
(2007) 09 RAJ CK 0070
In the Rajasthan High Court

Gaj Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 28

Citation : (2008) 2 RLW 1104

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Leave granted. Challenge in these appeals is to the judgment dated May 25, 2007 of learned Single Judge whereby directions have been issued in regard to tourists and vehicles in Ranthambore National Park Sawai Madhopur.

2. Contextual facts depict that respondents No. 5 to 13 filed writ petition bearing No. 8888/2006 titled Girraj Goyal v. State of Rajasthan and Ors. with the following prayer:

(i) That by an appropriate writ, order or direction the impugned notice inviting tenders dated 16.9.2006 (Annexure-4) may kindly be quashed and set aside.

(ii) That by an appropriate writ, order or direction the respondents may kindly be directed to prepared a stable, constant long period policy to register the vehicles to enter in the Ranthambore National Park for tourism purpose in accordance with the rules and regulations and to determine model condition and seating capacity of a vehicle and further the respondents may kindly be directed not to change the model condition and seating capacity of vehicles times and again.

(iii) That by an appropriate writ, order or direction it may kindly be held that the respondent No. 2 have no authority under the rules and regulations to prescribe terms and conditions of a vehicle for registration of the same to enter into the Ranthambore National Park for the purpose of tourism as such to prescribe such terms and conditions by him is without jurisdiction; and

(iv) That any other writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the humble petitioner.

It appears from the record that on December 8, 2006 learned Single Judge issued an order prohibiting the entry of all the vehicles in the Sanctuary. The Hoteliers (appellants No. 1 to 4 herein) filed an application before learned Single Judge seeking impleadment as party in the writ petition. Learned Single Judge however did not implead them as party but allowed them to intervene in the matter. It is contended by learned Senior Counsel appearing for the appellants that the impugned judgment went beyond the scope of writ petition and issued various directions which are beyond the subject matter of the writ petition. The appellants, in the Special Appeal No. 964/2007, are aggrieved of the following directions:

Eco-sensitive Zone-Under the law, the eco-sensitive zone has to be maintained and guarded strictly. All encroachments in the ecosensitive zone beyond Sherpur Tiraha Check Post be removed immediately. After proper demarcation, entire eco-sensitive zone around National Park area be safeguarded by construction of wall or wire fencing. There should be no leniency, relaxation or protection of any encroachment by whosoever powerful person within the eco-sensitive zone. All constructions, even as per prior permission, be removed after due notice to the party and it is expected of the Courts also not to pass ex parte injunction orders without notice to the authorities and verifying the facts.

The National Park should be closed totally for tourists at least twice a week. The closure days can be fixed and notified by the Park authorities.

3. The appellants in Special Appeal 1061/2007, who are Taxi Owners, have filed instant appeal being aggrieved of the following directions:

Pilgrims visiting the Ganesh Temple- There is a very small parking area at the Jogi Mahal Gate of the National Park. The pilgrims go on foot upto the Ganesh Temple from that point. The authorities may allow petrol run vehicles as public transport to carry pilgrims upto Jogi Mahal Gate. Public transport system be so devised that not more than three vehicles be allowed to enter Sherpur Tiraha Check Point every half an hour and such vehicles may be allowed to park at Jogi Mahal Gate parking area only for half an hour. The rotation of the vehicles may also be fixed by the authorities in consultation with the vehicle owners. Proper authorisation certificate for carrying pilgrims be pasted on the front screen of each vehicle. The rates of tickets for passengers may also be fixed by the authorities so that the vehicle owners may not exploit the pilgrims. All the entry tickets for the tourists visiting the Park area and the pilgrims visiting the temple should be issued at the Parking Complex only at Sherpur Tiraha. The District Collector may appoint a Committee including Dy Conservator of Forest and Dy Field Director In-charge of the Park, District Transport Officer and the Additional District Magistrate to fix up the modalities of rotation of such transport vehicles

and the decision of the Committee shall be final. Directions be complied with and made effective from 1.8.2007.

5. Parking at Jogi Mahal Gate- There is a small cramped area outside Jogi Mahal Gate from where tourists enter the main Park or the pilgrims go to the Ganesh Temple on foot. The area be so developed that not more than five vehicles be parked at a time. There may be one small Tourist Information Center with a proper Check Post for guards and security personnel. Entry of every vehicle reaching the point should be duly registered in a register. No commercial activity, whatsoever, be allowed to take place in that area. The pilgrims may buy their "prasad" and other items from the Sherpur Tiraha Parking Complex only. Plastic bags and bottles be totally banned in the entire area upto the Ganesh temple. Smoking may be strictly prohibited not only in the Park area but on the entire route upto the Ganesh Temple.

