

**(1998) 07 KL CK 0057**

**In the High Court Of Kerala**

**Case No : O.P. No. 14764 of 1997**

Chandrasekharan Pillai and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

**Date of Decision : 22-07-1998**

**Acts Referred:**

Constitution of India, 1950 — Article 48A

**Citation :** (1998) 2 KLJ 195 : (1988) 2 KLJ 195

**Hon'ble Judges :** P.K. Balasubramanyan, J

**Bench :** Single Bench

**Advocate :** V. Giri, for the Appellant; V.N. Achutha Kurup, A.A.G. ( T.M. Mohammed Youseff ) and Govt. Pleader ( H.B. Shenoy ), for the Respondent

**Final Decision :** Allowed

## Judgement

P.K. Balasubramanyan, J.—This Original Petition is filed by three residents of Pattazhi Vadakkekara Panchayat in Quilon District. They have properties on the northern bank of Kallada river. They have filed this Original Petition praying for the issue of a writ of mandamus directing the State of Kerala, the District Collector, Quilon and the Tahsildar, Pathanapuram to take appropriate action to see that the removal of sand from Kallada river carried on at the Konnaman Kadavu is stopped forthwith, for the issue of a direction to the said respondents to see to it that there is no further removal of sand from the river bed at Konnaman Kadavu at least until such a time an expert body constituting of the representatives of the Pollution Control Board and Central Water Authority certify that sand could be removed and for such other appropriate directions. The petitioners essentially complain that there is over exploitation of the river by auctioning of the right to collect and remove sand by contractors who have no commitment to the environment or to the preservation of Ecology and who are only concerned with self-aggrandisement. The Original Petition is resisted by the contractor for the current year impleaded as respondent No. 4. But it must be noticed that his year has run out and the State has also stopped from 1-4-1998

auctioning of the right to collect sand from certain specified rivers including Kallada river. As directed by this court, respondents 1 to 3 have also filed a counter affidavit to the Original Petition in which it is printed out that the State has now drawn up certain norms in that behalf. In this Original Petition, in C.M.P. 26512 of 1997, a petition for the issue of an interim direction this court issued a direction to the State Pollution Control Board as follows:--

Senior Environmental Engineer of Pollution Control Board or any other Engineer next in the rank of the said Environmental Engineer shall conduct an inspection in Konnaman Kadavu of Kallada river in Pattazhi Vadakkekara with notice to the Secretary to the Grama Panchayat, the first petitioner and the fourth respondent and furnish a report on the following aspects:

1. Whether the extraction of sand from the said kadavu is in accordance with the conditions contained in Ext. P4;
2. Whether the extraction of sand causes environmental de-gradation;
3. Any suggestion to avert environmental degradation if found.

He can take assistance from Tahsildar as well.

The report shall be filed on or before 23-9-1997....

Ultimately the report dt.6-10-1997 was submitted by the Environmental Engineer to this Court on 9-10-1997. The aspects directed to be reported on were reported on. On behalf of the first respondent State an objection to the report of the Environmental Engineer dt.27-5-1998 was filed. Thereafter learned counsel for the petitioners, learned Additional Advocate General on behalf of respondents 1 to 3 and learned counsel for respondent No. 4 contractor were heard in detail.

2. Three persons who claim to be members of the union engaged in collection of sand from the Konnaman Kadavu filed C.M.P. 27583 of 1997 seeking to get themselves impleaded as additional respondents in the Original petition. Their counsel was also heard at the time of arguments.

