
(2015) 02 KAR CK 0426

In the Karnataka High Court

Case No : Writ Petition No. 51190 of 2014 (GM-RES)

A.K. Premnath

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 KarLJ 593

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : B.M. Arun, for the Appellant; A.S. Ponnanna, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—In this case, the petitioner has called in question the validity of the guidelines framed by the State Government at Annexure-A, dated 21-12-2012 for according permission to conduct various functions in Bangalore Palace Grounds insofar as it restricts the period of each programme to 3 days and not including circus in the permissible programmes. The petitioner has also sought for quashing the order at Annexure-AI, dated 8-8-2014 whereby the application of the second respondent seeking permission to organise circus in a portion of the Palace Grounds, Bangalore has been rejected. Petitioner has been organising circus in various parts of the State of Karnataka. He had addressed a letter at Annexure-H, dated 12-4-2012 to Sri Srikantadatta Narasimharaja Wadiyar requesting him to move the first respondent for necessary permission to organise circus in Palace Grounds. Based on the said request, Sri Srikantadatta Narasimharaja Wadiyar submitted an application to the first respondent at Annexure-J, dated 20-4-2012. It is contended that petitioner was orally informed by the DPAR Secretary that permission will not be granted in the Palace Grounds for any commercial activities. Therefore, he addressed a letter to the then Chief Minister dated 29-5-2012 and sought his intervention in the matter. It is further

contended that he received a communication dated 21-6-2012 informing him that conduct of the circus in the Palace Grounds will not be permitted. Therefore, the petitioner sent a letter dated 18-7-2012 to the Principal Secretary stating that he has been organising circus in Bangalore for the past 20 years and that permission sought by them does not vitiate any law. However, the first respondent rejected his application. He challenged the said order by filing a writ petition in W.P. No. 47827 of 2012. This Court by order at Annexure-S, dated 11-12-2012 set aside the said order and directed the Government to consider the application afresh. Thereafter, his application requesting permission to conduct circus for a period of 60 days was rejected as per the order at Annexure-T, dated 21-12-2012. Petitioner once again obtained no objection certificate from the General Manager of the Palace, Bangalore, vide Annexure-U. He has entered into an agreement with the second respondent and sent a letter of request dated 18-7-2014 to conduct circus for a period of 60 days starting from December 12, 2014. Again, the first respondent has rejected the application.

2. The first respondent has filed its statement of objections opposing the writ petition.

3. I have heard Sri B.M. Arun, learned Counsel appearing for the petitioner and Sri A.S. Ponnanna, learned Additional Advocate General appearing for the first respondent.

4. Learned Counsel for the petitioner submits that the new guidelines at Annexure-A fixing the period of each programme to 3 days and not including circus in the permissible programme is arbitrary and unreasonable. It is also violative of the orders of the Hon'ble Supreme Court in Civil Appeal No. 3307 of 1997, dated 14-9-1998 and the order dated 25-1-2001. It is argued that the first respondent is not justified in refusing permission to the petitioner to organise circus show as it is not inconsistent with Bangalore Palace (Acquisition and Transfer) Act, 1996. It is argued that permission was being granted to run circus for the past over 20 years and the contradictory view taken at this point of time is wholly arbitrary.

5. On the other hand, learned Additional Government Advocate appearing for the first respondent submits that the second respondent was the applicant for organising the circus in question. The said application has been rejected by the first respondent. The petitioner has no locus standi to challenge the said order. Secondly, it is contended that pursuant to the interim orders of the Supreme Court in Civil Appeal No. 3307 of 1997, dated 14-9-1998 and 25-1-2001, guidelines have been framed regulating the use of Bangalore Palace Ground. On the basis of the said guidelines, the application of the second respondent has been rejected. The petitioner has to approach the Hon'ble Supreme Court to redress his grievances, if any, and not before this Court. It is further argued that pursuant to the order of the Hon'ble Supreme Court in Civil Appeal No. 2307 of 1997, dated 14-9-2008, the consolidated guidelines have been issued. The Hon'ble Supreme Court in its order dated 25-1-2001 has stated that permission

should be granted only for a short term by way of permissive licence and no long term contract shall be entered into by the State Government. The discretion was left to the State Government to fix the term for grant of permissive licence. In obedience of the said order, guidelines at Annexure-A have been issued. It is in conformity with the order of the Supreme Court. He prays for dismissal of the writ petition.

6. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

7. The State of Karnataka enacted the Bangalore Palace (Acquisition and Transfer) Act, 1996 ("Act" for short) for acquisition of the Bangalore Palace and open space around it. The validity of the Act is the subject-matter of challenge before this Court and the matter is pending before the Hon'ble Supreme Court in Civil Appeal No. 3303 of 1997 filed by Sri Srikantadatta Narasimharaja Wadiyar and others. On an interlocutory application, the Supreme Court has passed an order dated 14-9-1998 thereby issuing certain directions and permitting Sri Srikantadatta Na asimharaja Wadiyar to let out the Bangalore Palace premises on temporary leave/licence/hire basis subject to certain terms and conditions. It was made clear that letting out the Palace Ground was on leave/licence basis only with the prior permission of the State Government. Further, on 25-1-2001, the Supreme Court has clarified that permission shall be granted only for a short term by way of a permissive licence and no long term transaction shall be entered into by the State Government. Some of the clauses in the said order is as under:

"9. The appellant may make an application for the use of the "Palace Property" which means the Palace and the area surrounding it of an extent of about 30 acres as delineated in the sketch and taken note of by this Hon'ble Court in its orders, to the Department of Personnel and Administrative Norms, Government of Karnataka, with full details, including the following:

- (a) The purpose for which the land/building is required.
- (b) The details of the building or portion of building required for use.
- (c) If it is the land, the extent required and its location, as shown in an attached sketch.
- (d) Details of the activity to be carried out in the land/building for which permission is sought.
- (e) An undertaking that the use proposed of land/building will not have prejudicial effect on the other structures or land and it is not of general ecological consequence of a prejudicial kind.

10. Upon consideration of the application, the Government may call for further details in order to ensure that the use to which the portion/the property is to be put, will not result in any violations of the provisions of the Act or that it will not

lead to any deleterious effect upon the other structures, land and the greenery within the Palace property.

11. The application for permission sought for, shall be made at least one month prior to the proposed date of commencement of use. After consideration of each case on merits, the Government may grant permission or to decline the same, if in its opinion, such use is not to be permitted in the interest of preserving the heritage character of the property and ecological considerations. The Government shall be entitled to impose a condition that no tree in the Palace property shall be cut during the period of use and no other activity involving hazards to the surroundings, buildings, land and the greenery in the Palace property shall be committed.

12. Permission shall be granted only for a short term by way of a permissive licence and no long term transaction shall be entered into by the appellant. The period of use shall be within the discretion of the Government of Karnataka.

13. The permissive use of the property granted to the licensee shall not be transferred or alienated to any one else under any conditions.

14. The appellant shall maintain up-to-date accounts of the amount received by him in respect of the permission granted for the use of the property.

15. The State shall be entitled to depute any of its officials to ensure that none of the conditions imposed are violated by the person making use of the property.

16. All permission and licenses granted shall without any further act or deed expire on the date of the order made by this Hon''ble Court disposing of the above appeal.

17. In respect of the land belonging to the other members of the appellant's family (parties in Civil Appeal Nos. 3309 and 3310 of 1997), and permission sought or secured, shall be governed mutatis mutandis by the same conditions as above.

The proposals, as contained in the above paragraphs and accepted by learned Counsel for the applicant, are recorded and the application is disposed of accordingly".

8. On the basis of the said order, the Government of Karnataka has passed an order at Annexure-A, dated 21-12-2012 providing for guidelines for letting out the Palace Ground on leave/licence basis, which is as under:

"GOVERNMENT ORDER

No. DPAR 184 PSR 2012, Bangalore, dated 21-12-2012

In the circumstances explained in the preamble, the Government are pleased to issue the following guidelines, in supersession of all the earlier guidelines, for necessary guidance and compliance of all the concerned:

1. Only short term programs not exceeding 3 days will be permitted depending upon the merits of each case.
2. Structures erected, if any, for the permitted short duration programs, should be dismantled immediately after completion of the programs.
3. Programs which can be permitted include:
 - a. Marriage and Marriage Reception.
 - b. Birthday parties.
 - c. Political Party-Conferences.
 - d. Flower shows and the programs related to Horticulture, Forestry, Environment related events.
 - e. Religious functions and Conferences.
 - f. Programmes related to tree plantation, etc.
 - g. Any program organised by the Departments of the State Government and the Government of India by its own resources.
4. No trees shall be cut and no damage to the green cover in the Bangalore Palace premises shall be caused.
5. Applications for Government permission should be made one month prior to the date of the programs so that proper prior inquiry and due diligence can be exercised on the event..
6. No commercial activities like trade fairs, consumer exhibitions, etc., will be allowed.
7. No functions in which promotion, sale and serving of liquor and other prohibitory items are involved shall be permitted.
8. For each legal heir (brother and five sisters) only one function shall be allowed on any one day to avoid traffic congestion and accidents and also in view of ecological conservation.
9. Events where risk of life or Safety of participants as well as spectators, is involved shall not be permitted.
10. Permission should not lead to any violation of the limits prescribed in the Noise Pollution (Regulation and Control) Rules 2000.
11. Even though the Police protection, Fire Force contingents are provided by the Departments of the Government after due payment of the fees as specified by the concerned authorities, the onus of the responsibility of the safety and security of the people who gather during the events also lies on the legal heirs concerned and the organisers of the event.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF KARNATAKA

(J.D. MADHUCHANDRA TEJASWI)

Under Secretary to Government, D.P.A.R. (Services-IV)".

