
(2010) 12 KAR CK 0045
In the Karnataka High Court
Case No : Writ Petition No. 37334 of 2009

B.R. Deepak Rao

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 35 (1), 35 (4), 35 (5)

Citation : (2010) 12 KAR CK 0045

Hon'ble Judges : Manjula Chellur, J;B.S. Patil, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; R.G. Kolle, AGA for R1, R4 to R6, T.A. Ramachandran and K. Nageshwarappa, CGSC for R2 and R3, for the Respondent

Judgement

B.S. Patil, J.—Petitioner is an advocate by profession. He has got keen interest in wild life and its protection. He asserts that he has got good exposure regarding wild life and has done good research on environmental studies and also the ecosystem and its protection and management. He has filed this writ petition in public interest challenging the action of the State Government to start a "NIGHT SAFARI" in the Bannerghatta National Park.

2. The Times of India, Bangalore edition dated 09.12.2009 carried the news item regarding the approval of the Cabinet to the proposal of JUNGLE LODGES AND RESORTS CORPORATION to start a NIGHT SAFARI on the lines of SINGAPORE NIGHT SAFARI at the cost of Rs. 180 crores. The Petitioner, having learnt about the decision of the State Government as per the news item published in the Times of India, has approached this Court seeking a writ in the nature of mandamus or any other appropriate writ directing the State Government to withdraw the decision taken regarding implementation of "NIGHT SAFARI" project.

3. Mr. B.R. Deepak, who has appeared in person, has aired his deep concern regarding the hazards in starting a "NIGHT SAFARI" at Bannerghatta National

Park and has raised certain legal and environmental issues. Though in the pleadings Mr. Deepak has not raised legal issues touching upon the legality of the action of the State Government in deciding to start "NIGHT SAFARI" in the Bannerghatta National Park area based on any specific provisions contained in the Wild Life (Protection) Act, 1972 (hereinafter referred to as "the Act"), however, during the course of his arguments, he has referred to certain provisions of the Act which deserve our anxious consideration. Sri Deepak has brought to our notice the judgment of the Apex Court in the case of M.C. Mehta Vs. Kamal Nath and Others, , contending that the public trust doctrine extends to natural resources including forests for the purpose of protecting the eco system. He has also placed reliance on the judgment in the case of Pradeep Krishen Vs. Union of India and Others, , with regard to protection of ecology, environment and wildlife in sanctuaries and national parks and of the emphasis laid on the obligation cast on the State and citizen to protect and improve the natural environment and to safeguard the forest and wildlife of the country as per Articles 48A of 51A(g) of the Constitution of India. He has also referred to several other decisions on the same proposition. It is unnecessary to deal with each of them as there cannot be any debate on the importance of the need to maintain, preserve and protect the ecology, environment, forest and wild life. We have heard him at length.

4. The State Government has filed the statement of objections and has justified its action. Learned Additional Government Advocate Sri Kolle, has addressed his arguments in support of the action of the State Government.

5. From the pleadings and on the basis of the arguments advanced, the facts that emerge for our reference and consideration are, that the Bannerghatta National Park is a protected forest situated in close proximity to Bangalore city. It is spread over an area of 10274.01 hectares of land which shelters varieties of wild animals and birds. It shelters larger animals like Asian elephants, sambar, wild dog, spotted deer, leopard, jungle cat, apart from several species of birds, snakes, butterflies. It also safeguards elephant population. It acts as elephant corridor with sufficient wild life movement during day and night.

6. The State Government issued a Government Order dated 18.12.2009 which is produced at Annexure-R3 along with the statement of objections filed by the State, wherein it is made clear that in an area not exceeding 285 acres comprised in Bannerghatta National Park, the proposal made for starting a NIGHT SAFARI has been approved on condition that the required permission as per law has to be taken from the Competent Authorities and no private organization shall be allowed to take part in the said project. It is also clear from the Government Order that to execute the project an organization known as "Bannerghatta Night Safari Limited" shall be established. By a Corrigendum dated 18.01.2010, the State Government has corrected the mistake in mentioning the name of Bannerghatta National Park and has replaced it by stating that the NIGHT SAFARI proposed to be started shall be in the

Bannerghatta Biological Park and not in the Bannerghatta National Park.

