

(1989) 11 KAR CK 0035
In the Karnataka High Court
Case No : W.P. No. 20221/1989

B.M. Ranji Kariappa

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Preservation of Trees Act, 1976 — Section 2(1)(E)

Citation : (1990) 2 KarLJ 351

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In this petition under Article 226 of the Constitution, the petitioner has sought for a declaration that the provisions of Sections 2(1)(e) and the Proviso to Section 8(3) and also Section 8(4) of the Karnataka Preservation of Trees Act, 1976 (hereinafter referred to as the "Act") are void being violative of Article 14 of the Constitution.

2. It is contended on behalf of the petitioner that Section 2(1)(e) of the Act arbitrarily divides the holdings of lands in the rural areas into two groups by classifying them into Schedule-I and Schedule-II; that the holders of the lands falling under Schedule-II are placed at more advantageous position than the holders of the lands falling under Schedule-I; that the Tree Officer has no discretion but to grant permission in respect of the cases falling under the proviso to sub-section (3) of Section 8 of the Act, and he cannot also refuse permission to fell trees to the holders of land falling under Schedule-II and clause (vi) of the aforesaid proviso to section 8(3) of the Act; whereas in the case of holders of lands falling under Schedule-I, a discretion is vested in the tree officer and it is open to him to either grant permission in full or in part or refuse permission: that in the case of applications relating to the trees in the lands falling in Schedule-II, if the tree officer fails to inform the applicant of his decision within 60 days, the permission shall be deemed to have been granted, whereas in the case of an application in respect of a tree in the rural area of the kind specified in Schedule-I, if the Tree Officer fails to inform the applicant of his

decision within one year from the date of receipt of the application by him, the permission shall be deemed to have been granted. Therefore, it is submitted that the provisions contained in Section 2(1)(e) and the proviso to sub-section (3) of Section 8 and also the provisions contained in sub-section (4) of Section 8 of the Act, are discriminatory inasmuch as the classification of the lands made into two groups as specified in Schedule-I and Schedule-II is not a reasonable classification and it is not founded on an intelligible differentia and that it has no rational relation to the object sought to be served by the Act.

3. I will now examine the validity of the aforesaid provisions in the light of the contentions urged by the learned counsel for the petitioner.

4. The object of the Act is to provide for the preservation of trees in the State by regulating the felling of trees and for the planting of adequate number of trees to restore ecological balance and other matters connected therewith. It became necessary to enact the law to prevent ecological disturbance and to maintain ecological balance. The ecological balance has been disturbed due to indiscriminate felling of large number of trees in the rural and urban areas due to growing pace of urbanisation, industrialisation and increasing population which has led to erratic rainfall, recurring famines and floods, soil erosion etc. The Act provides for constitution of Trees Authority for each urban area and for each rural area. According to the definition "urban area" means an area comprising a Municipal Corporation, a Municipality or a Notified Area Committee. "Rural area" means an area and of the kind specified in Schedules-I and II. Thus the rural area has been divided into two partes as specified in Schedules I and II.

5. The duties of the Tree Authority are enumerated in Section 7 of the Act. It is not necessary to refer to them in detail but it is sufficient to state that the duties of the Tree Authority, apart from preservation of trees within its jurisdiction, also includes several other duties which aid to effectuate and advance the object of the Act.

Section 5 of the Act provides that there shall be a Tree Officer (i) in an urban area comprising of a Municipal Corporation, not below the rank of an Assistant Conservator of Forests; (ii) in an urban areacomprising of a Municipality or Notified Area Committee, not below the rank of a Range Forest Officer; (iii) in a rural area of the kind specified in Schedule-II, not below the rank of a Range Forest Officer; (iv) in a rural area of the kind specified in Schedule-I, not below the rank of a Divisional Forest Officer.

At this stage, it is also relevant to advert to Schedules-I and II which are as follows:

"Schedule-I

(See Section 2(i))

Areas comprising lands under coffee, tea, rubber, cardamom, cocoa or cinchona cultivation, including wood-lots and lands belonging to the State Government and

released in favour of others."

"Schedule-II

(See Section 2(i))

Areas comprising lands other than those included in Schedule-I."

6. From the definition of the "Rural area" read with the contents of Schedules-I and II, it is clear that "rural area" has been classified into two divisions. All those areas comprising lands under coffee, tea, rubber, cardamom, cocoa, or cinchona cultivation, including wood-lots and lands belonging to the State Government and released in favour of others are included in schedule-I and the areas comprising lands other than those included in Schedule-I are grouped into one category and are brought under Schedule-II. This classification is not only reasonable but it is also founded on intelligible differentia which distinguishes the lands comprised in the areas falling under Schedule-I from those lands falling under Schedule-II. The classification has also a rational relation to the object sought to be achieved by the Act. It does not require much persuasion to hold that the areas comprising lands under coffee, tea, rubber, cardamom, cocoa or cinchona cultivation are quite different from those areas comprising lands wherein other crops other than those mentioned in Schedule-I are grown. Wood-lots and lands belonging to the State Government and released in favour of others also form a separate and distinct category of lands which fall in line with the areas comprising lands under coffee, tea, rubber, cardamom, cocoa or cinchona cultivation. The elevation and geographic condition and rain-fall of the lands falling under Schedule-I are quite different from those lands falling under Schedule-II. The extent of tree-growth in the areas comprising lands falling under Schedule-I and the rain-fall will be more than in the areas comprising lands falling under Schedule-II.

