

(2018) 03 CHH CK 0129
In the Chhattisgarh High Court
Case No : Writ Petition (C) No.268 of 2017

DHARAMJEET SINGH

APPELLANT

Vs

STATE OF CHHATTISGARH

RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 27, 27(1)(b), 28, 35, 28(2), 38O(1)(a),
51(1C), 55(1D), 55(ab), 55(ac)
Motor Vehicles Act, 1988 — Section 74, 115

Citation : (2018) 03 CHH CK 0129

Hon'ble Judges : SANJAY K. AGRAWAL

Bench : Single Bench

Advocate : Satish Chandra Verma, Shashank Thakur

Final Decision : Allowed

Judgement

1. Tiger Conservation Plan (TCP) for Achanakmar Tiger Reserve (ATR), Chhattisgarh was approved by the Government of India, Ministry of

Environment, Forest and Climate Change, and National Tiger Conservation Authority by order dated 24-9-2015 under Section 38-O (1)(a) of the Wild

Life (Protection) Act, 1972 (for short, 'the Act of 1972') subject to certain conditions incorporated in the said order clearly holding that the core/critical

tiger habitat has the status of a National Park / Wildlife Sanctuary, all provisions under Chapter IV of the Act of 1972 would be applicable to such

areas, in addition to Sections 51(1C), (1D) and 55(ab), (ac) of the Act of 1972. Thereafter, the Collector-cum-District Magistrate, Bilaspur in exercise

of power conferred under Section 115 of the Motor Vehicles Act, 1988 read with Rule 215 of the Chhattisgarh Motor Vehicles Rules, 1994, directed

for closure of Kota-Achanakmar-Kevchi Highway prohibiting usage of new buses as well as light motor vehicles and heavy motor vehicles except

light motor vehicles of the persons residing in the villages of the said ATR. Feeling aggrieved against the order of closure passed by the learned

Collector-cum-District Magistrate on the aforesaid route Kota-Achanakmar-Kevchi Highway, this writ petition has been filed by the petitioners who

are four in number stating inter alia that the closure of their movement on the said road offends their fundamental right guaranteed under Article 19(1)

(d) of the Constitution of India and the order passed by the learned District Magistrate is without jurisdiction and without authority of law, therefore, it

deserves to be quashed.

2. Return has been filed stating inter alia that since Achanakmar-Amarkantak PWD road passes through the ATR area and over 1,000 vehicles run

every day causing great disturbance to wild animals of ATR and every year a lot of wild animals of ATR are being killed by speedy vehicles and in

accordance with the TCP, the said route has been closed and alternative route has already been provided in the shape of Ratanpur-Majwani-Kenda-

Kevchi (RMKK), therefore, the order passed by the said authority is strictly in accordance with law and the writ petition is liable to be dismissed.

3. Mr. Satish Chandra Verma, learned counsel appearing for the petitioners, would submit that the order passed by the learned District Magistrate

duly prohibiting the petitioners and the nearby villagers to pass through the said Kota-Achanakmar-Kevchi road is violation of their fundamental right

guaranteed under Article 19(1)(d) of the Constitution of India. He would further submit that the learned District Magistrate has not recorded any

finding that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, the prohibition of motor

vehicles is necessary. Even otherwise, no such notification in the official gazette has been published prohibiting the driving of motor vehicles in the said

order. Therefore, the impugned order is liable to be set aside.

4. Mr. Shashank Thakur, learned State counsel appearing for respondents No.1 to 8, would submit that the impugned order has been passed to protect

the wild animals in the ATR and further to protect the environment of the ATR that is based on Tiger Conservation Plan approved by National Tiger

Conservation Authority and alternative route has already been provided in the shape of Ratanpur-Majwani-Kenda-Kevchi (RMKK) route and even

otherwise, old buses and motor vehicles are being plied in the said route and

even the light motor vehicles of the local residents are being permitted

subject to pass being issued and as such, the impugned order is strictly in accordance with law and the writ petition is liable to be dismissed.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record minutely and critically as well.