3. Under the Government order Ext. P1 dt.29-6-1993 the Government of Kerala excluded from vesting in the Panchayat through which the rivers flowed nine of the major rivers in the State including the Kallada river. The rivers thus excluded from vesting in the Panchayat are: (1) Bharathapuzha, (2) Periyar, (3) Chaliyar, (4) Pamba, (5) Kallada, (6) Vamanapuram, (7) Chandragiri, (8) Karamana and (9) Meenachil. The reason for such exclusion was explained in that Notification as follows:--

The removal of sand from the rivers in the State and the licensing thereof are handled by the Panchayats through which the rivers concerned flow. It has come to the notice of the Government that the indiscriminate and uncontrolled removal of the sand from the major rivers causes large scale land sliding and loss of property. Such large scale dredging of sand also disturbs the biophysical environment system of the river beds in different degrees. The Honourable High

Court has directed the Government to take appropriate preventive measures in this regard. Government consider that there should be a new approach altogether to the whole question of managing and exploiting this natural resources in a sustainable way with a view to protecting that river system. As a first step towards this, Government have decided that nine major rivers in the State may be excluded from the control of the Panchayats. So that those rivers and the river beds will become the property of the Government to which the provisions of the Land Conservancy Act will apply.....

The circular Ext. P2 dt.30-10-1993 was also issued to the various departments and certain instructions were issued. These instructions were based on the discussion regarding the relevant aspects with the concerned officials of various departments. As per the decisions taken the right to grant permit for removal of sand was rested with the Tahsildar of the concerned Taluk and the permission had to be obtained in writing. The sand can be removed only at places which are 300 meters away from the sides of bridges, dams and other works. The sand could be removed only from the middle of the river situate at a distance of 10 meters of the boundary of the river on either side. In one season sand could be removed only to a height of 60 cms from the sand bed in the river. Sand can be removed only between 6 A.M. and 6 P.M. No mechanical device can be used for removal of sand. In areas where there was a possibility of salt water flowing into the river, sand should not be removed. There should be no removal of sand from areas where on the surface the deposit of sand was less. Sand could not be removed from publicly important places in the river like Maramon, Cherukolpuzha, alwaye and Thirunavaya. The boundaries of the areas within the Panchayat and Municipality from where the sand is permitted to be removed must be determined and clearly specified. The contracts for the current year can be revised by incorporating the conditions as above. Finally the permission to remove the sand should be without any detriment to the environment. This circular further directed the Collectors of the Districts to constitute river management and planning committees to ensure the implementation and to prevent violation of the conditions.

4. In the counter affidavit dt. 17-2-1998 filed on behalf of the State it is stated that the Government had considered the relevant aspects in detail and had issued specific restrictions for the collection of sand from Bharathapuzha on the basis of directions issued by this court in O.P. 15971 of 1997. The restrictions imposed are set but in the counter affidavit as follows:

1. Passes are to be issued for the transporting of sand to other States and sales tax is to be imposed for the inter-state transportation of sand.
2. District Collectors are to appoint Expert Committees as to fix the quantity of the sand which can be collected from each shutter. The District Collector has to take decision on the recommendations of the committee and sanction should be accorded to the Panchayats and Municipalities thereafter.

3. The Expert Committee has to estimate the quantity of the sand twice in a year and submit report for the long time action plan.
4. Check posts are to be maintained on each shutter at the cost of the Panchayat concerned and watchman should be appointed there.
5. Identity cards are to be issued to the existing workers engaged in the collection of sand by the Tahsildar with the co-operation of the local bodies concerned.
6. The system of auction of sand has to be fully stopped and the Panchayats themselves should collect the sand and sell the same directly.
7. The District Collectors have to fix the price of the sand prior to the commencement of season each year. 50% of the net profit has to be given to the local body concerned and the remaining 50% has to be deposited with the River Management Fund controlled by the District Collector. This amount is to be utilised for the protection of the river concerned. Detailed orders in this regard will be issued separately.
8. The Tahsildars are to organise Action Committees with the Co-operation of the Voluntary Organisation so as to ensure that the sand is being collected in strict compliance with the restrictions laid down by the authorities concerned. The District Collectors are to make it sure that such action committees are being formed prior to the commencement of the season. The "Grama Sabhas" are to be actively participated in such proceedings.
9. The collection of sand is to be prohibited from 1st July to 30th September every year.
10. As far as Bharathapuzha is concerned CESS and CWRDMN are directed to conduct a detailed study and submit its report within a period of 4 months as to the salination of water especially in the area between Chamravattam and Thirunavaya.
11. The collection of sand within 500 metres from the bridges and irrigation projects are to be prohibited. The Panchayats and Revenue authorities are to ensure that the collection of sand is being done in compliance with the restrictions imposed by the Government from time to time.
12. The filling of land should not be permitted with river sand. The Panchayats and "Grama Sabhas" are to enlighten the people in this regard.
13. The waste and impurities, especially those from the septic tanks should not be permitted to be opened to the river. The local bodies are to initiate remedial measures in this regard.
14. The encroachments of all sorts are to be prohibited and the existing encroachments are to be evicted summarily.
15. The District Collectors are to enlarge Special Survey Staff so as to measure

