
(1994) 03 SC CK 0003

In the Supreme Court Of India

Case No : Criminal Miscellaneous Petition No's. 5587 of 1982, 8443 of 1991 and 1360 of 1994 with Writ Petition (Criminal) No. 1420 of 1982

Sudip Mazumdar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Citation : (1994) 2 ALT(Cri) 246 : (1994) 2 Crimes 555 : (1994) JLJ 614 : (1994) 3 JT 21 : (1994) 2 SCALE 328 : (1994) 2 SCC 327 Supp : (1983) 2 SCC 258 : (1994) 1 UJ 549

Hon'ble Judges : M. N. Venkatachaliah, C.J.; S. Mohan, J.; P. B. Sawant, J.; K. Ramaswamy, J.; B.P. Jeevan Reddy, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. These proceedings were registered as a public interest litigation on the basis of a letter dated 15.11.1982 addressed to the then Chief Justice of India by Sri Sudip Mazumdar, a journalist. The petition concerns the alleged inadequacy of safety precautions in the Indian Army's ammunition test-firing range near Itarsi in Madhya Pradesh. It is alleged that the villagers, mostly tribals, who stray into what is stated to be the country's largest ammunition test-firing range, were getting killed and maimed.

2. In the counter affidavits filed by the respondent, from time to time, the repetitive occurrence of these incidents is not disputed. Sri R.S. Goel, Under Secretary, Department of Defence Production, Ministry of Defence, in the course of his counter affidavit dated 1.9.1983 states:

For testing armaments and ammunition, Central Proof Range was established in 1971 at Itarsi after acquiring land from the local inhabitants through the State Government and paying to them compensation as decided by the land acquisition officer. The State Government has also taken steps for rehabilitation of the uprooted tribals from this area through their development programmes.

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The peri-meter has been fenced with barbed wire at some of the sensitive areas adjoining villages as fencing the entire perimeter is not possible. The range is 19.5 Km long and 6 Km wide. Security personnel have been posted permanently at strategic points and regular patrolling is undertaken by security parties to prevent unauthorised entry, particularly at the time of firing.

Simultaneously, State Government have also taken preventive measures to stop entry of unauthorised persons into the prohibited area.

3. It is, however, admitted that these efforts have not succeeded in eliminating the entry of the villagers and tribals into the firing-range who, it is alleged, are tempted by the attraction of monetary gains from the collection of the metal scrap. The nature of the terrain, the undulating land surface, the cover of trees and bushes, it is stated, provide access to the intruders in search of metal scrap. Government sought to disclaim its responsibility for the deaths and the mainings of the intruders. Sri Goel's affidavit on the point proceeds to say:

The villagers who go into the range area to collect the metal out of exploded ammunition as well as unexploded ammunition at the risk of their lives are apparently backed by certain organised groups who profit by the sale of the metal. Both the entry into the prohibited areas as well as sale of metal out of such collection are illegal acts. If any person gets injured or dies while doing an illegal act, he cannot claim compensation from the Government for such activity or accident. Therefore, the immediate relief for monetary compensation to the families of those who die or get injured due to their own volunteered illegal act does not arise under any circumstances and such claim is not based on any principles of justice.

4. Similar were the averments in the counter affidavit dated 2.3.1988 filed by Mrs. Rashmi Shukla, IAS, Chief Executive Officer, District Rural Development Agency, Hoshangabad, Madhya Pradesh :

...The people of the neighbouring villages are extremely poor and go into the area to collect shells in which scrapmetal such as iron, brass, copper and sell it off in Kesla.

5. In the course of his affidavit dated 15.6.1988, Sri V.N. Awati, Under Secretary, Department of Defence Production and Supplies, Ministry of Defence, it was alleged that certain gangs were responsible for organising villagers to trespass into the firing range to pick up the metal scrap and such metal scrap was transported in vehicles for illegal disposal. It was also admitted in his affidavit that such preventive measures, as were taken, had not been effective. It was stated:

...But all these measures could not restrain fully these villagers who enter the range area deliberately in an unauthorised manner even at the risk of their lives.

