

(1985) 04 KAR CK 0039
In the Karnataka High Court
Case No : Crl R.P. No. 691 of 1982

Member Secretary, Karnataka State Board for Prevention and Control of Water Pollution APPELLANT

Vs

Sri Krishna Spinning and Weaving Mills (P) Ltd. RESPONDENT

Date of Decision : 11-04-1985

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 33

Citation : (1985) ILR (Kar) 3005

Hon'ble Judges : Vithal Rao, J

Bench : Single Bench

Advocate : H.N. Narayan, for the Appellant; H.R. Venkataramanaiah, K. Shivashankar Bhat, for the Respondent

Final Decision : Allowed

Judgement

Vithal Rao, J.

This Petition u/s 401 Cr.P.C. is directed against the order dated 28-6-1982, made by the Learned 1st Additional Chief Metropolitan Magistrate, Bangalore City, in C. Misc. No. 71 of 1981, holding that he had no jurisdiction to grant interim order under sub-section (2) of Section 33 of the Water (Prevention and Control of Pollution) Act, 1974.

2. The facts, briefly stated, are as follows :

The Karnataka State Board for Prevention and Control of Water Pollution, Bangalore, made an application u/s 33 of the Water (Prevention and Control of Pollution) Act, 1974, ("Act" for short) that the Respondents had discharged and continued to discharge the untreated effluent or trade wastes into a nalla joining Vishwabharathi river thereby it was apprehended that by reason of the disposal of the end untreated affluent, the water in the said nalla. and Vishwabharathi river was likely to be polluted. The Board sought a restraint order against the Respondents from discharging the said affluent in the nalla, which was likely to

cause such pollution. The Board also made an application for an interim order restraining the Respondents from discharging affluent in the nalla pending disposal of the main application.

3. The Respondents filed their objections contending, inter alia, that the Court had no jurisdiction to grant interim order of injunction.

4. The Learned Magistrate heard the parties on the question of jurisdiction and held that the Court had no jurisdiction to grant an interim order of injunction and in that view, refused to grant an interim order of injunction.

5. Being aggrieved by the said order, the Board, has made this Petition.

6. The Learned Counsel for the petitioner Sri H. N. Narayan, urged that the provisions of Section 33 of the Act empowered the Authority, the Court, to pass the final order restraining the person concerned from causing pollution of the water, if deemed fit; it is necessarily implied thereby that the Statute conferred power on the said Authority to pass an interim order pending disposal of the main application, if necessary, to give effect to the provisions of the Act and to remove the pollution or to prevent it. The Learned Counsel further submitted that though no express provision conferring power to pass a particular type of interim order is made in the Statute but the very fact that the Act confers a jurisdiction to pass final order restraining a person concerned from polluting the water impliedly also grants power to pass a necessary interim order to give effect to the provisions of the Act and to remove the pollution or to prevent it.

7. Sri Shivashankar Bhat, Learned Standing Counsel for Central Government, urged that the interim order of injunction sought for, in the present case, was only in aid of and as ancillary to the main relief of injunction which is available to the petitioner, under the provisions of Section 33 of the Act. Therefore, the power to grant the interim order of injunction is necessarily deemed to be implicit in the power conferred u/s 33 of the Act.

8. Sri H. R. Venkataramanaiah, Learned Counsel for the Respondents, Urged that it is not permissible to imply con-ferment of power of passing an interim order in the absence of an express confirmation of such a power on the Authority.

9. The point that, therefore, arises for determination is:

Whether the power to grant interim order can be regarded as implicit in the power conferred u/s 33 of the Act ?

10. The preamble of the Act reads:

"An Act to provide for the prevention and control of water pollution and the maintaining, or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purpose aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Whereas it is expedient to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water for the establishment with a view to carrying out the purposes aforesaid, of Boards for prevention and control of water pollution and for conferring on and assigning to such Boards powers and functions relating thereto."

It is clear from this that the Act is a social welfare legislation enacted for the purpose of preventing pollution of water and for maintaining, or restoring wholesomeness of water. Therefore, the provisions of the Act have to be strictly enforced and every effort should be made to carry out the true intent of the Legislature.

11. The Supreme Court in *Sevantilal Maneklal Sheth Vs. Commissioner of Income Tax (Central), Bombay*, held thus :

"...It is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the makers of the statute."

12. The provisions of Section 33 of the Act read thus :

"33. Power of Board to make application to Courts for restraining apprehended pollution of water in streams or wells :

(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal of any matter therein or of any likely disposal of any matter therein, or otherwise, the Board may make an application to Court, not inferior to that of a Presidency Magistrate or a Magistrate of the First Class, for restraining the person who is likely to cause such pollution from so causing.

(2) On receipt of an application under sub-section (1) the Court may make such order as it deems fit.

(3) Where under sub-section (2) the Court makes an order restraining any person from polluting the water in any stream or well, it may in that order- (i) direct the person who is likely to cause or has caused the pollution of the water in the stream or well, to desist from taking such action as is likely to cause pollution or, as the case may be, to remove from such stream or well, such matter, and

(ii) authorise the Board, if the direction under clause (i) (being a direction for the removal of any matter from such stream or well) is not complied with by the person to whom such direction is issued, to under-take the removal and disposal of the matter in such manner as may be specified by the Court.

(4) All expenses incurred by the Board in removing any matter in pursuance of the authorisation under clause (ii) of sub-section (3) or in the disposal of any such matter may be defrayed out of any money obtained by the Board from such disposal and any balance outstanding shall be recoverable from the person

concerned as arrears of land revenue or of public demand."

