

(2008) 09 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 1841 of 2006

B. Krishna Bhat

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Environment (Protection) Act, 1986 — Section 3 (3), 5

Citation : (2008) 09 KAR CK 0003

Hon'ble Judges : P.D. Dinakaran, C.J.;Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : Puttige R. Ramesh and Lakshmi Holla, for the Appellant; K.N. Puttegowda and Ashok Haranahalli for R-4, H.S. Sachidanand, for R-6, B.V. Shankaranarayana, for R-2, S.G. Pandit, for R-3, Veena Jadhav, for R-5, M.S. Narayan, for R-7, M.S. Arun, for R-8 and Niloufer Akbar, Additional Government Advocate for R-1, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, C.J.—Heard Sri Puttige Ramesh, learned Counsel for the petitioner and also the Counsel for the respondents at length. We also heard the Member Secretary of the Karnataka State Legal Services Authority.

2. The petitioner has prayed for issue of a writ of mandamus or any other writ, order or direction to the respondents in general and the 6th respondent in particular, to ensure that no sewage or garbage is directed to lakes and tanks. They have also prayed for a direction to the 6th respondent to ensure proper fencing of all the lakes and tanks in the city of Bangalore and also in the entire state of Karnataka. Further they have prayed for a direction to ensure that trees/saplings are planted on the periphery of lakes and tanks so that the said place be more green and capable of holding as well as increasing ground water level, which system will also help in preventing flow of silt and mud during rainy season into the lakes and tanks and for all consequential benefits.

3. In this regard the observations and directions made by the Apex Court in AIR

1991 420 (SC) to ensure the protection of the ecological and environmental conditions are apt to be referred to and they read:

7. Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation see *Bandhua Mukti Morcha v. Union of India*; *Sachindanand Pandey v. State of W.B.*, *Ramsharan Autyanuprasi v. Union of India* and *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*

3.1 In the case of *Dr. Ajay Singh Rawat Vs. Union of India (UOI) and Others*, the Apex Court held thus:

7. We have duly considered the findings of the Commissioner and his recommendations. According to us, there cannot be two opinions about some preventive and remedial measures to be taken on war footing, as any delay would cause further degradation and complicate the matters. In our considered view, the following steps deserve to be taken urgently:

(i) Sewage water has to be prevented at any cost from entering the lake.

(ii) So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to

prevent situation of the lake.

(iii) Care has been taken to see that horse dung does not reach the lake. If for this purpose the horse-stand has to be shifted somewhere, the same would be done. The authorities would examine whether trotting of horses around the lake is also required to be prevented.

(iv) Multi-storied group housing and commercial complexes have to be banned in the town area of Nainital. Building of small residential houses on flat areas could, however, be permitted.

(v) The offence of illegal felling of trees is required to be made cognizable.

(vi) Vehicular traffic on the Mall has to be reduced. Heavy vehicles may not be permitted to ply on the Mall.

(vii) The fragile nature of Ballia Ravine has to be taken care of. The cracks in the revetment of Ballia Nala have to be repaired urgently.

3.2 Further in the case of Vellore Citizens Welfare Forum Vs. Union of India and others, the Supreme Court has given the following directions:

23. The learned Counsel for the tanneries raised an objection that the standard regarding total dissolved solids (TDS) fixed by the Board was not justified. This Court by the order dated 9-4-1996 directed the NEERI to examine this aspect and give its opinion. In its report dated 11-6-1996 NEERI has justified the standards stipulated by the Board. The reasoning of the NEERI given in its report dated 11-6-1996 is as under:

The total dissolved solids in ambient water have physiological, industrial and economic significance. The consumer's acceptance of mineralized water decreases in direct proportion to increased mineralize as indicated by Bruvols (1). High total dissolved solids (TDS), including chlorides and sulphates, are objectionable due to possible physiological effects and mineral taste that they impart to water. High levels of total dissolved solids produce laxative/cathartic/purgative effect in consumers. The requirement of soap and other detergents in household and industry is directly related to water hardness as brought out by DeBoer and Larsen (2). High concentration of mineral salts, particularly sulphates and chlorides, are also associated with costly corrosion damage in wastewater treatment systems, as detailed by Patterson and Banker (3). Of particular importance is the tendency of scale deposits with high TDS thereby resulting in high fuel consumption in boilers.

The Ministry of Environment and Forests (MEF) has not categorically laid down standards for inland surface water discharge for total dissolved solids (TDS), sulphates and chlorides. The decision on these standards rests with the respective State Pollution Control Boards as per the requirements based on local site conditions. The standards stipulated by the TNPCB are justified on the afore-referred considerations.

The prescribed standards of the TNPCB for inland surface water discharge can be met for tannery wastewaters cost effectively through proper implant control measures in tanning operation, and rationally designed and effectively operated wastewater treatment plants (ETPs and CETPs). Tables 3 and 5 depict the quality of groundwater in some areas around tanneries during peak summer period (3-6-1996 to 5-6-1996). Table 8 presents the data collected by TNPCB at individual ETPs indicating that TDS, sulphates and chloride concentrations are below the prescribed standards for inland surface water discharge. The quality of ambient waters needs to be maintained through the standards stipulated by TNPCB.

24. The Board has the power under the Environment Act and the Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3(2) of the Rules even permits the Board to specify more stringent standards from those provided under the Rules. The NEERI having justified the standards stipulated by the Board, we direct that these standards are to be maintained by the tanneries and other industries in the State of Tamil Nadu.

25. Keeping in view the scenario discussed by us in this judgment, we order and direct as under:

1. The Central Government shall constitute an authority u/s 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired Judge of the High Court and it may have other members - preferably with expertise in the field of pollution control and environment protection - to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions u/s 5 of the Environment Act and for taking measures with respect to the matters referred to in Clauses (i), (vi), (vii), (viii), (ix), (x) and (xii) of Sub-section (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996.

2. The authority so constituted by the Central Government shall implement the "Precautionary Principle" and the "Polluter Pays Principle". The authority shall, with the help of expert opinion and after giving opportunity to the polluters concerned assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as exist of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons

to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collectors/District Magistrates of the area concerned. The Collector/District. Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/ families.

4. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. This shall be in addition to the recovery hum him as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.

6. We impose pollution fine of Rs. 10,000 each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R, The fine shall be paid before October 31, 1996 in the office of the Collector/ District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment Protection Fund*" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act, 1971.

7. The authority, in consultation with expert bodies like NEERJ, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/ schemes so framed shall be executed by the State Government under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund*" and from other sources provided by the State Government and the Central Government.

8. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November 30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be closed forthwith.

9. We direct the Superintendent of Police and the Collector/District Magistrate/ Deputy Commissioner of the district concerned to close all those tanneries with

immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to close such tanneries permanently or to direct their relocation.

10. Government Order No. 213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure 1 to the notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to the authority to direct the relocation of any of such industries.

11. The standards stipulated by the Board regarding total dissolved solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.

4. Following the above observations and directions we feel it appropriate to issue the following directions.

- (i) The sewage or garbage will not be diverted to the lakes and tanks.
- (ii) The lake area as per the revenue records will be surveyed by the Revenue Department and would be fenced at the cost of the respondents.
- (iii) The Forest Department shall undertake planting of the trees and saplings after getting necessary technical opinion from the experts concerned.
- (iv) The Member Secretary of the State Legal Services Authority shall act as a coordinator among all the respondents herein including the revenue department and the forest department for both monitoring the implementation of the undertaking of the above respondents in implementing, executing the work and the ecological and environmental condition of the lakes.

5. The writ petition is ordered accordingly.