Karnataka High Court
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K.K. Vasant vs State Of Karnataka And Another on 29 January, 1991
Equivalent citations: AIR 1992 Kant 256, ILR 1991 KAR 1301, 1991 (2) KarLJ 518
Author: C Urs
Bench: M C Hegde
ORDER

Chandrakantarak Urs, J.

1. This writ petition is filed by one K.K. Vasant -- A practising Advocate of Bangalore. He has averred in the petition that the writ petition which is filed under Art. 226 of the Constitution is in public interest and the reliefs he has prayed for also in public interest.

2. In paragraph 3 of the statement of facts in respect of the prayers, he has alleged that the intention of filing the writ petition had arisen in view of the absence of the provisions in the Forest Act, 1963 (apparently Karanataka Forest Act, 1963) to keep a check on the action of the respondents in order to achieve the intent of the Karnataka Preservation of Trees Act, 1976. He has further averred that the Rules made under the Forest Act, 1963 has resulted in defeating the very intent of the legislature to bring the Forest Act, 1963 and the Karnataka Preservation of Trees Act, 1976 into force as a result of which the action of the respondent-State of Karnataka, has caused loss to the forest wealth, resulting n environmental imbalance, affecting the subjects of the State and as such the writ petition should be entertained as a Public Interest Litigation.

3. In the course of the averments contained in the statement of facts, he has succinctly narrated the history of the various enactments governing the regulation, administration and preservation of forests in the State of Karnataka and Western Ghats in particular. He had stated the historical background in which the Karnataka Forest Act of 1963 came to be enacted as well as the Karnataka Preservation of Trees Act, 1976. He has also set out the scheme of the Act as well as the objects sought to be achieved by the Act. His complaint (which is of general nature) is that the provisions made under the Forests Enactments in Karnataka and the Rules framed thereunder do not make provisions for declaring certain areas as "Core Forest" or Virgin Forest", particularly in the hill ranges on the Western side of the Karnataka State, where the. rain fall is definitely higher than in the rest of the State of Karnataka. He has made general averments that the forest produce has been allowed to be exploited by forest based industries, without sufficient precaution being taken by the State Government to preserve the lost forest wealth in allowing such exploitation. He has further averred that on account of the ill regulated exploitation of the forests and non marking of the survey of the forest area coverage in the State Periodical by the State Government has seriously affected the flora and fauna of the State thereby causing erosion, lack or shortage of water on account of lack of sufficient rain fall and thereby upsetting the ecological balance in the State, particularly in the Western Ghats, i.e., hilly ranges on the Western side along the costs.

4. The petitioner's chief grievance is that the legislation governing the subject of preservation of forests and protection of animals therein falls short of the requirements of cultivation and scientific exploitation of the forests. In fact there are avernments to the effect that the exploitation of forests should be totally stopped and the forest produce based industries must be de-licenced and prevented from utilising the forest produces.

5. He has produced several Annexures to the petition giving the types of trees grown in the forests of Karnataka, the indiscriminate exploitation by the Forest Department of permission granted by it to private individuals to cut trees of smaller girth than would be. prudent thereby increasing the requirement of the forest produce by the industries instead of allowing the growth of the trees to its proper girth to mature and adequate for utilisation and exploitation. He has generally averred that no provision is made by the State Government to take steps for sufficient afforestation to compensate for the loss due to ill-planned exploitation of the forests by the State Government as well as by the individuals and licnesees in exploiting the forest produce.

6. He has enumerated certain industries which use forest produce, statistics in regard to forest coverage in the State, types of trees grown and the trees which are on the verge of extinction and the resultant loss in the preservation of the flora and fauna in the forests.

7. We may sum up by stating that the narration of the statements of facts is excellent on how ecology is to be maintained in the forests, the rain fall and utilisation of forests and forest produce. In that background he has asked for the following reliefs, set out in the prayer column as follows :--

"Wherefore the petitioner most respectfully prays that this Hon'ble Court may be pleased to issue a writ of mandamus, prohibition and any other appropriate writ, order or direction.

Directing the respondent to declare forest of any nature in the catchment areas, water shed Zons in the State and Western Ghats in particular as Vergin Forest not to be subjected for any exploitation in any way whatsoever excepting supervision and maintenance.

Directing the Reserved Forest where wild life, rich flora and fauna prevails, not to be subjected for encroachment for Revenue benefits and even for deriving Forest produce for industries, excepting for minor forest produce to rural population under the governing rules and regulations.

