

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD)Nos.11033 & 11034 of 2019

S.Senthilkumar

... Petitioner
in W.P.(MD)No.11033 of 2019

M.Thetchinamoorthy

... Petitioner
in W.P.(MD)No.11034 of 2019

Vs.

1. The Director of Fisheries Department,
Thanjavur & District.
2. The Joint Director of Fisheries Department,
Nagapattinam & District.
3. The District Collector,
Thanjavur & District.
4. The Inspector of Fisheries Department,
Mallipattinam,
Thanjavur District.

... Respondents
in both petitions

Prayer in W.P.(MD)No.11033 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents to pay compensation a sum of Rs.1,50,000/- as declared by the State Government for petitioner's fully damaged fiber boat by considering the petitioner's representation dated 06.02.2019.



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Prayer in W.P.(MD)No.11034 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the respondents to pay compensation a sum of Rs.1,50,000/- as declared by the State Government for petitioner's fully damaged fiber boat by considering the petitioner's representation dated 22.02.2019.

(in both W.Ps.)

For Petitioners : Ms.J.Shakila

For Respondents : Mr.A.K.Manikkam,
Special Government Pleader.

COMMON ORDER

The petitioners herein are fishermen hailing from Sethubavachatram and Kazhumaguda villages respectively in Peravurani Taluk, Thanjavur District. They owned reinforced fiber plastic boats. They claimed that their boats suffered total damage during Gaja cyclone that struck on 16.11.2018. They submitted applications to the State Government seeking disbursement of financial assistance. The inspection team constituted by the Department of Fisheries visited their villages and submitted damage assessment reports based on which the petitioners were paid Rs.12,000/- and Rs.17,000/- respectively. Aggrieved by the quantum of compensation paid to them,

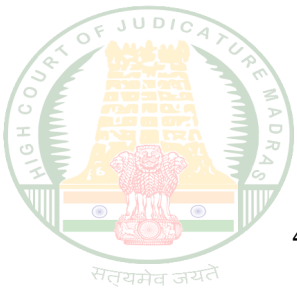


these writ petitions have been filed. The learned counsel for the petitioners

took me through the averments set out in the affidavits filed in support of the writ petitions and also the materials enclosed in the typed set of papers. She pressed for granting relief as sought for.

2.The respondents have filed counter affidavits. Their stand is that the checking team found that the petitioners' boats suffered only slight damage. This was confirmed during second verification also. The respondents have gone to the extent of accusing the petitioners of attempting to unjustly enrich themselves. The learned Special Government Pleader pointed out that the disbursement of ex-gratia was as per norms and pressed for dismissal of the writ petitions.

3.I carefully considered the rival contentions and went through the materials on record. It is not in dispute that the petitioners are victims of natural disaster. They have been eking out their lives as fishermen. They were critically dependant on their fibre boats. They claimed that the boats suffered total damage. The question that arises for consideration is whether the authorities properly assessed the damage said to have been suffered by the petitioners.



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4.The issue is critically important. We are living in the era of climate change. The world is prone to extreme weather conditions. Natural disasters such as cyclones may strike at any time. During such calamitous situations, the State has to assume the role of *parens patriae*. The State cannot abdicate its responsibility. This proposition was authoritatively laid down in ***Bipinchandra J. Diwan v. State of Gujarat (2001 SCC OnLine Guj 10)*** in the following terms :

“10.The duties of the Government or the Court on occurrence of a disaster or natural calamity of this magnitude are not statutorily regulated. In fact there is complete lack of any legislation in this field. Article 21 of the Constitution of India which guarantees to every citizen protection of his life and personal liberty, is repository of all important human rights which are essential for a person or a citizen. When there is a natural calamity like earthquakes, floods, fire, cyclones and similar natural hazards the State as guardian of the people is obliged to provide help, assistance and support to the victims of such natural calamities to help them to save their lives.

11.From Article 21 of the Constitution the Supreme Court has deduced an affirmative obligation to preserve human life. There is no parallel to the present colossal natural calamity as in India. In order to protect

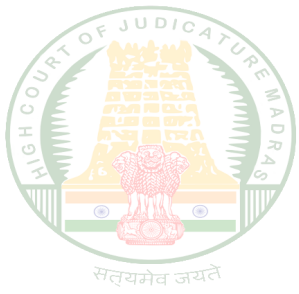


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human rights as part of right flowing from Article 21 the Supreme Court has enforced obligations of the Government, such as providing medical staff to the Hospital (*Bhim Singh, MLA v. State of Jammu and Kashmir* AIR 1986 SC 494) and awarding compensation for illegal detention of the prisoner for long period after his acquittal. (*Rudul Sah v. State of Bihar*, AIR 1983 SC 1086).

