

(2004) 08 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No's. 26855 and 26856 of 1997

Mandya Zilla Raithara Hitharakshana Samithi and Others

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 7 KarLJ 411 : (2004) 4 KCCR 492 SN

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

Bench : Division Bench

Advocate : J. Prashanth, for L.G. Havanur and Company, S. Vasudeva, for the Appellant; M.N. Seshadri, A.G.A. for Respondents-1, 2, 4 to 7, 13 and 15, S.K. Venkata Reddy, for Respondents-3, 16 and 17, Rajashekar B. Kanavi, Central Government Standing Counsel for Respondents-8 to 10, M.V. Seshachala, for Respondent-11 and M.R.C. Ravi, for Respondent-12, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, C.J.—Mandya Zilla Raithara Hitharakshana Samithi represented by its President and 15 others have filed these PIL petitions. It is alleged that the first petitioner is a registered organisation and 2nd petitioner is the President and other petitioners are the office-bearers of the first petitioner. It is alleged that to safeguard the interest of Varuna Canal, VC Modernisation Scheme is projected by the Government. Government Order was issued on 27-3-1979 and administrative approval was given on 23-4-1979. The revised estimate of Modernisation Scheme for K.R.S. Project, Phase I was approved by the Government on 6-8-1987.

2. The main grievance of the petitioners is that the estimates prepared were abnormally exorbitant and the respondents have committed financial irregularities and violated departmental rules by allotting piece works to a number of benami contractors, committing irregularities in payments and purchases made by the department and by way of which respondent 3 acquired

wealth beyond claimed sources. It is also contended that the farmers could not get the actual water benefit. Hence the petitioners have filed this petition seeking number of directions against the respondents. It is prayed to issue mandamus to the CBI to investigate the contractual works undertaken and given by the State to various contractors and to conduct enquiry into the 12th respondent obtaining Rs. 60 crores contract work of VC Modernisation Scheme and also to investigate the assets possessed by 3rd, 16th and 17th respondents, to issue direction to the Comptroller and Auditor General of India to conduct special audit in respect of 152 crores expenditure; a direction to the 10th respondent to investigate the irregularities in purchase of medicines by Animal Husbandry and Veterinary Service Department; a direction to the 11th respondent to conduct enquiry into the tax evasion and unaccountability of the assets held by 3rd respondent, and further to issue directions to 13th and 14th respondents to hold enquiry into the unauthorised and illegal felling of trees all along VC canal. The petitioners have also sought for interim prayer.

3. The learned Government Advocate has filed a detailed parawise statement of objections denying the allegations as made in the writ petitions. It is stated that details regarding total payments made against each contract based on records and registers maintained in respective Divisions has already been submitted to this Hon"ble Court. It is also stated that estimates were prepared on the basis of prevailing rules and rates and construction has been carried out as per technical advice. It is further stated that the enquiry headed by retired District Judge, Sri K. Eshwar Bhat, found no substance in the alleged complaints regarding irregularities in the transaction of the works entrusted by KSCC. It is also stated that the works entrusted by KSCC to piece workers/contractors was as per the norms and within the powers of Managing Director.

4. On 20-10-1997, the learned Counsel for respondents 3, 16 and 17 has filed preliminary statement of objections a controverting the allegations made in the writ petitions. It is stated that the writ petition in the garb of public interest is nothing but an instrument to settle political scores and the allegations made are totally baseless and without any substance. It is stated that the execution of project work was entrusted to a High Power Technical Committee and that the Irrigation Minister has no role in the execution of the project, except deciding on policy matters.

5. Again on 1-12-1997, the learned Counsel for respondents 3, 16 and 17 has filed statement of objections denying the allegations made in the writ petitions. It is stated that the writ has been filed with an intention to malign these respondents. It is also stated that the first petitioner is not a society which is functioning according to the provisions of the Karnataka Societies Registration Act and the Board of Management seems to have not taken decision to file these petitions. The petitioners are put to strict proof of their claim as to their authorisation to file these petitions. It is stated that all the allegations made in the respective paras are denied. It is also stated that 3rd respondent has no

power to approve or disapprove the estimates and it was all done and approved by the technical persons.

6. On 1-12-1997, the learned Counsel for respondent 12-Karnataka State Construction Corporation Limited, has filed detailed statement of objections denying the allegations made as false and baseless and prays that the petitions may be dismissed. It is stated that the respondent does not. engage any sub-contractor to execute any work on turn-key basis. It is stated that the work done by the respondent has been checked at each stage by the Quality Control Staff of Irrigation Department under the supervision of Officer of Irrigation Department and KSCC Engineers and no room is given for substandard work.

7. On behalf of respondents 1, 2, 4, 5, 6 and 7, Sri K. Shivashankar, Secretary to Government, Irrigation Department has filed detailed parawise remarks to the statement of objections on 1-12-1997 denying each and every statement, contention, allegation, averment or submission made in the writ petitions. It is stated that the petition be dismissed in limine as being not maintainable as it suffers from misjoinder of parties and causes of action. It is also stated that the writ petition under Article 226 is not the proper remedy to investigate and determine the merits and demerits of the method adopted for modernisation of V.C. System. The 2nd petitioner was also a member of the Committee and cannot make a grievance. It is stated that the petitioners are not entitled for any relief claimed and the writ petitions may be dismissed with exemplary costs.

8. Learned Counsel appearing for the 75 contractors who were permitted to intervene, submits that the PIL petitions are not maintainable. More so everything has been done as per the required norms and procedure in accordance with law. It is stated that though payment has been made prior to filing of these petitions, even then they have filed undertaking that they will abide by the result of the writ petitions. It is also stated that as the matter is pending before the Government, they will abide by their undertaking and the same can be extended till the writ petitions are disposed of. It is also stated that the PIL petitions are nothing but abuse of process of Court and are liable to be dismissed.