6. On Government's own showing, between the years 1972 and 1988, as many as 62 persons lost their lives in such accidents and that between 1988 to 1991 and 1991 to 1993, 19 and 12 persons, respectively, lost their lives in the area. Thus, at least 81 persons have been killed in the last 21 years.

7. In the supplementary affidavit dated 5.8.1988, it was stated that the Government had examined various alternatives to tackle the problem of unauthorised entry into the test-firing range and the feasibility of providing a wire fencing over the perimeter of the range was also examined. But the Government found that such "wire-fencing" would not be effective in keeping out the intruders in view of the fact that the area to be protected would be approx. 117 sq. meters and wire fencing over such an extensive area would itself be prone to cutting and removal. In view of these difficulties, Government offered to put up a boundary wall to ward off intruders and on the basis of this offer and undertaking by the Government, this Court passed an order dated 18.8.1988 in terms following: "Mr. Kuldip Singh, learned Addl. Solicitor General, states that the work of construction of wall at corners and a road along the perimeter as referred to in second portion of Clause (a) of paragraph 3 of the Affidavit filed by Sri V.N. Awati, Under Secretary in the Department of Defence Production and Supplies, Ministry of Defence, New Delhi, dt. 5.8.88, will be commenced without delay and will be completed within a period of 3 years."

8. The work of construction of the wall, however, did not even commence though the stipulated 3 years expired.

9. However, on 13th August, 1991 Crl. Misc. Petition No. 8443/1991 was filed by the Government of India setting out that the construction of the wall, as undertaken, involved the cutting and uprooting of about 40,000 trees in the area and also 118.29 acres of forest land to be acquired. The delay in implementation of the order of 18th August, 1988, it is said, is because for both these acts the clearance of the State Government of Madhya Pradesh had becomes necessary.

10. Thereafter, Crl. Misc. Petition No. 1360/1994 was filed in which the Ministry of Defence prayed for the modification of the earlier order dated 18.8.1988 itself and for substitution of the entirety of the earlier proposal by the proposal to put-up barbed-wire-fencing as delineated in Sketch 'P' attached to Crl. Misc. Petition No. 1360/1994. It was averred that this alternative method would be effective and would obviate the need to cut down any trees, while all that needed to be cleared, was a few bushes here and there in the area. It was stated that this was the recommendation of the high-level Board of Officers constituted by Government to re-examine the matter. The main recommendations of the high-level Board, it is stated, were these:

i) The substitute plans of erecting barbed wire fencing around the four target areas have been worked out and is as per sketch P., Q. and Q1.

ii) DSC personnel will be deployed to patrol the target areas to prevent unauthorised entry by metal pickers into the target area and to protect the

barbed wire.

iii) Watch towers will be constructed around the fencing to provide effective field of observations to the DSC guards to carry out duties at (b) above,

iv) Approach roads to the target areas will be constructed for easy access,

v) Additional transport will be provided to CPE Itarsi to ferry DSC troops to and for target areas and to convey food and other essential requirements to them while on duty.

Commending this alternative proposal in place of the one approved by the court's order dated 18th August, 1988, the pleadings and averments in Crl. Misc. Petition No. 1360/ 94 proceed to say:

It is further submitted that in the substitute proposal there is no need for cutting the full grown trees, and sufficient observation across the fencing is possible at 1500 M & 3000 M target area. Only some bushes will have to be removed. Around the target areas at 5000 M and 7000 M growth of trees is thicker as compared to 1500 M and 3000 M target areas. Here also thinner variety of trees (less than 20 cm girth) and bushes can be cut at the time of clearing the area. This does not require prior approval of the Forest Department. Since the tree growth around the fencing is not too thick there is no need to cut entire full grown trees but only the branches upto 3.M height can be trimmed to provide clear observation upto 10 Metres beyond the fencing. Further barbed wire fencing and Concertina wire being flexible can easily be taken around the trees. Hence removal of trees in the target area is not considered necessary in the substitute proposal. As such the requirement of approaching forest authorities is ruled out. Since no trees are being removed, proposal to acquire land for afforestation has become redundant.

