

(2011) 09 KAR CK 0165
In the Karnataka High Court
Case No : Writ Petition No. 28040 of 2009

Dr. R. Dwarakinath and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Biological Diversity Act, 2002 — Section 37
Constitution of India, 1950 — Article 131

Citation : (2011) 09 KAR CK 0165

Hon'ble Judges : J.S. Khehar, C.J.;H.G. Ramesh, J

Bench : Division Bench

Advocate : Uday Holla, Sri S. Siddappa and Sri Sunil Duttyadav And Sri Vikram A. Hailgol, for the Appellant; Ashok Haranahalli, Advocate General With Sri B. Veerappa. Aga For R 1. R-2, R-8. R-10. R-12 TO 16 and 22, Smt. A.M. Vijaya, For R-9, Sri B. Palakshaiah, For R-17 TO R-19, R-21, Sri K.N. Puttegowda, For R-3, R-4 and R-11, Sri Nithin Ramesh, For R-5 "IX) R-8, Sri Ajay Kumar Patil, For R 17, R-18 and R-21, R-20, Sri S.G. Siddartha and Sri J. Om Prakash, For Impleading Applicant in Misc. W. 7596/10, for the Respondent

Judgement

1. The petitioners, many of whom are former Vice Chancellors of the University of Agricultural Sciences, Bangalore, have filed this writ petition as a cause in public interest challenging construction of a link road (motorway) through the GKVK campus (Gandhi Krishi Vignana Kendra) of the University of Agricultural Sciences, Bangalore ("the University" for short). The link road is to connect Yelahanka road and Bellary road. The GKVK campus which is 1380 acres large is located between the aforesaid two roads and is declared as a Heritage site u/s 37 of the Biological Diversity Act, 2002 vide notification dated 2nd September 2010.

2. The case of the petitioners is that the proposed link road would adversely affect the biodiversity in the University campus and also the various research programmes being carried there. They state that much of the University land is a forest land and laying of the link road would violate several laws like the Forest Conservation Act, 1980, the Karnataka Preservation of Trees Act. 1976 and also

the Karnataka Town and Country Planning Act, 1961. The proposed link road is also not in conformity with the master plan-2015 of Bangalore.

3. The case of the Bruhath Bengaluru Mahanagara Palike (the BBMP for short) is that the University created the problem by closing the roads leading to different villages surrounding the University campus. This led to protest by the villagers of thindlu, hattur, vidyaranya and the surrounding villages. They requested for laying of a new road. At the request of the BBMP, the University agreed to transfer the land for formation of the link road and accordingly on 05.09.2008, they handed over possession of 24 acres of land for formation of the link road. The BBMP undertook the construction work and cut several trees after obtaining permission from the Tree Officer. The entire 24 acres of the land given to the BBMP is utilised for laying of the link road to an extent of 3.90 kms. by spending Rs. 15.19 crores as against the total estimated cost of Rs. 27.16 crores for the project. The link road laid is a double lane road of 24 mtrs. width. It is stated that 59% of the work has been completed and the remaining work could not be completed because the University has not handed over 12 more acres of land required for completion of the project. The BBMP prays for dismissal of the writ petition with a direction to the University to hand over the remaining 12 acres of land to complete the project.

4. The University in its statement of objections dated 16.12.2009 has opposed the link road project and has prayed for stopping of the project.

5. Having regard to the nature of the controversy, this Court, by its order dated 28.01.2010, constituted an Expert, Committee to examine the aforesaid rival claims and to suggest solutions.

6. The Expert Committee has opined that the proposed link road will have adverse effects on the biodiversity of the University. However, it has also opined that it was difficult to make an exact quantitative assessment of the long term effects of the vehicular pollution on the biodiversity and research activities. The Committee also suggested to connect me four existing roads in the locality to ease the traffic.

7. We have heard the learned counsel appearing for the parties and perused the written submissions filed on behalf of the petitioners, the BBMP and the National Biodiversity Authority.