7. Going back in time to refer to certain developments in the past, it is necessary to notice that by a notification published in the Karnataka Gazette dated 09.01.1975, taking note of ecological, faunal, floral, geomorphological or geological importance and in order to protect, propagate or develop the wild life therein, the Government considered it necessary to constitute the area covered in the Bannerghatta region as National Park, called the Bannerghatta National Park and in this regard exercising the powers under Sub-section (1) of Section 35 of the Act, the Government declared its intention in this regard. After carrying out necessary exercise of reconciling the survey number-wise extent of the area of the reserved forest of Bannerghatta, and after certain extent of land was handed over by the Revenue Department to the Forest Department and also upon acquisition of certain private lands in Bannerghatta and Byrapanahalli villages, altogether an area of 11,112.73 hectares of total extent was available, out of which, 246 acres was deleted as per the decision taken on 16.04.2003 since the same had been granted to the beneficiaries at various stages starting from 1942 to 1976. Out of the balance area of 11,005.89 hectares, 731.88 hectares came to be earmarked for Bannerghatta Biological Park as per the Government Order dated 09.09.2003. The remaining area of 10,274.01 hectares has been declared as the Net National Park Area by the Government Notification dated 05.03.2004 issued by the Department of Forest, Environment and Ecology under Sub-section (4) of Section 35 of the Act. The area, its situation and limits have been specified in the schedule to the said notification describing the same as a National Park called "Bannerghatta National Park". Bannerghatta Biological Park is shown as one of the enclosures to the Bannerghatta National Park in the description of the boundary given in the notification dated 05.03.2004. It is relevant to notice that this notification issued under Sub-section (4) of Section 35 of the Act, is preceded by the Government Order dated 09.09.2003, whereunder after considering the proposal of the Principal Chief Conservator of Forests (Wild Life) to earmark an extent of 731.88 hectares area from the Bannerghatta Park Area for the purpose of Bannerghatta Biological Park, the Government decided to bifurcate 731.88 hectares from Bannerghatta National Park and earmarked the same for the purpose of Bannerghatta Biological Park. It is only thereafter, that the notification dated 05.03.2004 under Sub-section (4) of Section 35 of the Act has been issued by the State Government declaring the remaining area of 10,274.01 hectares as a National Park called Bannerghatta National Park.

8. The contention of the Petitioner is that if NIGHT SAFARI is permitted in this area it will disturb the movement of wild life which in turn will lead to man-animal conflict in future. According to him, as the animals will get disturbed by the extraordinary lights used, the vehicular movements and the noisy movement of the human beings during night will have an adverse impact on the nocturnal animal movement and the same will make them to revert to unusual movement out of panic which may occasion the elephants stray into human habitat and

leopards to enter into villages for food and shelter and the sloth bears invading human habitation. Petitioner has also urged that the area in question which is sought to be utilized for NIGHT SAFARI is best suited to be declared as an elephant corridor area, as number of elephants use this area for their movement. Inviting our attention to Sub-section (5) of Section 35 of the Act, Sri Deepak has contended that alteration of boundaries of the Bannerghatta National Park could not have been made except on the recommendation of the National Board. He also refers to Sub-section (6) of Section 35 of the Act, to contend that destruction or diversion of habitat of wild animals in the National Park has been prohibited. Referring to the master plan of the Biological Park produced by the State Government for the perusal of this Court, wherein detailed reference is made to the establishment of Lion Safari, Tiger Safari and Butterfly Park in the area earmarked for Biological Park, apart from specifying the area now sought to be utilized for NIGHT SAFARI, he has contended that the entire action of the State and its authorities in establishing the Lion and Tiger Safari, the Butterfly Park and the present attempt to establish the NIGHT SAFARI, are illegal, being in violation of the provisions u/s 38H of the Act and also the provisions contained in the Forest Conservation Act, which enacts several restrictions on de-reservation of forests.

