

(2010) 11 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No's. 18063-18072 of 2010

K. Ningaraju and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) ILR (Kar) 938 : (2011) 3 KCCR 2399

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Kavitha H.C. and Prakash H.C, for the Appellant; K.M. Nataraj, A.A.G., for the Respondent

Judgement

Mohan Shantanagoudar, J.—Petitioners are policemen working in Karnataka State Reserve Police (KSRP). Their services were utilised by inducting them in the "Special Task Force" (STF) constituted for the specific and sole purpose of capturing the infamous forest Brigand Veerappan in M.M. Hills in Chamarajanagara-Kollegala areas of the State of Karnataka. Petitioners were among 754 members of the STF, who were involved in the operation of capturing Veerappan as on 18.10.2004.

2. Veerappan and his gang were indulging in elephant poaching and smuggling of sandalwood on a large scale, since long time. The said gang started indulging in extortions, murders, kidnapping for ransom, etc. from 1983. Subsequently, i.e., somewhere in the year 1984, the said gang started attacking and killing forest and police officials, who tried to control their illegal and terrorist activities. The said gang killed about 2000 elephants, committed theft of 40,000 kgs. of tusks worth about Rs. 12 crores and has denuded the sandalwood from the forest areas situated in the borders of Karnataka, Tamil Nadu and Kerala, worth more than Rs. 100 crores. The operation to nab Veerappan and his gang members, lasted for 14 years in hilly terrain resulting in the death of 123 police officers apart from causing grievous injuries to 61 persons. The operation ultimately

culminated in the capture and death of Veerappan on 18.10.2004. In the course of said service, the Petitioners and the similarly situated STF personnel were exposed to dangers to their life and limb in the form of wild animals, extreme weather conditions in the forest areas and faced threat of attacks from forest brigand.

3. The Government of Karnataka announced on 8.7.2005, a "package" reward of about Rs. 50 crores in favour of STF personnel. The said reward was proposed to be distributed in three forms viz., (1) cash reward, (2) allotment of free house sites and (3) one increment in pay. The Government Order dated 8.7.2005 announcing the aforementioned package reward is produced at Annexure-A to the writ petitions. The third Respondent herein sought for details of availability of the sites in the respective Districts. Certain of the District wise reports received by the third Respondent regarding the availability and non-availability of the sites are produced at Annexure-C series. However, the Respondents did not allot free sites in favour of STF personnel even after lapse of three years and consequently some of the STF personnel made representations to the Government of Karnataka, as per Annexure-D. Even then, no purpose is served. Hence, around 130 members of the STF personnel approached this Court by filing WP. No. 19957/2009, praying for direction to State Government for allotment of sites. The said writ petition was disposed of on 21.7.2009, directing the Respondents to consider the representations within six months. Even after lapse of six months, the Respondents did not consider the said representations relating to allotment of sites. Thus, two of the STF personnel, Mr. Venkappa Rai and Mr. Jagannathan N, filed contempt petition in CCC. No. 365/2010. During the pendency of the said matter, the Respondents complied with the directions by allotting them sites and consequently, contempt petition was closed vide order dated 24.5.2010. Similarly, Mr. Ningappa, Mr. Jayaswamy and Mr. Bhaskar Rai, the former STF members filed contempt petitions in CCC. Nos. 507-508/2010. During the pendency of the said matter, the State Government complied with the direction by filing a memo before this Court that the Petitioners therein will be allotted sites. Consequently, those three persons were also allotted sites and the contempt petitions were closed.

4. When the facts stood thus, the impugned order is passed as per Annexure-J, dated 17.5.2010. The said order discloses that adequate number of sites are not available for distribution to STF personnel in the Districts of State of Karnataka and therefore the Government has decided to compensate the STF personnel by paying sital value instead of allotting sites. While doing so, the State Government has fixed the BDA price as the basis, in order to have uniformity in paying the sital value. Since the Government was of the opinion that the Districts other than Bangalore Urban District may have lesser sital value, the allotment price as fixed by the BDA should be the basis for paying the sital value all through Karnataka for the purpose of complying with the order relating to reward. The order at Annexure-J dated 17.5.2010 is called in question in these writ petitions.

5. It is argued on behalf of the Petitioners that the Respondents are estopped from going behind their promise; that the State Government is not justified in passing the impugned order, inasmuch as the earlier order at Annexure-A, allotting free sites in favour of the Petitioners, is sought to be modified against the interest of the STF personnel, who have fought for nabbing and killing Veerappan by taking all the risks; that since five of the STF personnel are already allotted sites during the pendency of the contempt matters before this Court, it is not open for the State Government to deny the said benefit to these Petitioners and other similarly placed persons. It is further argued that the Government of Tamil Nadu which was also equally interested to nab Veerappan, also announced the rewards relating to allotment of sites and the Government of Tamil Nadu has fulfilled its obligation by allotting free sites to all the STF personnel. According to the Petitioners, the voluntary act of State Government in announcing free sites by passing the order at Annexure-A has given rise to a valid and rightful expectation on the part of the Petitioners and hence the impugned order runs contrary to the doctrine of legitimate expectation.