7. When the very object of the Act is preservation of trees, regulating felling of trees, and planting of adequate number of trees to restore ecological balance, necessarily, the areas comprising lands where tree-growth is more have to be classified into one category and the areas comprising lands where the tree-growth is less have to be classified into another category. The areas comprising lands falling under Schedule-I are not the plain lands used for raising crops other than those mentioned in Schedule-I. The areas falling under Schedule-II comprise such lands which will be normally plain lands having sparse tree-growth. Therefore, areas comprising such lands have to be categorised into a different category. Accordingly, such areas are categorised in Schedule-II. In tune with the object of the Act, in the areas where the tree-growth is scattered, naturally stringent conditions are to be imposed for felling trees as otherwise even the scattered tree-growth is likely to disappear. Similarly, for felling and preservation of trees in the areas falling under Schedule-I still more stringent conditions are to be imposed to effectuate the objects of the Act. It is in this background, the provisions of section 8 of the Act are to be viewed.

8. As per sub-section (1) of Section 8 of the Act, with effect from the appointed day, no person is entitled to fell any tree or cause any tree to be felled in any land whether in his ownership or occupancy or otherwise, except with the previous permission of the Tree Officer. An application in Form-I as per Rule 4 of the Karnataka Preservation of Tree Rules, 1977 has to be made to the concerned tree officer by a person who desires to fell a tree, for permission to fell a tree. Such an application shall have to be accompanied by a site plan or survey sketch, specifying clearly the site or the survey number, the number, kind and girth of the tree sought to be cut and the reasons therefor, along with the consent of the owner or occupant of the land if the applicant happens to be a person other than the owner or occupant. On receipt of the application, the tree officer may inspect the tree and hold such enquiry as he deems necessary and may either grant permission in full or in part or refuse permission. However, in the case of a tree falling under the proviso to sub-section (3) of Section 8 of the Act, the Tree Officer has no option but to grant permission. In this regard it is relevant to notice that the trees falling under clauses (i) to (v) of the proviso to sub-section (3) are those trees which are either dead, diseased or wind-fallen or siliviculturally matured or constitute a danger to life or property or constitute obstruction to traffic or substantially damaged or destroyed by fire, lightning, rain or other natural causes. Such trees are required to be cut and removed. Therefore, the statute has categorically laid down that permission to cut such trees shall not be refused by the Tree Officer. Similarly in the case of trees which fall under clause

(vi) of the proviso to sub-section (3) of Section 8 of the Act, permission has to be granted if the tree officer is satisfied that the tree is required in the rural areas to be removed either for extension of the cultivation in areas specified in Schedule-II or for the bona fide use of the applicant. It is already pointed out that the areas specified in Schedule-II are those which comprise plain lands where the tree-growth is scattered; therefore, felling of trees in such areas is permissible only on two grounds as specified in clause (vi) of the proviso to Section 8(3) of the Act. In such areas, if the applicant is able to satisfy the tree officer that the removal of trees is necessary either for extension of cultivation for growing crops other than those mentioned in Schedule-I, or for the bona fide use of the applicant, the Tree Officer cannot refuse permission. Thus it is clear that even the trees falling under clause (vi) of the proviso to sub-section (3) of Section 8 of the Act, stand on a different footing than those trees standing in the areas comprising lands falling under Schedule-I of the Act.

9. As far as the discretion vested in the Tree Officer in respect of the areas comprising lands falling under Schedule-I of the Act and the trees falling outside the proviso to Section 8(3) of the Act are concerned, it has to be borne in mind that the areas comprising lands falling under Schedule-I of the Act, are such areas wherein tree-growth is in dense and it also consists of forest areas, therefore, in such areas tree-growth has to be preserved. Felling of trees has to be strictly regulated because these areas are prone to tree-growth. It is these

areas which help to maintain ecological balance. In these areas, felling of trees for the purpose of extension of cultivation of crops other than those mentioned in Schedule-I is not permissible and cannot be permitted because it results in complete removal of trees and consequently it will affect ecological balance.

As far as domestic felling of trees for bona fide use of the applicant is concerned, sub-section (6) of Section 8 of the Act provides that notwithstanding the conditions and restrictions contained in sub-sections (1) to (5) of Section 8 of the Act, for bona fide domestic use of a family, one or more members of such family may if they are otherwise entitled to do so, in the aggregate fell in a calendar year such number of trees as would fetch not more than 2.8 cubic metres of timber and five tonnes of fire-wood. Regarding the provisions contained in clauses (i) and (ii) of sub-section (4) of Section 8, the only difference between the areas comprising lands falling under Schedule-I and Schedule-II is that in the case of application in respect of a tree in an urban area and in a rural area of the kind specified in Schedule-II, the permission shall be deemed to have been granted in case the Tree Officer fails to inform the applicant within 60 days from the date of receipt of the application whereas in the case of an application in respect of a tree in a rural area of the kind specified in Schedule-I similar permission shall be deemed to have been granted if the tree Officer fails to inform the applicant of his decision within one year from the date of receipt of the application. As the areas comprising lands in Schedule-I & II are quite different, different periods fixed for each areas in order to assume that the permission sought for shall be deemed to have been granted, cannot be found to be discriminatory. In fact in the areas comprising lands falling under Schedule-I, trees cannot be cut during all the 12 months in a year. It is only during the summer season, trees can be cut and removed; whereas in the case of areas comprising lands falling under Schedule-II, trees can be cut during all the 12 months in a year. Therefore, different periods fixed for presuming that the permission shall be deemed to have been granted cannot be held to be discriminatory.

10. For the reasons stated above, it is not possible to accept the contentions advanced on behalf of the petitioner and hold that the provisions contained in Section 2(1)(e) and Schedules-I and II and also the provisions of sub-section (4) of Section 8 of the Act and the proviso to sub-section (3) of Section 8 of the Act are discriminatory and are violative of Article 14 of the Constitution. Accordingly, the petition fails and the same is dismissed.

Writ Petition Dismissed