
(2008) 02 KL CK 0020
In the High Court Of Kerala
Case No : WP (C) No. 764 of 2008 (N)

Adimali Grama Panchayat and Another	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 243
Forest (Conservation) Act, 1980 — Section 2
Kerala Panchayat Raj Act, 1994 — Section 218

Citation : (2008) 1 KLJ 919

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : K. Ramakumar, T. Ramprasad Unni and Smitha George, for the Appellant; Rajith Thamban, S.G.P., K.J. Muhammed Anzar, GP and J.R. Prem Navaz, for the Respondent

Judgement

Pius C. Kuriakose, J.—Two Grama Panchayats in Idukki District viz. Adimali Grama Panchayat and Kavalangad Grama Panchayat have filed this Writ petition under Article 226 of the Constitution of India raising substantial questions of law regarding the interpretation of various provisions of the Kerala Panchayat Raj Act and complaining of attempted interference by forest authorities in their functioning and enjoyment of rights which are available to them under law. According to the petitioners Panchayats, they have been collecting sand from the banks of the Periyar river going through their respective areas. They submit that Section 218 of the Panchayat Raj Act is a non obstante clause and notwithstanding anything contained in any other law for the time being in force, all public water courses other than those notified by the Government, beds and banks of rivers etc. are vested in the Panchayats. The river Periyar flows through the area called Neriamangalam in which on the northern bank is situated in the area of the Adimali Grama Panchayat, while the southern bank is in the area of Kavalangad Grama Panchayat. The petitioner claims that they have been exercising the rights granted to them and duly empowered under the provisions

of the Protection of River Banks Act and regulation of Collection of Sand (Act 18 of 2001). Instead of auctioning the rights, the Panchayats have been collecting the sand and selling the same to the needy. This activity is permissible under the provisions of Act 18 of 2001. It is submitted that collection of river sand and sale by the Panchayat are regulated and overseen by a committee called District Level Committee with the Chairmanship of the District Collector ex officio chairman in which the Forest Officials also have been nominated by the Government as members. For the last nearly seven years, the Panchayats had been collecting and selling sand, it is claimed. While so, the 3rd respondent - Forest Range Officer, Neriampalam, has issued Ext. P1 and P2 communications to the Secretaries of the petitioners Panchayats intimating that the banks of river Periyar passing through the Panchayat's areas are forest land and hence they are reserved forests. Along with Exts. P1 and P2, a copy of a notification issued by the Travancore Government under Regulation 2 of 1068 is also enclosed. Ext. P3 is copy of the notification. Apart from Ext. P3, copy of Ext. P4 letter dated 7-10-2005 issued by the Deputy Conservator of Forests (Central) to the Principal Secretary to the Government in the Forest Department is also produced. It is submitted that along with Ext. P4, copy of an order passed by the Hon'ble Supreme Court of India in I.A. No. 1000 in W.P.(C) No. 202/1995 having no application at all to the facts of this case is also attached. The Supreme Court had forbidden mining operation only in National Parks and sanctuaries and it is contended that the Supreme Court's order is not all applicable to Periyar river. Pursuant to Exts. P1 and P2, the petitioners Panchayats are forbidden from collecting sand from areas which are vested in the Panchayats and not from forest. The 3rd respondent Forest Range Officer has now threatened the Panchayats that the vehicles used by the Panchayats for collecting sand will be confiscated under the provisions of the Kerala Forest Act and passes, if any, issued will also be taken into custody and the Secretary of the Panchayat will be prosecuted. Raising various grounds, the petitioners pray that Exts. P1 and P2 be quashed. They also pray that 3rd respondent Forest Range Officer be retrained from interfering with the exercise of rights by the petitioners in collection and sale of river sand from the banks of rivers vested in them under the provisions of the Panchayat Raj Act.

2. Sri. Ranjith Thamban, the learned Special Government Pleader for Forest has filled a detailed statement signed by the 3rd respondent Forest Range Officer, Nariampalam. It is contended that the present writ petition seeking settlement of disputes between the two statutory authorities is not liable to be entertained under Article 226 of the Constitution. It is then stated that the southern boundary of Malayattoor Reserve Forest is the Periyar river, likewise the northern boundary Nagampara Forest reserve is also the Periyar river. It is also stated that from Panamkutti to Neriampalam the Periyar river is going through the reserve forest area. The above stated reserve forest area is comprised within the Nagampara Reserve and Malayattoor Reserve Forest. The sand deposited on the banks of the Periyar river from Panamkutti to Neriampalam is within the

reserve forest area. In view of Section 2 of the Forest Conservation Act, 1980, mining of sand from the river banks, lying within the Reserve Forest Area is prohibited. The Government of India, Ministry of Environment and Forests, in their letter dated 7-10-2005 addressed on the Principal Secretary to the State Government, has referred to the judgment of the Supreme Court in W.P.(C) No. 202/1995 and has directed to stop mining activities in forest areas. Annexure R3(a) produced along with the statement is a copy of the Government letter. Likewise, the Government of India's Ministry of Environment and Forest had directed by Annexure R3(b) letter dated 22-9-2005 to immediately stop mining activities within the forest area. On the basis of Annexure R3(b), it is contended that the petitioners Panchayats have to legal right to mine through the river banks situated within the reserved forest area. Any attempt by these Panchayats will be in violation of the Kerala Forest Act and Forest Conservation Act and also against all the directions of the Supreme Court. That is why, the 3rd respondent had issued Exts. P1 and P2 communications. Statement also produced Annexure R3(c), a copy of the Hon"ble Supreme Court's order in I.A. 1000 in W.P.(C) No. 202/1995. The attempt of the petitioners is to violate the mandatory provisions under the Forest Conservation Act 1980, which cannot be permitted. Refuting the grounds, it is contended that in exactly similar circumstances, the Government has passed G.O.(Rt) 3816/1997 dated 18-11-1997. Annexure R3(d) is a copy of that Government Order.

