

(1998) 01 GUJ CK 0026
In the Gujarat High Court

Case No : Spl. Civil Application No's. 616 of 1995 and 2798 and 3679 of 1996
with L.P.A. No's. 461 and 488 of 1996

Ajit D. Padiwal and etc.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat High Court Rules, 1993 — Rule 2
Wild Life (Protection) Act, 1972 — Section 55

Citation : AIR 1998 Guj 169 : (1998) 2 GLR 262

Hon'ble Judges : Kumaran Sreedharan, C.J.; M.S. Shah, J

Bench : Division Bench

Advocate : S.N. Shelat, A.A.G. and Ameer Yagnik, A.G.P., A.D. Padiwal and P.M. Thakker and Girish Patel, for A.J. Yagnik, for the Appellant; N.D. Nanavati, Rajni H. Mehta, S.B. Vakil and K.J. Shethna and S.N. Shelat, A.A.G. and Ameer Yagnik, A.G.P., for the Respondent

Judgement

K. Sreedharan, C.J.—"The Indian Express" daily, in its issue dated 29th January. 1995, published an article, "Where law "allows" felling of trees". A cutting of that news item was forwarded to this Court by Advocate Shri Ajit D. Padiwal and requested this Court to treat it as a public interest litigation. A Division Bench of this Court treated it as Special Civil Application No. 616 of 1995 and issued Rule to the concerned parties. This Court also called for a report regarding the bamboos and trees existing in the forest by appointing Shri N.V. Anjaria, an Advocate of this Court, as Commissioner Advocate-Commissioner submitted his report dated 13-2-1995. After perusal of the report, this Court permitted respondent-Company to remove the bamboos, which have been cut and earmarked for it, on the Company paying the workmen the amounts due to them. Government was directed to file affidavit, indicating the census figures of the area, showing the number of trees as well as clumps of bamboo, which have been there since the beginning of the census work. State was also directed to indicate the steps that are to be taken to prevent unauthorised or illegal cutting

of bamboos. Subsequently, by order dated 22-2-1995, State Government was permitted to distribute the cut bamboos among Kotwalias and tribals. State Government was directed to ensure the compliance with the terms contained in the licence issued on 15-12-1994 u/s 29 of the Wild Life (Protection) Act, 1972 to the Company. While the matter stood like this, another news item came in "Gujarat Samachar", dated 3-4-1996 regarding the rash and indiscriminate cutting of various trees. On seeing the same, the learned single Judge initiated suo motu proceedings and registered Special Civil Application No. 2798 of 1996. The operative portion of that order reads :--

"..... In view of the aforesaid facts and circumstances of the case, I taking a suo motu notice of the aforesaid news item at Annexure A, direct the Registrar of this Court to treat this as a writ petition and issue notice making it returnable on 26th April, 1996 at 11.00 a.m. to (1) Secretary, Forest Department, Gandhinagar; (2) concerned Range Forest Officer of the area; and (3) J.K. Paper Mills, who shall file their respective affidavits meeting with the allegations made in the aforesaid news item. I hereby further direct the Superintendent of Police, Central Bureau of Investigation, "Jivahhai Chambers". Ashram Road, Ahmedabad to inquire into the matter and find out as to (i) whether the facts narrated in the aforesaid news item are true? if yes. (ii) then to find out as to why, how and under what circumstances the alleged cutting of trees/Sesame, etc. in "Surpaneshwar Sancturay" was permitted, and (iii) at whose instance, that is to say which of the Government authority? and make a true and full disclosure by enclosing the notings, directions -- in short whatever Government record available leading to the alleged illegal activity immediately [preferably within 24 hours from the date and time of receipt of this Order]. The Superintendent of Police, CBI is hereby further directed to spring into action and inquire/investigate the case either personally or through any of his officer of personal confidence, right from the grass-root level to find out the clues which ultimately prevailed over the officers of the Forest Department permitting cutting of trees in "Surpaneshwar Sanctuary", going to the logical extent of even prosecuting the concerned delinquents on the basis of material in support of the allegations and submit a report to this Court on 26-4-1996. In case, in the meanwhile, if any prima facie offence is made out, the SP-CBI shall also register the offences against all concerned....."

