
(2004) 07 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 29014 of 2003

Karnataka Ithihasa Academy (R)

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Constitution of India, 1950 — Article 151, 153, 154, 162, 213

Citation : (2004) 6 KarLJ 613

Hon'ble Judges : N.K. Jain, C.J.;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : Smt. Shwetha Anand, for the Appellant; Sri M.N. Seshadri, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, C.J.—Karnataka Ithihasa Academy, represented by its member, Sri T.R. Krishna Gowda has filed this PIL petition to quash the order dated 21-4-2003 passed by the 4th respondent approving the construction.

2. It is stated that the petitioner is a Society registered under the Karnataka Societies Registration Act, 1960. It is stated that as per Indian history, Pampa Kshetra, now known as Hampe, Pampa or Hampi in colloquial usage was the capital of Vijayanagar Emperors. The capital was later shifted on to the southern bank of Tungabhadra river near Sri Virupaksha Temple and the new capital was built around the said temple. Hampi is the only city in the entire world, which has been lying in almost the same condition in which it was, immediately after the devastating war, when the Vijayanagar rulers lost to their enemies who plundered the kingdom. The UNICEF appreciating that Hampi is of great architectural importance, issued guidelines in partial implementation of which an area within a radius of one km. from the periphery of the zone intended to be protected has been considered as protected area. A monument of the country can be inscribed in the World Heritage List by making an application and furnishing an undertaking that the Government of the country concerned would

abide by the guidelines of the UNESCO. The United Nations Educational, Scientific and Cultural Organisation (hereinafter UNESCO") declared Hampi monuments as World Heritage site on 28-11-1986. The observer of the Government of India who conducted the work, submitted a report dated 24-7-2000 to the UNESCO that the construction of the two bridges had been halted but that corrective measures had to be inevitably undertaken to remove the threats, facing the site. As the Hampi site, a World Heritage site, was inscribed in the "World Heritage in Danger" list, the Joint Mission comprising the representatives of International Committee of Monuments and Sites (ICOMOS) and the UNESCO visited the protected zone of Hampi between 21-2-2000 and 25-2-2000. It submitted a report in the month of May 2000, vide Annexure-E. Based on that report, UNESCO and ICOMOS recommended certain corrective measures, laying stress on relocation of the two bridges and development of Comprehensive land in close co-operation with the UNESCO and ICOMOS. It is stated that the Task Force constituted by the Government of Karnataka on 27-1-2000 conducted spot study of the impact of the bridges on the World Heritage Site, held meetings and discussions and submitted a report. The Cabinet of Ministers, Government of Karnataka in its meeting held on 11-5-2000, based on the recommendations of the Task Force (Annexure-Q), decided to dismantle the two bridges, i.e., Cable Suspension bridge connecting Anegondi and Venkatapura and Suspension Footbridge connecting Hampi and Virupapura Gadde and find suitable alternative locations for these two bridges.

3. Thereafter, two PIL petitions were filed one by Channappa Veerappa Katti and 8 others in W.P. No. 23760 of 2000 praying to direct the respondents to immediately complete the construction of the cable stayed bridge at Anegondi, Gangavathi Taluk, Koppal District and not to demolish the said bridge and the footbridge connecting the village of Virupapura Gaddi with Hampi; and the other by the Karnataka Ithihasa Academy and 13 others in W.P. No. 34312 of 2000, praying to direct the respondents to forbear from proceeding with the construction of the two bridges at Talavaraghatta and the Southern Bank of Tungabhadra river. Considering the statement of objections filed by respondent 7-Government of India, represented by Secretary of Culture, respondent 8-The Archaeological Survey of India (hereinafter "ASI") and respondent 9-Superintending Archaeologist, ASI, Bangalore. This Court observed that "It is within the dominion of the Government to see the feasibility and other financial aspects to decide the issue in the public interest". This Court also taking note of the submission made by the learned Government Advocate that action was being taken for constituting Hampi World Heritage Area Management Authority (for short, "the Management Authority" and that the State would prepare necessary plan through the aforesaid Authority and will take a decision regarding demolition or otherwise of the two bridges in public interest, ordered that: "Under the circumstances, we direct the respondents to examine the matter thoroughly and it is made clear until such decision is taken, the respondents are directed not to initiate any action in pursuance of Government Order dated 20-10-2000" vide

order dated 10-9-2001. Now, the order dated 21-4-2003 Annexure-W passed by the 4th respondent on the basis of the recommendation of the management authority and the Committee has been challenged.