To cancel licence and permits of the established forest based industries whose products for the consumers have substitutes in the nature of metals, iron, steel, aluminium, cotton etc.,

To grant the forest produce to industries such as paper mills depending on the availability of raw material without exploitation of Reserved forests, vergin forest, further on the capacity of recharging the forest product without decreasing the existing forest coverage.

Prohibit the respondent from felling of timber and storing in the Timber depots.

Directing the respondent to amend the Forest Act, 1963 to express the intent of the legislation in Preamble and strict execution of the same.

Strike down the Rules of grant of permit and licence to forest based industries as ultra vires in view of the Karnataka Preservation of Trees Act, 1976.

To identify, preserve, protect conserve the rich Flora and Fauna and other Medicinal plants in all forests.

To restrain the plantation of Eucalyputs in Western Ghat regions and other forest water shed zones.

To retrain from spending revenue on expensive advertisement and divert the same for afforestation projects by proper implementation.

To achieve the coverage of forest area to a minimum of 35% in the State of Karnataka and pass such reliefs as thsi Hon'ble Court may think fit to grant in the circumstances of the case including the cost of the petition."

8. The petition was admitted by the learned single Judge on 16-9-1987. On 19-9- 1987 an application for impleading as many as 28 respondents came to be allowed and notice was directed to be taken out by paper publication in respect of those respondents and others who were interested to support or oppose the petition, in the view that the petition be maintained as a public interest litigation. Government Advocate was also directed to take notice for the first respon dent.

9. We may, at this stage notice that though in 1977 forests became a concurrent subject, falling in entry 17A in List-3 of the VIIth Schedule of the Constitution, the Union of India has not been impleaded as a party. On

account of forests being included in the concurrent list, Government of India has passed Forest (Conservation) Act, 1980 as well as Environment Protection Act of 1986, in the light of general depreciation of forest wealth both in flora and fauna and on account of various activities ranging from rapid industrialisation to increasing land demand for cultivation for greater food production.

10. The respondent-State of Karnataka has filed its statement of objections on 29-5-1989 as also the second respondent Harihar Polifibres Limited, one of the major wood based industries in the State of Karnataka.

11. The sum and substance of the resistance by the State to this writ petition is that the reliefs asked for are not tenable; that the State Government has taken adequate precaution to protect and preserve its forest wealth, both in flora and fauna; that the enactments made, particularly, Karnataka Forest Act, 1963, the Rules framed thereunder, as well as the Karnataka Preservation of Trees Act and the Rules framed thereunder, the Forests (Conservation) Act, 1980 and the Enviornment Protection Act, 1986, passed by the Union Legislature are adequate to meet all requirements in respect of which the petitioner complains.

12. It would be useful to extract few of the averments in paragraph 2 of the Statement of Objections filed on behalf of the State. The allegations are that adequate provisions are not made to preserve and protect the forests in catchment areas and Western Ghats are not correct. Likewise, the allegations that the Rules framed under the Karnataka Forest Act give unlimited power to the authorities to exploit any forest and the allegation that there are no guidelines to grant sanction for a forest based industry in the State are not correct. Further; the allegation that there is no check on the forest authorities and, therefore, there are no measures to prevent the destruction of forest is baseless. Forest is a renewable resource available to mankind not only for protection purposes but for productive purposes as well. Forest Management all over the world is 400 years old. In no country, all the forests are preserved totally in prime condition only for the purpose of maintenance of ecological balance. Forests in the State are managed in a scientific manner on the principle of sustained yield in perpetuity. For this purpose, before any working is allowed in the forest, a working plan is prepared based on detailed inventory of the area which includes data regarding the growing stock, the growth rate, the regeneration status, the densities, the capacity of the soil to take any treatment and the silvicultural requirement of the trees standing; the area felling prescriptions are given taking into consideration the regeneration capacity of the forests. It is the total extent of good forests cleared for the above purposes in the State since independence is about 2 lakhs hectares. The priority given was for attaining self sufficiency in food production and increasing capacity for power generation and irrigation. This could not be helped. It is further stated by the State that in order to mitigate the above situation arising out of loss of forest area, to compensate for the loss of good forest area, the State Government introduced number of measures, such as surrendering its power to disreserve forests to the Legislature, not to release any forest areas for cultivation purposes, forest development fund created by levying taxes on the sale of forest produce to finance afforestation projects, the State accepting Government of India's suggestion to bring the subject 'forest' under the concurrent list in the VIIth Schedule to the Constitution of India, the procedure established for selected removal of over matured trees from the forests, salvaging of dead and fallen trees from the forets, system of sale of standing trees to contractors in coupes being abandoned, and income from the forest produce going up in recent years.