9. Learned Additional Government Advocate Sri Kolle has produced a copy of the master plan titled as Zoo Authority of Karnataka Master Plan (2009-10 to 2018-19). He has produced the project report of NIGHT SAFARI at Bannerghatta prepared by Jungles Lodges and Resorts, the Government of Karnataka Undertaking, with the help of Indian Zoos Association Specialists Group. A detailed project report of NIGHT SAFARI prepared in the month of May 2010 containing several pictorial images depicting the concept of the project, environmental impact assessment, along with project history, is also placed for our perusal.

10. We have carefully considered the entire materials made available, in the background of the various contentions raised by the Petitioner.

11. NIGHT SAFARI is basically a zoological park mostly with large open air exhibits with concealed barriers which is visited by people during early evening/night hours. This visit by the people can be partly by tram and partly on foot with trained guides. Usually the guide provides a running commentary as the people pass along the animal exhibits. The details of animals, their habitat, vegetation is explained in a low voice so as not to disturb the animals and the tranquility of the forest area. The animal area is illuminated with low intensity lights focused on the place where the animals are housed, for giving a good view and a feel akin to viewing the animals in bright moon light. The vegetations in the entire safari is carefully maintained and kept in tact, while the required openings are made for roads, paths, animal display area, barriers, etc. In the Project Report made available and in the course of arguments, the Respondent-State has made it clear that an area comprising about 50 hectares shall only be utilized for the

NIGHT SAFARI.

12. The major concern expressed by the Petitioner is that, commencement of NIGHT SAFARI as proposed, will seriously affect the elephant corridor in the area and will disturb the movement of the wild animals. Apart from this, the main legal contention advanced is that the action of the State Government is opposed to Sub-section (5) of Section 35, Sub-section (6) of Section 35 and Section 38 of the Act.

13. The contention of Sri Deepak that the State has taken the decision to commence NIGHT SAFARI in the area notified as "Bannerghatta National Park", is itself misconceived. As referred to above while narrating the facts, notification under Sub-section (1) of Section 35 was issued on 09.01.1975 proposing vast extent of area to be constituted as National Park called as Bannerghatta National Park. Thereafter, certain exercises were undertaken to acquire certain lands in two villages, to delete certain lands which were granted in favour of certain persons. By the Government Order dated 09.09.2003, an area of 731.88 hectares came to be earmarked for Bannerghatta Biological Park leaving aside the remaining area of 10,274.01 hectares for the National Park. Thereafter, on 05.03.2004, the Notification under Sub-section (4) of Section 35 of the Act, has been issued declaring the said area of 10,274.01 hectares as the Net National Park area. It is thus clear that the area earmarked for Bannerghatta Biological Park is different from the Bannerghatta National Park area as declared under Sub-section (4) of Section 35 of the Act. While there can be no dispute about the proposition that no alteration of boundaries of the National Park as declared under Sub-section (4) of Section 35 of the Act shall be made except on recommendation of the National Board as mandated under Sub-section (5) of Section 35 of the Act in the facts of the present case, the State Government has not resorted to altering the boundaries of the National Park as declared under Sub-section (4) of Section 35 of the Act. The proposal to establish NIGHT SAFARI is in the area earmarked as Bannerghatta Biological Park and therefore, the contention of the Petitioner that there is violation of the mandate contained under Sub-section (4) of Section 35 of the Act cannot be accepted.

14. Under Sub-section (6) of Section 35 of the Act, destruction or diversion of habitat of wild animals is prohibited. In order to protect, preserve and develop the wild life and its environment, notification is issued under Sub-section (4) of Section 35 of the Act declaring 10,274.01 hectares of land as National Park Area. No activity that will have any adverse impact on the protection, propagation or development of wild life or its environment in this area, can be permitted except as provided in the Act. The area earmarked as Biological Park is shown as a tourism zone covering zoo, safaris and the rescue centre of the Central Zoo Authority built for the rehabilitation of the rescued animals from circuses and street plays. It is brought under the jurisdiction of Zoo Authority of Karnataka for the special purposes of conservation and breeding of endangered wild animals, research on wild life and creation of public awareness, etc. It is apparent from

the project report and the pleadings of the parties in this writ petition that in this area earmarked as Bannerghatta Biological Park, a zoo, tiger and lion safari and butterfly park have been established and the same is serving as a place of attraction for people to visit and view the animal species, birds and butterflies.

