

(1991) 06 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 10751 of 1990

I.K. Jagirdar

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 17-06-1991

Acts Referred:

Constitution of India, 1950 — Article 162, 202, 207, 212 (1), 73

Citation : AIR 1992 Kar 175

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Advocate : Chaitanya Hegde, for the Appellant; P.R. Ramesh, Government Advocate and S.G. Sundaraswamy, for the Respondent

Judgement

1. The petitioner has filed this writ petition claiming to espouse the public interest. The petitioner contends that he is a tax payer; a journalist serving the cause of the public through journalism since last 30 years; he was a senior feature writer and investigative reporter for a leading Kannada daily newspaper "Prajavani"; he is an Income Tax Assessee; a member of the Karnataka Working Journalist Association and was the President of the Press Club, Bangalore, for three years from 1986-88 and at present he is the editor of Kannada fortnightly "Sanketa". As such he claims to have the locus standi to maintain this writ petition.

The 2nd respondent was the former President of India, getting a monthly pension from the Central Government. He has got a palatial building at Anantpur in Andhra Pradesh; his sons are well placed and he has got properties and income much above the average income of Indian citizens.

The State of Karnataka is in a financially critical position since for last five years; is unable to meet the basic needs of the residents of Karnataka. In spite of the difficult financial position prevailing in the State to the detriment of the people of Karnataka the first respondent has been spending lavishly for the benefit of the 2nd respondent which is neither necessary nor it serves any public cause. The

petitioner further contends that there are several houseless people in the country including Karnataka. The 1st respondent has provided a palatial bungalow at prominent place at Bangalore to the 2nd respondent though he has got a house. The 1st respondent has incurred more than Rupees 54 lakhs for entertaining the 2nd respondent in the last 22 months as on the date of filing the petition by providing two cars with drivers, several servants including gardeners and providing security personnel. All this expenditure is made by the 1st respondent on the second respondent at the cost of the people of Karnataka.

The 1st respondent in the cabinet meeting held on 20-11-1987 decided to provide a suitable well furnished government accommodation and a car with a driver for two to three years to the 2nd respondent. According to the petitioner this decision was taken by the 1st respondent under an impression that the Government of India will bear the expenditure on this account. Even as per the said decision of the Cabinet the 1st respondent could have incurred expenses only for providing a well furnished rent free accommodation and a car with a driver to the 2nd respondent for two to three years. But spending huge amount by the 1st respondent on the 2nd respondent in providing him servants, security personnel, gardener and by paying his light bills, water bills, telephone bills, security expenditure, petrol to the car and also bearing his travelling expenses to Delhi are not supported by any such Cabinet decision. The 1st respondent being liable to account to the people of Karnataka for spending each paisa is liable to be directed to recover from the 2nd respondent the amount thus already spent on the 2nd respondent unauthorisedly and illegally. The 2nd respondent who had occupied the post of a President of India is legally and morally bound to reimburse the amount.

On the basis of these averments the petitioner has raised the following grounds in the writ petition :--

(1) The action of the 1st respondent in providing and continuing the financial and other benefits to the 2nd respondent is illegal, arbitrary, illegal and against the interest of the general public;

(2) The 2nd respondent being well placed is capable of maintaining himself and his family according to his status. Hence it is unnecessary for the 1st respondent to provide benefits to the 2nd respondent at the cost of the people of Karnataka;

(3) The 1st respondent being not in a position to meet the basic demands of its people is liable to be restrained from providing such facilities to the 2nd respondent.

2. The writ petition was filed on 16-5-1990. This Court on 17-5-1990 issued rule and interim order.

3. IAS-I and II were filed by applicants in the said IAs to get them impleaded in the writ petition. IA-III was filed by the petitioner seeking amendment of the writ petition. This Court on 19-7-1990 allowed the applicants in IAS-I and II to assist

the Court as intervenors and allowed IA-III filed by the petitioner seeking amendment of the writ petition.

