

2023 LiveLaw (SC) 58

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

A.S. BOPANNA; J., SUDHANSHU DHULIA; J.

January 24, 2023

SPECIAL LEAVE PETITION (CIVIL) NO.8442 OF 2021

FISHERMAN CARE, REGISTERED ASSOCIATION

versus

**THE GOVERNMENT OF INDIA, DEPARTMENT OF ANIMAL HUSBANDRY, DAIRYING
AND FISHERIES REP. BY ITS SECRETARY & ORS.**

Purse seine fishing - Supreme Court passes restricted interim order allowing the purse-seine fishing beyond the territorial waters of Tamil Nadu but within the Exclusive Economic Zone with conditions.

WITH WRIT PETITION (CIVIL) NO.262 OF 2022; WRIT PETITION (CIVIL) NO. 710 OF 2022; WRIT PETITION (CIVIL) NO. 1039 OF 2022

(Arising out of impugned final judgment and order dated 20-04-2021 in WP No. 5356/2021 passed by the High Court of Judicature at Madras)

For Parties Mr. Gopal Sankaranarayanan, Sr. Adv. Ms. Baby Devi Bonia, Adv. Ms. Tanya Srivastava, Adv. Ms. Aditi Gupta, Adv. Mr. Anshuman Verma, Adv. Mr. G.D. Verma, Adv. Mr. Praveen Kumar, Adv. Keerthik Vasana, Adv. Mr. James P. Thomas, AOR Mr. M.P. Parthiban, AOR Mr. A.S.Vairawan, Adv. Mr. R.Sudhakara, Adv. Mr. Vikashraj Kumar, Adv. Mr. D.subrahmanya Bhanu, Adv. Mr. T.hariharasudhan, Adv. Mr. K. Devendran, Adv. Mr. D.alagendran, Adv. Mr. C.R. Jaya Sukin, Adv. Ms. Baby Devi Bonia, Adv. Ms. Divya Shukla, Adv. Mahimaantoni Jeyam, Adv. Mansa Singh, Adv. Pugazhendhi B., Adv. Ms. Sudha Pal, Adv. Mr. A. Sirajudeen, Sr. Adv. Mr. Praveen Kumar, Adv. Ms. Baby Devi Bonia, Adv. Ms. Sudha Pal, Adv. Ms. Manisha Singh, Adv. Mr. Roshan Chapagain Adv. Mr. Sathees K., Adv. Mr. Dharam Pal Saini, Adv. Mr. Sudhir Singh, Adv. Mr. K.M. Nataraj, ASG Mr. Vinayak Sharma, Adv. Vatsal Joshi, Adv. Mr. Chitransh Sharma, Adv. Mr. Nakul Chengappa K.K., Adv. Mr. Amrith Kumar, AOR Mr. Narender Kumar Verma, AOR Mr. Manoj Swarup, Sr. Adv. Mr. D.Kumanan, AOR Mr. Shravan Kumar Yamunar, Adv. Mrs. Deepa S., Adv. Mr. Sheikh Fakhruddin Kalia, Adv. Ms. Rachheta Chawla, Adv. Ms. Divya Singh, Adv. Mr. Huzefa A. Ahmadi, Sr. Adv. Mr. Ejaz Maqbool, AOR Mr. Sagheer A. Khan, Adv. Ms. Shahruxh Alam, Adv. Mr. Rohan Sharma, Adv. Mr. Saif Zia, Adv. Mr. Deepak Kumar Singh, Adv. Mr. Shashank Tripathi, AOR Mr. Jeewan Kumar, Adv. Mr. Shravan Kumar Yammanur , AOR

ORDER

We have before this Court a Special Leave Petition, and three Writ Petitions, where the common issue is the use of a fishing method called Purse Seine Fishing. The Fisheries Department, Government of Tamil Nadu vide its Order dated 25th March, 2000 had banned, *inter alia*, the use of Purse Seine Fishing nets within its territorial waters i.e. within 12 nautical miles (22 KMs from the Coast Line). By an Order dated 5th February, 2019 passed by the Madras High Court, the challenge made to the above Order was also dismissed. Thereafter, another writ petition was filed before the Madras High Court by Fisherman Care Association (Petitioner in S.L.P.(c) No.8442/2021), this time relying on a report of an Expert Committee, made yet another effort to persuade the High Court to revisit the whole issue and allow Purse Seine Fishing within the territorial waters. The Division Bench of the Madras High Court, however, dismissed the Writ Petition holding that the Government has taken an informed decision by banning Purse Seine Fishing within its territorial waters, and the petition before it was by only “a class of affluent fishermen”, and thus declined to revisit the matter, dismissing their petition vide Order dated 20th April, 2021.