The Writ Petitions are opposed by Shri K.M. Nataraj, Additional Advocate General by contending that the Petitioners will not be put to hardship by the impugned order as they will get sital value instead of site; that policy of the Government can be changed from time to time; that the impugned order is in the interest of the public at large, inasmuch as allotment rules do not contemplate reservation for such events.

6. It is not in dispute that the State Government has announced rewards voluntarily by passing the order at Annexure-A, dated 8.7.2005, i.e., after nabbing Veerappan. The said order reveals that the STF personnel are rewarded under three heads viz., 1) cash prize, 2) allotment of free sites and 3) one increment in pay. The Petitioners aggrieved by the inaction of the State Government in not fulfilling its obligation in respect of reward No. 2 i.e., allotment of free sites. The impugned order at Annexure-J, dated 17.5.2010 reveals that the State Government has tried to find out the availability of sites in all the Districts, including Bangalore City. By virtue of the order at Annexure-A, the Government has to allot free sites to STF personnel in the Districts to which each of the STF personnel belongs. The records reveal that 754 STF personnel are native of 26 Districts. The list of the Districts and the total number of STF personnel in respect of each of such District is produced before this Court by filing a memo dated 26.10.2010 by Sri K.M. Nataraj, learned Additional Advocate General. It is clear from the said table that the STF personnel are native of 26 Districts. Thus, the information was sought for by the third Respondent from each of the 26 Districts regarding availability of the sites. Most of the Districts Administrations have replied that as of now no sites are available to satisfy the Government Order at Annexure-A in respect of all STF personnel. It seems, an enquiry is also made by the State Government, in Karnataka Housing Board also. According to the State Government, sites of Housing Board, in those Districts are also not available. In order to overcome the difficulty, the State Government has

passed an order at Annexure-J for paying the sital value, instead of allotting sites. The sital value as fixed by the BDA is taken as the basis in order to have uniformity in payment of money. Reward is a sum of money or other compensation offered to the public in general or to a class of persons, for the performance of special service. It is common place for the police to offer a reward for information leading to the arrest and conviction of an offender/offenders. In legal terms, the person promising a reward is offering to enter into a contract with the person who performs the requested action after knowing the offer. Therefore, legal concepts involving rewards are derived from the law of contract.

An actual valid offer must be made before the performance to a create contract of reward. But, in the matter on hand, no offer was made by the State Government to the STF personnel to pay/grant reward, prior to nabbing of Veerappan and his gang. The rewards are announced only after Veerappan and his gang were nabbed and killed. Thus, technically there was no offer by the State Government and consequently the work was not performed by STF personnel pursuant to any offer. Hence, in law, there was no contract as such between the parties. However, Government Order announcing rewards as per Annexure-A was passed, as the State Government was happy with the performance of STF personnel. Hence, expectation of public in general and STF personnel, in particular, is in favour of fulfillment of Government's assurance to reward the free sites as announced. Even when some defect is found in the decision-making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

In this regard it is relevant to refer to the decision in the case of Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., wherein it is observed thus:

90. Now, it is well settled that jurisdiction of the High Courts under Articles 226 & 227 is discretionary and equitable. Before more than half a century the High Court of Allahabad in the leading case of Jodhey v. State, observed: (AIR p. 792, para 10)

10. ...There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein.

91. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all Courts and the tribunals throughout the territories in

relation to which it-exercises jurisdiction is very wide and discretionary in nature. It can be exercised *ex debito justitiae*, i.e, to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a Court of law, but also as a Court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must "advance the ends of justice and uproot injustice".

(Emphasis supplied)

Be that as it may, this Court does not find any illegality on the part of the State Government in passing the order at Annexure-J. Since sufficient number of sites are not available in 26 Districts, as is clear from the list produced by the Additional Advocate General on 26.10.2010, the Government has come out with a policy of paying sital value. Even in fixing the sital value, the State Government is fair enough to all the STF personnel, inasmuch as the sital value as fixed by the BDA will be paid to the STF personnel, even if STF member belongs to other District.