6. As stated herein-above, National Tiger Conservation Authority has approved Tiger Conservation Plan for Achanakmar Tiger Reserve (ATR) and

the Achanakmar-Amarkantak PWD road passes through the ATR area. The Kota-Achanakmar-Kevchi road (State Highway-8) is situated in the

midst of core area. Total area of ATR is 914.017 sq.km. out of which 626.195 sq.km. is core area and remaining 287.822 sq.km. is buffer area. In

core area, 19 villages are situated and in buffer area, 5 villages are situated. By virtue of the order approving TCP on 24-9-2015, the provisions of

Chapter IV of the Act of 1972 have been made applicable. Section 27 of the Act of 1972, which deals with restriction on entry in sanctuary, provides

as under: -

â??27. Restriction on entry in sanctuary.â?"(1) No person other than, â?

(a) a public servant on duty,

(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,

(c) a person who has any right over immovable property within the limits of the sanctuary,

(d) a person passing through the sanctuary along a public highway, and

(e) the dependents of the person referred to in clause (a), clause (b) or clause (c),

shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under section 28.

(2) Every person shall, so long as he resides in the sanctuary, be boundâ?

(a) to prevent the commission, in the sanctuary, or an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting

the offender;

(c) to report the death of any wild animal and to safeguard its remains until the

Chief Wild Life Warden or the authorised officer takes charge thereof;

Â (d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his

power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any Forest Officer, Chief Wild Life Warden, Wild Life Warden or Police Officer demanding his aid for preventing the commission of any

offence against this Act or in the investigation of any such offence.

(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause any wrongful gain as defined in the Indian Penal

Code, 1860 (45 of 1860), alter, destroy, move or deface such boundary-mark.

(4) No person shall tease or molest any wild animal or litter the grounds or sanctuary.â??

7. A focused glance of the aforesaid provision would show that restriction of entry in the sanctuary is permissible by virtue of Section 27(1)(b) of the

Act of 1972 and restriction can be imposed by the Chief Wild Life Warden. By virtue of Section 27(1)

(d) of the Act of 1972, a person is within his right to pass through the sanctuary along a public highway.

8. A Division Bench of the Kerala High Court in the matter of In Re Travancore Devaswom Board¹ speaking through T.B. Radhakrishnan, J, as then

His Lordship was (presently the Chief Justice of this Court), while dealing with a declared sanctuary i.e. Periyar Tiger Reserve under the provisions

of the Wild Life (Protection) Act, 1972 has held that the sanctuary declared in terms of the provisions of the Act of 1972 is a protected area and the

prime purpose for declaration of an area as sanctuary is for the purpose of protecting, propagating and developing wild life or its environment. While

dealing with Section 27(1)(d) of the Act of 1972 it has been held that if there is a public highway through a sanctuary, it can be used only for the

restricted purpose of a highway and that movement be not utilised for further intrusion into the sanctuary and observed as under: -

Â â??5. Though passage through, a public highway along with sanctuary is permitted, that is a regulated and restricted passage in terms of S. 27.

Hence, even if there is a public highway through a sanctuary, it can be used only for the restricted purpose of a highway and movement through that

cannot, in any manner, be utilised for further intrusion into the sanctuary or in any manner affecting faunal,

1 MANU/KE/1501/2011

floral, geomorphological, natural or zoological significance of the sanctuary.â??

The aforesaid observation made by the Division Bench squarely applies to the facts of the present case.

9. Likewise, Section 28 of the Act of 1972 provides for grant of permit which states as under: -

â??28. Grant of permit.â?"(1) The Chief Wild Life Warden may, on application, grant to any person a permit to enter or reside in a sanctuary for all

or any of the following purposes, namely:â?

(a) investigation or study of wild life and purposes ancillary or incidental thereto;

(b) photography;

(c) scientific research;

(d) tourism;

(e) transaction of lawful business with any person residing in the sanctuary.

(2) A permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed.â??