We have called Mr. Bharat Vyas, learned Additional Advocate General, Mr. K.K. Sharma, learned Assistant Solicitor General, Mr. Dinesh Yadav and Mr. M.S. Kachhawaha and heard their submissions.

4. (The Wild Life (Protection) Act, 1972 (for short "1972 Act") was enacted for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. Section 28 of 1972 Act read as under:

28. Grant of permit, (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:

(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.

5. Section 64 of 1972 Act relates to power of State Government to make rules. Pursuant to Section 64 of 1972 Act, the State Government made Wild Life (Protection) (Rajasthan) Rules, 1977 (for short "1977 Rules"), which came to be published in Rajasthan. Gazette on July 7, 1977. Having scrutinised the scheme of statutory provisions, we find that the provisions for the protection of wild animals, birds and plants and the matters ancillary and incidental thereto have been incorporated. The High Court in our humble opinion cannot re-write the legal provisions. Even otherwise the scope of writ petition is limited to the extent of relief sought for. This scope cannot be enlarged. If it appeared to the learned Single Judge that public interest was involved in the writ petition the matter

ought to have deferred to Division Bench. Their Lordships of the Supreme Court in Secretary to the Govt. and Another Vs. M. Senthil Kumar, indicated that there was no challenge to the constitutional validity of the policy, the High Court could not have made out a case for adjudication which was not even part of the pleadings.

6. In Union of India (UOI) Vs. R. Bhusal, Hon'ble Supreme Court observed as under: (Para 7)

We find that the High Court's consideration of the writ petition filed by the respondent and conclusions arrived at were beyond the pleadings. The High Court acted on certain materials and purported concession without examining whether that concession was well founded and whether the appellant got an opportunity to clarify the position as regards the applicability of the regulations which according to the High Court had application. The basic challenge in the writ petition was that the medical deficiency found by the appellant was not properly assessed. In the counter affidavit, the specific stand of the appellant Union of India was that the medical deficiency was only one of the factors while assessing suitability for permanent commission. The Union of India's specific stand was that the performance | criteria fixed under the applicable policy regulations were not fulfilled by the respondent. In the rejoinder affidavit filed, there was no specific challenge as to the applicability of either criteria or policy regulations.

7. At this juncture we deem it appropriate to refer to the Guidelines and tips issued for the visitors, who desire to visit Sanctuary. The Guidelines are as under:

1. The Reserve is for wildlife conservation. You are a visitor. Behave respectfully towards nature and wildlife.
2. Visit to Similipal is not for the picnic. It is to learn few things from nature.
3. Local forest staffs advice and assistance helps in enjoying and understanding the Reserve best.
4. The possibility of animal sighting increases by observing silence and keeping patience.
5. Terrain being rough, use well maintained four wheel drive vehicles.
6. It is advisable to take anti-malarial drugs before entering into the Park,
7. Follow rule and regulation to avoid inconvenience.
8. The fire from your match stick may destroy thousands of trees. Don't allow fire to spread.
9. You may be the root cause for death of many animals and plants in Similipal, Control fire.
10. Tiger will not differentiate between a deer and a tourist.

11. Woods are lovely, Dark and Deep follow the rules and smile to sleep.

12. Don't play with wild animals they can use you as their plaything.

13. Enjoy the sound of the forest. Keep your sound level to minimum.

14. When you are in the forest. Enjoy it the way nature created it.

8. In order to control pollution, (The) Air (Prevention and Control of Pollution) Act, 1981 (for short "1981 Act") was enacted. To ensure standards for emission from automobiles Section 20 was enacted, which reads thus:

20; Power to give instructions for ensuring standards for omission from automobiles. With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under Clause (g) of Sub-section (1) of Section 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1939, and such authority shall, notwithstanding anything contained in that Act or the rules thereunder be bound to comply with such instructions.

9. Since there are statutory provisions for controlling pollution and to protect the wildlife, we find prima facie case in favour of the appellants. We therefore stay the operation of the impugned judgment dated May 25, 2007 of the learned Single Judge. We however direct the State Government to comply with the statutory provisions in letter and spirit. Let notice be issued to private respondents No. 5 to 13. Rule is made returnable within seven days. The appeals may be listed for final disposal on September 19, 2007.