

(2006) 08 KL CK 0071

In the High Court Of Kerala

Case No : C.A. No's. 3483 and 5564 of 2006

Siddique

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 122, 141
Constitution of India, 1950 — Article 225, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 340
Kerala High Court Rules, 1971 — Rule 146, 147, 147(1), 147(2), 150
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 23
Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 —
Rule 27

Citation : (2006) 3 ILR (Ker) 731 : (2006) 4 KarLJ 21

Hon'ble Judges : Thattathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : V.S. Chandrasekharan, for the Appellant; John Joseph Vettikkad, Sr.
Government Pleader, for the Respondent

Judgement

Thattathil B. Radhakrishnan, J.—WP(C). No. 5564/2006 is filed challenging Ext.P2 containing the decision of the District Collector imposing a fine of Rs. 50,000/- on the petitioner, under the Kerala River Banks" Protection and Regulation of Sand Mining Act, 2001, hereinafter referred to as the "River Act" and the Rules framed thereunder, namely the Kerala River Banks" Protection and Regulation of Sand Mining Rules, 2002, hereinafter referred to as the "River Rules". The said Act and the Rules provide, among other things, a mechanism to save and preserve the river banks by preventing uncontrolled mining of river sand, which adversely affects the environment and leads to depletion of natural wealth and resources.

2. The petitioner"s case is that he is the "agreement owner" of the vehicle mentioned in Ext.P2; that on 19-1-2006, his driver purchased sand from one Sri. A. Nandakumar, a licensed dealer of sand in Konnikara: that the said dealer

issued Ext. P1 cash memorandum; that while the said vehicle was proceeding from North Paravur to Kochi through the Paravur-Varapuzha Road, the second respondent. Additional Tahsildar, Kodungalloor, intercepted that vehicle at Padanna and took the vehicle into custody alleging that it contained unauthorised load of sand; that on being handed over by the second respondent, the said vehicle is lying in the premises of Kodungalloor Police Station under the control of the third respondent Sub Inspector; that the petitioner ultimately received Ext. P2 decision of the first respondent District Collector directing him to pay an amount of Rs. 50,000/- for the release of the vehicle; and that the said action was taken on the report of the Tahsildar, without obtaining report from the Department of Mining and Geology regarding the genuineness of Ext.P1 and without allowing the petitioner an opportunity of being heard. He accordingly impeaches Ext.P2.

3. Though it is not so pleaded in the Writ Petition, the learned Counsel for the petitioner urged that the petitioner was transporting only (Karamanal) thereby meaning, sand which is not river sand but having been mined out from land, other than river bed. In support of the said contention, he relied on Ext.P1, shown to be one issued under the provisions of the Kerala Minor Mineral Concession Rules, 1967. On the face of it, Ext.P1 shows that it is issued for (Karamanal) to one Siddique by one A. Nandakumar, whose licence number, as the dealer, is also shown in the said document. Accordingly, it is urged that the River Act and the River Rules do not apply. It is further urged that the imposition of Rs. 50,000/- as fine is an exorbitant one, having regard to the yardstick as to the imposition of fine in the nearby districts.

4. When WP(C). No. 5564/2006 was being heard at the stage of admission, I came to the prima facie opinion that Ext.P1 is an interpolated document in as much as the date occurring therein is not the one that it could have originally borne. In my view, the inscription regarding the month is shown by erasing either "0", "1" or "2" since these are the only three numbers, going by the calendar, that could have appeared at the space which is now shown to be blank, immediately after the inscription T while showing the month along with the date in Ext.P1. There was also reason to apprehend that even the date could have been interpolated to make it appear as "19". All that apart, the entry regarding the year which now appears to be passed off as "06" is, in my view, "05".

5. In the aforesaid circumstances, the District Collector was directed to ascertain the identity of the lessee and the dealer and issue notice to them requiring their appearance before this Court. The learned Government Pleader was to seek specific instructions in the matter.

