
(1966) 06 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 4740 of 1990

K.S.E.B.

APPELLANT

Vs

Chief Conservator of Forests

RESPONDENT

Date of Decision : 27-06-1966

Acts Referred:

Electricity Act, 1910 — Section 18(3)

Citation : (1996) 2 KLJ 8

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; M.K. Damodaran) and Govt. Pleader for State, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Disputes between Government departments inter se, and between departments and Government owned Corporations and Companies, etc., are now a common phenomena. Large number of such disputes are now brought to courts, tribunals and other dispute resolving forums without making least effort to resolve the disputes amicably by mutual consultation, thereby causing considerable financial burden to the State exchequer. It also delays various projects and programmes of considerable importance. Time is overdue that these disputes are resolved at the State level, rather than allowing the State departments, State owned Corporations, Companies fighting each other in courts and tribunals and other forums. In the instant case the dispute is between the Kerala State Electricity Board and the Forest Department and Social Forestry wing. Kerala State Electricity Board, a State owned undertaking, was constituted under the Electricity Supply Act, 1948 for carrying out the generation, transmission and distribution of electricity within the State. Idukki hydro electric project being one of the biggest in the State, contributes maximum units of electricity every year. Electricity produced at the Moolamattom Power House is transmitted to various parts of the State. Transmission lines are drawn through forest area as well. In order to necessitate smooth transmission of electrical energy to various destination, the Board has to cut and remove high growing

trees in the alignment of the transmission lines. As per the Electricity Rules, the transmission lines are to be drawn with a minimum clearance from the ground. Board has to maintain the lines by periodically checking to see that there is no possibility for any damage either to property of the Board or individuals residing near the said lines. It is the primary duty of the Board to maintain various transmission lines so that no interruptions are caused to supply of energy and no loss to the Board.

2. The Board found large number of acacia and other plants were planted beneath the Idukki-Mysore transmission line by the Range Officer, Social Forestry Range and Range Officer, Territorial Wing, Wadakkancherry. Social Forestry Department ignored the requirement of Electricity Board. Since plants were growing at alarming rate and threatened to cause short circuit of the electric lines, Board took very serious note of the situation and the Assistant Executive Engineer, Transmission Section, Moolamattom addressed the Forest Officer, Social Forestry, Ayyanthole, Trichur, requesting him to make necessary arrangements for the cutting and removing of these trees. Board also addressed a letter to the Assistant Conservator of Forests requiring urgent action. The Assistant Executive Engineer of the Board also contacted the Assistant Conservator of Forest, Social Forestry. However, it was seen that major portion of the acacia plantation comes under the Machad forest range. Consequently, the Board contacted the Machad Forest Range Officer. Board was however informed that prosecution steps would be taken against the Board officials if the trees are cut without the written consent of Deputy Conservator of Forests.

3. Board then addressed the Chief Conservator of Forests, and requested him to make arrangements to cut and remove the acacia plants and bamboos beneath the existing EHT line. They received a communication from the Divisional Forest Officer, Trichur, stating that their request cannot be accepted since the trees proposed to be cut and removed are for non-forestry purposes. It is stated as per Forest Conservation Act, 1980, prior approval of the Government is necessary for clearance of forest tree growth. The Divisional Forest Officer, therefore, directed the Board to approach the Government and obtain necessary sanction.

4. Under the above mentioned circumstances, Board was constrained to move District Collector and District Magistrate, Trichur, under S.18(3) of the Indian Electricity Act. District Magistrate passed Ext.P7 order dated 22-9-1989 slating that there can be no objection to the felling of the plantations so as to remove the obstruction to the transmission line. However, it was ordered that felling of trees should be done in accordance with the norms laid down in Forest (Conservation) Act, 1980. Board is aggrieved by Ext.P7 order, in so far as the District Magistrate ordered that the felling of trees should be done in accordance with the norms laid down in the Forest (Conservation) Act, 1980. According to them, the District Magistrate has not properly considered the matter. It is suited the Forest (Conservation) Act, 1980 is not applicable to the case on hand.

5. It is unfortunate that Government departments and State owned undertakings are fighting each other in courts, tribunals and other statutory forums for the redressal of their grievances, rather than resolving their disputes using their own good officers. Disputes which can easily be resolved between themselves are brought before courts, tribunals and other forums spending money on court fees, procedural expenses and wasting public time. Many of the disputes remain unresolved for years and years, thereby holding up various projects and schemes. In the instant case, from 1978 onwards the Board and its officials are running here and there for the purpose of cutting certain trees for maintaining statutory clearance. At last, they have approached this Court invoking writ jurisdiction of this Court. I am of the view that these disputes ought to have been resolved by officials of the Board and Forest Department rather than bringing this dispute before the District Magistrate and before this Court.

6. Supreme Court had occasion to consider the dispute between ONGC and Collector of Central Excise in ONGC and another v. Collector of Central Excise, JT 1991 (4) SC 148. While deciding the issue, Supreme Court directed the Central Government to set up a High Power Committee to resolve the dispute. The views expressed by the Supreme Court were accepted by the Cabinet Secretary and the Cabinet Secretary reported to the Supreme Court as follows:

I would also like to state that the Government respects the views expressed by this Hon''ble Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in court by spending money on fees on counsel, court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to all departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated.