12. The obligation of the State to protect life is reorganised by directing providing of proper medical attention to every citizen See *Pt. Parmanand Katara v. Union of India*, AIR 1989 SC 2039 (Paragraphs 8, 9 to 17). In *Joint Women's Programme v. State of Rajasthan*, AIR 1987 SC 2060, the Court directed setting up of “Special dowry cell” to investigate into dowry deaths. In *President, Association of Allottees of Requisition Premises, Bombay v. State of Maharashtra*, [1986 Supp SCC 567](#), the Supreme Court required the Government to prepare a scheme for construction of houses for Government servants who were sought to be displaced as a result of the Government policy of derequisition of requisitioned premises. For the same purpose of protection of human rights in *Rakesh Chand Narain v. State of Bihar*, [1986 Supp SCC 576](#), the State Government was directed to raise the daily diet allocation to supply adequate



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drinking water, mattresses and blankets and medical services etc. to patients in the Government Mental Hospital. In fact, Supreme Court has been, case after case, enforcing economic, social and cultural rights as recognised in international covenant of 1996. In this, the Supreme Court is prompted by the philosophy of social justice or social rights. In doing so, the Supreme Court has been even enforcing directive principles of State policy. This was so done because with the amendment of the preamble of the Constitution “social justice” is an objective for the Government to achieve. Whatever may be the precise content of “social justice”, it is held to include recognition of the needs of weaker section of the community as “human beings.” This need is more urgent where a large section of people have been seriously affected by natural calamity like earthquake and their homes and life is totally shattered (See *Sadhuram Bansal v. Pulin Behari Sarkar*, AIR 1984 SC 1471 (paras 29-30, 68, 70 and 73). We have, therefore, support from host of case law of the Supreme Court for taking a view that to humans affected by calamity the State is obliged to provide help, assistance and support so that they may be able to save their lives. This right of assistance in calamity has to be treated as an enforceable right. Such affected persons, as a result of the calamity, are rendered helpless and handicapped. Help and corrective action



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sought for them through service spirited organisation or section of people cannot be thwarted, but the same deserves to be encouraged.

13. The doctrine of parens patriae was applied by the Supreme Court in the case of *Charanlal Sahu v. Union of India*, AIR 1990 SC 1480 (the Bhopal Gas leak tragedy case) by upholding the legislation whereby the Central Government claimed a right to represent victims of Bhopal Gas Leakage Disaster in the pending cases for compensation. As in the case of *Charanlal Sahu* (supra), the doctrine of parens patriae can more appropriately be applied to the case of victims of earthquake disaster like the present one which occurred in Gujarat and is the subject of public interest litigation before us. The doctrine has been explained by Supreme Court relying on several Indian and English decisions. The concept in jurisprudence of doctrine of parens patriae is that the State has the inherent power and authority to provide protection to the person and property of persons non-sui-juris such as minor, insane and incompetent persons like those rendered helpless due to earthquake disaster. 'Parens Patriae' has been literally explained to mean 'the father of the country' and is used to designate the State referring to its sovereign power of guardianship for persons under disability. Parens Patriae jurisdiction, it has been explained is the



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right of sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. Conceptually the *parens patriae* is theory of obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations. The Constitution makes it imperative for the State to secure to its citizens rights guaranteed by Constitution and where the citizens are not in a position to assert and claim their rights, the State can be activated and approached to effectively come upon the scene and protect the human rights of victims of a disaster. The Supreme Court has held that the Preamble of the Constitution read with Directive Principles in Articles 38, 39 and 39-A enjoins the State to take up this responsibility. It is the protective measure to which the social welfare State is committed.

14.The functions of a State governed by Constitution and Rule of Law are to take necessary remedial measures as parent and guardian of the citizens of the country to help and support helpless victims of a massive disaster.”

5.In the aforesaid decision, the Hon'ble Division Bench of the Gujarat High Court highlighted the absence of legislation in the field. This was remedied by the Parliament by enacting the Disaster Management Act, 2005.



Section 3 of the Act contemplates establishment of National Disaster

Management Authority. Section 12 of the Act reads as follows :

“12.Guidelines for minimum standards of relief.