8. Learned counsel for the petitioners contended that the Expert Committee constituted by this Court has opined that formation of the link road would cause irreversible damage to the University's flora and fauna, biodiversity and to its research projects. He submitted that formation of the link road would violate several laws and it is also not in conformity with the master plan-2015 of Bangalore. He further submitted that, no environmental impact assessment was made before undertaking of the project, in substance, he submitted that the link road, if formed, would greatly damage the University's biodiversity and research activities, which is of vital importance to the farming community and food

security of the State, and hence, would be detrimental to public interest.

9. He also stated that the resolution dated 18.08.2009 passed by the University to transfer 24 acres of land for laying of the link road was annulled by a subsequent resolution on 08.06.2010, and further, the request of the BBMP to give an additional 12 acres of land to complete the link road project was also rejected by the University by its resolution dated 19/20th April 2011.

10. He also submitted that the major works standing committee of the BBMP has recommended for cancellation of the proposed link road and for return of the land to the University. It is stated that the BBMP major works standing committee, in its report, has opined that the link road project was misconceived, unnecessary and unscientific and has accordingly recommended to cancel the project and to return to the University, the 24 acres of land taken for construction of the link road.

11. It was also his submission that a large number of trees (688 trees) were cut to facilitate formation of the proposed link road, without obtaining permission under the Trees Act. He concluded by seeking for cancellation of the link road in public interest.

12. Learned counsel for the BBMP submitted that forming of the link road is only to ease the traffic in the locality and to provide connectivity to the villages surrounding the University. He submitted that the University has handed over 24 acres of land and the entire land has been utilised to form 3.90 kms. of the proposed link road of 24 mtrs. width. The BBMP has spent Rs. 15.19 crores as against the total cost of Rs. 27.16 crores for the project. He submitted that 59% of the work is completed and to complete the remaining construction of the link road, 12 more acres of land is required. He sought for dismissal of the writ petition with a direction to the University to hand over an additional 12 acres of land to facilitate completion of the link road.

13. The facts stated above and the contentions referred to, would reflect two competing claims:

(i) The petitioners claim that the proposed link road would adversely affect the biodiversity in the University campus and also the research projects of the University and eventually would cause irreversible damage which is detrimental to public interest as the University's research projects would greatly help food security of the State.

(ii) The BBMP claims that there is no connectivity for several villages surrounding the University campus, and therefore, linking of the two main roads namely the Yelahanka road and the Bellary road would greatly ease the traffic and hence would serve public interest.

14. The question that requires to be examined in this public interest litigation is as to whether formation of the link road (two lane motorway) would adversely affect, the biodiversity and the research projects of the University?

15. It is not. in dispute that the Government of Karnataka by its notification dated 02.09.2010 has declared the GKVK campus, University of Agricultural Sciences, Bangalore as a Heritage site u/s 37 of the Biological Diversity Act, 2002; the location details of the Heritage site are stated in the said notification which comes to 167 hectares comprising of 14 patches in the campus. The total extent of the GKVK campus, Agricultural University, Bangalore, is 1380 acres (559 hectares). It is relevant to refer to the following paras in the said notification:

FOREST, ENVIRONMENT AND ECOLOGY SECRETARIAT

NOTIFICATION

No. FEE 132 ENV 2009, Bangalore, Dated: 2nd September, 2010

Whereas, after the convention on Biological Diversity negotiation, the Government of India has passed Biological Diversity Act 2002, for the purpose of conservation of biodiversity, sustainable use of components of biodiversity fair and equitable sharing of benefits arising out of the utilization of genetic resources. Section 37 of the Act provides for declaration of certain areas as Biodiversity Heritage Sites by the State Government. As per the guidelines issued by the Central Government the areas having unique ecological fragile ecosystem, species richness, high endemism, presence, of rare, endemic and threatened species, keystone species, species of evolutionary significance, wild ancestors of domestic/cultivated species or land races or other varieties, past pre-eminence of biological components represented by fossil bodies and having cultural or aesthetic values may be declared as heritage sites.

Whereas, the total extent of GKVK campus, Agricultural University, Bangalore is 1380 Acres (559 Hectares). Excluding buildings and other infrastructure, 167 hectares (412 acres) has been extensively developed with wide variety of agricultural and biotechnology research plots and nurtured a landscape to support wide range, of flora and fauna. The GKVK campus is considered one of the greenest areas in Bangalore.