2. Pursuant to the above order, the Central Bureau of Investigation (hereinafter referred to as "CBI"), went into action. They submitted report dated 26-4-1996. Report of the CBI brought out following facts :--

" That the Forest Department as well as the CPM had allotted the duties of supervising the working to its employees. In case of the Forest Department the Assistant Conservator of Forest, the Range Forest Officer, the Round Forester and the Beat Guards and in cases of the CPM the Deputy Divisional Forest Manager, the Forest Inspector, the Forest Assistant and the Forest Supervisor were assigned the duty of ensuring that the working of bamboos was carried out by

the Labourers strictly according to the conditions laid down in the permission letter.

That the CBI team visited Compartment Nos. 226, 244, 245, 246 and 331. Partial working had been carried out in Compartment Nos. 244, 245 and 246 and working had been completed in Compartment Nos. 226, 292 and 331. The CBI team also examined the Villagers who had been employed as Labourers. The visit of the CBI team was videographed and still photographs in Compartment No. 245 were taken.

That it was observed in one of the Compartments that at a spot the whole clump had been removed and it was covered with debris to avoid detection. In almost all the Compartments visited by the CBI team the conditions laid down in the permission letter had not been adhered to. This can be easily seen from the video cassette and the still photographs.

That the aforesaid fact that the conditions laid down in the permission letter were not adhered to was accepted by the senior officers of the Forest Department as well as the CPM

On this basis, they came to the conclusion that erring Officers of the Forest Department and Central Pulp and Paper Mills Limited (hereinafter referred to as "CPM") have to be proceeded against for violating the provisions of the Wild Life (Protection) Act, 1972, as amended upto 1991, and under Sections 119 120-B 408 and 409 of the Indian Penal Code and Section 13(2) read with Section 18(1) (c) and (d) of the Prevention of Corruption Act, 1988.

3. Order passed by the learned single Judge on 10-4-1996, registering Special Civil Application No. 2798 of 1996 was taken up in appeal, namely, LPA No. 461 of 1996. Division Bench issued notice of admission on 10-5-1996 and stayed the operation of the directions given by the learned single Judge. On 3-5-1996, learned counsel representing the Company, undertook before this Court that no bamboo was removed from the Shoolpaneshwar Wild Life Sanctuary area and that no bamboo will further be transported out of that area without the Court's order. This undertaking has been recorded. Consequently, no bamboo was cut by the Company nor was any removed by it thereafter.

4. CPM took up the matter before the Supreme Court in Petition for Special Leave to Appeal (Civil) No. 14824 of 1996. Apex Court, on 22-11-1996, disposed of the same, with the following observation :--

"..... It appears to be an admitted position that question regarding illegal cutting of Bamboo trees in Shoolpaneshwar Sanctuary is under consideration in S.C. A. No. 616/95 before a Division Bench.

Taking all facts and circumstances into consideration, we direct that S.C.A. No. 2798/96 be heard along with aforesaid S.C.A. No. 616/95. The Division Bench shall examine the grievances of the petitioners in the present Special Leave Petitions that it was not a fit case where a direction should have been given to

C.B.I. to investigate merely on the basis of the allegations published in a newspaper.

The Registrar, High Court of Gujarat, is directed to seek instructions from the Hon'ble Chief Justice of the High Court in respect of placing S.C.A. No. 616/95 and S.C. A. No. 2798/ 96 before a Division Bench as early as possible for appropriate direction. Till then the direction given to the C.B.I to investigate shall remain stayed.

We make it clear that we are not expressing any opinion on the merit of the said direction.