National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include,—

(i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;

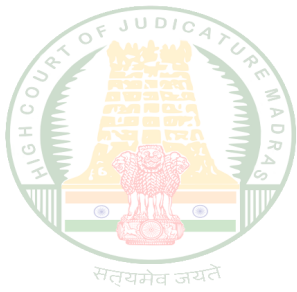
(ii) the special provisions to be made for widows and orphans;

(iii) ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;

(iv) such other relief as may be necessary.”

The statutory scheme was considered by the Hon'ble Supreme Court in ***Reepak Kansal v. UOI [(2021) 9 SCC 251]***. The Hon'ble Supreme Court held as follows :

“35. In Section 12 of the DMA, 2005, the word “*shall*” is used twice. The intent of the legislature by using the word “*shall*” twice is very clear and the same can be in tune with the Statement of Objects and Reasons for enactment of the DMA, 2005 and the functions and powers of the National Authority.



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One of the objects and purposes is “*mitigation*”. As per Section 6(1) and sub-section (2)(g) of Section 6, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management and recommend provision of funds for the purpose of mitigation.

36. Section 12 specifically provides that the National Authority “*shall*” recommend guidelines for the *minimum standards of relief* to be provided to persons affected by disaster, which “*shall*” include:

(i) the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;

(ii) the special provisions to be made for widows and orphans; and

(iii) *ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood.*

Therefore, it is the statutory duty cast upon the National Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include the reliefs, as stated hereinabove.

37....

38. Under Section 12 of the DMA, 2005, the National Authority is mandated to recommend guidelines for the minimum standards of relief. Minimum standards of relief are, as such, not defined under the Act. Then what is somewhat



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intended by the legislature while providing minimum standards of relief is to be gathered from Section 12 itself. Ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood therefore can be said to be part of minimum standards of relief of which the National Authority is required to recommend guidelines.”

It was further held in the said decision that no relief can be granted to direct the National Authority/Central Government/State Government to pay a particular amount towards ex-gratia assistance and that it should be left to the concerned authorities. It was also held that the courts would be very slow to interfere with priorities fixed by the Government in providing relief, unless it is patently arbitrary and/or not in the larger public interest at all.

6.Pursuant to the aforesaid statutory mandate, orders have been issued by the Government of India and the State Government from time to time. The Government of Tamil Nadu issued G.O Ms.No.380 Revenue Department dated 27.10.2015 announcing revised consolidated scale of relief for the persons affected by the natural disasters. Annexure to the said G.O sets out the norms of assistance to be provided to the victims. The relevant portion of the Annexure dealing with fishery sector is as follows:-



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<p>7 Fishery</p>	
<p>(i) Assistance to Fishermen for repair / replacement of boats, nets-damaged or lost-</p> <p>-Boat -Dugout-Canoe -Catamaran -Net</p> <p>(This assistance will not be provided if the beneficiary is eligible or has availed of any subsidy/assistance, for the instant calamity, under any other Government Scheme)</p>	<p>i) Replacement of fully damaged / lost wooden catamaran with a wooden catamaran, a full subsidy will be of Rs.32,000/- (inclusive of net)</p> <p>ii) For repair / rebuilding of partially damaged catamaran Rs.10,000/- unit.</p> <p>iii) For replacement of fully damaged / lost wooden / FRP Vallam, the percentage of subsidy assistance will be enhanced from 35% to 50% of the total cost subject to maximum subsidy of Rs.75,000/- calculated at a unit cost of Rs.1.5 lakhs (inclusive of engine and net)</p> <p>iv) For partially damaged FRP Vallam at the rate of Rs.20,000/- per unit.</p> <p>v) For replacement of fully damaged / lost mechanised boats the subsidy to be paid will be 35% of total cost, restricted to a maximum subsidy of Rs.5 lakhs per boat.</p> <p>vi) For repairs of partially damaged mechanised fishing boats, the subsidy will be provided at 60% of the assessed value of the damages restricted to a maximum subsidy of Rs.3 lakhs per boat.</p> <p>vii) For replacement of Gill nets for catamaran Rs. 10,000/- per unit.</p> <p>Repaid of OBM / IBE Engines – Rs.5000/- per engine.</p>
<p>ii) Input subsidy for fish seed farm</p>	<p>Rs.8,200/- per hectare</p> <p>(This assistance will not be provided if the beneficiary is eligible or has availed of any subsidy / assistance, for the instant calamity, under any other Government Scheme, except the one time subsidy provided under the Scheme of Department of Animal Husbandry, Dairying and fisheries, Ministry of Agriculture).</p>



The quantum of financial assistance was subsequently enhanced vide G.O.Ms.No.15, Animal Husbandry, Dairying Department, dated 04.02.2019.

