dated 10.4.1978, the Fishermen Co-operative Society of the local area

shall have the right to have lease in respect of Minor Irrigation Tank under the control of the Gram Panchayat or Major Irrigation Tank under the

control of the Government. It is further contended that only where the Fishermen Co-operative Society is not willing to accept the lease, then only

the Executive Authority of the Gram Panchayat or the Government can dispose of lease hold rights by way of public auction. It is also contended

that there is no cause of action for filing the writ petition since the 2nd respondent has not yet put the lease hold rights to public auction for the lease

year 2005-2006 and as such, the writ petition being premature is liable to be dismissed on that ground alone.

5. I have heard the learned Counsel for both the parties and perused the material on record.

6. As can be observed from the pleadings, it is not in dispute that the Tank in question viz., Kakani Tank, covers an ayacut of Ac.330.20 cents

and therefore, it is classified as Major Irrigation Tank. Consequently, Section 56(1)(b) of the A.P. Panchayat Raj Act, 1994 does not apply and

therefore, the fishery rights in the Kakani Tank do not vest in the Gram Panchayat. As a matter of fact, the District Collector, (Panchayat Wing),

Guntur, in pursuance of the directions of this Court in W.P.No. 211160 of 2000 dated 27.3.2001 having made a detailed enquiry, by order dated

29.10.2001 categorically held that the Gram Panchayat, Kakani has no right what-so-ever in respect of Kakani Tank and that the said tank

exclusively vests with the Government. Hence, undoubtedly, the 2nd respondent-Assistant Director of Fisheries, Guntur is the competent authority

to grant the lease hold rights in respect of the fishery rights of the said tank. May be that prior to the classification of the Kakani Tank as Major

Irrigation Tank, the 4th respondent-Society which was the only Fishermen Co-operative Society in the Gram Panchayat was being granted lease

by the Gram Panchayat in terms of G.O. Ms. No. 343 Panchayat Raj, dated 10.4.1978, under which, the Gram Panchayats are obligated to lease

out the fishery rights to the Fishermen Co-operative Societies of the local area by way of public auction. However, as held by the District

Collector, Guntur, vide proceedings dated 29.10.2001, as of today the Tank vests with the Government and therefore, the Gram Panchayat

cannot exercise any right in respect of the said tank.

7. It is not in dispute that there is absolutely no provision under any Statute which provides for preferential rights to the Fishermen Co-operative

Societies in respect of leasehold rights of the fishery rights in the Major Irrigation Tank. The law is well-settled that the lease hold rights of any

public largesse shall be conducted in an open public auction in accordance with law to be in conformity with the equality clause under Article 14 of

the Constitution of India. Hence, it is obligatory on the part of the 2nd respondent to put the leasehold rights of the fishery rights of the Tank in

question to public auction and the same cannot be straightaway granted to the 4th respondent-Society on the ground that it is the only Fishermen

Co-operative Society, registered under the A.P. Co-operative Societies Act, 1964.

8. Then the question that remains for consideration is whether the petitioner-Society is not entitled for grant of lease of fishery rights in respect of

the Tank in question on the ground that it is a Society registered under the 1995 Act.

9. Section 19 of the Co-operative Societies Act, 1964 which provides eligibility for membership of the Societies, runs as under:

19. Eligibility for membership:--(1) Subject to the provisions of Section 21,--

(a) an individual who attained majority and is of sound mind and who belongs to a class of persons, if any, for whom the society is formed as per

its bye-laws and who possesses such qualifications as may be specified in the bye-laws or as may be prescribed for the concerned class of

societies in the interest of Co-operative movement.

(b) a society registered, or deemed to be registered, (under this Act or the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 and

which belongs to the class of societies, if any, for which the society is formed as per its bye-laws:

Provided that the Co-operative Society registered under the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 which were

admitted into Central, Apex Level Co-operative Societies, shall not be entitled for voting rights.

(c) xx xx xx xx;

xx xx xx xx

xx xx xx xx

xx xx xx xx

Explanation (I):

xx xx xx xx

xx xx xx xx

Explanation II:

For removal of any doubts, it is hereby declared that the Mutually Aided Co-operative Society registered or deemed to be registered under the

Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 shall be entitled to all the rights and privileges of a member of a society except

voting rights under the provisions of this Act on admission as such member.

10. From a bare reading of the above provision, particularly the first proviso to Sub-section (1) of Section 19, it is clear that the members of the

Co-operative Societies registered under the 1995 Act, are denied only voting rights. The Explanation-II further makes it clear that a Mutually

Aided Co-operative Society, registered or deemed to be registered under the 1995 Act shall be entitled to all the rights and privileges of a member

of a Society, except voting rights under the provisions of this Act.

11. The learned Counsel for the respondents could not dispute the above legal position. No other statutory provision, which would disentitle the

Societies registered under the 1995 Act to obtain the lease of fishery rights has been placed before this Court by the learned Government Pleader.

On the other hand, the learned Counsel for the petitioner while placing reliance upon a decision of a Division Bench in Vaddavalli Fishermen Co-

operative Society Ltd. Vs. Rayidi Krishna Kumari and others, , submits that no such distinction can be drawn between a Society registered under

the A.P. Co-operative Societies Act, 1964 and 1995 Act, so far as grant of fishery rights in respect of Major Irrigation Tanks which are vested

with the Government are concerned. In the said decision, the Division Bench, while dealing with an identical question, held that the Society

registered under the 1995 Act is also at liberty to participate in the public auction and that the rights of the 6th respondent therein, cannot be

interfered with in any manner.

12. In the light of the observations made by the Division Bench in the above decision and having regard to the provision of Section 19 of the A.P.

Co-operative Societies Act, 1964, I hold that the petitioner-Society is also eligible to participate in the public auction that may be conducted by

the 2nd respondent-Assistant Director of Fisheries, Guntur, for grant of lease of fishery rights of Kakani Major Irrigation Tank. The writ petition is

accordingly disposed of with a direction to the 2nd respondent-Assistant Director of Fisheries, Guntur to consider the claim of the petitioner-

Society as well on par with the Societies registered under the A.P. Co-operative Societies Act, 1964 and take necessary further action in

accordance with law.

13. The writ petition is accordingly disposed of. No costs.