The Special Leave Petitions are disposed of"

Thus, the entire matter is before us.

5. It is the common case of parties that Government of Gujarat permitted CPM to cut and remove bamboo from the Shoolpaneshwar forest area.

6. As per the definition in the Wild Life (Protection) Act, "wild life" includes land vegetation. It is the duty of the State to protect this vegetation. Bamboo is one such vegetation present in Shoolpaneshwar Sanctuary in Gujarat. According to the Government, bamboo cleaning operation is carried out in a scientific manner. Procedure followed therein are :--

"..... (i) No culm if and under 2 years of age and having white bloom on the inter node will be cut.

(ii) Minimum 6 mature culms will be retained in each clump. If there are only six or less than six mature culms in each clump no felling will be done except for cleaning.

(iii) Mature culms to be left shall be so selected that they are evenly distributed over the whole clump.

(iv) culms will be cut at a height of about 15 cms. from ground level between first and second node.

(v) No portion of cut bamboo and debris will be left in the clump.

(vi) No culm will be removed with any portion of the rhizome.

(vii) Rhizomes and tender shoots will not be dug.

(viii) All the dead bamboos will be removed from clumps.

(ix) In case of gregarious flowering all the bamboos should be cut after the seed has fallen.

(x) Sharp instruments will be used for cutting bamboos to prevent splitting or tearing of the stumps.

(xi) Cutting period may be retrained from 15th Oct. to end of March.

(xii) Cutting will be done in horse shoe shape so that opening it one without any damage to the clump.

(xiii) All the top broken culms irrespective of their age will be removed "

Area of the sanctuary is divided into coupes. The cleaning operations are done in a phased manner. The working plan fixes a rotation and each area will get four years' rest period. During this rest period, new shoots of bamboo will mature for further cutting. Removal of bamboo is resorted to, to maintain and improve the original vegetation, specificity of the area based on scientific proof and methods.

7. An Expert Committee, consisting of highly qualified Forest Officials, examined the issue relating to the bamboo working by CPM in the Shoolpaneshwar Wild Life Sanctuary and submitted a report to this Court. After a planned and statistical study, the committee suggested compliance with the conditions mentioned therein for a proper protection of the sanctuary.

8. From all the reports now made available to this Court, it is established beyond doubt that bamboo cutting is a continuous and a regular process. This operation is carried out for about 6 to 7 months from Nov. till the onset of monsoon. For a systematic management of this process, a Sanctuary is divided into various felling areas. They are then sub divided into coupes, Each coupe is then divided into compartments. On the basis of silvicultural growth pattern, rotation period is determined for working on bamboo. CPM uses the lops and tops for its raw material. Full size bamboos are utilised by Forest Department, Tribals, who stay in the Sanctuary, are also users of Bamboo. The growth cycle of bamboo is roughly four years, i.e. the new shoot of bamboo becomes mature for cutting in four years. The total life span of bamboo clump is about 40 years. At that stage, the bamboo clump reaches the stage of flowering. With the flowering, the clump becomes dead.

9. Considering the nature of bamboo, it can safely be held that they are to be cut and utilised. It is not to be preserved for all time to come. Its cutting and removal should be systematic and controlled. The grown up bamboo is not used as raw material by CPM. They use the lops and tops. Full size bamboo cut by CPM is entrusted with the Forest Department. As on record, there is nothing to show that any one else, other than CPM and the tribals, who stay inside the Sanctuary area, is interested in bamboo for consumption in any industry as a raw material. So, bamboo, which has to be cut, can be utilised by the tribals, the State and CPM. To prevent unauthorised cutting or cutting in a manner, which will destroy bamboo growth, steps can only be undertaken by the Government and the Officers of the Forest Department. CBI, in its Report, has found that some of the Officials of the Forest Department have not discharged their duties properly and have misused their authority and power for gaining material benefits. That by itself is no reason for taking a view that supervision or the management of cutting operation of bamboo is not to be entrusted with the Officers of the Forest Department. This Court has no machinery of its own to