4. Learned Counsel for the petitioner submits that the action of the respondent is arbitrary and the order is liable to be set aside as the Government of Karnataka has not taken the opinion of the experts. He also submits that importance of Hampi is a monument of international value does not require to be over stressed and a duty is cast on every organ of the State and its right minded citizens, and therefore, the action of Government in taking a decision on the report/advice of the State Level Advisory Committee Meeting held on 7-6-2002 for having decided to complete the work of the Cable Suspension Bridge connecting Aneondi and Venkatapura Villages after an alternative road to the existing road as constructed is bad. Therefore, he submits that necessary directions may be issued to the respondents to forbear from proceeding with the construction of the Cable Suspension Bridge at Talavaraghatta thereby implementing the recommendations of the UNESCO and the ICOMOS and to grant such order necessary in public interest, preserving and maintaining the historical archaeological site in the vicinity and the ambience of Hampi for ever.

5. In response to notice, statement of objections has been filed by respondents 1 to 5 denying the averments as made in the writ petition. It is stated that the writ petition is not maintainable and is liable to be dismissed. On merits, it is stated that pursuant to the direction of the Court issued in W.P. No. 23760 of 2000 and connected writ petition on 10-9-2001, the 1st respondent in exercise of executive power under Article 162 of the Constitution has constituted the "Management Authority" and the State Level Advisory Committee (for short, "the Committee"). The Management Authority and the Committee have to coordinate and monitor the activities of the Authority and advise the Authority on all matters concerning the conservation of the cultural heritage and natural environs within the heritage area, under the Government Order dated 21-3-2002, as per Annexure-R1. The matter was placed before the Authority, which in its meeting held on 15-5-2002, considering the facts recommended that the final decision would be taken by the Committee for dismantling the bridge and constructing an alternative Bridge at the alternative location. It is also stated that the Committee at its meeting held on 7-6-2002, as per Annexure-R3, decided to complete the cable stayed bridge after completion of the outer bypass road and to demolish the footbridge, connecting Hampi and Virupapura Gadde. It is also stated that the Chief Consulting Engineer for Tar Steel Research Foundation of India, opined that the incomplete portion of "Cable Stayed Bridge" leads to undesirable forces on the structure and that the construction of balance portion of the Bridge needs to be taken up immediately to avoid further distress and deterioration, and under the circumstances, the Government passed the order dated 21-4-2003; that no work was taken pursuant to that order and the order was placed before the Authority; that the Authority at its meeting on 15-7-2003 resolved and ratified the action proposed to be taken as per the

impugned Government Order Annexure-R4.

6. It is stated that pending Management Authority and the Committee as stated as per Annexure-R1, dated 21-3-2002, Hampi World Heritage Area Management Authority Act, 2002 has been passed by the Legislature. It is stated that notification is yet to be issued for bringing the Act into force by issue of appropriate notification u/s 1(2) of the Act substituting the executive Order as per Annexure-R1. Under the circumstances, the action of the State in the matter of construction of the Cable Stayed Bridge and the decision for retention thereof is in accordance with law. It is stated that in the fact situation of the case, the action to continue the construction of the Bridge is not arbitrary and it is based on study, investigation and on the advice of the concerned authorities. It is stated that the entire project is being implemented by keeping the UNESCO authorities notified about the decisions and developments from time to time through the Government of India. Therefore, there is no illegality in the order dated 21-4-2003. As stated the petitioner has no locus standi nor there is any public interest and as stated this Court cannot issue directions in the garb of PIL.

7. A rejoinder has also been filed. Learned Counsel also referred to Articles 151, 153, 154 and 213 of the Constitution.

8. We have heard Smt. Shwetha Anand, learned Counsel for the petitioner and Sri M.N. Seshadri, Government Advocate learned Counsel for the respondents, perused the material on record, relevant provisions and the case-laws cited.

9. Learned Government Advocate has not disputed the constitutional provisions referred to above but it is stated that the issuance of the ordinance by the Governor is different and distinct from exercising the executive power under Article 162, and it is not applicable to the facts of the present case as the question involved pertains to exercise of executive power under Article 162.

10. No doubt, this Court in an appropriate case can issue appropriate direction for violation of fundamental right or if it touches the conscience of the Court, but not for espousing the cause of others for personal gain, political motive or for publicity. It is also settled that an individual can file a PIL for a public cause, but if a person files a petition on behalf of a Society/Association, the Court has to be satisfied with his bona fides and to see the aims and objects of the Society/Association and also to see that the Society/Association is following the other requirements of law. Further, the person filing the petition has also to be duly authorised by the members of the Society/Association. Public Interest Litigation is a weapon, which has to be used with care and circumspection and the judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. A reference can be made to be decisions in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, and BALCO Employees Union (Regd.) Vs. Union of India and Others, .

11. It is not disputed that as per the direction in earlier PIL in W.P. No. 23760 of

2000 and connected matter the Management Authority has been established vide order 21-3-2002, as per Annexure-R1 comprising of a Chairperson, Vice-Chairperson, and 18 other Officers of various Departments of the State; and the State Level Advisory Committee was also constituted headed by the Minister in charge of Bellary District as Chairperson, Minister in charge of Kannada and Culture as Co-Chairperson, Minister in charge of Tourism and 7 other Officers of various Departments of the State. Under the circumstances, the argument that the action of the respondent is arbitrary for want of taking opinion from the expert is not acceptable. As stated, the Management Authority and the Advisory Committee constituted under Article 162 of the Constitution have taken a decision, which cannot be stated to be bad. Otherwise also, the same cannot be interfered with.