15. NIGHT SAFARI has gained increasing popularity. Though it is basically a zoo, yet by a carefully planned lighting, a feeling is given to visitors that they are seeing free animals of different regions exhibiting their natural behaviour at night. One is relatively relaxed to spend the tranquil evening hours in a natural environment away from the din and bustle of the city life. The situation of the area in close proximity to Bangalore City has made the Government to take this decision to provide a facility of NIGHT SAFARI. It is stated in the project report that the visiting hours will be spread over between 6 p.m. to 11 p.m. depending on the season. The project is based on the SINGAPORE NIGHT SAFARI providing necessary safeguards against indiscriminate use of the area for putting any construction or other structures disturbing the environment in the area. The authorities have planned to take all adequate steps for the safety of the animals, their health, besides maintaining the cleanliness of the entire park.

16. We are assured by the Respondent-State during the course of the arguments that utmost care will be taken to regulate the movement of the people, the disturbance that they may cause by resorting to use of cameras, mobiles or creating noise and sound pollution which may disturb the animals in the area of the NIGHT SAFARI. It is contended that adequate safeguards involving regulatory and prohibitory measures will be introduced. In fact, the project report makes mention of the same. Even the lighting arrangement focusing the area where the animals are housed will be one that will not affect the animals as the light will be very soft and will give a moon light effect to the animals and also to the viewers.

17. In the above circumstances we do not find any basis for the apprehension that the proposed NIGHT SAFARI will result in disturbing the animals by allowing human intrusion. As long as there is no violation of any of the provisions of the Act, we are not persuaded to interfere with the decision taken by the Government which is also backed by studies made and the carefully planned project prepared. However, we would like to make it clear that if the Petitioner or any public spirited person interested in the matter, finds any lapse on the part of the authorities in implementing and executing the project as conceived by them providing adequate safeguards as adverted to herein above and as spelt out in the project, they will be at liberty to approach this Court with all necessary details and furnishing sufficient materials challenging the violation of the safeguards spelt out in the project.

18. Further, no material is placed before us to substantiate the contention that the area now sought to be earmarked for NIGHT SAFARI is an elephant corridor used by the elephants for their movement. We are also of the view that in view of the large extent of land earmarked for the Bannerghatta National Park as declared under Sub-section (4) of Section 35 of the Act, use of an extent of 50

hectares from out of the area earmarked for Bannerghatta Biological Park for NIGHT SAFARI, will not affect the wild life. As it is urged by the State Government that permission is being obtained by the Zoo Authority, we do not see any substance in the contention urged by the Petitioner that there is violation of the provisions contained u/s 58H of the Act. We need only to mention at this stage that the required permission from the competent authorities has to be obtained before commencing the NIGHT SAFARI in the Bangalore Biological Park. We make it clear that the authorities are required to maintain the water bodies and the flora and fauna in this area and shall not give room for putting up any construction by using bricks, mortar or steel and any structure to be put up shall be environmental friendly and that too shall be in a very limited and regulated way.

19. In the result and for the foregoing discussion, we are of the view that while we must appreciate the efforts put in by the Petitioner in this writ petition showing his concern for preservation, protection and propagation of the wild life, we are unable to interfere with the decision taken by the Government as long as the same is in accordance with the provisions contained in the Act. As already observed by us, the State Government and the concerned authorities have to take adequate measures to secure the safety of the animals and to maintain peaceful atmosphere in the area adopting all the safeguards mentioned In the project report placed before us, some of which have been adverted to by us, herein above. We further make it clear that the area to be used for NIGHT SAFARI shall be strictly in conformity with the project report both in its extent and location. The authorities shall ensure cleanliness, hygiene and complete discipline in the matter of maintenance of the area and in regulating the visitors so as to ensure peace and tranquil atmosphere. Breach of these conditions shall be viewed seriously and the Petitioner or any other interested person can move this Court with sufficient facts and figures seeking appropriate directions and action.

20. Petition is disposed of in terms stated above.