4. The respondent-1 has filed the statement of objections contending that the petitioner was not entitled for any relief sought for in the writ petition. The 2nd respondent was staying in his house in Ananthpur in Andhra Pradesh; he required regular medical attention and as such he desired to reside in Bangalore the place where better medical facilities were available and was nearer to Ananthpur. The first respondent considered the request made by the 2nd respondent and order bearing No. DPAR 112 GMR 87 dated 1-6-1988 came to be issued allotting premises No. 29, Sankey Road, Bangalore, for occupation of the 2nd respondent making it clear that the said premises would be the official residence of the 2nd respondent. In this objection statement details of expenditure made by the 1st respondent on 2nd respondent are given. The total expenses incurred by the 1st respondent on the facilities provided to the 2nd respondent works out at Rs. 19,58,660-16ps. The 1st respondent contends that this amount was spent lawfully and in pursuance of the orders passed by the 1st respondent with necessary competence to do so. On 23-4-1990 a fresh order was issued continuing the facilities hitherto enjoyed by the 2nd respondent up to 19th June 1991 the date on which the term of three years would be completed. The fact that the former President to be treated giving special facilities now has the approval of the Parliament inasmuch as the President's Emoluments and Pension (Amendment) Bill 1990 was passed by the Parliament and it has received the assent of the President on 3-6-1990. The 1st respondent has also contended that the petitioner being a journalist was deemed to have been aware of the facilities given to the 2nd respondent for over two years and the writ petition filed at the belated stage is liable to be summarily rejected. The 1st respondent has also denied that the facilities were provided to the former President with the belief that the amount will be reimbursed by the Government is not correct. However efforts are being made to get the reimbursement from the Union of India. The 1st respondent asserts that efforts have been made for reimbursement of the amount spent on second respondent.

5. An additional affidavit is filed on behalf of respondent-1 by the Undersecretary, DCA & DPAR (General) stating that the amount spent on the 2nd respondent is fully in accordance with law. After this Court passed an interim order, the first respondent has received a telex message from the Union of India stating that Union of India will reimburse the expenditure incurred subsequent to passing of the interim order i.e., on or after 18-5-1990. The 1st respondent has spent a sum of Rs. 19,58,660-16 ps. up to 18-5-1990 i.e., between the period 20-11-1987 to 17-5-1990. The efforts are in progress to get even this amount reimbursed by the Union of India. Assuming the Union of India is not going to reimburse the said amount the amount spent on respondent-2 is fully protected under the provisions of Articles 202 to 204 of the Constitution of India since the amount has been spent under the heading "Head of Account 2070 -- other administrative services -- 113 Government House, Government Hostels etc. (non-

plan) and the amount so spent is a voted expenditure. It is also further stated in the said affidavit that though the amount has not been specifically earmarked for expenditure on the 2nd respondent it is permissible in law under the account mentioned above.

6. In the objections statement filed by the 2nd respondent it is contended that the petitioner has no locus standi to maintain the petition as admittedly petitioner's personal legal rights are in no way affected; Government is not under duty to account to the petitioner for the expenses it incurs on hospitality to a former President of India or for that matter to any one. The question as to what hospitality should be extended by the State Government to its guests is not a justiciable issue. It is essentially a matter of governmental policy and discretion. A decision such as this as to whether it is reasonable to extend hospitality to a former President and to what extent is a matter entirely within the sphere of the executive and Courts cannot be asked to sit in judgment over the same. The writ petition is liable to be rejected on the ground of inordinate delay and laches. The 2nd respondent has also explained as to under what circumstances he desired to stay at Bangalore. Respondent 2 has denied that his sons are well placed holding I.A.S. posts. He has only one son who is a practising doctor at Ananthpur. He has further contended that what is spent on the hospitality is a small amount compared to the finances of the State.

It is further stated that one car with driver is provided; security provided is minimum. Sometimes guests come to the house who are entertained at the cost of the 2nd respondent himself and not at State expense. It is denied that Rupees 54 lakhs have been spent by the State Government for entertaining the 2nd respondent during the last 22 months. The contention of the petitioner that the extension of benefits to the 2nd respondent does not serve any public cause and that it is against the interest of the people of Karnataka runs counter to the traditions and culture of India and it in no way hurts the people of Karnataka and that too when the amount spent is negligible. The second respondent further contended that the prayer of the petitioner for reimbursement of the amount spent on amenities is unjust and untenable; as far as accountability of the Government is concerned the obligation is discharged when the State budget is placed before and passed by the State Legislature. With these contentions the 2nd respondent has prayed for dismissal of the writ petition.