2. The above order is impugned in the petition.
3. The three writ petitions have also been filed by the petitioners where the relief sought is i.e. to permit the petitioners to do fishing with Purse Seine Fishing Nets beyond the territorial waters in the State of Tamil Nadu. In Writ Petition No. 1039 of 2022, the specific prayer is to strike down sub-rule (7) of Rule 17 of Tamil Nadu Marine Fishing Regulation Rules, 2020, sub-rule (7) reads as under :-

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

4. In short the petitioners are aggrieved by the restrictions imposed by the Tamil Nadu Government on Purse Seine Fishing.

5. Whether the ban imposed by the State Government, within its territorial waters is justified, is a matter which is pending consideration by this Court. There is no interim order by this Court in this matter and the ban, which is imposed by the State of Tamil Nadu, still continues.

6. The method of Purse Seine Fishing, has more than one aspect which needs to be looked into by this Court. There is definitely a conflict of economic interests, between fishermen. Biological diversity is another aspect which may fall for our consideration here. But on all these aspects, we do not have a full report before us as yet. We have been told at the Bar that the Government of India is examining most of these aspects.

7. Interim relief is sought by the petitioners to fish beyond the territorial waters of Tamil Nadu. They would argue that though the Government of Tamil Nadu has no jurisdiction to impose any kind of restrictions for fishing beyond its territorial waters, but for the reasons that their vessels are fitted with purse seine nets, the State Government is not allowing their vessels to pass through its territorial waters, thereby effectively prohibiting them to fish even in waters beyond the territorial jurisdiction of the State, and for which there is apparently no restriction in law.

8. Petitioners submit that only Union of India has jurisdiction beyond the territorial waters, which has placed no restrictions on fishing by the method called ‘Purse Seine Fishing’. On the other hand, they have filed an affidavit indicating that it can be permitted.

9. The petitioner would also argue that the powers of the State Legislatures and its executive, cannot travel beyond the territorial waters of Tamil Nadu as that subject is within the exclusive jurisdiction of the Union of India. They would refer to Entry 57 of List I of the Seventh Schedule which reads as under :-

“57. Fishing and fisheries beyond territorial waters.”

Thus, the petitioner would argue that the restriction imposed by the State Government in not allowing their fishing vessels to fish beyond its territorial waters are absolutely illegal, and the State Government is exercising control which is beyond the jurisdiction of the State Government under the Constitution of India. They pray for an interim relief from this Court for fishing beyond the territorial waters of Tamil Nadu.

10. This prayer is strongly opposed by Shri Mukul Rohatgi, learned Senior Counsel appearing for the State of Tamil Nadu, who submits that this method of fishing i.e. Purse Seine Fishing (or PSF), is a ‘pernicious’ method of fishing, as it is harmful to

marine life, including fish. He would submit that PSF is a non-selective fishing technology which captures all kinds of fish, which would include protected species as well. It therefore has a dangerous effect on ecology. Moreover, it is a method which is used by affluent and rich fishermen or big fishing companies, as this technology is costly and is beyond the reach of ordinary fishermen. The vast majority of fishermen of the State of Tamil Nadu who are traditionally engaged in fishing for their livelihood cannot afford this technology and depend on traditional method of fishing. He would also submit that even if the petitioners would be fishing beyond the territorial limits of the State, yet they would be catching a large quantity of fish which has its movement towards the coast and by catching them midway the petitioners are depriving the traditional fishermen of their catch, which belongs to them. Moreover, it is very difficult for the State Government to either monitor or police fishing which may be done in or around the territorial waters, as it is very difficult to demarcate and ascertain as to where the territorial waters ends. It is further submitted that since the matter is still under consideration, it would be better to decide the entire matter and not pass any interim orders as it would have huge ramifications throughout the country, particularly in the coastal belt, where fishing communities survive on their traditional methods of fishing.