6. Thereafter, the learned Government Pleader, produced the file relating to the case and submitted, on instructions, that the term of the licence that was granted to the licensee whose number is engrossed in Ext.P1, had expired by the end of 2005. This is sufficient material, if need be, even to conclude that Ext.P1 is an interpolated document made by changing the date as "19-1-06" and

produced to deflect the course of justice, in this proceedings, in an attempt to obtain an order by making false claim based on a fabricated document. The petitioner was accordingly asked to appear in person.

7. After that, on a random check in the register of this Court under my oral instructions, it was traced out that the petitioner had filed WP(C) No. 3483/2006, which came up on 6-2-2006 and, for the learned Government Pleader to seek instructions from the officials, was adjourned to 8-2-2006. On 8-2-2006, the learned Counsel for the petitioner submitted that the District Collector has already passed orders against the petitioner without hearing him. Accordingly, this Court posted that case on 10-2-2006, wanting the learned Government Pleader to get instructions, whether, in fact, any order has been passed by the District Collector, as alleged by the petitioner and if any order was passed, the learned Government Pleader was to produce a copy of that order. That case was then adjourned to 15-2-2006 at the request of the Government Pleader, on which day, it was adjourned to be posted when moved again. The fact that the petitioner had filed such an earlier Writ Petition was not pleaded or brought to the notice of this Court in WP(C). No. 5564/2006. The document produced as Ext.P1 in WP(C). No. 3483/2006 and as Ext.P1 in WP(C). No. 5564/2006 are photo copies of the same document. Of course, WP (C) No. 3483/2006 was filed before Ext.P2 in WP (C). No. 5564/2006 was issued.

8. One Sudheer P.A. appeared on behalf of the licensee in whose name Ext.P1 is issued. He has been examined as CW1 on oath. He deposed that he is the person managing the affairs of the licensee to whom the licence with the number shown in Ext.P1 was issued. He stated that the permit was granted by the Geologist only till 23-12-2005, to extract ordinary sand (Karamanal) and that after 23-12-2005, no activity was carried out on the basis of the said permit. He also brought the original permit in the name of A. Nandakumar, the licensee. I have perused the same. He denied any transaction as evidenced by Ext.P1 and also testified that he is prepared to face any enquiry even by having the seized sand being tested and compared with the sand that was available in the location in relation to which Nandakumar was granted licence.

9. The writ petitioner appeared and was examined as CW2 on oath. He denied having filed any other case except the ones in relation to the transaction in question. He stated that the original of Ext.P1 was given to him by a broker and that he is not involved in any illegal dealing in sand. He deposed that the original of Ext.P1 was handed over to the official who intercepted the lorry, which statement is apparently contradictory to the contents of the mahazar prepared at the time of interception, followed by the seizure of the vehicle. If the stand of the petitioner were true, there is no reason why the mahazar does not contain a statement to such effect. The officers cannot be treated to have acted mala fide. There is no reason even to remotely suggest that they had any malice towards the petitioner. I have no hesitation to hold that the statement of the petitioner that the original of Ext.P1 was handed over to the officials, is a clear afterthought

and the same cannot be believed.

10. In this context, I proceed to consider the law governing the institution of writ proceedings before this Court, since these two cases should alert this Court in the matter of ensuring that the judicial process is cleanly protected from being scouted upon by unscrupulous persons.

11. Section 141 of the CPC ("CPC" hereinafter), by the Explanation thereto, provides that the expression "proceedings" in Section 141 CPC does not include any proceedings under Article 226. All that this means is that the provision in Section 141 which makes the procedure provided in CPC, in relation to suits, applicable, as far as it can be made applicable, to all proceedings in any court of civil jurisdiction, does not extend to writ proceedings under Article 226 of the Constitution.

12. Even before the introduction of the Explanation to Section 141 CPC, the Apex Court, while examining the scope of the said Section, in *Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others*, , stated as follows:

It is not necessary for this case to express an opinion on the point as to whether the various provisions of the CPC apply to petitions under Article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any Court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the Court must take into account the nature of those proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders of writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petition, the entire purpose of having a quick and inexpensive remedy would be defeated. A Writ Petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226.