and demarcate the boundaries of the river within a specified time.

16. The existing River Management Committees are to function efficiently and District Collectors are to take special attention in this regard.

17. The forest department is to give special attention to the conservation of forests at the origination point of the rivers since the availability of water is essential for the existence of rivers.

18. Chack dams are to be built in co-operation with the Irrigation Department so as to save the water.

It is submitted in the counter affidavit that the Government had decided to implement the restrictions set but above in respect of the other eight rivers also with effect from 1-4-1998. Thus all the nine rivers referred to in Ext. P1 Notification are governed by the above directions.

5. In the report submitted by the Senior Environmental Engineer as per the interim directions of this court extracted earlier, after furnishing answers to question No. 1, on the question "whether the extraction of and causes environmental degradation" it was stated as follows:--

The extensive sand extraction will cause environmental degradation such as

- a. This will spoil the normal gradient (slope) of the river bed and thereby affect the self clearing velocity of the river.
- b. This will give chances to the accumulation of silt and dirt and affects water quality.
- c. Reduces ground water table during summer, and causes drinking water shortage.
- d. Land slide on river banks.
- e. Affects the water management structures, bridges, retaining walls etc.

It was stated that in that particular stretch of the river no environmental degradation was actually noticed. Regarding the third aspect referred to in the order of this court it is stated that extensive sand extraction will cause serious environmental degradation and to avert such problems suggestions that follow were being given:--

(a) continuous sand extraction at a particular stretch may be stopped. The auction may be done in alternate years.

(b) In condition No. 1 of the Ext. P4, it is stated that sand extraction shall be done only 10m. away from river bank.

But the "river bank" is not clearly defined. Due to land slides, the Width of the river may increase and hence the sand mining area will also get increased. To avoid this, the river bank may be fixed with some permanent structures i.e. from

the survey stones placed along the river course. So that land slide occurred if any also can be assessed.

(c) The prohibited area i.e. on either sides of bridges, dams, etc. are not earmarked by the concerned agency. This prohibited area may be earmarked by a permanent stone painted in Red Colour on either bank of river.

(d) The maximum, depth of sand excavation is limited to 60 cm. from normal sand bed. But normal sand bed level is not defined and specified.

Normal sand bed level at a river stretch may be defined and shall be marked with some permanent Bench Mark on the river banks. If the present sand bed level is below the required level, then auction may not be conducted till it attains the required level.

(e) Regarding condition No. 6, the area where sand deposit is less may be located and may be declared as prohibited area, before finalising the auction.

(f) A regular monitoring cell may be formed by including local representatives to check the violations if any.

(g) Retaining wall may be constructed along the river banks, wherever the chances of land slides exists.

(h) The limiting conditions shall be intimated to the sand extraction workers and in case of violations, the responsibility shall be shared by them along with the contractor.

6. The system of auctioning the right to collect sand has now been given up the State as disclosed from clauses 6 of the conditions imposed and now the local authorities are themselves to collect the sand and sell the same directly. It was submitted by the Additional Advocate General on behalf of the State that the system of auctioning of the right to collect sand from the nine rivers referred to in Ext.P1 Notification has been discontinued with effect from 1-4-1998 and hereafter there will be no such auction. It is therefore not necessary to further consider the question whether the right to collect sand should be auctioned or not. It is only necessary to record the stand adopted by the Additional Advocate General that there will be no further auction of the right to collect sand from the nine rivers referred to in Ext.P1 as per the decision now taken by the Government.

