

(1988) 10 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No"s. 13925 to 13932 of 1988

S. Krishna and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-10-1988

Acts Referred:

Constitution of India, 1950 — Article 162, 21

Citation : AIR 1989 Kar 291

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Advocate : H. Subramanya Jois, for the Appellant; N. Devada, HCGP, for the Respondent

Judgement

1. These petitions raise an interesting point touching the Constitutional guarantee to the petitioners enshrined under Art. 21 of the Constitution of India.
2. It is not in dispute that the petitioners are eking out their livelihood by guiding the visitors to the Mysore Palace which, a few years ago, belonged exclusively to late Maharaja of Mysore. It transpires that after his death, certain changes have taken place as regards the management of the Palace. Certain portions of the Palace are still private property of the late Maharaja and his heirs and certain portions have been taken over by the State Government. But all the same the fact remains that these petitioners were acting as private guides to the visitors who visited Mysore for sight seeing.
3. The grievance of the petitioners is that by an executive order which is produced at Annexure "E" in the writ petition, they have been restrained from functioning as Tourists guides to the Palace and that order vide Annexure "D" is without authority of law and violative of the protection conferred under Art. 21 of the Constitution of India. The learned counsel Mr. Subramanya Jois relied on the decision of the Supreme Court reported in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, in support of their case.

4. It is not in dispute that these petitioners were functioning as tourist's guides for many years and their source of livelihood depended on this job. But all of a sudden, they have been prohibited from entering the Palace premises and acting as guides on the ground that the services they were rendering to the tourists were not satisfactory; that they were ill-equipped for the job in which they were engaged; that their knowledge of history, culture and Archaeology of the erstwhile princely State was inadequate and thus they were misleading the tourists and by such conduct they were not advancing the cause of tourists who visited the Palace.

5. To put it shortly, they were more of a hindrance to the tourists who wanted to visit the Palace to know all about it. Therefore the Committee constituted for the purpose of taking care of the interest of the Palace known as "Palace Advisory Committee" thought it fit to appoint official guides who had the requisite knowledge of the ancient history of Mysore State. According to the Committee, official guides were better suited than the petitioners for discharging the duties of tourist guides.

6. The State Government relies on its executive power under Art. 162 of Constitution to make the impugned order. The learned Government Pleader has produced the proceedings of Government of Karnataka in G.O.No. DPAR 30 PSR 78, Bangalore, dated 28-10-1978 for sustaining the validity of the impugned order. Under this Government order, the Palace Advisory Committee is entrusted with the responsibility of making proper arrangements to allow the public to see the Palace under such conditions as to timing, rates, etc., as may be fixed by Government from time to time. .

7. Assuming that this Government order enables the Palace Advisory Committee to deal with tourist guides who are petitioners herein, the point for consideration is whether that executive order under Art. 162 of the Constitution could be traced to any entry in List II or List III which would enable the Government to make Law pertaining to tourism. That seems to be the crux of the problem in this case. Learned Government Advocate relied on entries Nos. 35 and 40 in Lists II and III respectively in order to trace the power of the Government under Art. 162 of the Constitution for sustaining the impugned order.

8. I will take up entry 35 in List II first. Entry 35 pertains to "works, lands and buildings vested in or in the possession of the State". Mr. Devadas contended that this entry enables the State Government to issue executive instructions as a portion of the Palace has vested in the Government or in the possession of the State Government and hence it has power to make the necessary regulations for the works, lands and buildings in its possession. It is well settled when interpreting the entries in the list attached to the Constitution; the language of these entries should be given the widest scope. In this case we are dealing with the rights of the petitioners to act as tourist guides for their livelihood. The words "works, lands and buildings which are vested in the Government or in the possession of the Government" do not have any relevance to tourism nor they

are directly or indirectly connected with the tourists or tourism. Therefore this entry is of no avail to the Government for sustaining the impugned order.

9. The other Entry 40 in List III deals with archeological sites and remains other than those declared by or under law made by Parliament to be of national importance. On the plain terms of this entry, the Mysore Palace cannot be treated as an archeological site or archeological remains. The exception to this entry is not relevant for the purpose of our case since the Palace has not been declared as an archeological site or remains of national importance. Therefore, in the absence of any power which can be traced to any of the entries in List II or List III, the executive order under Art. 162 of the Constitution, which would affect the rights of the petitioners under Art. 21 of the Constitution is unsustainable. If any authority is necessary the same can be found in the decision of the Supreme Court on which the petitioners have relied. The Supreme Court considering the scope of Art. 21 of the Constitution observed as follows:

"As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Art. 21 includes the right to livelihood and since they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual

correctness of the premises that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Art. 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is struggle for survival, that is, the struggle for life. So unimpeachable is

the evidence of the nexus between life and the means of livelihood. They have to eat to live; only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in *Baksey* (1954) 347 MD 442 that the right to work is the most precious liberty that man possesses. It is the most precious liberty because it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, in *Munn v. Illinois* (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh Vs. The State of U.P. and Others*, ."

The Supreme Court also quoted with approval, the observation of Justice Mathew which was adopted by Bhagwati, J. as he then was, in the well known case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . The learned Judge observed:

"It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement."

10. In this case, the petitioners might have been a nuisance to the visitors, they might have conducted themselves either in a disorderly way or their conduct was unbecoming of their profession, but that by itself is not sufficient for the Executive to take away their source of livelihood by an executive fiat.

11. Accordingly, these petitions are allowed and the impugned orders Annexures "D" and "E" are quashed reserving liberty to the authorities to take action in accordance with law.

Parties to bear their own costs.

12. Petitions allowed.