3. I have heard the submissions of Sri. K. Ramkumar, the learned Senior Counsel for the petitioners and Sri. Ranjith Thamban, the learned Special Government Pleader for Forest on behalf of respondents 2 and 3.1 have also heard Sri. K.J. Muhammed Anzar the learned Government Pleader on behalf of the first respondent.

4. My attention was drawn by Sri. Ramkumar to the 73rd amendment of the Constitution and it was submitted that the Kerala Panchayat Raj Act is an enactment made pursuant to the 73rd amendment. It was introduced in the Constitution with the end of securing greater major partition of people in planned development. It was argued that there are specific provisions in the Panchayat Raj Act vesting rivers with the local Panchayats which had to be honoured since the provisions like 218 are virtually founded on constitutional provisions itself. Section 218 is a non obstante clause and hence nobody other than the Panchayat can have any right over river banks passing through the area of the Panchayat. Exts. P1 and P2 letters have been issued by the Forest Range Officer on a notification issued under Travancore State which cannot any longer be in force since all such notifications have been repelled pursuant to the enactment of the Kerala Panchayat Raj Act which in turn is a product of the Constitutional amendment. The Travancore enactment and any orders issued under that enactment cannot override the provisions of the Panchayat Raj Act, which owes its origin from Article 243 of the Constitution.

5. Sri. Ranjith Thamban, would seriously question the maintainability of Writ

Petition and submit that in essence it seeks resolution of disputes between the Panchayats, who are statutory authorities and functionaries under the Forest Act and other forest Laws. Drawing my attention to the judgment of the Supreme Court. *Mahanagar Telephone Nigam Ltd. Chairman. Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another*, the learned special government pleader argued that the such disputes ought to be resolved by a High Powered Committee specially setup for resolving such disputes and not by this Court under its extraordinary constitutional jurisdiction under Article 226 of the Constitution. Sri. Ranjith also referred to the judgment of the Supreme Court in *Chief Conservator of Forests Govt. of A.P. v. Collector and Ors.* (2003) 3 SCC 472 wherein it has been held that the disputes between two Government Departments cannot be decided in this Court and it is for the State and Central Government to evolve a mechanism for resolving inter departmental disputes. The counsel submitted that in that cases supreme Court suggested constitution of a committee consisting of Chief Secretary, Secretaries of the departments concerned, Law Secretary and Secretary of Finance. Sri. Ranjith also referred to the judgment of this Court in *K.S.E.B. v. Chief Conservator of Forests* 1996 (2) KLT 232 wherein also, following the judgment of the Supreme Court in *ONGC and Collector or Central Excise v. ONGC and Anr.* v. *Collector of Central Excise* JT 1991 (4) SC 48 it is held that whenever there is dispute between the Government Departments, the State is bound to constitute High Powered Committee to settle disputes and that the court should restrain from proceeding further in the matter before the disputes is considered by such committee. Sri. Ranjith also referred to the judgment of the Supreme Court in *T.N. Godavarman Thirumulpad v. Union of India and Ors.* (1997) SCC 267, in which it is held that the Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance, and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutory recognised forest, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land" occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government's record irrespective of the ownership.

6. I have considered the rival submissions addressed at the bar. It is true that in Ext. Annexure R3(d) the Government has, in pursuance to the direction of this Court in O.P. 8836.1996 filed by the Kudampuzha Grama Panchayat, repelled the claim of that Panchayat which was similar to the claims raised by the petitioners Panchayats and held that Kuttampuzha Panchayat does not have right to remove sand from rivers flowing through the reserve forest areas within the local limits of that Panchayat. But it appears to me that the Government should reconsider the issue raised in this writ petition. Though Ext. Annexure R3(d) order was

issued by the Government after the commencement of the Panchayat Raj Act 1994, it is seen that the grounds raised in this writ petition regarding the overriding effect of Section 218 of the Panchayat Raj Act, which is a non obstante clause having its foundation in the 73rd amendment of the Constitution which was incorporated by the parliament for ensuring more decentralization of powers and to confer more autonomy to the Local Self Governments, was not focused before the Government in the hearing which preceded Annexure R3(d). The matter certainly requires reconsideration.

7. Following the view consistently taken by the Supreme Court and by this Court that disputes between the statutory authorities or between two Departments should be resolved by High-Powered Committees to be constituted by the concerned Government, I dispose of this Writ Petition directing the first respondent to constitute a High-Powered Committee consisting of three members, in which Law Secretary and the Forest Secretary and the Secretary, LSGD should be members. The High Powered Committee will be constituted by the Government within one month of receiving a copy of this judgment. The committee will issue notice to the petitioners Panchayats, hear them and take a decision on the various grounds raised in this Writ petition and pass orders at the earliest and at any rate within four months of the constitution of the committee. It is open to the committee to issue notice to the other Panchayats in the State who are likely to have similar claims and will be affected by the orders to be passed.