10. Under Section 28 of the Act of 1972, the Chief Wild Life Warden is competent to impose restriction on entry of public in a sanctuary once it is

declared as such under Section 35 of the Act of 1972. Under Section 28(2) of the Act of 1972, the Chief Wild Life Warden is authorised to permit to

enter or reside in a sanctuary subject to such conditions and on payment of such fee as may be prescribed. Thus, the Chief Wild Life Warden is

conferred with the power to permit entry into area declared as a National Park subject to such conditions and on payment of such fee as may be

prescribed. In other words, when a declaration is made under Section 35 of the Act of 1972 converting a particular area as a National Park, the

authority is competent to impose certain conditions, however, no provision is brought to my notice prohibiting entry into the National Park, as such,

there is no provision completely prohibiting entry into the National Park or sanctuary area. By virtue of Section 27(1)(d) of the Act of 1972, a person is

entitled to pass through the sanctuary along a public highway.

11. The fact remains that no such power has been conferred either under Section

27 or Section 28 of the Act of 1972 to impose restriction on entry into a sanctuary or a National Park along a public highway, as the case may be, to the Collector-cum-District Magistrate and even otherwise, no such power is said to have been exercised by the District Magistrate under Section 27 or Section 28 of the Act of 1972. Therefore, the impugned order of prohibition cannot be said to have been passed by the Collector-cum-District Magistrate either under Section 27 or Section 28(2) of the Act of 1972. There is no other provision in the Act of 1972 empowering the Collector-cum-District Magistrate to prohibit the citizens from using a public highway passing through the ATR, as the said route Kota-Achanakmar-Kevchi is covered by State Highway-8.

12. This would lead me to the issue as to whether the learned Collector-cum-District Magistrate can exercise the power to prohibit the entry into the said public highway i.e. Kota-Achanakmar-Kevchi route by restriction provided under Section 115 of the Motor Vehicles Act, 1988 read with Rule 215 of the Chhattisgarh Motor Vehicles Rules, 1994. At this stage, it would be appropriate to notice Article 19(1)d) of the Constitution of India which provides as under: -

“19. Protection of certain rights regarding freedom of speech, etc.-(1) All citizens shall have the right—

(a) to (c) xxx xxx xxx

(d) to move freely through the territory of India;

xxx xxx xxx

xxx xxx xxx”

13. Freedom of movement guaranteed by clause (d) of Article 19(1) of the Constitution is in addition to the right to personal liberty guaranteed under

Article 21. Citizens have to be provided access to roads and public highways which access is necessary for proper exercise of right to life. A

permanent restriction on the freedom of movement of citizens is prima facie suspect, but said right is not absolute and can be subjected to reasonable

restriction contemplated under clause (6) of Article 19 of the Constitution of India.

14. The reasonableness of restriction has to be determined in an objective manner and from stand point of the interest of general public. While

considering the aspect of validity of restriction and judging reasonableness of law, it is necessary to consider surrounding circumstances and it is also necessary to find out whether it is for furthering the social interest.

15. The Supreme Court in the matter of State of Himachal Pradesh and another v. Umed Ram Sharma and others² has held as under: -

“11. ... Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)

(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely

throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical

existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. ...”

16. At this stage, now, it is appropriate to notice Section 115 of the Motor Vehicles Act, 1988, which gives power to the Collector to prohibit or restrict

entry of motor vehicles on road or roads in the interest of public at large, and Rule 215 of the Chhattisgarh Motor Vehicles Rules, 1994, which read as

follows: -

Section 115 in the Motor Vehicles Act, 1988

“115. Power to restrict the use of vehicles .”The State Government or any authority authorised in this behalf by the State Government, if

satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may by notification in the

Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the

notification, the driving of motor vehicles or of any specified class or description of motor vehicles or the use of trailers either generally in a specified

area or on a specified road and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under

section 116 at suitable places: Provided that where any prohibition or restriction under this section is to remain in force for not more than one month,

notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such

prohibition or restriction.”

Rule 215 in the Chhattisgarh Motor Vehicles Rules, 1994

215. Power to restrict use of vehicle."In accordance with Section 155 of the Act, the District Magistrate may, within the jurisdiction, prohibit or

restrict the use of motor vehicles, driving of motor vehicles or of any specific class of motor vehicles or use of trailers in specified area or specified

road in the interest of public safety, convenience or the condition of any road or bridge.