supervise the said operation in the Sanctuary. It is the duty of the Government to safeguard wild life. Government, from the affidavits filed in this case, appears to have become conscious of the ecological problem involved in the management of bamboo cutting. It is stated that for the purpose of monitoring and protection, 25 Beat Guards are appointed by way of local arrangement. As and when the work is carried out, Beat Guards will be deputed to supervise the work. Five Foresters are posted in the Jungle Depot. It is also stated that Government are taking active steps to protect the bamboo growth in the Sanctuary area.

10. Learned counsel representing the CPM advanced an argument that the contract entered into between the Firm and the State is to be operative till 2000 A.D. and as per the terms of that Agreement, Firm is entitled to extract bamboo from the Sanctuary area. No other industry has so far put onward any claim to use bamboo as a raw material. Therefore, in all reasonable circumstances, the Firm should be allowed to cut and remove bamboo, so long as the contract subsists. It was also contended that a Firm will not resort to a method of killing the goose that lays golden egg while extracting bamboo, for, the Company will be the last person interested to destroy the same. This argument has been countered by counsel representing the Non-Governmental Organisations and the State. According to learned counsel, this argument of the Company may appear to be attractive at the first blush, but it cannot be taken on its face value. The Company is interested in making profits by utilising the raw material. For over an year, they were not permitted to cut and remove the bamboo from the area on account of intervention by this Court. So, their attempt now will be to extract maximum quantity of bamboo during the remaining two year period of the contract and to make maximum profit out of it. This submission made by counsel appears to be well founded. The period of contract entered into between the Company and the State has only a short period to expire; During that short period, the attempt of the Company will be to extract maximum bamboo as raw material. This is more so when it is seen that for about a year, they were not permitted to cut bamboo on account of this Court's intervention. Right of the Company as against the State under the contract entered into between them is not a matter to be dealt with by us in these proceedings. Be that as it may, State has come forward to have the entire work of harvesting of bamboo departmentally. Affidavit dated 23-12-1997, filed by Shri G.K. Makwana, Joint Secretary, Forest and Environment Department, states that Government have decided to undertake the work of harvesting of bamboo in Shoolpaneshwar area for current year departmentally and that it will continue to do so for the next year also. When the Department undertakes to have the bamboo harvesting by itself, the said harvesting must be in conformity with the opinions expressed by the Experts and to safeguard the bamboo growth in the Sanctuary without affecting wildlife. Even while carrying on the above operation departmentally, we hold that sufficient opportunity must be afforded to Non-Governmental Organisations to examine the area. In case such organisations come across violations of the Guidelines given by Experts Committee, they can report the

matter to the Government and Government should immediately take effective steps to rectify such violations. In case Government fails to take such remedial measures, the Non-Governmental Organisations can move this Court for taking action against the erring Officers of the Forest Department for violating the directions of this Court.

