

(1996) 01 KL CK 0045
In the High Court Of Kerala

Institute of Social Welfare

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 3

Citation : (1996) 01 KL CK 0045

Hon'ble Judges : K.T. Thomas, Acting C.J.; S. Sankarasubban, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Thomas, Ag. CJ.

1. A scheme has been formulated for linking the main land of Cochin with a few of the Islands in the archipelago situated beyond the western backwaters. A body has been constituted for its implementation. The name of the said body is "Goshree Island Development Authority" (its acronym is "GIDA"). The scheme involves construction of bridges connecting those islands with the main land-Ernakulam. It also envisages reclamation of an area of 362 hectares in the Vembanad lake abutting the Arabian sea. The cost estimated for this major scheme is roughly 328 crores of rupees. Propounders of GIDA were initially enthusiastic in implementation of the scheme. But such activities had to be slowpedalled when the public interest litigation was launched at the instance of a society registered claiming itself to be interested in the social welfare of general public. The Original Petition filed by them for a writ of prohibition restraining the authorities to stop the project for reclamation and construction of bridges was dismissed by a learned single Judge of this Court against which the Institute filed this Writ Appeal. A Division Bench which heard the Writ Appeal earlier and dismissed it when the State Government informed the Court that the implementation of the scheme would be confined to construction of bridges after obtaining requisite sanction wherever it is required. Government Pleader further

pointed out that "the reclamation work is limited to the construction of the bridge and for the purpose of putting up necessary posts for supporting the bridges." Hence the Division Bench expressed that it is not clear from the averments in the Original Petition as to how the construction of the bridges would cause environmental damage. So the Writ Appeal was dismissed on 30-8-1994. State Government has filed a review petition for apprising the Court that reclamation work cannot be limited to the construction bridges. When the review petition was heard, it was agreed by both sides that Writ Appeal can be disposed of afresh in view of this changed stand of the State Government. We then allowed the review petition and heard the Writ Appeal afresh.

2. Learned counsel for the appellant has stated at the Bar that they are not opposing the construction of bridges for linking Ernakulam with Vypeen and other islands, but they seriously oppose the proposed reclamation of a vast area in the Vembanad lake towards implementation of the scheme. The proposal regarding use of the reclaimed area is to locate various commercial activities thereon.

3. Government of India have issued a notification u/s 3 of the Environment (Protection) Act, 1986 on 19-2-1991 declaring the Coastal Stretches of sea etc., including backwaters "which are influenced by tidal action (in the landward side) upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (TDL) and the HTL as Coastal Regulation Zone(CRZ)". Certain restrictions have been imposed by the Central Government as per the same notification regarding the activities in the said Zone (CRZ). One of the restrictions is "land reclamation" in the said zone.

4. It is admitted that the said prohibition regarding land reclamation in the zone will have the effect of legally injuncting the authorities from, reclaiming the area at the proposed site. This was further re-enforced when the Supreme Court has issued an injunction order on 12-12-1994 in Writ Petition (Civil) No. 664/93 directing the State not to permit the setting up of any industry or construction of any type "on the area upto 500 meters from the sea water at the maximum High Tide Level". But learned Advocate General has invited our attention to a subsequent order. However, the said modification has not granted any relaxation of the earlier injunction order. Learned Advocate General now contends that as the said injunction order is based on Government of India notification dated 19-2-1991, no governmental order would be issued in violation thereof. According to the learned Advocate General the clearance now accorded by the Government of India as per memorandum dated 10-5-1995 is in keeping with the earlier order and not in violation thereof.

5. Learned Advocate General has advanced broadly two contentions to convince us that the prohibition of land reclamation contained in the notification dated 20-2-1991 would not apply to the proposed reclamation in this case. First is that the land reclamation mentioned in the notification should be of such a nature as to disturb the natural course of sea water which alone would fall within the ambit of the prohibition. Second is that the proposed land reclamation is not expected

to take place within the Coastal Regulation Zone.

6. While dealing with the second contention an understanding is necessary regarding the farthest limits of CRZ. It is described as the coastal stretch influenced by tidal action "upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL". The zone can in the appropriate cases include estuaries, creeks, rivers and backwaters which are influenced by tidal action. In order to fix up the farthest line an idea of what is meant by HTL is necessary. The Central Government brought about some amendments to the earlier notifications dealing with this subject through S.O. 114(E) dated 19-2-1991 and declared that "the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India". No material has been made available to us regarding the said demarcation, if any, made by the demarcating authority. Without fixing HTL it is difficult to decide whether the proposed reclamation is within the prohibited area. Third respondent has a case that the proposed reclamation would be in the backwaters situated at a distance of 4.2 to 4.5 kilometers from the mouth of the sea. We are thus not in a position to find that the proposed reclamation would come within the CRZ until it is established that the High Tide Line had been demarcated in accordance with the procedure prescribed by the Central Government in the notification mentioned above.

7. While dealing with the first contention, we would extract the words relating to the land reclamation as falling within the ambit of prohibition. Paragraph 2 of the notification dated 20-2-1991 deals with different prohibited activities. Clause (viii) refers to the land reclamation and it reads thus:

"Land reclamation, bundling or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal and maintenance of clearing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge."

Third respondent in his Statement drew a distinction between sea water and the brackish water in estuarine basins. Quoting from authorities third respondent has stated that sea water in the Arabian Sea is different from brackish water in Backwaters. Only such land reclamation as would disturb the natural course of sea water would fall within the area of prohibition, according to the learned Advocate General. He pointed out that if the aforesaid interpretation is not accepted, it may lead to the mischief that any obstruction other than land reclamation, bundling etc., would be permissible even if it would disturb the flow of brackish water in the Coastal Regulation Zone. We also feel that the prohibition relating to land reclamation is intended to cover only such land reclamation as would disturb the natural course of sea water.

8. Appellant has not established that the proposed land reclamation would in any manner interfere with the natural flow of sea water.

9. Learned Advocate General lastly contended that it is the very Central Government, through an expert body, had studied the entire position and granted sanction subject to the conditions for constructing bridges and for carrying out the proposed land reclamation. We feel that this is an area where this Court cannot decide on factual dispute while exercising jurisdiction under Article 226 of the Constitution.

For the aforesaid reasons, we dismiss the Writ Appeal.