11. We have been informed at the bar that some of the coastal States/Union Territories such as Gujarat, Kerala, Andhra Pradesh, Odisha, Karnataka, Goa and West Bengal have not made any restrictions on Purse Seine Fishing, within its territorial waters. This ban has been imposed by the State of Tamil Nadu and also by the State of Maharashtra. The coastal States are therefore divided on this issue. As far as the fishing beyond territorial waters, but within Exclusive Economic Zone (EEZ) is concerned, we have been told by Shri K. M. Nataraj, Learned Additional Solicitor General for the Union of India that the U.O.I. has placed no restrictions on this method of fishing.

12. Learned counsel for the petitioners led by Shri Gopal Sankarnarayanan and Shri Sirajudeen, Learned Senior Counsels have submitted before us that a large number of families are also dependent, in one way or another, in the fishing activity of the petitioner. Moreover the fishing season will come to an end by next month i.e. February 2023, and in case, they are not allowed to fish beyond territorial waters they would also be incurring a huge loss as there has been a large investment on their part for purchase of vessels as well as Purse Seine Fishing Nets.

13. After hearing both the sides at some length, we are of a *prima facie* opinion, that interest of all parties need to be protected. Hence, we propose to pass a restricted interim order, allowing the Purse Seine Fishing beyond the territorial waters of Tamil Nadu, but within the Exclusive Economic Zone, with certain conditions. These conditions are as follows:

i) Only registered fishing vessel, as on date, will be given permission i.e. a fishing vessel registered under Section 11 of the Marine Products Export Development Authority Act, 1972 (Central Act 13 of 1972) as well as registered with the State Government under its Rules or Regulations, presently in force in the State of Tamil Nadu.

ii) The Fisheries Department will give permission to such boats only, which are installed with an approved Vessel Tracking System (VTS), which shall be kept running during the operating time of vessels.

- iii) These vessels will be allowed to operate only twice a week i.e., on Monday and Thursday of each week with the other restrictions of non-fishing period applying as is applicable to all other fishing activity.
- iv) The vessels which will be given this permission shall leave the coastline on or after 8 AM and shall return to the designated place positively by 6 PM on the same day.
- v) It shall be mandatory for all the sailors to keep their biometric card/photo ID with them.
- vi) It shall be mandatory to provide the code of the VTS to the Fisheries Department, Marine Police, Coast Guard and the Indian Navy.
- vii) Fisheries Department of the State shall also give a colour code to these Purse Seine Fishing Boats for the above purposes.
- viii) The Registration Number of these vessels shall be prominently displayed on the boat. In order to ensure that the vessels have fished only outside the territorial waters of the State, the tracking data of each vessel for each of its trips shall be submitted the same day to the concerned Assistant Commissioner, Fisheries, or such other designated officer, after the vessels reach ashore.
- ix) These boats shall be allowed to land/dock only at one or more than one designated centre, which will be earmarked by the Fisheries Department.
- x) The State Fisheries Department shall display on its website the permission granted by it for this kind of fishing i.e. Purse Seine Fishing to such individuals/companies as the case might be and the registration number of each of the vessels.

14. We must also make a mention that Shri Mukul Rohatgi, Learned Senior Counsel during his submissions before this Court had also referred to the two decisions of this Court¹ in his favour. He had argued that this Court in these two decisions had made adverse comments on Purse Seine Fishing. All the same, considering the subsequent development since 1994 and the stand taken by the Central Government in their affidavits, based on which this restricted interim order is being made, the above two decisions are kept open which will be considered when a deeper consideration is made, after further inputs are received by this Court which are based on the report of the Committee to be setup by the Central Government.

15. List in usual course. Pleadings be completed in the meantime.

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¹ State of Kerala versus Joseph Antony (1994) 1 SCC 301 & Kerala Swathanthra Malaya Thozhilali Federation and Others versus Kerala TrawlNet Boat Operators' Association and Others (1994) 5 SCC 28