12. It is seen that the State can exercise executive powers under Article 162, which is subject to the other provisions of the 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. The executive power is co-extensive with legislative power. It is subject to certain limitations. In other words, if the law made by the legislation is already in existence, the executive power cannot be exercised nor it can override the law already in existence. In the instant case, the learned Counsel has not been able to show that the executive power has been exercised in constituting the Management Authority and Committee by respective notifications in pursuance of the order of this Court which were already in existence and not covered by the law made by the legislation. In view of this, once the Authority has taken a decision in exercise of the executive power under Article 162, the same cannot be interfered with. It is also settled that Judicial review is also not permissible by the Courts not being Appellate Authority. That apart as stated the exercise of power is neither arbitrary nor capricious. Therefore, no direction can be issued as prayed for in this PIL and it is liable to be dismissed with costs.

13. It is seen that the Karnataka Act No. 18 of 2003 came to be published in the Karnataka Gazette special issue dated June 4, 2003. The argument that the action taken by the Committee while exercising the power under Article 162 is bad for want of publication in the gazette after coming into force the Hampi World Heritage Area Management Authority Act, 2002, by the legislation, is not acceptable. The power has been exercised under Article 162 following the business rules as per Article 166 and the notification has been issued in the name of the Governor. Therefore, the action taken in exercise of executive power cannot be said to be bad for want of publication of the Act and as stated, it cannot be interfered with by this Court. The Management Authority and the Advisory Committee have taken decision after consideration and deliberation, in

the fact situation of the case. It is stated that further construction work of the "Cable Stayed Bridge" has been stalled till peripheral roads are formed as per the direction of the UNESCO.

14. We have considered the decisions relied upon by the learned Government Advocate. In *A.K. Roy and Others Vs. Union of India (UOI) and Others*, wherein while considering the power of issuance of ordinance is concerned, their Lordships, at paras 44, 45 and 46, held as follows:

"44. Both Dr. Ghatate and Shri Garg contend that despite the provisions of Section 1(2) of the 44th Amendment Act, Article 22 of the Constitution stood amended on April 30, 1979 when the 44th Amendment Act received the assent of the President and that there was nothing more that remained to be done by the executive. Section 1(2) which, according to them is misconceived and abortive must be ignored and severed from the rest of the Amendment Act and the rest of it deemed to have come into force on April 30, 1979".

"45. At this juncture we will limit ourselves to a consideration of those arguments insofar as they bear upon the interpretation of Section 1(2) of the 44th Amendment Act, the consequences of the failure of the Central Government to issue a notification under that provision for bringing into force the provisions of Section 3 within a reasonable time and the question as to whether, despite the provision contained in Section 1(2), the 44th Amendment Act must be deemed to have come into force on the date on which the President gave his assent to it. The point last mentioned raises the question as to whether Section 1(2) of the 44th Amendment Act is severable from the rest of its provisions, if that section is bad for any reason".

"46. That pre-condition is the issuance by the Central Government of a notification in the Official Gazette, appointing the date from which the Act or any particular provision thereof will come into force, with power to appoint different dates for different provisions. Thus, according to the very terms of the 44th Amendment, none of its provisions can come into force unless and until the Central Government issues a notification as contemplated by Section 1(2)".

In *B.N. Nagarajan and Others Vs. State of Mysore and Others*, while considering Articles 309 and 162 of the Constitution, their Lordships, at para 5, observed as follows:

"(5) It would be convenient to deal with this argument at this stage. Mr. Nambiar contends that the words "shall be set forth in the rules of recruitment of such service specially made in that behalf clearly show that till the rules are made in that behalf no recruitment can be made to any service. We are unable to accept this contention. First it is not obligatory under proviso to Article 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly, the State Government has executive power, in relation to all matters with respect

to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, , that it is not necessary that there must be a law already in existence before the executive is enable to function and that the powers of the executive and limited merely to the carrying out of these laws. We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot m exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act".

15. Applying the above settled position of law to the facts of the given case no direction can be issued, as prayed for in this PIL.

16. Whether the petitioner-Society is performing its duty as per the provisions of the Karnataka Societies Registration Act, 1960 or not and whether T.R. Krishna Gowda, who has filed this petition is duly authorised by its members and about the locus standi of the petitioner, cannot be considered in the absence of any material, nor it is necessary to consider the same, as we have considered the respective arguments on merits, and not interfered with the order dated 21-4-2003.

In view of what we have discussed above, in the facts of the given case, we find no ground to entertain this writ petition. This PIL petition is dismissed with costs of Rs. 2,000/-. Petitioner is directed to deposit the same in the High Court Legal Services Committee within one month from today, failing which the State is free to recover the same in accordance with law.