
(2000) 07 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition No. 37966 of 1999 (LB-RES) connected with Writ Petition No. 28706 of 1999 (LB-RES)

M. Nanjundappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 10

Citation : (2000) 7 KarLJ 729

Hon'ble Judges : V. Gopala Gowda, J

Judgement

V. Gopala Gowda, J.-Though these matters are listed in preliminary hearing B Group, with the consent of the learned Counsels appearing for the respective parties, the matters are heard on merits and disposed of by this common order.

2. The petitioner in W.P. No. 37966 of 1999 who is a Class I Contractor has filed the writ petition seeking for issuance of a writ of certiorari quashing the impugned circular dated 25-9-1996 at Annexure-A issued by the 4th respondent-Under Secretary Urban Development Authority regarding entrusting the street light electrification works to the Mysore Lamps Limited, Bangalore, which is a public limited company owned by the Government of Karnataka and the relevant transactions between the 2nd respondent-Commissioner, Mandya Development Authority, Mandya and the Managing Director, Mysore Lamps Limited, Bangalore, pursuant to Annexure-A urging various facts and legal contentions.

3. The petitioners in W.P. No. 28706 of 1999 who are licensed electrical Contractors have filed the writ petition seeking for issuance of a writ of mandamus directing the 2nd respondent-The Commissioner of Mandya Urban Development Authority to take up developmental works in the new layout of Mandya Town in respect of electrification work in terms of Sections 10, 18 and 45 of the Act by calling tenders with the approval and sanction of the State Government urging various facts and legal contentions.

4. The prime contentions urged on behalf of the petitioners with regard to the

challenge of the impugned circular issued by the State Government are that the circular has no statutory force and the issuance of the said circular by the State Government is without authority of law as the same is in contravention of Section 10 of the Karnataka Urban Development Authorities Act, 1987 (in short, "KUDA Act"). Section 10 contemplates that the Commissioner on behalf of the Authority may, sanction any estimate and call for tenders or enter into any contract or agreement the value or amount whereof shall not exceed rupees five lakhs in such manner and form as according to the law for the time being in force would bind them if such contract or agreement were on their own behalf; and every such contract or agreement were on their own behalf; and every such contract or agreement shall be reported to the authority at its next meeting. The second legal submission is that the circular cannot be construed as a direction issued by the State Government as contemplated under Section 65 of the KUDA Act which states that the State Government in exercise of its powers under Section 65 may give such directions to the authority as in its opinion are necessary and expedient for carrying out the purposes of the Act and it shall be the duty of the authority to comply with such directions.

5. The learned Counsel Sri Ashok S. Mensinakai, appearing on behalf of the petitioners submitted that the circular is not only in contravention of Section 10 of the KUDA Act and the impugned circular is not in the form of the directions issued under Section 65 of the KUDA Act and that therefore the 2nd respondent should not have applied the circular and entrusted the electrification of the work in favour of Mysore Lamps Works Limited, which is the 3rd respondent-Public Sector undertaking company. The third ground of attack of the impugned circular is that the circular issued by the first respondent-Government is in violation of Articles 14, 19 and 21 of the Constitution of India and that therefore the same is liable to be quashed. The last contention urged on behalf of the petitioner is that the State Government has expressly laid down the authority with the second respondent in entrusting the work including the electrification work after following the procedure as contemplated under Section 10 of the KUDA Act and that the impugned circular is in contravention of the aforesaid provisions of the KUDA Act and the law declared by the Apex Court in AIR 1966 SC 165 (sic) and that therefore he would submit that the impugned circular is liable to be quashed.

6. Sri K.N. Puttegowda, learned Additional Government Advocate appearing on behalf of the State Government has sought to justify the impugned circular contending that neither Section 10 nor Section 18 and Section 45 of the KUDA Act has got application insofar as the entrustment of work to the 3rd respondent-Mysore Lamps Works Limited, by the authority, further the issuance of circular by the State Government in exercise of its powers is not affecting the rights conferred either upon the authority or on an individual person. Further Sri M. Shivappa and Sri T.S. Amar Kumar, learned Counsels appearing on behalf of respondents 2 and 3 would sought to justify that the impugned circular contending that the same is in conformity with Section 65 of the KUDA Act and

further placed reliance upon the law laid down by the Hon'ble Supreme Court in the decision in Bangalore Medical Trust v B.S. Muddappa and Others, AIR 1991 SC 1902, wherein the Hon'ble Supreme Court at Paragraph 52 as held as follows.-

"Section 65 the overall power reserved in Government to give such directions to the authority as it considers expedient for carrying out any purpose of the Act was another provision relied to support an order which is otherwise unsupportable. An exercise of power which is ultra vires the provisions in the statute cannot be attempted to be resuscitated on general powers reserved in a statute for its proper and effective implementation. The Section authorises the Government to issue directions to ensure that the provisions of law are obeyed and not to empower it itself to proceed contrary to law. What is not permitted by the Act to be done by the Authority cannot be assumed to be done by State Government to render it legal. An illegality cannot be cured only because it was undertaken by the Government. The section authorises the Government to issue directions to carry out purposes of the act. That is the legislative mandate should be carried out. And not that the provision of law can be disregarded and ignored because what was done was being done by State Government and not the authority. An illegality or any action contrary to law does not become in accordance with law because it is done at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails is law and rule and not the height of the person exercising the power".