As per the revised norms, relief assistance to owners of fully damaged Fiber Reinforced Plastic Vallams including net was enhanced to Rs.1,50,000/-.

7.The question that falls for consideration is the extent of damage suffered by the petitioners herein. I wanted to know from the respondents as to how the assessment was done. The learned Special Government Pleader made available the Gaja cyclone damage assessment report. The names of the petitioners herein are figuring therein. The report has as many as 35 columns. The details regarding the claimants are found. The claims made by them have been set out. The report reads that Thetchinamoorthy's boat did not suffer any damage but his net and engine suffered damage and the assessment value has been arrived at Rs.7000/- and 5000/- respectively. That is how Thetchinamoorthy's compensation was quantified at Rs.12000/-. As regards Senthilkumar, the report reads that his boat suffered partial damage. Assessment value was quantified at Rs.10000/-. Adding the assessment value for damage to net and engine, he was paid Rs.17000/- as compensation. The report has been signed by the Assistant Director of Fisheries, Trichy, Inspector and Sub Inspector of Fisheries, the Tahsildar and



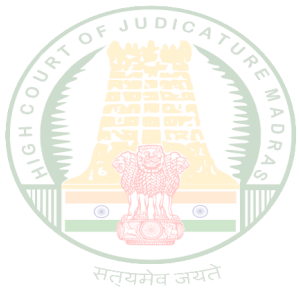
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Revenue officials. The assessment report does not indicate as to how the inspection team determined the extent of damage or the value thereof.

8. The manner in which the assessment was done leaves much to be desired. The writ petitioners in their applications have categorically asserted that their boats have been fully damaged. It is true that the petitioners were present to identify their boats. But their counter signatures have not been taken in the assessment reports. Survey and loss assessment is a specialised subject by itself. Section 64-UM of the Insurance Act, 1938 deals with surveyors or loss assessors. Sub-section 4 reads as follows :

“(4) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding an amount specified in the regulations by the Authority in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance Laws (Amendment) Act, 2015 (5 of 2015), shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as “approved surveyor or loss assessor”).”

Chapter IV of IRDA (Insurance Surveyors and Loss Assessors) Regulations, 2015 reads as follows :



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“13.It shall be the duty of every Licensed Surveyor and Loss Assessor to investigate, manage, quantify, validate and deal with losses (whether insured or not) arising from any contingency, and report thereon to the insurer or insured, as the case may be., All Licensed Surveyors and Loss Assessors shall carry out the said work with competence, objectivity and professional integrity and strictly adhere to the code of conduct as stipulated in these Regulations.

(1)The following, shall, inter alia, be the duties and responsibilities of a Surveyor and Loss Assessor:-

(a)declaring whether he has any interest in the subject-matter in question or whether it pertains to any of his relatives, business partners or through material shareholding;

Explanation: For the purpose of this clause ‘relatives’ shall mean any of the relatives as defined in Subsection (77) of Section 2 of the Companies Act, 2013;

(b) Bringing to the notice of the Authority, any change in the information or particulars furnished at the time of issuance of license, within a period not exceeding fifteen days from the date of occurrence of such change, that has a bearing on the license granted by the Authority

(c) maintaining confidentiality and neutrality without jeopardising the liability of the insurer and claim of the



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insured;

(d) conducting inspection and re-inspection of the property in question suffering a loss;

(e) examining, inquiring, investigating, verifying and checking upon the causes and the circumstances of the loss in question including extent of loss, nature of ownership and insurable interest;

(f) conducting spot and final surveys, as and when necessary and comment upon franchise, excess/under insurance and any other related matter;

(g) estimating, measuring and determining the quantum and description of the subject under loss;

(h) advising the insurer and the insured about loss minimisation, loss control, security and safety measures, wherever appropriate, to avoid further losses;

[(i) Commenting on the admissibility of the claim and assessing the liability of the insurer as per the policy terms and conditions;]

(j) surveying and assessing the loss on behalf of insurer or insured;

*{(k) [***]}*

*(l) [***]}*

(m) satisfying queries of the insured/insurer and of persons connected thereto in respect of the claim/loss;

(n) recommending applicability of depreciation, percentage and quantum of depreciation;



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(o)giving reasons for repudiation of claim, in case the claim is not covered by policy terms and conditions;

(p)taking expert opinion, wherever required;

(q)commenting on salvage and its disposal wherever necessary;

(r)Any licensed Surveyor and Loss Assessor appointed as Director / Partner of a Company / Firm seeking application for grant of Corporate Surveyor licence, shall undertake survey jobs and issue survey reports only in the capacity of Director / Partner of the Applicant Company / Firm.]