7. One of the important suggestions made by the Environmental Engineer, Pollution Control Board to preserve the environment and prevent environmental degradation is that the execution of sand may be done only in alternate years and continuous sand extraction at a particular stretch may be stopped. This is the first suggestion made by the Pollution Control Board. Learned Additional Advocate General appearing on behalf of the State submitted that this suggestion by the Environmental Engineer was not acceptable to the State and the State wanted to file an objection to the suggestions made by the

Environmental Engineer. After a number of adjournments and extensions of time for filing objections, an objection dt.27-5-1998 was filed before this court. It is stated therein that the conditions stipulated by the Government in its Circular dt.5-1-1998 is considered by the Government to be sufficient for protection of the rivers and the environment. It is stated that the Government was of the view that total banning of removal of sand was not proper. If the removal of sand is banned for one year there was every possibility of the sand mining workers becoming jobless for the entire one year boosting the price of sand and affecting the construction activities etc. The Government was of the opinion that the precautions taken as per the circular are sufficient enough to safeguard the environment and the river. If the expected result is not obtained on implementing the circular or any difficulty is experienced in the way of giving effect to the guidelines in the circular then the Government will reconsider the entire issue and appropriate remedial measures will be taken in the matter. Therefore the Government was of the view that there was no necessity for ordering a total ban for one year in mining sand at present. No serious objections are seen taken to the other suggestions made by the Environmental Engineer in his report. The stand adopted by the Government is that the directions in the circular issued by it would be sufficient for protecting the environment and to prevent environmental degradation. But it can be seen from the report of the Environmental Engineer that without clearly defining the river bank, the condition that sand extraction shall be only 10 meters away from the river bank on either side could not effectively implemented. There was no earmarking of the prohibited area from which no sand could be removed except beyond 300 meters on either side so that the said prohibition also could not be effectively implemented. Though it is provided that the maximum depth of sand excavation should be limited to 60 centimeters from normal sand bed, normal sand bed limit is not defined and specified. These omissions in my view would make the implementation of the circular issued by the Government ineffective, if not impossible and the directions would not be sufficient to protect the environment and to avert environmental degradation. The position is now clear that unregulated sand extraction will lead to environmental degradation. It is in this context that one has to consider the recommendation made by the Environmental Engineer of the State Pollution Control Board that there may be a "sand-removal holiday" for every river in one out of two years. The main objection on behalf of the Government appears to be that because of the banning of removal of sand for one year out of every two years, there was a possibility of sand mining workers becoming jobless and the price of sand going up. This is not an objection to the merit of the suggestion from the point of view of environmental protection, the need for which is recognised. But this possibility could be averted to a considerable extent by alternating the year of the Ban among the "kadavus" and the rivers. It is not as if there should be a ban on removal of sand from all the nine rivers in the State and in all the "kadavus" in them during the same year. The banning could be by rotation or by alternating it and in a particular year banning could be confined to some of the kadavus of the

rivers or to four or five rivers and in the next year confined to the other kadavus of the rivers or to five or four rivers as the case may be. There is no other serious objection raised in the objection filed on behalf of the first respondent. There is no controverting of the statement that the constant and continuous removal of sand from the river would lead to Environmental Engineer of the State Pollution Control Board or the statement that extensive sand extraction will cause serious environmental degradation.

8. Article 48A of the Constitution of India provides that the State should endeavour to protect and improve the environment. This is thus a Constitutional obligation of the Government. The State Pollution Control Board is an expert body that has been created with a view to avert pollution and ensure the due implementation of the Environment Protection laws and it consists of experts in that field. In the nature of the objection raised by the State, I find no justification in not accepting the recommendations of the Environment Engineer in full for the purpose of protection of the nine rivers referred to in Ext.P1 including the Kallada river involved in the present original petition. Even to implement the decisions already taken by the Government, it appears to me to be necessary to carry out the suggestions made by the Environmental Engineer in his report dt. 6-10-1997. I am therefore satisfied that in addition to accepting the conditions imposed by respondent No. 1 as disclosed from the counter affidavit which the learned Additional Advocate General assures this court, will be implemented strictly, it is necessary to issue the following directions to the first respondent.