13. A plain reading of the provisions of this Section would make it clear that the Magistrate on receipt of an application u/s 33 of the Act may make an order restraining the Respondents from polluting the water in any stream or well and in doing so it may in that order direct the Respondents to desist from taking such action as is likely to cause pollution or, as the case may be, to remove from such stream or well, such matter, and it may authorise the Board under sub-section [(3), (ii)] to undertake the removal and disposal of the matter in such manner as may be specified by the Court.

14. The Supreme Court in *The Sub-divisional Officer, Sadar, Faizabad Vs. Shambhoo Narain Singh*, while considering the principle governing the interpretation of the Statutes in order to find out as to whether the authority on whom statutory power is conferred to pass a final order, without any express provision conferring power to pass a particular type of interim order, has by necessary implication the power to make such an interim order, held as under:

"It is well recognised that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. But before implying the existence of such a power the Court must be satisfied that the existence of that power is absolutely essential for the discharge of the power conferred and not merely that it inconvenient to have such a power...."

15. From the above observation it is clear that existence of a particular power can be regarded as part and parcel of the main power, if only, in the absence of such power the main power gets frustrated at least in certain situation.

16. In *Income Tax Officer, Cannanore-v.-M. K. Mohammed Kunhi* AIR 1969 SC 430 it is held as under:

"An express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective."

17. In *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, it was held thus :

"it is well established rule of construction that a power to do some-thing essential for the proper and effectual performance of the work which the statute has in contemplation may be implied."

18. From the aforesaid decisions it is clear that the power to grant an interim order when the same is not expressly conferred, can be deemed to have been granted if only the want of that power adversely affects the efficacy of the order

made in the exercise of the main power or renders such orders futile.

19. In order to find out the answer to the question arising for consideration in this case, it is necessary to ascertain whether the non-existence of that power renders the order made in exercise of the main power futile or less effective.

20. The main power under the provisions of Section 33 of the Act is to pass an order restraining the person who is likely to cause such pollution from so causing, if deemed fit, by the Magistrate. Having regard to these beneficial provisions, the non-existence of the power to make an interim order, if necessary, would necessarily render the power conferred u/s 33 of the Act less effective and would frustrate a final order favourable to the Board made under that provision. The power to make an interim order of the type sought for in the present case, is only in aid of and as ancillary to the main relief that is available to the party, the petitioner, on final determination of the dispute.

21. Therefore, it is clear that the power to grant interim order of the type sought for in the present case is implicit in the power conferred u/s 33 of the Act.

22. The Learned Counsel for the Respondents referred to the decisions in Lingamma Vs. State of Karnataka, and a decision in I.T.C. Limited Vs. Presiding Officer and Others, and submitted that in the absence of express provision in the Act conferring such a power to grant interim order of injunction the Court gets no jurisdiction to pass an interim order of injunction.

23. In Lingamma's Case the question for consideration was whether Section 55 of the Karnataka Land Revenue Act, 1964, which conferred appellate jurisdiction on the Karnataka Appellate Tribunal against orders of the Revenue Authorities made under the Karnataka Land Revenue Act, 1964, included the power to pass an interim order like appointment of receiver, interim injunction etc., the Court held thus:

"There is no express provision in the Appellate Tribunal Act conferring such power.

The scheme of the Karnataka Land Revenue Act (Section 55) indicates that the Tribunal has only the power of granting interim order of stay of execution of the order appealed from during the pendency of the appeal before it and that it has not been conferred the power of granting interim orders like an order appointing a receiver.

The conferment of Appellate power does not imply the power in the Appellate Authority to make an interim order appointing a receiver."

24. In the Case of I.T.C. Ltd.⁶, the question for consideration was whether the power conferred u/s 33(2)(b) read with Section 33(5) of the Industrial Disputes Act, 1947, an order either of granting or rejecting an application of the employer would include an ancillary power to grant an interim award directing payment of wages till disposal of application u/s 33(2)(b), the Court held as under:

"The existence of a particular power can be regarded as part and parcel of the

main power, if, only, in the absence of such power the main power gets frustrated atleast in certain situations. The power of the Appellate Authority to stay the execution of the order under appeal is one such instance....The power to grant an interim order when the same is not expressly conferred, can be deemed to have been granted if only the want of that power adversely affects the efficacy of the order made in the exercise of the main power or renders such order futile."

25. The principles decided, having regard to the facts and the circumstances in both the cases narrated above, have absolutely no application to the facts of the case on hand.

26. As per the provisions of Section 33 of the Act the powers conferred thereunder would necessarily be deemed to have been conferred to grant an interim order, if necessary to render the order made in exercise of the main power effective. Therefore, the Court has the jurisdiction u/s 33 of the Act to grant an interim order, if deemed fit restraining the person who is likely to cause such pollution from so causing pending disposal of the main application u/s 33 of the Act.

27. Therefore, the finding recorded by the Magistrate holding that he had no jurisdiction to pass an interim order of injunction u/s 33 of the Act is erroneous and unsustainable.

28. The point is, accordingly, answered in the affirmative.

29. In the result, therefore, this petition is allowed; the order of the I Additional Chief Metropolitan Magistrate, Bangalore City, made in C.Misc. No. 71 of 1981 dated 28-6-1982, is set aside. The Magistrate is directed to consider the application made by the petitioner seeking interim order of injunction and to pass suitable orders in accordance with law.