17. A focused glance of the aforesaid provisions would show that (i) the State Government or any authority authorised in this behalf; (ii) on being

satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge; (iii) may by notification in

the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles

or of any specified class or description of motor vehicles or the use of trailers either generally in a specified area or on a specified road, impose any

such prohibition or restriction. Proviso to Section 115 of the Motor Vehicles Act, 1988 provides that for prohibition or restriction for more than one

month, notification in the Official Gazette shall not be necessary.

18. Thus, for prohibition of use of road or bridge for more than one month, issuance of notification in the Official Gazette is a statutory requirement

that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, such a prohibition or restriction to

any specified class or description of motor vehicles is necessary. Section 115 of the Motor Vehicles Act, 1988 provides that such a notification has to

be published in the Official Gazette if the prohibition or W.P.(C)No.268/2017 restriction is for more than one month.

19. It is the basic principle of law long settled, that, if the manner of doing a particular act is prescribed under any statute, the act must be done in that

manner or not at all. The origin of this rule is traceable to the decision in the matter of Taylor v. Taylor³, which was followed by Lord Roche in the

matter of Nazir Ahmed v. King Emperor⁴, who stated as under: -

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

20. Similar is the proposition laid down in the matter of State of U.P. v. Singhara Singh and others⁵ in which the Supreme Court has clearly held that

where a power is given to do a certain thing in a certain way, the thing must be

done in that way or not at all and that the other methods of performance are necessarily forbidden.

21. A power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. (See *J.N. Ganatra v. Morvi Municipality*, *Morvi*⁶ and *Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and others*⁷.)

22. Thus, publication of notification in the Official Gazette is a sine qua non / mandatory for valid restriction / prohibition of the use of motor vehicles

under Section 115 of the Motor Vehicles Act, 1988, if restriction / prohibition is for more than one month.

23. In the matter of *New Motor Transport Company, Durg v. Regional Transport Authority, Raipur and others*⁸, a Division Bench of the High Court

of Nagpur dealing with Section 74 of the Motor Vehicles Act, 1939 which is pari materia provision to Section 115 of the Motor Vehicles Act, 1988,

has held that the District Magistrate is

3 (1876) 1 Ch D 426

4 AIR 1936 PC 253 (2)

5 AIR 1964 SC 358

6 (1996) 9 SCC 495

7 (2002) 1 SCC 633

8 AIR 1952 Nag 111

empowered to prohibit or restrict in the interests of public safety, or convenience, the driving of motor vehicles or any specified class of motor vehicles

or the use of trailers, either generally in a specified area or on a specified road. The prohibition or restricting may no doubt be subject to exceptions

and conditions but the exceptions and conditions cannot however be arbitrary. As the power to restrict or prohibit is conferred in the interest of public

safety or convenience or because of the nature of any road or bridge, the exceptions and conditions subject to which the power of prohibition or

restriction may be exercised must themselves proceed on no other considerations except those necessitating the prohibition or restricting under the

section. The Division Bench further held that the District Magistrate has to prescribe the exceptions and conditions in general way and leave the

control of transport vehicles by permits to the transport authorities functioning

under the Act and observed as under: -

14. The sweeping prohibition in the notifications however, that no motor vehicle shall ply on the road without the previous written permission of the

authority results in the prohibition altogether of the use of stage carriages on the road except as may be permitted by the District Magistrate. That

means that stage carriages also can be driven on the roads covered by item 4 provided there is previous written permission from the District

Magistrate. From the notification it is not clear on what grounds the permission is given. The District Magistrate has to prescribe the exceptions and

conditions in general way and leave the control of transport vehicles by permits to the transport authorities functioning under the Act. We are

therefore of opinion that the notification dated 15-5-1945 is beyond the scope of the power conferred by Section 74 of the Act and is therefore

invalid.

24. Thus, the Division Bench of the Nagpur High Court has clearly held that the control of transport vehicles can only be done by transport authorities

functioning under the Motor Vehicles Act, 1939 and the District Magistrate can only prescribe the exceptions and conditions in general way.