9. Rejoinder has also been filed.

10. These PIL petitions were filed on 24-9-1997 annexing several documents Annexure-A to H-7. Notice was issued on 25-9-1997 with a direction that payment to contractors shall be stayed subject to result of writ petitions. On the impleading application made, the respondents were impleaded to intervene vide order dated 29-10-1997 and the order was modified that no payment shall be made to any contractor without obtaining an undertaking for each payment to the effect that in case the writ petitions are allowed, the concerned contractor shall refund the amount. Fresh notices were issued to other respondents and respondent 14 was deleted. On 1-4-1998. I.A. 6 was disposed of in terms of order passed in I.A. 1 on 29-10-1997. On 10-8-1998 permission was granted to

withdraw I.As. 5 and 7, rejecting I.A. 4 filed by the contractors but permitting them to intervene and assist the Court. The matter was adjourned for one reason or the other. However, on 6-8-2002, a co-ordinate Bench directed the matter to be posted for final hearing. On 22-10-2002, the co-ordinate Bench, directed the 1st respondent to file statement giving details of payments made to each contractor prior to filing of petitions and after filing of petitions. On 28-11-2002, learned AG filed documents showing payments made to the contractors before and after filing of the petitions. On 18-2-2003, the petitioners were directed to file consolidated statement giving particulars of contract, total payments made etc. In response to this order, on 24-3-2003 the petitioner submitted that it was not possible to give the particulars of irregularities, excess payments etc., as the number of contracts are more but have tried to classify the alleged irregularities under several heads. When the matter came up on 22-7-2004 before this Bench, this Court directed the learned Counsels for respective parties to furnish the required information and also directed to post the matter on 30-7-2004.

11. As directed the matter came up on 30-7-2004. The learned Government Advocate has filed the chronology of events and synopsis of the argument of the respondent-State and its authorities. The learned Counsel for the petitioners has also filed the synopsis of the case reiterating the prayer to grant the relief prayed for in the petition.

12. As agreed, we have heard the learned Counsels for the parties and perused the material placed on record.

13. No doubt, this Court in an appropriate case can issue directions if there is gross violation of fundamental rights or if the issue involved touches the conscience of the Court but not for espousing the cause of others, for personal gain, publicity or political motive. It is also settled that a policy decision of the State should not be interfered with unless it is tainted with mala fides.

14. It is not necessary to go into the details of the case. It is not disputed that Krishnarajasagar Dam/Reservoir was commenced in the year 1911 and completed during 1931 providing irrigational facilities to 1,20,000 acres of lands in Mandya District. The achkat and command area i.e., irrigated are gradually increased to take water from the dam to more agricultural lands. On execution of this project, the petitioners have filed these petitions alleging that the respondents have violated departmental rules by giving works to number of contractors, committed financial irregularities and prepared exorbitant estimates. Counter has been filed stating that facility of irrigation has been increased originally from 1,20,000 acres to 1,95,972 acres and for the purpose of increasing the facility embankment of canals was raised and works of lining of the canals cross drainage works were undertaken; that it took substantial time of 6 months to execute the work, and therefore, the work was entrusted to several contractors and even then there was delay, and on these grounds no direction can be issued. It has also come on record that separate contracts were given, which was within the competence of the respondents concerned and the amount

has been paid prior to filing of the petitions. As per the reply, by modernisation about 5,250 acres of new achkat have been provided water for irrigation purposes and about 10,000 acres of existing achkatdars have been provided sufficient water. The modernisation has benefited lakhs of farmers and in this way larger public interest has been safeguarded.

15. As already stated, in the facts of the given case, this Court cannot investigate the issue in PIL nor it is necessary to go into the locus standi of the petitioners and to see whether the Society is functioning and following the procedure and also whether the concerned persons are authorised to file the writ petitions. More particularly, when the regular audit has been done by the Accountant General and the deficiencies pointed out by him have been referred to the Public Accounts Committee. The report of the Public Accounts Committee has been placed in the House. An Enquiry Committee, headed by retired District Judge Sri Sawkar, was constituted to go into the excess payment made in regard to the said work. The Enquiry Committee found no irregularities. However, an Engineer of the Department complained that he was not given an opportunity of being heard and as such the matter was entrusted to Sri C.K. Balakrishna, retired District Judge, whose report is awaited.

16. Under the circumstances, it is not necessary to go into the voluminous materials placed on record. Nor it will be proper to go into the merits of the case. In the facts of the given case, this Court cannot issue a direction for investigation of the matter. Otherwise also, merely on asking and on the basis of the averment the matter cannot be referred to the CBI for investigation unless this Court is satisfied that there is a delay in fair investigation. As it has come on record, the matter is subjudice before the Government. That apart, a policy decision has been taken by the State and nothing has been produced to show that the policy decision is tainted with mala fides or violates fundamental rights. This (sic) cannot be entertained.

17. In the circumstances, no direction can be issued in the facts of the given case, as prayed for. It has also come on record, that this Court on 29-10-1997 modified the interim stay directing that "no payments shall be made to any contractor without obtaining an undertaking for each payment to the effect that in case these writ petitions are allowed, the concerned contractor shall refund the amount...." As stated in compliance of the order of this Court, an undertaking has already been filed by each and every Contractor and the learned Counsel representing the Contractors who were allowed to intervene, has submitted that the undertaking is already filed and can be kept in tact till the final decision is taken by the Government.

18. On an overall consideration, and as discussed above, in the facts of the given case, it will be proper to direct that the undertaking furnished by the contractors shall continue and will be effective till an ultimate decision is taken by the Government in this behalf.

With the above observations these writ petitions are dismissed.