13. In *Puran Singh and others Vs. State of Punjab and others*, , rendered after the introduction of the Explanation to Section 141 CPC, the Apex Court held as follows:

When the Constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all Courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction, have to be traced and found in Articles

226 and 227 itself.

After noticing that no useful purpose will be served by limiting the power of the High Court by the procedural provisions prescribed in CPC while acting under Article 226 and 227 of the Constitution, the Apex Court held in *Puran Singh's* case (supra) that on many questions, the provisions and procedures prescribed under CPC can be taken up as guide while exercising the power, for granting relief to persons, in writ jurisdiction and that the different provisions and procedures under CPC are based on well recognised principles for exercise of discretionary power and they are reasonable and rational. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious. The High Court should be left to take its own procedure for granting relief to the persons concerned.

14. The Rules of the High Court of Kerala, 1971, hereinafter referred to as "the High Court Rules", contain certain provisions regulating the procedure regarding filing of writ petitions. The High Court Rules are framed by virtue of the powers conferred under Article 225 of the Constitution of India, Section 122 of the CPC and all other powers, enabling in that behalf. The sources of power, referred to in the High Court Rules, are being adverted herein to point out that it is in the contemplation of the said Rules that while the said Rules may not admit any contradiction between the provisions of CPC and the High Court Rules, the endeavour shall always be to permit them to work in harmony and liaison, as hand" maids to Justice. Article 225 of the Constitution and Section 122 of the CPC provide rule-making powers on the High Court, to continuously guide and aid the High Court in discharging its constitutional duties as the High Court, referable also to the authority under Articles 226 and 227 of the Constitution. This has to remind one and all that the exercise of authority and regulation of procedures in writ jurisdiction cannot be treated as one in any water-tight compartment, divorced from CPC. This is the approach that has to be followed.

15. For the purpose of convenience, the High Court Rules which govern the procedure, are grouped into Chapters. Chapter XI is captioned as "Proceedings Under Articles 226 and 227 of the Constitution". Such provisions as may be relevant from out of Chapter III relating to "Form and Institution of Proceedings", Chapter VI relating to "Affidavits" and other Chapters relating to different matters, would apply to proceedings under Articles 226 and 227 of the Constitution. The relevant rules in Chapter IX, Chapter III, Chapter VI and elsewhere in the High Court Rules work in unison in relation to institution of proceedings under Article 226 or 227 of the Constitution.

16. Rule 147 of the High Court Rules enumerates the documents that are to accompany petitions under Articles 226 and 227 of the Constitution. Among other things, they include an affidavit verifying the facts relied on and a schedule of the documents relied on in the affidavit with copies of such of those documents as are in the possession of the petitioner. Sub-rule (2) of Rule 147 requires that the copies of the documents shall be authenticated as true copies