11. Another question that remains to be tackled is the propriety and validity of the order passed by learned single Judge on 10-4-1996. Learned Judge took suo motu notice of news item, seen in "Gujarat Samachar", dated 3-4-1996 and passed the order, the operative portion of which was extracted by us hereinabove (paragraph 1 at page 3). Could the said order be passed by K.J. Vaidya, J., when as per the work allotted by the Chief Justice, he was of to deal with matters of public interest ? It is common case that K.J. Vaidya, J. passed the above order sitting singly, and when he was to handle criminal matters as a single Judge. According to the Gujarat High Court Rules, 1993, Civil and Criminal Jurisdictions of the Court shall be exercised by a Division Bench consisting of two or more Judges, except in cases where it is otherwise provided. Matters which are to be dealt with by single Judge are specifically enumerated in Rule 2 of the Rules. It has not conferred any power on learned single Judge to exercise the powers of the Division Bench as was done by K.J. Vaidya, J. The provisions contained in the Letters Patent and the Bombay Reorganisation Act do not confer on a learned single Judge of this Court powers to exercise jurisdiction of the High Court in matters, which are not assigned to him by the Chief Justice. It is now settled law that "Chief Justice is the Master of Roster" and has prerogative to constitute Benches and to allot work. No learned single Judge can pick and choose any case or any matter for its disposal without appropriate orders of Chief Justice (vide *Inder Singh and Another Vs. Financial Commissioner, Punjab and Others*, and *State of Rajasthan Vs. Prakash Chand and Others*,). As per the allotment of work at the relevant time the single Judge K.J. Vaidya, J. had no jurisdiction to entertain public interest litigation. Further, Special, Civil Application No. 616 of 1995 was pending before this Court and was being proceeded with by a Division Bench, consisting of the then Chief Justice and another learned single Judge. While identical matter was being dealt with by the Chief Justice, it was not at all necessary for K.J. Vaidya, J. to initiate another suo motu proceedings, which has only gone to increase the number of matters relating to the same subject matter. Learned Judge directed the CBI to register cases and to prosecute the concerned delinquents. This, according to us, was clearly beyond his jurisdiction. Even the provisions contained in the Delhi Special Police Establishment Act, 1946 have been ignored, in as much as, the learned Judge directed dispensation of the contest of the State Government to exercise jurisdiction by the CBI. High Court cannot ignore the statutory provisions contained therein. In many cases, the Supreme Court, in exercise of the authority under Article 142 of the Constitution of India, gave such directions to the CBI. Such power cannot be exercised by the High Court under Article 226 of the Constitution. Reference in this regard may be made to the decisions of the Supreme Court in *State of Haryana Vs. Naresh*

Kumar Bali, and Mohammed Anis Vs. Union of India (UOI) and Others, . In the above situation, we are clear in our mind that the order of 10-4-1996, passed by K.J. Vaidya, J. is not at all tenable.

12. What then should be the fate of the cases registered by the CBI pursuant to the investigation conducted by it as ordered by the learned single Judge. It has been brought to our notice that First Information Reports have been filed by the CBI before Special Court against Officers of the Forest Department. In those First Information Reports, K.J. Vaidya, J. has been termed as "First Informant". Order passed by K.J. Vaidya, J. having been found to be devoid of any legal validity, FIRs registered pursuant thereto should also fall to the ground. Therefore, the FIRs filed by the CBI before the Special Court against Officers of the various Departments and others are quashed, but we make it clear that the materials gathered by the CBI can be referred to by the State Government in case Government intends to initiate departmental action or other action against Officers named therein. Letters Patent Appeal No. 461 of 1996 and Letters Patent Appeal No. 488 of 1996 are allowed.

Special Civil Applications and Appeals are disposed of in the light of the directions contained earlier in this judgment. We direct parties to suffer their respective costs in these proceedings.

M.S. Shah, J.

13. Having carefully gone through the judgment prepared by the learned Chief Justice and having anxiously considered the matter, while I agree with the final directions contained therein, that is those in paras 10 and 12 of the judgment, I would like to record my own reasons for quashing the FIRs lodged pursuant to the order dated April 10, 1996 passed by Mr. Justice K.J. Vaidya.

14. In the first place, I regret my inability to concur with the view taken by the learned Chief Justice that the High Court under Article 226 of the Constitution cannot exercise the power of directing the CBI to register and investigate into an offence without consent of the State Government in view of the provisions of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as the Act). Their Lordships of the Supreme Court have expressed their considered opinion in the case of State of West Bengal and Others Vs. Sampat Lal and Others, that Section 6 of the Act would require the consent of the State Government before jurisdiction u/s 5 of the Act is exercised by the Officers of that establishment, but when a direction is given by the Court under Article 226 in an appropriate case to the CBI to register and investigate, consent envisaged u/s 6 of the Act would not be a condition precedent to compliance with the Court's direction.

