

(2018) 03 KAR CK 0001
In the Karnataka High Court
Case No : 58175 of 2017

Sri K.S.Yathiraj & Ors.

APPELLANT

Vs

The State of Karnataka & Anr.

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Constitution of India, Article 162 -
Extent of executive power of State
Information Technology Act, 2000, Section
14 - Secure electronic record

Citation : (2018) 03 KAR CK 0001

Hon'ble Judges : Dinesh Maheshwari, S Sunil Dutt Yadav

Bench : Division Bench

Advocate : M.S. Bhagwat, S.S. Mahendra

Final Decision : Dismissed

Judgement

1. The petitioners, claiming themselves to be public spirited persons and espousing the cause of public interest, seek to challenge the order issued

by the Government of Karnataka on 12.9.2017 whereby the Government has attempted to introduce certain requirements to facilitate easy

registration of documents while stating, inter alia, as under:

VERNACULAR MATTER OMITTED

2. English translation of the aforesaid, furnished by the petitioner, is as under:

68. Documents which are registered in the previous two years to be digitized and to be made available online.

80. To prepare the online system to submit and verify the applications and documents registered, online itself.

81. Online system shall be automatically calculate the application / service fees

and the stamp / registration fees payable as per the market value.

82. To provide system for the registration of documents which are intended to register in the respective sub-registrar offices, to fix the date and

time automatically, also to provide the concerned fees through online itself.

84. To provide the provision to download the notice with duly signed, regarding having received the applications and documents online, or the date

and time fixed or amount received.

3. It is clear on perusal of the preamble to the said Government Order that it is given under the name of ""Sulabh Nondani"" (easy registration) and is

sought to be brought into force pursuant to the Business Reform Action Plan 2017 under a theme of ""Ease Of Doing Business"" in the Department

of Stamps and Registration.

4. The petitioners have sought to challenge the said Government order asserting that the order dated 12.09.2017 passed in exercise of executive

power is based on the premise that provisions of the Information Technology Act would take care of the legal requirements regarding registration

and hence amendment to Registration Act is not required. The petitioners contend that Section 14 of the Information Technology Act, 2000

excludes applicability of the said Act to certain documents of transactions specified in Schedule I which includes documents of conveyance. Thus,

the petitioners contend that the premise on which the executive order has been passed is legally untenable. The petitioners also contend that the

executive order in exercise of Article 162 of Indian Constitution being contrary to the provisions of the Central Act i.e., the Registration Act, 1908

would render the exercise of the executive power illegal.

5. The petitioners rely upon the judgment in Lok Prahari Vs. State of Uttar Pradesh and others reported in (2016) 8 SCC 389 wherein it was held

at para 39 as follows:

....if there is any variance in statutory provision and executive instruction the statutory provision should always prevail. This is a very well known

principle and no further discussion is required on the subject.

6. It is further contended that the said executive order would cause public inconvenience especially with respect to the senior citizens and that the

system sought to be introduced is capable of being misused and is error prone.

7. The State, however, defends the said Government Order and points out that the Government Order is merely facilitatory and is issued in public

interest and is only optional, being that of additional facilitatory measures.

8. At the outset, it is noticed that the ""Sulabh Nondani"" scheme sought to be introduced in exercise of executive power by way of a Government

Order is only facilitatory in nature in so far as the ancillary procedures relating to registration are sought to be digitized which include online

submission of applications, online system to calculate stamp fees and registration fees, fixation of date and time through automated process etc. The

actual process of Registration as provided for under the Registration Act is, however, not done away with nor anything contrary to procedure for

registration provided under the Act is sought to be resorted to.

9. Hence, it is clear that the scheme of Sulabh Nondani sought to be introduced is in order to facilitate easy registration and to mitigate the

difficulties that citizens face in the offices which deal with registration of documents. Clearly the said scheme is in public interest. In other words, the

Sulabh Nondani"" scheme as reflected in the operative portion of the Government Order reproduced above is facilitatory and seeks to promote

"Ease of doing Business" and we find no illegality in the same.

10. When the Government Order in question is found serving the public interest, so as to ameliorate the difficulties being faced by common man

and is not shown to be opposed to law, there appears no reason for this Court to consider interference in the same. In view of the above, the writ

petition is dismissed.