by the advocate, and, if there is no advocate, by the party. Rule 82 requires that every affidavit shall clearly express how much is a statement of the deponent's knowledge and how much is statement of his belief. This is required to be done in Form No. 7 of the High Court Rules. The grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act on the deponent's belief. Rule 80 requires that the documents mentioned in and accompanying an affidavit shall be referred to as exhibits and shall be marked in the same manner as exhibits and shall bear a certificate as in Form No. 6 signed by the person before whom the affidavit is sworn or affirmed. Reading Rule 80 with Rule 147(2), the authentication at the foot of a document which is exhibited in a writ petition has to be necessarily made by stating that the document is a true copy of the original. The ultimate requirement is for the Court to judge as to whether it would be safe to act on the deponent's statement. So much so, if the original of a Document that is produced as an exhibit in a writ petition is in the custody of the writ petitioner, it is necessary that such a statement finds a place in the affidavit. Otherwise, the copy need not inspire confidence in the mind of the Court. If the original of the document is not in the possession of the petitioner and yet he is in possession of a copy which he believes to be true and which is required to be tendered along with the writ petition, such a petitioner has to state so in his affidavit, as also the source of the copy and as to whether he believes that its contents are true. Rule 154 provides that proof of facts and documents shall be tendered by affidavit. Writ petitions are primarily decided, going by the particulars, on the basis of affidavits. An allegation as to the existence of a fact needs to be supported by an affidavit. Similarly, the proof of a document has to be by an affidavit. All these are the requirements of Rule 154 of the High Court Rules, which Rule is built on the cardinal rule of judicial procedures that one, who asserts a fact, has to stand by it and show prima facie evidence of such fact. In writ proceedings, he is entitled to do so by filing affidavit. This means that the affidavit filed in support of a Writ Petition and presented in terms of Rule 147(1)(a) shall contain clear statements in proof of the facts stated in the Writ Petition and also in proof of the documents tendered along with the Writ Petition. Short of that, the affidavit or the Writ Petition is not entitled to be entertained. This is because, Rule 146 requires that the applicant shall set out, among other things, a clear and concise statement of facts and the grounds on which the relief is sought. Such statements require to be supported by affidavits and on the practical side of things, it is most appropriate that such statements are made in the affidavit itself.

17. The proviso to Rule 146 of the High Court Rules requires that no petition shall be entertained unless it contains a statement as to whether the petitioner had filed any petition seeking "similar reliefs" in respect of the same subject matter earlier and if so, the result thereof. Similar is the effect of the proviso to Rule 150. Rule 150 of the High Court Rules also requires that no petition for interim relief shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition seeking "similar reliefs" in

respect of the same subject matter earlier, and if so. the result thereof. "Similar" and "same" are not same but different, though similar. To be "same", is to be identical, unchanged, unvaried. Unlike "same", to be "similar", is to resemble, may be in content, but need not be in expression. The terms "similar reliefs" and "same subject matter" in Rules 146 and 150 have to be understood, having regard to the distinction between "similar" and "same". I say this because, in many of the Writ Petitions, including the ones in hand, the plea appears to be that "same reliefs" are not sought for in respect of the same subject matter. The provisos to Rules 146 and 150 are not framed with reference to cause of action. So much so, whatever be the different causes of action, when a person seeks relief in relation to a subject matter which was subjected to an earlier writ proceedings and if the later petition seeks relief similar to that sought for in the earlier petition, he is bound to disclose the same. To demonstrate this, a reference to WP (C). No. 3483/2006 will show that it was filed seeking to quash the proceedings pursuant to the detention of the vehicle of the petitioner on ground that it was carrying unauthorised sand, though the said Writ Petition was filed, allegedly, before being served with what is produced as Ext.P2 in WP(C). No. 5564/2006, wherein the petitioner seeks nothing but the quashing of the decision contained in that document. Hence, the suppression of WP(C). No. 3483/2006 in WP(C). No. 5564/2006 is uncalled for. Such disclosure was required in terms of Rule 146 of the High Court Rules.

18. A cursory scan of the legal history on this topic appears to suggest that repeated reminders as to the relevant proposition have been made. In *K.V. Marakkar v. State of Kerala* 1998 (2) KLT 920 : 1998 (2) KLJ 705, the mandatory nature of the provisos added to Rules 146 and 150 following the notification dated 18-7-1997 was noticed. Following that judgment, in *District Collector, Palakkad v. Devayani* 2001 (3) KLT 697, the Division Bench of this Court held that the non-disclosure of the institution of the prior Writ Petition for the same reliefs is an abuse of the process of the Court. In that context, the Division Bench, appositely quoted the verdict of the Apex Court in *M/s. Upadhyay and Co. Vs. State of U.P. and Others*, to blend the view that successive scoutings for similar reliefs are reprehensible.