In short, Section 6 of the Act does not apply when the Court gives directions to the CBI to conduct investigation. Hence in the instant case FIRs need not be quashed on the ground that the State Government had not given consent. In my view, the decision in State of Haryana Vs. Naresh Kumar Bali, and Mohammed Anis Vs. Union of India (UOI) and Others, , on the scope of the power of the

Apex Court under Article 142 of the Constitution cannot be construed as narrowing the parameters of the power of the High Court under Article 226 of the Constitution to direct the CBI to investigate into an offence without consent of the State Government which issue is referred to a Constitution Bench of the Supreme Court as noted in the decision in the case of State of Bihar and another Vs. Ranchi Zila Samta Party and another, . In that decision the Supreme Court dismissed the SLP against the order of the Patna High Court directing the CBI to investigate into an offence without consent of the State Government.

15. The question would still remain whether the FIRs filed by the CBI before the Special Court should be permitted to hold the field or whether they should be quashed. In my view the ex parte directions given by the learned Judge in the order dated April 10, 1996 to file FIRs against the officials of the Forest Department and the directions to prosecute them even without sanction of the State Government were not called for, not merely because such directions should not have been given ex parte, but also in view of the following considerations :

(i) Special Civil Application No. 616 of 1995 was already pending before a Division Bench of this Court on the same subject matter and after considering the report dated Feb. 13, 1995 submitted by Mr. N.V. Anjaria, Advocate Commissioner appointed by this Court, the Division Bench of this Court presided over by the learned Chief Justice had permitted the respondent Company to remove the bamboos which had been cut earmarked for it and the respondent company was also permitted to cut the bamboos in terms of the agreement between the State Government and the respondent Company.

(ii) u/s 55 of the Wild Life (Protection) Act, 1972 Chief Wild Life Warden of the State is the statutory authority to file FIRs against any person who is alleged to have committed any offence punishable under the provisions of the said Act. This Court was therefore, expected to consider what the said statutory authority had to say on the question whether this was a fit case for issuance of directions to file FIRs and launching, of prosecution. In this connection reference may be made to the principle laid down by the Apex Court in the case of State of West Bengal and Others Vs. Sampat Lal and Others, that ordinarily such opportunity should be given to the Government before entrusting the investigation to the CBI.

16. Once the aforesaid aspects were brought to the notice of the learned single Judge at the first hearing before, him, it was expected that the learned Judge should have recalled or at least suspended ex pane direction and the matter should have been ordered to be placed before the Division Bench taking up Special Civil Application No. 616 of 1995. Now that there are various materials on the subject-matter involved in this group of petitions, including the report of the Court Commissioner, the report dated July 15, 1996 of the expert committee and the CBI report I am of the view that in the first instance it is for the Chief Wildlife Warden of the State to go through all the materials and to take an appropriate decision as to whether this is a fit case for filing a complaint against the concerned officials/persons for breach of the provisions of the Wild Life

(Protection) Act, 1972 which is the principal offence in respect of which the CBI has filed the FIR. In the facts and circumstances of the case, the directions issued by the learned single Judge to the CBI to file FIR and investigate the case were premature and are required to be set aside. I, therefore, do not express any view on the question whether the order passed by the learned single Judge was without jurisdiction or whether that order was resuscitated when another Division Bench passed the order dated July 22, 1996 modifying the ad-interim stay and permitting the CBI to proceed with the investigation, as contended by Mr. H.M. Mehta for the CBI.

17. It is in view of the aforesaid reasons that I agree with the final conclusion arrived at by the learned Chief Justice that the FIRs registered pursuant to the directions given by Mr. Justice K.J. Vaidya are required to be quashed with a clarification that the materials gathered by the CBI can be referred to by the State Government, in case the Government intends to initiate departmental action or any other action against the officials named therein.