13. To summarise, the State contends that by intensifying its activities in the conservation of forests in general and particularly to strike a balance between industrialisation in production as well as preservation of forests and development of irrigation and allied projects as a comprehensive development plan, it has done its duty and the provisions of law in that behalf are adequate.

14. The second respondent being a wood based industry has long held contract with the State Government in order to sustain its investment and protect the labour force, it has to continuously receive the permitted quota of wood contractually obtained from the Government and other private sources. Therefore, the Court should not merely on the plea of the petitioner, in the guise of public interest look at only one side of the case ignoring the need for industrialisation in the State.

15. After hearing the learned Counsel for the petitioner as well as the learned Government Pleader Smt. D. Bhoopathy and Mr. Dayanand Karant for Respondent No. 2 and others, we are satisfied that the questions raised are no longer res integra, despite an attempt made by the learned Counsel to distinguish the decided cases of the Supreme Court, particularly the case of Rural Litigation and Entitlement Kendra v. State of U. P., See .

16. The petitioner before the Supreme Court under Art. 32 approached that Court in public interest, as it was observed that in certain areas of U.P., particularly Dehradun forest area a number of limestone quarries operated by several lessees were being so operated unlawfully long after the expiry of the leases, illegally in some cases and as a result of such indiscriminate and illegal quarrying for limestone, forest wealth in the Doon valley and its surrounding region had been doomed causing soil erosion, depreciation of water resources and total ecological imbalance resulting in the killing of several specier of fauna, which had inhabited the area. That case was presented in the Supreme Court in 1983. ft was heard in stages by the Supreme Court over a period of 6 years. Having regard to the importance of the questions raised by the petitioner therein, the Court chose to appoint Special Committee to go into various aspects of the question and in the course of hearing took notice of the passing of Environment Protection Act, 1976, and the provisions made by the Central Legislature -- the Parliament, in that behalf from time to time. The Court gave directions to ensure, quarrying did not affect the existing forest wealth as on the date of the petition and the various dates of hearing and issued guidelines and recommended by the Expert Committees.

17. In the course of its judgment at para 58, as , the Court has stated as follows:

"In the order of 12th March, 1985 , a

three Judges Bench of this Court had indicated that the mine owners who had been displaced should be rehabilitated. There is no material on record if any alternate provision has been made either by the State of Uttar Pradesh or the Union of India. On going lesses (sic) have been terminated under orders of this Court without provision for compensation. Indisputably displacement has been suffered by these lessees and the sudden displacement must have upset their activities and brought about substantial inconvenience to them. The Court has no other option but to close down the mining activity in the broad interests of the community. This, however, does not mean that the displaced mine owners should not be provided with alternative occupation. Pious observation or even a direction in that regard may not be adequate, what is necessary is a time frame functioning if rehabilitation is to be made effective. It is, therefore, necessary that a Committee should be set up to oversee the rehabilitation of the displaced mine owners. The Uttar Pradesh Government, as apprehended by many of these mine owners, by itself may not be able to meet the requirements of the situation. It may be that all the displaced mine owners may not find suitable placement within the State of Uttar Pradesh. It is, therefore, necessary to associate some other States in the programme. Unless a High-Powered Committee is set up wherein Union of India is also represented, the Committee to be constituted may not be effective and there may be lack of corrrdina-tion. There is material that lime stone quarries are available in Rajasthan and Gujarat. It is, therefore, necessary that representatives of these State Governments are also on the Committee. We accordingly direct a Committee to be set up with representatives of the Union of India, the State Governments of Uttar Pradesh, Rajasthan and Gujarat. While effecting rehabilitation by giving alternate mining sites, ecology and environment will have to be considered. It is, therefore, necessary that on such Committee Ministry of Environment should also be represented. Apart from them there should at least be two experts. We direct constitution of Rehabilitation Committee with the following members."