19. It is a fundamental principle of law that a person invoking prerogative remedy must come with clean hands and should make a full and candid disclosure of all material facts. Whether the petitioner had filed an earlier Writ Petition seeking similar reliefs is a matter, relevant and material in a later Writ Petition. He shall not suppress it. Such suppression is a jugglery which has no place in equitable and prerogative jurisdiction. The makers and advisers of such suppressions would stand well advised to read Scrutton, L.J. in the leading case of *Rex v. Kensington Income Tax Commissioners* (1917) 1 K.B. 486.

20. A new promotion policy of the State Bank of India was challenged before the Apex Court by an organisation of the Officers of that Bank by filing a Writ Petition through the President of the organisation making incorrect statement that no

similar petition was filed, though similar petitions were already filed in the different High Courts. The practice adopted was strongly and emphatically disapproved by the Apex Court in *All India State Bank Officers Federation v. Union of India* 1990 (Supp.) SC 336. Their Lordships stated thus:

We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this case and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.

21. Having regard to the aforesaid, the affidavits filed by the petitioner in these Writ Petitions cannot be acted upon. The Writ Petitions are, thus, not supported by any reliable material and deserve not to be entertained.

22. Though the Writ Petitions are only to be dismissed for the reasons aforesaid, I proceed to consider the contentions of the petitioner on the merits also. According to him, the vehicle intercepted by the second respondent has a present market value of Rs. 60,000/- and the impugned order directing payment of Rs. 50,000/- is exorbitant. The River Act and the River Rules require to be referred to in this context. Section 23 of the River Act makes it obligatory on the police and revenue officers to confiscate vehicles which are used for transporting sand otherwise than in conformity with the said Act. Rule 27 of the River Rules provides for release of the vehicle to the owner thereof provided the amount fixed by the Collector as value of the vehicle and an equal amount of fine are paid into the River Management Fund. The said statutory provisions are not challenged in these Writ Petitions. The evidentiary value of Ext.P1 having been noticed, there is no defence for the petitioner to trace the sand loaded in his vehicle to lawful and legitimate origin. As already noticed, even according to the petitioner, the value of the vehicle is Rs. 60,000/-. The imposition of Rs. 50,000/- as per the impugned Ext.P2, for release of the said vehicle, is not in violation of the statutory provisions which require to be interpreted, having regard to the object of the legislations in hand, as noticed in the opening paragraph of this judgment. Under such circumstances, I do not find any legal infirmity in the action taken by the officials, I am not inclined to hold that the fixation of Rs. 50,000/- for release of the vehicle is exorbitant, having regard to the gravity of illegal sand mining that is wrecking the potable water sources of the State and breaching the machineries in law and in violation of the laws relating to environment and particularly, when Ext.P1 has been found to be a concocted document. The Writ Petitions fail on this count also.

23. In the aforesaid circumstances, I am inclined to treat this as an instance of perjury, which might warrant recourse to the provisions of the Code of Criminal Procedure to ensure that prosecution is initiated at the instance of this Court by instituting a complaint before the competent Magistrate. Before making such an order, statutory provisions, particularly Section 340 Cr.P.C., and the majesty of this Court require it to ensure for itself that, apart from such prosecution being required to secure justice, there is every likelihood of such prosecution ending in

conviction. I have no doubt in my mind that the petitioner deserves to be prosecuted. However, I have serious doubt as to whether the prosecution would be fruitful. In the strict technical sense, the affidavits filed in support of these Writ Petitions do not contain any statement that what is exhibited by him as Ext.P1 is a true copy of its original. He also does not vouchsafe in the affidavit to the correctness of the contents of the documents produced along with the Writ Petition. The certification at the foot of the documents does not contain any declaration even by the Advocate that it is a true copy of the respective originals. Arguments could be many. In the process of upholding the dignity of this Court, I deter from ordering the filing of a complaint on the basis of the aforesaid facts.

24. The Writ Petitions are dismissed.

Having regard to the conduct of the petitioner, I am inclined to impose an order of exemplary costs on him. Yet, in view of the quantum of penalty imposed by the impugned decision, such order of costs is being withheld.