9. I therefore direct the first respondent

- i. to clearly define the river bank referred to in the conditions imposed by it and to fix permanent marks so as to enable the clear determination of the river bank on either side.
- ii. to earmark the prohibited area on either sides of bridges, dams and other structures so as to implement the 300 metre ban.
- iii. to specify the normal sand bed level for the respective rivers and after such demarcation, to mark the level with some permanent bench mark on the river banks.
- iv. to prevent and/or ban the removal or extraction of sand from such rivers where the present sand bed level is below the required level as fixed by the State.
- v. to locate the areas where the sand deposit is less and declare such areas as prohibited areas before taking up the work of extraction for the relevant year.
- vi. to construct retaining walls along the river banks where there exist chances of land slide, wherever possible.

I may notice that the issuance of the above directions are not seriously objected to by the first respondent or by the learned Additional Advocate General who appeared on behalf of respondents 1 to 3. As I noticed already, the main

objection was to the "sand removal holiday" in one Out of two years suggested by the Pollution Control Board. But considering the need for environmental protection and to prevent environmental degradation and taking note of the nature of the objections raised on behalf of the first respondent I am of the view that the suggestions of the Environment Engineer in that behalf are to be accepted. This is especially so since I find from the various Original Petitions that have come up before this court, that the local authorities and bodies have not shown sufficient commitment to the protection of the environment. I therefore issue the following direction also to the respondents 1 to 3.

vii. Not to permit removal of sand from specified kadavus in the 9 rivers covered by Ext.P1 notification or from the specified rivers themselves thought proper in one out of every two years and permit that removal once in two years only subject to the other conditions prescribed.

10. Since, for the current year, commencing from 1-4-1998, arrangements have already been made for removal of sand, the above directions will be implemented by the State from the year commencing from 1-4-1999. Before commencement of the next year on 1-4-1999, respondents 1 to 3 are directed to implement direction (i) to (vi) and also to prepare the list of kadavus or rivers themselves which are to have a "sand removal holiday" during the year 1-4-1999 to 31-3-2000. This will be done at least by the end of February 1999 and their implementation carried out by the 1st respondent and all its officers. The exercise of identifying the kadavus or rivers that are to have the holidays for the succeeding years and the carrying out of the directions (i) to (vi) and such of them as are needed to be carried out every year, will be done before the end of the month of February of the succeeding year.

11. The experience of this court has shown that the local authorities and local bodies are not yet sufficiently conscious of the need to prevent environmental degradation and to protect the environment. The first respondent would do well to organise seminars and workshops on environmental protection so as to make the local bodies and those in charge of them conscious of the need for such protection. As of now, it is seen that wood based industries are freely given licence to establish factories even touching forests and certainly within 5 kilometers, and action prevented by the Supreme Court. River banks are permitted to be misused. Similarly, quite a few of the local authorities are seen to be keen only on deriving the maximum income from the sand extraction from the rivers. This has to change and they must be helped to develop an environmental friendly attitude while performing their statutory functions. The voluntary organisations referred to in the counter affidavit filed on behalf of the State can certainly play a leading and fruitful role in this kindling of environmental consciousness in the local bodies and their citizens. It is true that the subject-matter of this Original Petition was initially only the Kallada river, one out of the nine rivers specified in Ext.P1. But the suggestions made by the Environmental Engineer of the State Pollution Control Board, were common

suggestions. The arguments were also about the steps to be taken to prevent environmental degradation in respect of all the rivers. The learned Additional Advocate General also argued this case only on that higher plane and on the basis that all the rivers included in Ext.P1 notification was within the purview of this original petition. Hence the directions issued above will have application to all the nine rivers included in Ext.P1 notification and they will be in addition to and not in derogation of the directions already issued by the Government, as detailed in its counter affidavit and extracted by me in this judgment.

This original petition is thus allowed and the directions as above are issued directing the first respondent State and all the District Collectors of all the Districts in the State to implement them strictly.