

Joseph Vs. Venu

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Court : Kerala

Decided On : Aug-27-2003

Reported in : 2003(3)KLT928

Judge : K.A. Abdul Gafoor and; J.M. James, JJ.

Acts : Kerala Marine Fisheries Regulations Act, 1980; Management and Control of Fisheries in Government Waters Rules, 1974 - Rule 13

Appeal No. : W.A. Nos. 1689, 1943 and 2072/97

Appellant : Joseph

Respondent : Venu

Advocate for Def. : K.R. Kurup,; N.N. Sugunapalan and; C.R. Syam Kumar,

Advocate for Pet/Ap. : P.B. Sahasranaman and; K. Jagadeesh, Adv.

Judgement :

K.A. Abdul Gafoor, J.

1. The first and second respondents in O.P.6039/92 together and third respondent separately and an another interested person with leave, have filed these appeals against the judgment in O.P.6039/92. The said Original Petition was filed by twenty persons, who were engaged in fishing using stake nets, when their

applications for licences, have been rejected by the second respondent stated to be relying on extraneous reasons and without considering relevant aspects in terms of Rule 13 of the Rules for the Management and Control of Fisheries in Government Water Rules, 1974 framed under Section 18 of the Travancore-Cochin Fisheries Act, 1950. It was urged before the learned Single Judge by the State and other respondents in the O.P. that certain experts committees had been constituted by Government and the said committees had given reports to regulate the grant of licence for china nets and stake nets. Such reports also had to be taken note of. But the learned single Judge found that the report of the committee to be considered is of the committee made mention of in Rule 13. The reports of the committees called Babu Paul's Committee, Prof. N.Balakrishnan Nair's Committee and A.G. Kalawar's Committee cannot be the guidelines for committee under said rules. It was therefore held that the extraneous consideration shall not be allowed to play in the process of adjudication of the rights of the parties, seeking grant of licences for stake nets. Accordingly the order rejecting the licence Ext.P6 was quashed with a further direction to the appellants in W.A.2072/97 'to pass fresh orders on the applications filed by the petitioners in view of what is said above and issue certificates of registration and licences to the petitioners for the erection of stakes sought for as above'

2. It is contended by the appellants that the aforesaid reports are not extraneous matters. They specifically contain certain recommendations for regulating the grant of licence for china nets and stake nets. Of course the licence to operate such nets can be given only on the basis of the recommendations of a committee to be constituted under Rule 13 of the said Rules. But there is nothing wrong in the said committee considering the reports submitted to Government with respect to the regulation of the fishing in inland waters. Therefore the learned Single Judge went wrong when it was found that such reports are irrelevant and extraneous and cannot be taken note of while considering the issuance of licences in terms of Rule 13 of the rules.

3. It is contended by the respondents/writ petitioners that the said committees have been appointed under the Kerala Marine Fishing Regulation Act, 1980, which covers the coastal sea fishing. It does not have any relation to inland fishing. It is

in that respect the learned Single Judge had found those consideration as irrelevant and extraneous. The statutory rules governing issuance of licence on china nets and stake nets are those contained in the said rules and it shall be based on the recommendation of a committee constituted in terms of such rules. The reports of any other committee shall not be the criteria in the matter of issuance of a licence for stake nets or china nets, it is contended.

4. True, the issuance of licence shall be based on the recommendation of the committee in terms of Rule 13 of the said rules. That does not mean that the said committee cannot consider any expert opinion given by other committees. If a committee appointed under the Kerala Marine Fisheries Regulation Act, 1980 had given certain sensible information with respect to the grant of licence on an optimum basis to stake nets or china nets in the backwaters, which is connected with the sea through gaps, such recommendations cannot be stated to be extraneous because those recommendations are made by the experts. Therefore we are of the view that while considering the applications in terms of the direction contained in the impugned judgment the committee constituted under Rule 13 of the said Rules can also take note of whatever expert opinion that the committee had received or the Government had forwarded to it for consideration, while granting licence for stake nets, china nets etc. as the case may be. The impugned judgment is modified as above.

Appeals are disposed of.