Supreme Court directed the Government of India to set up a High Power Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and Ministry of Law, to minor disputes between Ministry and Ministry of Government of India, Ministry and Public Sector Undertakings of the Govt. of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a tribunal without the matter having been first examined by the committee and its clearance for litigation. It was also directed that the Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance to the committee. Senior Officers only should be nominated so that the committee would function with status, control and discipline. Supreme Court further directed that it is the obligation of every court and tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it

has not been so pleaded and in the absence of clearance the proceedings would not be proceeded with. It was also ordered that the committee should function under the ultimate control of the Cabinet Secretary but his delegate may look into the matters. Supreme Court directed that copy of the order be communicated to every High Court for information of all the courts subordinate to them.

7. The above mentioned decision of the Supreme Court was subsequently clarified by order in I.A. Nos. 3 & 4 of 1992 in Civil Appeal Nos. 2058-59/1988 dated 7-1-1994. It was pointed out that the earlier order was intended to ensure that no litigation comes to court without the parties having had the opportunity of conciliation before an in-house committee. It was ordered that pending matters before any court or tribunal should also be the subject matter of the deliberations of the High Power Committee. All the matters pending as on that day either instituted by the Union of India or any of the Public Sector Undertakings should within one month from that day be referred to the High Power Committee. It was also ordered that whenever appeals or petitions are filed without clearance from the committee so as to save limitation, the appellant or the petitioner, as the case may be, shall within four months from such filing, refer the matter to the High Power Committee with prior notice to the Designated Authority in Cabinet Secretary of Government of India authorised to receive notices in that behalf. It is ordered that it is only after getting clearance from the High Power Committee that the matter be proceeded with. If the High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation.

8. I am of the view that the procedure adopted by the Supreme Court in the matter of disputes between public sector undertakings of the Central Government and Union of India and others can be followed in the matter of disputes between the State Government departments as well as between Government owned companies, corporations and government owned undertakings, inter se. This court had occasion to come across several such disputes between State Government departments in this Court, in the subordinate courts, tribunals and various other dispute resolving forums. It is high time that disputes between the Government of Kerala undertakings themselves be amicably resolved by mutual consultation or through good offices of empowered agencies of the Government or through arbitration and recourse to the litigation should be eliminated.

9. When this matter came up for hearing, I heard learned Advocate General, who on instructions from the Government submitted that the Government of Kerala is willing to constitute High Power Committee in this State as well, so that many of the litigations between Govt. departments, government owned undertakings, inter se, now pending before this Court, subordinate courts, tribunals and other forums could be amicably settled by mutual consultation through the High Power Committee to be constituted. I appreciate the stand taken by learned Advocate

General. It is advisable that Law Secretary or Senior Officer of law Department along with senior members of departments or Government undertakings, as the case may be, are included in the committees so that it would function with status, control and discipline. Constitution and composition of the committees is left to the Govt. which they will do taking into consideration of the nature of the disputes involved.

10. The Chief Secretary, State of Kerala, will see that committees are constituted as and when required so that disputes now pending before this Court and in various subordinate courts, tribunals, etc., could be resolved. As soon as the said committees are constituted, all the disputes now pending before this Court, and other courts and tribunals and other forums regardless of the types of litigations would be referred to the said committees and the committee will look into the said matters and reach an amicable solution. In case the committee could not reach a solution then only litigation pending before various courts, tribunals, etc. be proceeded with.

11. I make it clear all pending matters before this court, subordinate courts, tribunals, etc. should also be made subject matter of the said committees. All the matters pending as on today either instituted by the State Government or by Public Sector Undertakings owned by the State Government be not proceeded with till the matter is examined by the committee which will be constituted by the Government of Kerala. It will be the obligation of every court, tribunal where such dispute is raised hereafter to demand a clearance from the committee in case it is not so pleaded and in the absence of clearance the proceedings would not be proceeded with. In cases where there is likelihood of matter being hit by law of limitation, it is open to the Government Departments as well as public sector undertakings as the case may be to move the court or tribunal. However, courts, tribunals, etc., should refrain from proceeding further till the matter is considered by such committees, and clearance obtained from the committees to proceed with the litigation. In cases where the committees could not come to an amicable settlement, it is open to the committee to give clearance to the parties to proceed with the litigation. While the committees find that they are unable to resolve the dispute, they should record their reasons therefor. The dispute involved in this case also will be considered by such a committee.

Communicate a copy of this order to all the subordinate courts and tribunals and other dispute resolving forums with a direction not to proceed with the disputes between Government Departments and Government owned Corporations and Government Companies and such Corporations themselves, pending before them unless and until they get a clearance from the High Power Committee which will be constituted by the State Government within a period of three months from today. Communicate a copy of this order to the Chief Secretary for compliance. The Chief Secretary will take steps to intimate the gist of this order to all Govt. Departments, Government undertaking for information