7. Sri Chaitnya Hegde, learned counsel for the petitioner submitted that the benefits provided to respondent 2 are in exercise of executive power of the State Government. He drew my attention to Arts. 73 and 162 of the Constitution of India. Art. 73 deals with extent of executive power of the Union. Art. 162 deals with the extent of executive power of State which reads thus :

"162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws: Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the

executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

He contended that providing hospitality or benefits to respondent 2 is not a matter with respect to which the Legislature of the State has power to make laws. The expenditure of funds made on respondent 2 require the authorisation of the Legislature either directly or under the provisions of a statute which is lacking in this case, inasmuch as the expenditure incurred on respondent 2 was neither included in the financial statement nor appropriation bills were introduced. In short he contended that without compliance of Arts. 202 to 207 of the Constitution the said expenditure is illegal and arbitrary. In support of this submission he relies on the judgment of the Supreme Court in the case of Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, particularly drawing the attention to para 15 of the said judgment which reads thus :--

"15) Suppose now that where the Ministry or the executive Government of a State formulates a particular policy in furtherance of which they want to start a trade or business. It is necessary that there must be a specific legislation legislating such trade activities before they could be embarked upon. We cannot say that such legislation is always necessary. If the trade or business involves expenditure of funds, it is certainly required that Parliament should authorise such expenditure either directly or under the provisions of a statute.

What is generally done in such cases is, that the same required for carrying on the business and entered in the annual financial statement which the Ministry has to lay before the House or Houses of Legislature in respect of every financial year under Art. 202 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the consolidated fund are submitted in the form of demands for grants to the legislature and the legislature has the power to assert or refuse to assent to any such demand or assent to a demand subject to reduction of the amount (Article 203)

After the grant is sanctioned, an Appropriation Bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the Assembly (Art. 204). As soon as the Appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under Art. 266(3) of the Constitution."

In this argument, the learned counsel for the petitioner assumes that the expenditure made on respondent 2 is unauthorised because it was not included in the financial statement. But in this regard respondent 1 has taken a specific stand in para 7 in the affidavit filed on 19-11-1990 which reads thus :--

"Assuming that the Union Government is not going to reimburse the said amount, with respect ii is submitted that the amount has been spent on the former President is fully protected under the provisions and under Arts. 202 to

204 of the Constitution of India since the amount has been incurred under the heading "Head of Account 2070 -- other administrative services-113 Govt. House Govt. hostels etc. (non-plan) and the amount so spent is a voted expenditure. In other words, though the amount had not specifically been earmarked for expenditure towards the second respondent and there being no necessity for it, the expenditure of the same is permissible in law under the account mentioned supra."

Further respondent 1 has placed official memorandum dated 31-3-1987 showing the budget estimate for 1987-88 authorising to incurred expenditure for the full year. Similarly Official Memorandum dated 30th June, 1988. Both these official memorandums show at items Nos. 42 and 43 respectively that an amount of Rs. 14,13,77,000/- and Rupees 14,92,96,000/- were included towards expenditure under the head Miscellaneous demands of Chief Minister, Revenue. In the very first paragraphs of both these memorandums reference is made in para I showing that the act authorises grants/appropriations to the extent indicated in the Schedule attached. This being the factual position, I do not find any merit in the submission of the learned counsel for the petitioner that the expenditure made on respondent 2 was bad or illegal for want of following procedure under Arts. 202 to 207 of the Constitution. In the same judgment of the Supreme Court referred to above in paras 6 and 7 the scope of Arts. 73 and 162 of the Constitution is considered. The expenditure made on respondent 2 is not in exercise of executive power. On the other hand it is an voted expenditure which has the approval and seal of the Legislature. In my opinion the submission of the learned counsel with reference to the exercise of executive power under Art. 162 of the Constitution has no force.

8. In the case of Piarelal Singh v. State of Madhya Pradesh, Nagpur AIR 1965 Nag 11 the Special Bench had an occasion to consider a question having bearing on the controversy raised in this writ petition. In the said judgment it is observed thus in para 12 :--

"The Assembly being the master of its own procedure, could condone the irregularity in the procedure followed by the Government. Apart from that, the irregularity had occurred in the proceedings before the Assembly. The validity of those proceedings cannot, by virtue of Cl. (1) of Art. 212 of the Constitution, be called in question before a Court of law on the ground of irregularity in procedure."

Further, in para 39 it is stated thus:--

"39) It is said that it is a pre-requisite for the exercise by the Assembly of its powers under this article that the Budget itself should state the purpose for which every item included in the demand was required, and that by omitting to state it, the State Government had contravened the provisions of Cl. (2) of Art. 203 of the Constitution. The short answer to this argument is that this article refers to "demands" only and makes no reference whatsoever to the separate

items constituting the demands, or to the purpose for which each item was required. It is, therefore, difficult to understand how the provisions of this clause have been contravened. Indeed, the only requirements of Art. 203 are that every demand shall be recommended by the Governor and that it shall then be put separately to the vote of the Assembly. Both these conditions were satisfied in this case and therefore there was no contravention of Art. 203 of the Constitution."