Further, the learned Counsel for the 3rd respondent would submit that the first respondent in exercise of its power under Section 18 of the Act of 1987 for the purpose of Urban Development in Mandya District the State Government has sanctioned the scheme after following the procedure as contemplated under Section 18 of the KUDA Act which relates to sanction of scheme including entrustment of electrification work to this respondent which is the public sector undertaking owned by the State Government as part of the Scheme. Further, the learned Counsel would submit that the entrustment of the work including the electrification to the public sector undertaking is to achieve the laudable objects of the directive principles of the State Policy as enumerated under Articles 38 and 39 of the Constitution of India with a view to secure the socio-economic and political justice to the people of the country which is held to be the basic feature of the Constitution. He would further contend that the various contentions referred to above on behalf of the petitioners cannot be considered by this Court as the petitioner in the first writ petition is not equally placed with that of the 3rd respondent which is a public sector undertaking company and therefore none of the fundamental rights guaranteed under Articles 14, 19 and 21 as claimed by him are not attracted to this case for the reason that the 3rd respondent is a public sector undertaking company which is established by the Karnataka State to achieve the directive principles of the State Policy enumerated under Articles 38 and 39 of the Constitution of India to achieve the socio-economic and political justice to the people of the country, which is the Constitutional obligation of the

State.

7. Sri T.S. Amar Kumar, learned Counsel for the 3rd respondent submitted that it is a public sector undertaking company and it is before the BIFR as it has become a sick unit and it is the constitutional duty upon the State Government to rehabilitate it in order to achieve the directive principles of the State policy as enumerated under Articles 38 and 39 of the Constitution of India to ensure the livelihood to the working class who are working in the said company and at any rate the petitioner cannot be compared with the 3rd respondent. He therefore submitted that the first petition is liable to be rejected. He has further submitted that the prayer sought for in the connected writ petition also cannot be granted for the reason that already 75% of the work entrusted to the 3rd respondent in pursuance of the scheme sanctioned by the Government as per Section 18 of the Act of 1987 has been completed.

8. Heard the learned Counsels appearing for the respective parties and perused the impugned circular and the relevant provisions namely Sections 10, 18 and 65 of the KUDA Act. It is an undisputed fact that under Section 10 entrustment of work can be done by the authority not exceeding five lakhs. It is also not in dispute that the scheme sanctioned by the Government in exercise of the power under Section 18 of the Act of 1987 in respect of electrification work to the 3rd respondent is more than Rs. 3,00,38,18,042. Therefore, the submission of the learned Counsel for the petitioner in the first petition that Section 10 of the KUDA Act is attracted to the facts of this case is not tenable in law. Hence, the said contention has to be rejected.

9. The submission made on behalf of the petitioner in the first writ petition that the fundamental rights guaranteed to him under Articles 14, 19 and 21 of the Constitution is considered and examined by this Court, the same are not infringed for the reason that the petitioner is an individual and therefore he cannot be compared with the public sector undertaking company owned and established by the State Government with a view to discharge its constitutional obligations as enumerated under Articles 38 and 39 of the Constitution to secure social order for the promotion of welfare of the people and to further to see that the ownership and control of the material resources of the community are so distributed at best to sub-serve the common good. Therefore, he cannot be compared with the company established by the State Government.

10. It is an undisputed fact that the company is suffering from sickness under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. Its application under Section 22 of the said Act filed before the BIFR seeking sanction of the scheme for its rehabilitation is pending before it. State Government must have thought to encourage the 3rd respondent to see that its constitutional obligation is discharged by strengthening the sick public sector undertaking by entrusting the work of electrification executed by it and sanctioned the scheme under Section 18 for forming the layout in Mandya Town. The object of the State Government in issuing the circular is also in conformity

with Section 65 of the Act as it is a direction to the 2nd respondent and other local authorities to see that the work shall be entrusted in favour of the 3rd respondent as it is a public sector undertaking established to achieve the directive principles of the State Policy and also keeping in view that it is running under losses and the application is filed before the BIFR which is pending consideration by BIFR. It is the duty of the State Government to ensure that the sick unit is rehabilitated in the larger interest of the working class of the State. In my view the scheme is not only in conformity with Section 65 of the Act of 1987 but also to discharge the constitutional function of the State to bring social order for the promotion of welfare of the people. Therefore the contention urged on behalf of the petitioner in the first petition that his fundamental rights are infringed cannot be accepted as Article 14 is not attracted to the facts of the case for the reason that the petitioner cannot be compared with a public sector undertaking company as he is not similarly placed as that of the third respondent-company. The further contention of the learned Counsel for the petitioner that the same is in contravention of the law declared by the Supreme Court referred to supra is misplaced for the reason that this Court has already recorded the finding that the scheme is in conformity with Section 18 of the KUDA Act and the electrification work is entrusted in favour of public sector undertaking which is manufacturing electrical goods and having regard to the relevant fact namely that the third respondent has become sick and further having regard to the constitutional obligations to be discharged as envisaged under Articles 38 and 39 of the Constitution of India, the electrification work is entrusted to the third respondent with a view to strengthen it to secure social order for the promotion of welfare of the people of the State. By reading the scheme, no argument can be advanced that entrustment of work in favour of the 3rd respondent would amount to conferring largesse. Therefore, there is neither violation of the provisions of the Act and the law declared by the Supreme Court in the case of *Ramana Dayaram Shetty v International Airport Authority of India and Others*, AIR 1979 SC 1628. For the reasons stated supra, the impugned circular need not be quashed. Therefore, for the reasons stated supra the first petition must fail.

11. For the reasons stated supra, the prayer sought for in the connected writ petition also cannot be granted. Therefore, the connected writ petition also must fail.

Accordingly, both the writ petitions are dismissed.