

(2006) 02 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 47354 of 2004

G. E. Thippaiah and Others	Vs	APPELLANT
The State of Karnataka and Others		RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 4 KCCR 2272

Hon'ble Judges : Cyriac Joseph, C.J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : Vaishali Hegde, for the Appellant; S.M. Chandrashekar, G.A. for Respondents 1 and 5 and Ashok N. Naik, for Respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—There are 20 Petitioners in this Writ Petition. They are Coffee Planters who have their estates adjacent to or along road which passes from Chandagoodu Village to Kesevinahaklu Village through Kerehakkalu Village and thereafter Knachinakal Durga Village in Chickmagalur Taluk, Chickmagalur District. The said road used by several bus operators and other members of the public apart from the Petitioners. The Petitioners claim that they are not seeking any individual relief and that the Writ Petition is filed in public interest. It is alledged in the petition that the entire stretch of the above mentioned road measures about 8 kms. and it has not seen any kind of maintenance for the last several years. Though the Petitioners made several representations to various authorities to bring to their notice the horrendous state of road, no action was taken. The Zilla Panchayat informed the Petitioners that it cannot do anything due to shortage of funds allotted by the State Government. The Zilla Panchayat has also taken the stand that the maintenance of the road is within the jurisdiction of the Grama Panchayat concerned. The second Respondent-Chickmagalur Zilla Panchayat also orally informed the Petitioners that the entire

works of maintenance and repairs had been handed over to the Karnataka Land Army Coproration Ltd. Though the Petitioners issued a legal notice to Karnataka Land Army Corporation Ltd., the said Corporation sent a reply dated 24.4.2004 stating that the maintenance and repairs of the road had not been entrusted to them. In these circumstances, the Petitioners pray for a direction to the Respondents-authorities to perform their statutory duties and to repair and maintain the roads which pass through Chandagoodu Village through Karehaklu village and Kanchinakal Durga Village and the road from Aldur Forest Check post through Donagudige, Chindagodu, Guddadoor, Elekhane, Katardahalli, Kandarakasige Villages and Hawalli Road to Mudigere Road and further on till it joins near Poorna Pragna English School, situated in Chickmagalur Taluk and District and in particular all the other roads which fall in their purview in general with immediate effect.

2. A Statement of objections has been filed by Respondents 2, 3 and 4. The said Respondents have admitted that the Petitioners are Coffee estate owners who have their Coffee estates adjacent to the road which passes from Aldur Forest Check Post through Donagudige, Chandagoodu, Guddadoor, Elekhan, Katardahalli, Kandarakasige and Hawalli Road to Mudigere Road where the said road joins near Poornapragna English School. They have also admitted that the entire stretch of the road is 8 kms. and that it is used not only by the Petitioners but also by the other members of the public. However, they have denied the allegation that the roads have not seen any kind of maintenance for the last several years. According to the Respondents, they have spent about Rs. 9.48 lakhs between 2000 and 2005 for the maintenance of Aldur, Guddadoor, Poorna Pragna English School road which joins Handi Mudigere road. It is stated that when the first Petitioner approached the Zilla Panchayat through the representation dated 20.3.2003 stating that the roads are not properly maintained, a reply was given by the member of the Zilla Panchayat on 24.3.2003 stating that the Panchayat has taken up several works and also appraising the Petitioners that there was shortage of funds allotted by the State Government. It is also stated in the Statement of objections that the condition of the roads is not bad as stated by the Petitioners. It is further stated for the maintenance and development of the roads, funds are distributed by the State Government to the elected representatives and that the Respondents have requested the elected representatives to provide more funds for the maintenance of the roads so as to enable the Respondents to carry out the maintenance of the roads in time. It is further stated that the Zilla Panchayat will make a request for the State Government for the developments of the roads.

3. In view of the averments contained in the Statement of objections filed on behalf of Respondents 2, 3 and 4, we are not in a position to hold that there was any failure on the part of those Respondents in deciding their statutory duties. The said Respondents might not have been successful in properly maintaining and repairing the roads as it ought to be, but the Respondents have pointed out that they have done the works of maintenance and repairs with the funds

available and they have requested for more funds from elected representatives and the Government. In the absence of any failure on the part of the said Respondents to discharge their statutory duties, there is no question of a Writ of mandamus being issued to compel them to discharge their statutory duties.

4. It is stated by the learned Counsel for Respondents 2, 3 and 4 that even though the other Respondents have requested the Government for more funds, they have not received any further funds. Learned Counsel also stated that the said Respondents have requested the elected representatives like Member of Parliament and Member of Legislative Assembly for providing funds. Learned Counsel for the Petitioners also admitted that they sent a representation to the Member of Parliament of the area and he sent a reply dated 29.11.2004 stating that he had recommended inclusion of the road in the NABARD Scheme.

5. Neither the Member of the Parliament nor the Member of the Legislature is a party to the Writ Petition and therefore, this Court cannot issue any direction to them regarding the providing of funds to the Panchayat for maintenance of the roads. Even otherwise, it is not for this Court to decide as to which roads or which bridges or which schools or which development work should be included in the Scheme recommended by the Member of the Legislature or the Member of the Parliament. It is for them to decide such matters. It is for the citizens to persuade or compel the Member of the Parliament or the Member of the Legislative Assembly to utilise the funds properly and equitably and in a just manner for development of the area coming within their jurisdiction. In a democratic society, the citizen should be able to assert their rights and to compel their elected representatives to perform their duties and functions properly. If the citizens do not realise their rights and their powers and do not assert such rights and powers, they have no moral justification for invoking the jurisdiction of the High Court under Article 226 of the Constitution of India. One who does not perform his duty, has no right to approach this Court to compel another to perform his duty. Therefore, it is for the Petitioners, if they so desire, to resort to the democratic methods available to them for redressing their grievance, if any. It is strange that even though the second Respondent informed the Petitioners that there is shortage of funds allotted by the Government, they have not made any representation to the State Government requesting for allotment of more funds to the Panchayat concerned. When the Petitioners themselves have not thought it necessary or proper to approach the Government for redressal of their grievance, there is no question of this Court issuing a Writ of mandamus to the Government in the matter.

6. We are not absolving the Government or the Panchayats from their responsibility or obligation to maintain and repair the public roads. We are also not justifying any inaction or failure on their part. We are only expressing the reluctance or inhibition of the Court in the given situation to issue a Writ of mandamus to these authorities to compel them to do what the Petitioners want them to do. The reasons have already been explained above. We have no reason

to assume that if the Petitioners or the public who are affected by the state of affairs of the roads in question, approach the appropriate authorities in accordance with law and resort to democratic methods available in a State committed to rule of law, they will not respond positively and constructively. Hence it is for the Petitioners to do whatever is necessary in the light of the observations made above.

Subject to the above observations, the Writ Petition is dismissed.