Whereas in addition the research activities of the Agricultural University have supported the collection of wide range of germplasms, evolved a botanical garden containing a collection of nearly 500 species of important plants and trees. As a result the biological diversity of this campus constitutes a critical repository of various forms of flora and fauna, which needs to be protected and nurtured to posterity. As per the survey, the university campus has the biodiversity which includes-mammals-13 species, reptiles-10 species, birds-165 species and 530 plant species.

Now. therefore, in view of the circumstances, explained above and as recommended by Karnataka Biodiversity Board, and Expert Committee on Biodiversity Heritage Site, GKVK Campus, University of Agricultural Sciences, Bangalore is declared as Heritage Site as per power vested in the State

(Emphasis supplied)

The information narrated in the above notification would show that the GKVK campus is one of the greenest, areas in Bangalore having a rich biodiversity of 530 species of plants, 165 species of birds, 13 species of mammals and 10 species of reptiles.

16. It is not in dispute that the University is one of the premier Institutions in the State, undertaking a lot. of research activities. Admittedly, no" scientific "environmental impact assessment" has been made relating to "the link road project". In our opinion, it is hazardous to take any view in the matter in the absence of a clear scientific "environmental impact assessment by an expert body, relating to the link road project on the biodiversity of the University. If the "environmental impact, assessment" indicates that, notwithstanding any compensatory measures to minimise the pollution, the vehicular movement on the link road would result in irreversible damage to the biodiversity and the research programmes of the University, then the link road project may have to be cancelled in public interest and alternative solutions to ease the traffic in the locality have to be explored. On the contrary, if it were to indicate that the vehicular movement will have no adverse effect on the biodiversity and the research programmes, then the BBMP may be allowed to take steps in accordance with law to complete the remaining construction work of the link road.

17. Absence of a clear scientific "environmental impact assessment by an expert body is one aspect. Another aspect that requires to be noticed is that the dispute is mainly between the University and the BBMP. It is similar to an interdepartmental dispute in the Government. In cases of interdepartmental disputes, the Hon"ble Supreme Court in Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others,] has observed that such disputes should be resolved by setting up a high level committee. It is relevant to refer to the following observations made at paras 14 & 15 of the said judgment:

14, Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more states and. the Union of India. It was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate.nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it. also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation, Filig of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which

requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all interdepartmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and the Union of India, this Court in *Oil and Natural Gas Commission v. CCE* called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission v. CCE* this Court directed the Central Government to set up a committee consisting of representatives from the Ministry of Industry, to monitor disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee, Seniors Officers only should, be nominated so that the Committee would function with status, control and discipline.

15. The facts of this appeal, noticed above, make out a strong case that there is a felt need of setting up of similar committees by the State Government also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to setup a committee consisting of the: Chief Secretary of the State, the Secretaries of the Departments concerned, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the s land of the Government."

(Emphasis supplied)

18. Keeping in view the aforesaid observations of the Supreme Court, the nature of the controversy and the fact that there is no environmental impact assessment made by an expert scientific body relating to the project and as the dispute is mainly between the University and the BBMP, which is like an interdepartmental dispute, we deem it appropriate to make the following order:

(i) the State Government is directed to set up a Committee consisting of the Chief Secretary of the State, the Secretary of the Department of Agriculture, the Secretary of Forest, Ecology & Environment, two representatives nominated by the University, two representatives nominated by the BBMP and two experts on the subject nominated by the Indian Institute of Science for resolution of the controversy;

(ii) the petitioners are permitted to present their views both orally and in writing to the Committee; they are also at liberty to produce relevant documents in support of their claim;

(iii) till the Committee takes a decision in the matter, the BBMP shall not proceed

with the further construction of the link rood; the BBMP shall take further steps in the matter as per the decision of the Committee;

(iv) if the petitioners are aggrieved by the decision of the committee, they are at liberty to challenge the same in accordance with law;

(v) the writ petition stands disposed of in the above terms; in view of disposal of the main writ petition, Misc. W. Nos. 10383/2009, 12532/2009, 5942/2010, 7596/2010, 2211/2011, 4188/2011 and 6021/2011 do not survive for consideration and they stand disposed of accordingly.