18. It would be useful at this stage to state that on 25-11-1987, the writ petition came before one of us sitting as a Bench of Single Judge, in the light of an application made for modifying the interim order earlier granted in the case. In that connection, one of us had occasion to refer to the observationas of the Supreme Court in the case of Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh . At an earlier stage of that case, certain directions were issued as extracted in same case, repeated later. Earlier in the course of its order,

Supreme Court had this to say (See ) :

"The limestone quarries in this area are estimated to satisfy roughly three per cent of the country's demand for such raw material and we were told during the hearing that the Tata Iron and Steel Company is the largest consumer of this limestone for manufacture of a special kind of steel. At the present rate of mining, the deposits arc likely to last some 50 years. It is for the Government and the Nation and not for the Court, to decide whether the deposits should be explicited at the cost of ecology and environmental consideration or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilisation that would indeed be a matter for an expert body to examine and on the basis of appropriate advice, Government should take a policy decision and firmly implement the same.

Governments -- both at the Centre and the State -- must realise and remain cognizant of the fact that the stake involved in the matter is large and far-reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India, as some doubt, may persist and the Thar desert may expand its limits."

19. From the above it is clear that under the scheme of separation of powers envisaged by the founding fathers of the Indian Constitution, the three wings of the Government must function in the respective spheres independently of each other, unfettered by the other wings of'the Government. Petitioner's request could not be so construed as to conferment of powers by the Constitution to interfere with the daily routine administration of the State or in the making of laws by the Legislature. Judicial review must be strictly understood to protect the rights of the citizens, when their legal or constilulional rights are affected by any order or Legislative Enactment and not otherwise. Where it relates to matters of policy of the Government, where it relates to making of laws, the Court has no role whatsoever to play. It must be always left to the executive will and the wisdom of the Legislature. In paragraph 60 in Rural Litigation and Entitlement Kendera's case () (supra), the Supreme Court observed as follows :

It is not our intention to continue control over these matters. Once this Court is satisfied that the Committees are operating on the right lines we shall consider whether it is any longer necessary for the Court to supervise their activity."

That clearly indicates the parametres within which the judiciary has to function.

20. We have on record the statement of objections filed by the State, in regard to the steps it has taken to protect the various forests in the State and to enhance it wherever necessary. We have no reason to doubt the corrections of the assertions in the statement of objections filed.

21. In this regard, having regard to the prayers, which we have earlier set out, it would be useful to notice what Supreme Court has said in yet another public interest litigation case, in State of Himachal Pradesh v. A. Parent of a Student of Medical College, Shimla (See ) :

"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature.

On the basis of a letter written by a guardian of a student of Medical College in Shimla, which was treated as a petition, the High Court issued notices to the College authorities and the Government. The High Court gave various directions including a direction to constitute a committee for reporting in the matter. On the submission of the report which contained a recommendation for legislation the High Court directed the Chief Secretary to inform the Court as to what action the Government proposed to take on the recommendation to institute legislation for curbing ragging. This direction was given in spite of the Chief Secretary's categorical

assurance in that regard.

Held, that the direction given by High Court was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. This the Division Bench was clearly not entitled to do."

22. From the above, it is clear, in the light of the discussion and the ruling of the Supreme Court, on which we have relied upon, that this Court can hardly grant any of the prayers, nor the Court is in a position to mould the reliefs in any other form. Even on technicality which normally should not deter the Couft while dealing with public interest litigation, we must point out that the petitioner has not made a written demand calling upon the Government to do what it is statutorily bound to do, when such demand has been made and on failure on the part of the Government to perform its statutory duties, the petitioner or the like of him would acquire locus standi to seek a writ of mandamus or a direction in the nature of mandamus.

23. We can only observe that our judgment is not to discourage the petitioner or the like of him, to evince interest in environment protection and protection of the flora and fauna of the forests in Karnataka in particular and forests in general in the Country as well as the World. Those who move the Court in the name of public interest litigation must be equally aware of the limitations the Courts have imposed on themselves in order to work within the framework of the Constitution and in harmony with the other wings of the Government.

24. We can only advice the petitioner to move the concerned Legislators who come from the arrears of the Western Ghat to take initiative and to fill up the lacuna, if any, pointed out by any Expert Committee and get the relief which the Court is unable to give.

25. With these observations, we dismiss the petition.

After we had completed the dictation of the order in the open Court, learned counsel for the petitioner prayed for a Certificate of Fitness to appeal, under Art. 133 of the Constitution. We have followed the rulings of the Supreme Court and as the matter is concluded by the decision of the Supreme Court, we do not think it proper to grant the Certificate prayed for.

In view of this the oral motion made is rejected.

26. Petition dismissed.