Under the circumstances, I have no hesitation to reject the contention of the learned counsel for the petitioner that the expenditure made on respondent 2 was either unauthorised or arbitrary or illegal.

9. Learned counsel for the petitioner cited the decision in the case of Asif Hameed and others Vs. State of Jammu and Kashmir and Others, to emphasise that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether Legislature or the executive has acted within the powers and functions assigned under the Constitution and if not the Court must strike down the action. He relied on the decision of Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, to state the limits within which the executive Government can function. He also relied on the decision in the case of Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, drawing my attention to para 11 to state unlike a private individual, the State cannot act as it pleases. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. He cited the decisions in the cases of Sheela Barse Vs. Union of India (UOI) and Others, Appanna and Others Vs. The State of Karnataka and Others, and Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, to explain the powers of the Court to grant relief in public interest litigation. In my opinion the proposition of law laid down in these decisions cannot be disputed. But in the view I have taken the question of applying the principles laid down in the decisions to the facts at hand does not arise.

10. As per the amended writ petition the petitioner has sought for a writ of mandamus directing the first respondent not to provide financial or any other benefits to the 2nd respondent, direct the first respondent to recover from the 2nd respondent all the amounts spent by it except the expenses incurred by it providing him a well furnished accommodation and a Car with a driver or direct the second respondent to reimburse such amounts spent on him to the 1st respondent. In view of the fact that the Union of India has come forward to meet the expenditure on respondent No. 2 with effect from 18-7-90 the first prayer does not survive. The petitioner contended that Rs. 54 lakhs were spent on the 2nd respondent during 22 months between 20-11-1987 to 17-5-1990. The same was denied by respondent 1. According to respondent 1 a total sum of Rs. 19,58,660-16ps. were spent during this period. According to the petitioner he wants direction to respondent 1 to recover the amount spent on respondent 2

except the expenses incurred by it for providing him well furnished accommodation and a Car with a driver. In other words, the expenditure made for providing respondent 2 well-furnished accommodation and a Car with driver is to be excluded from Rs. 19,58,660-16ps. In view of the conclusion arrived at by me that the expenditure made by respondent 1 on respondent 2 was authorised and according to law in the matter of providing hospitalities to him, the writ petition has to be dismissed. That apart no writ can be issued to respondent 2 to reimburse the amount spent on him by respondent 1.

11. Learned counsel for the respondents urged that the writ petition is liable to be dismissed as the petitioner has no locus standi to maintain the petition. Even otherwise the writ petition is liable to be dismissed on the ground of delay and laches. The learned counsel urged that the petitioner being enlightened citizen that too being a journalist should be deemed to have been aware of the facilities given to respondent 2 as early as on 20-11-1987 and as such the writ petition filed as late as on 16-5-90 is liable to be rejected on the ground of delay and laches. They further urged that the petitioner has no locus standi as neither the petitioner's rights are affected in any way by the impugned action of the Government, nor the Government is under any duty to account to the petitioner for the expenses incurred on hospitality to a former President of India. The learned counsel justified and supported the action of the Government stating that the expenditure made on respondent 2 was fully authorised by the Legislature which is the representative body of the people of Karnataka State. They also submit that the Union of India has come forward to reimburse the expenditure made on respondent 2 with effect from 30-7-90 as per memo dated 17-12-1990 filed by respondent 1.

12. In view of the long line of decisions as to the locus standi in a matter like this, I am of the opinion that the petitioner has locus standi to maintain the petition. Then again the petition cannot be thrown out on the ground of delay and laches as there is nothing to show the petitioner had the knowledge of the details of the benefits given to respondent 2 right from the beginning. That apart in the public interest litigation when the attention of the Court is drawn depending on the facts and circumstances of the case, Courts may not throw away the writ petition on the ground of delay and laches alone. This is not a writ petition which should be dismissed on the ground of delay and laches. It is for these reasons I have considered the case of the petitioner on merits as discussed above.

13. Considering the facts and circumstances of the case, and position of law it is not a case for issuing any writ. Hence, in the result the following order is passed :--

Writ petition is dismissed. No costs.

14. Petition dismissed.