9. The petitioner requested the second respondent by his letter at Annexure-W, dated 18-7-2014 to accord permission to conduct circus show in the Palace premises. The second respondent forwarded the said letter to the State Government for permission to use open Area No. 1, in the Palace Ground for circus show starting from December 12, 2014. Permission was sought for 60 days starting from 12-12-2014. This application was rejected by the respondents as per the order at Annexure-AI, dated 8-8-2014.

10. Having regard to the contentions urged, the first question for consideration is whether the petitioner has locus standi to challenge the order at Annexure-AI, dated 8-8-2014 and the circular at Annexure-A, dated 21-12-2014?

11. The petitioner is a promoter of circus in various parts of India. He has been organising circus in Palace Grounds at Bangalore for the past 20 years. The second respondent is the legal representative of His Highness Sri Srikantadatta Narasimharaja Wadiyar. The petitioner had requested the second respondent for permission to conduct circus at Bangalore Palace Grounds and his application was forwarded by the second respondent to the State Government. As noticed above, the said application was rejected by the State Government on 8-8-2014, on the ground that conducting of the circus is not permissible as per the guidelines at Annexure-A as the proposed period of the programme is more than 3 days. In fact, number of writ petitions were filed by similarly situated persons before this Court seeking permission to conduct different activities in the Palace Grounds. Some of them are W.P. No. 27299 of 2012 and W.P. No. 56183 of 2013. This Court has entertained those writ petitions and orders have been passed on 3-12-2012 and 10-2-2014.

12. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in India and the constitutional Courts have been adopting a liberal approach in dealing with the cases. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having locus standi.

13. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, AIR 1966 SC 828 : (1966) 2 SCR 172, the Hon'ble Supreme Court has observed that a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof.

14. In Ghulam Qadir Vs. Special Tribunal and Others, (2001) 9 JT 231 : (2001) 6 SCALE 667 : (2002) 1 SCC 33 , it has been held thus:

"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in India and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having locus standi."

15. In the present case, the petitioner is affected by the order passed by the State Government. Therefore, it cannot be said that he has no locus standi to challenge the said order.

16. That brings me to the second question as to whether the petitioner has co approach the Supreme Court for redressal of his grievances in Civil Appeal No. 3307 of 1997?

17. Pursuant to the order of the Supreme Court dated 25-1-2001, the State Government has framed the guidelines at Annexure-A. The petitioner is aggrieved by the guidelines and rejection of his application to conduct circus as per Annexure-AI. The question for consideration is whether the guidelines are in conformity with the order of the Supreme Court and the order of rejection of the application to conduct circus is valid in law? In my opinion, there is no bar for this Court to consider the aforesaid question. As noticed above, several writ petitions have been entertained by this Court earlier to consider identical issues.

18. That brings me to the last question as to whether the guidelines at Annexure-A are contrary to the directions of the Supreme Court contained in the order at Annexure-CI, dated 25-1-2001?

19. Clause 12 of the order makes it clear that permission shall be granted only for a short term by way of a permissive licence and no long term transaction shall be entered into by the appellant. The period of use shall be within the discretion of the Government of Karnataka. Clause (viii) of the order at Annexure-C states that the State Government shall not refuse permission to let out the premises on the aforesaid terms so long as the purpose for letting out is not

inconsistent with the object of the Act. One of the objects is to utilise the land surrounding the Palace for developing it as a Tree Park and Horticultural Garden and Botanical Museum exclusively or partly for that purpose and partly for any other public purpose necessary for civic life. It is only in terms of the guidelines issued by the Government certain programmes such as marriage and marriage reception, birthday parties, political party conferences, flower shows and the programs related to Horticulture, Forestry, Environment related events, religious functions and conferences, programmes related to the plantation, etc., and any program organised by the Departments of the State Government and the Government of India by its own resources have been permitted. The Supreme Court has clarified that permission shall be granted only for a short term by way of a permissive licence and no long term transaction shall be entered into by the appellant and the period of use shall be within the discretion of the Government of Karnataka. In order to regulate the use of the Palace Grounds, the Government in its discretion has framed new guidelines to let out the Palace Ground only for short term programs not exceeding 3 days depending upon the merits of each case.

20. In my opinion, the discretion exercised by the State Government in rejecting the application for letting out the Palace Grounds for conducting circus show is in conformity with the order of the Hon''ble Supreme Court. The permission sought is for 60 days. Circus show cannot be conducted within a short span of time. As rightly submitted by the learned Additional Advocate General, the roads around the Palace Grounds are congested. The roads are not in a position to take additional traffic movement. The Hon''ble Supreme Court has permitted the State Government to allow the use of Palace Grounds for short term. Therefore, I do not find any infirmity in the guidelines and the order impugned herein. The petition is devoid of merit. It is accordingly dismissed. In view of the dismissal of the writ petition as above, I.A. No. 2 of 2014 does not survive for consideration. It is accordingly dismissed. No costs.