During the course of arguments, learned Additional Advocate General produced the copy of the Corrigendum, dated 26.10.2010, issued further clarifying the actual sital value of BDA (i.e., allotment price) to which the STF personnel are entitled to. According to him, typographical mistake has crept in the impugned order in respect of the sital value. The Corrigendum reveals that STF personnel are entitled to Rs. 2,100/- per sq. mtr. of site instead of Rs. 210/- per sq.ft.

8. This Court will not generally interfere with the policy of the State Government unless the same is irrational and unconstitutional or otherwise opposed to law. The State Government had taken policy decision to allot free sites by passing the order at Annexure-A. As the Government found that it is not possible to comply with the said order, it has changed its policy by issuing the impugned Government Order as per Annexure-J. Since the Petitioners are getting the sital value as fixed by the BDA, this Court does not find any ground to accept the contention of the Petitioners that the impugned order is illegal.

9. Though the impugned order at Annexure-J is in accordance with law, the State Government shall be put on terms to safeguard the interest of STF personnel who have fought for the State. As aforementioned, the State Government had announced the package of reward on 8.7.2005, which included the allotment of free house sites to the STF personnel. If it is so, it has to be presumed that as on that day, sufficient sites were available for allotment to the beneficiaries. Because of the inaction on the part of the government, the assurance given on behalf of the State is not fulfilled till this day, in spite of directions of this Court in W.P. No. 19957/2009. Therefore, it is not proper on the part of the State Government to contend after five years, that the sites are not now available for allotment. This Court can take judicial note of the fact that the Government has been allotting BDA sites under "G-Category" even after 8.7.2005. If it is so, the same yardstick is to be made use of to comply with its own assurance of allotting

free sites to the STF personnel. In my considered opinion, the State Government cannot take advantage of its own inaction. This Court hopes, at least from now onwards, the State Government should be more careful in announcing the rewards. When the rewards are announced, the same should be fulfilled, inasmuch as the public at large legitimately expect that the Government will not go behind its own assurance. Hence, this Court is of the opinion that the interest of justice will be met if the Respondents are directed to allot sites to STF personnel as and when the sites are available for allotment. The impugned order is based on the premise that the sites are not available in any of 26 Districts. However, if the sites are formed in future and are available to the general public, the Petitioners will have to be preferred in allotment of sites. In such an event, the Petitioners will have to pay the allotment price fixed by the allotting authority for getting the sites. In case if the Petitioners do not accept the sital value pursuant to the impugned order, such persons have to pay the difference of amount in the then allotment price. By the said process no injustice or prejudice will be caused to any of the parties. The State Government would be fulfilling its obligation to certain extent in case the sites are allotted to the Petitioners on preferential basis, that too on payment of allotment price fixed by the allotting authority. This Court has taken into consideration all the aspects, in order to safeguard the interest of STF personnel as well as the State Government. The STF personnel should not feel that they are ignored by the State, though they virtually fought against Veerappan gang. Having regard to the totality of the facts and circumstances and in the interest of equity, the following order is made:

- i) The prayer relating to quashing of Annexure-J, dated 17.5.2010, is rejected. The order at Annexure-J is held to be valid.
- ii) However, sites as per their eligibility shall be allotted to the Petitioners, within two months, if available as of now.
- iii) If sites are not available as of now, Respondents 1 and 2 are directed to comply with the order at Annexure-J, and the Corrigendum, dated 26.10.2010, issued by the State Government clarifying that the sital value (allotment price) of BDA is Rs. 2,100/- per sq.mtr, as early as possible, but not later than the outer limit of three months from the date of this order. It is made clear that if the sital value (allotment price) is not paid within three months, but is paid later, then, the State Government is directed to pay interest at the rate of 12% per annum, or the amount of sital value fixed by BDA, which would be existing as on the date of making payment, whichever is higher.
- iv) If sites are not allotted to any of the Petitioners now, the Petitioners and other similarly placed STF personnel are entitled to preferential allotment of sites in their respective Districts as and when the sites are formed and notified for allotment either by concerned Urban Development Authority/BDA or by the Housing Board.
- v) In case if the sites are allotted to the Petitioners and other similarly situated

STF personnel as mentioned in order (iv) above, the sital value (allotment price) should be paid by the Petitioners.

vi) In case if the Petitioners do not accept the sital value pursuant to the impugned order at Annexure-J/ Corrigendum (as arrived at in Order-iii), the Petitioners are liable to pay the difference of amount of sital value (allotment price), if any, as on the date of such allotment. It is also made clear that in case if the sital value as fixed by the Allotting Authority is less than the amount to which the STF personnel are entitled to pursuant to the order at Annexure-J/ Corrigendum (as arrived at in Order-iii), the difference of amount should be paid to the Petitioners by the State Government.

Writ petitions are disposed of in the aforementioned terms.