25. In the matter of Ram Sahai Varma v. State of Madhya Pradesh and another⁹, again a Division Bench of the Madhya Pradesh High Court dealing

with Section 74 of

9 AIR 1989 MP 334 the Motor Vehicles Act, 1939 has clearly held that the power and jurisdiction under Section 74 of the said Act of 1939 must be

exercised for safety or convenience of the public generally. The power envisaged under Section 74 of the Motor Vehicles Act, 1939 is to be exercised

judiciously and reasonably. Minimum and reasonable restrictions matching the avowed objective can only stand the constitutional cavil of Article 19(1)

(d) of the Constitution guaranteeing freedom of movement to citizens. The Division Bench of the Madhya Pradesh High Court observed as under: -

9. Doing so, we would add further few words of caution in case action is taken afresh under Section 74 or Rule 257 aforequoted by complying

with the requirement of the proviso to Section 74. Power envisaged under those provisions is to be exercised judiciously and reasonably. Minimum and

reasonable restrictions matching the avowed objective can only stand the constitutional cavil of Article 19(1)(d) guaranteeing freedom of movement to

citizens. To relieve the alleged overcrowding restrictions may be appropriately devised to apply to "specified class of motor vehicles" and among other exceptions and conditions" contemplated under Section 74 , it has to be considered if relaxation can be made for "timings" as may suit lawyers and litigants coming to Courts and children going to schools and colleges. Section 74 does not contemplate arbitrary imposition of such blanket ban as of oneway route" for all purposes and for all periods of times and seasons against all sections of people.â??

26. Reverting to the factual matrix of the present case after having examined the legal statutory provisions in this regard and the principles of law

flowing from the aforesaid judgments (supra), it is quite vivid that under Section 27(1)(d) of the Act of 1972, a person is entitled to pass through a

sanctuary along a public highway and order of restriction can only be passed under Section 28(2) of the Act of 1972 by the competent authority and

no such power has been conferred to any authority to prohibit completely in the State Highway, the movement of public / transport vehicles carrying

citizens and therefore the order of total prohibition of movement of vehicles of citizens on Kota-Achanakmar-Kevchi route (State Highway-8) by the

learned Collector-cum-District Magistrate is without jurisdiction and without authority of law. Apart from this, under Section 115 of the Motor

Vehicles Act, 1988 read with Rule 215 of the Chhattisgarh Motor Vehicles Rules, 1994, the Collector-cum-District Magistrate is empowered only if

on satisfaction being recorded that in the interest of public safety or convenience, or because of the nature of any road or bridge, such a prohibition or restriction is necessary, but in the instant case, no such reasons have been assigned by the learned District Magistrate holding that in the interest of

public safety or looking to nature of road, such a prohibition is necessary. In the instant case, the order has been passed on the recommendation of a

Local Advisory Committee and taking in view the application submitted by the Deputy Director, ATR which is not a sine qua non for exercising power

under Section 115 of the Motor Vehicles Act, 1988 and which is neither in the interest of public safety or convenience nor because of the nature of

any road or bridge. Apart from this, second part of Section 115 of the Motor Vehicles Act, 1988 has not been complied with i.e. publication of

notification in the Official Gazette which is mandatory in nature for restricting use of road for more than one month and once the mandatory provision

has been complied with in its breach and notification issued under Section 115 of the Motor Vehicles Act, 1988 has not been published in the Official

Gazette, the action taken becomes illegal and is liable to be quashed. Thus, in my considered opinion, the Collector-cum-District Magistrate has no

jurisdiction to make sweeping prohibition on the usage of public vehicles on road Kota-Achanakmar-Kevchi (State Highway-8) by the citizens

including the petitioners which is violative of the petitioners' right guaranteed under Article 19(1)(d) of the Constitution of India.

27. As a fallout and consequence of aforesaid discussion, the impugned order passed by the Collector-cum-District Magistrate is quashed. The

Collector-cum-District Magistrate is directed to make it open for all and make the said route usable and roadworthy for citizens and it will be used only

for restricted purpose of highway and it cannot in any manner be utilised for further intrusion into the sanctuary or in any manner affecting faunal,

floral and natural significance of the said area. However, the competent authority is at liberty to proceed in accordance with law.

28. The writ petition is allowed to the extent sketched herein-above, leaving the parties to bear their own cost(s).