(2)A surveyor or loss assessor whether appointed by insurer or insured, shall submit his report to the insurer as expeditiously as possible, but not later than 30 days of his appointment, with a copy of the report to the insured giving his comments on the insured's consent or otherwise on the assessment of loss. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension, in any case not exceeding six months from the insurer for submission of his report.

(3)In cases where the Survey report is pending due to non completion of documents, the surveyor may issue the final survey report independently based on the available documents on record, giving minimum three reminders in



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writing to the insured.

(4) If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on such incomplete issues. Such a request may be made by the insurer within 15 days of the receipt of the original survey report. Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

(5) The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.”

The Hon'ble Apex Court in ***New India Assurance Co.Ltd v. Sri Buchiyyamma Rice Mill and another (2020) 12 SCC 105*** quoted the following from ***Sri Venkateswara Syndicate (2009) 8 SCC 507*** :

“31. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assesses the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis



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for settlement of a claim by the insurer in respect of the loss suffered by the insured.”

Thus, the assessment report is a basis on which compensation is paid. It cannot be prepared casually or arbitrarily. When norms have been laid down for quantifying relief assistance, an objective approach has to be adopted. Of course, the Government cannot be expected to engage licensed loss assessors for disbursing compensation to the victims of natural disaster. But the broad principles that underlie the process of loss assessment by insurers are applicable when the authorities assess damage suffered by citizens during natural calamities. The G.O provides for payment of Rs.1.50 lakhs in case of total damage of fiber boats and Rs.20000/- in case of partial damage. When the claimant asserts that his boat has suffered total damage, the inspecting team has to assign reasons for rejecting his claim.

9.The inspection team must have at least one official who is having some experience in the field of loss assessment. The team should conduct spot inspection. The affected party must be present. The assessment must be done with reference to the claim particulars. Inspection notes must be prepared at the time of inspection. Its contents must be explained to the



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victim. His signature or thumb impression must be taken. If the claimant disagrees with the view of the inspection team, that must also be recorded.

Photographs must be taken. The damaged object must also be videotaped. The inspection report must describe the nature and extent of damage. It cannot be generally described as partial or total. Such description would suffer from the vice of vagueness. The authority competent to disburse compensation will apply his mind to the view expressed by the claimant at the time of inspection. If there is considerable variance, all the relevant particulars will have to be scrutinized. A wholesale approach cannot be adopted. In the very nature of things, the process of assessment and disbursement of compensation will have to be individualized when the relief assistance norms provide therefor. In other words, it has to be tailor made for each claimant. The compensation payable to the claimants in terms of the statutory scheme or the government orders is not a bounty or dole or charity. We are a welfare State. Therefore, the norms for payment of relief assistance must be enforced in an objective manner. The rights guaranteed under Article 14 and 21 of the Constitution of India are involved. The assessment process cannot be arbitrary. The authorities must be conscious of the fact that the policy of the government is to enable the affected individuals to stand on their own feet. Fiber boats in this case are a means of livelihood.



WEB COPY 10. Judged by the aforesaid yardstick, the assessment reports filed by the respondents deserve to be scrapped. It is in mere excel format. The nature of damage suffered by the petitioners has not at all been particularized. The description given is cryptic and absolutely insufficient. The petitioners have made out a case for grant of relief. They shall be paid a further sum of Rs.1,38,000/- and Rs.1,33,000/- respectively within a period of eight weeks from the date of receipt of copy of this order.

11. The writ petitions are allowed accordingly. No costs.

16.12.2022

Index : Yes / No
Internet : Yes/ No
skm

Issue order copy by 21.12.2022

To

1. The Director of Fisheries Department, Thanjavur & District.
2. The Joint Director of Fisheries Department, Nagapattinam & District.
3. The District Collector, Thanjavur & District.
4. The Inspector of Fisheries Department, Mallipattinam, Thanjavur District.



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G.R.SWAMINATHAN, J.

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WP (MD)Nos.11033 & 11034 of 2019

16.12.2022