11. We have heard learned Counsel on both sides. We have carefully considered the suggested alternative. At the time the order dated 18th August, 1988 was made, Government did not indicate that the implementation of the proposal put forward by it and accepted by the Court, would involve the cutting-down of about 40,000 trees in the area. Cutting down of 40,000 trees would be a near ecological disaster in the area. It is pity that the Government did not defer to this prospect at the time it offered to put up a boundary wall and that it delayed the present alternate suggestion by nearly 5 years. Even in the earlier Crl. Misc. Petition No. 8443 of 1991, Government merely sought an extension of time of two years to implement the proposal to put up a wall but did not suggest the alternative of an improved barbed-wire-fencing project. Though, the idea of a barbed-wire-fencing had been considered ineffective earlier, it is now stated that the design of barbed-wire-fencing as set out in the said Sketch 'P' would be an improved method and would be quite effective. The merit of this alternative proposal is that it would save 40,000 trees. It is also stated that new design of the barbed-fence assures efficacy in containing trespass.

12. We, accordingly, allow Crl. Misc. Petition No. 1360/94, modify and recall the order dated 18th August, 1988 and permit the Central Government to implement the barbed-wire fencing scheme, as indicated in Crl. Misc. Petition No. 1360/94 read with the Plan in Annexure 'P' attached thereto. Government will, however, ensure that the contractors engaged in the execution of the fencing project will not be permitted to transport any timber or tree growth from the area.

13. In view of the acceptance of the alternative proposal, Crl. Misc. Petition No. 1360/94 for extension of time does not survive and is dismissed accordingly.

14. So far as the time-frame for completing this work is concerned, a Note has been submitted by Lt. Col. R.R. Murthy and Col. B.S. Ahluwalia. We have carefully examined the proposals which suggest that 36 months' time be granted. The break-up of the suggested time-frame in the Note is as under:

15. We are persuaded to the view that it will be somewhat unfair and unreasonable for Government to insist upon another 3 years to delay the completion of the alternative scheme. The three phases, namely, the preparation of detailed estimates, the processing of the case with the Government for sanctions and the Tender Action are said to require 2, 6 and 4 months respectively. These, in our opinion, are wholly avoidable delays. In anticipation of the Government's sanction, steps for initiating tender-processes be undertaken immediately. Government sanction and the tender papers shall be processed within a period of 3 months from today. We direct the Government to accord sanction in terms of its own prayer in Criminal Misc. Petition No. 1360/94 immediately so as to allow the tender process to be completed and the work to commence within 3 months from today. The actual physical execution of the work for which 24 months' time is indicated in the aforesaid Note, shall be reduced to and completed in a period of 18 months.

16. In the result, within 21 months from today, the alternative schemes of barbed-wire fencing as set out in Crl. Misc. Petition No. 1360/94 shall be executed and completed. It is ordered accordingly.

17. Before parting with the matter, we should perhaps refer to one other aspect of this writ petition. On 29.11.1982, Fazal Ali and Venkataramiah, JJ. framed questions pertaining to the procedures for such public interest litigations and referred them to a Constitution Bench. Indeed, the petitioner, Sri Sudip Mazumdar, expressed the apprehension that this development in the case would delay the consideration and disposal of the main reliefs. The petitioner in his Crl. Misc. Petition No. 5587/82 has averred:

that the Petitioner is concerned with the welfare of the citizen mentioned in the Writ Petition which will be unnecessarily delayed if at this juncture, this Hon'ble Court going to reconsider its earlier decisions on the question of locus.

He has sought the recalling of the order dated 29.11.1982 referring the said 10 questions to a Constitution Bench.

18. It is, no doubt, true that this development in the case has delayed the matter and every time the case would have to come before a five-Judge Bench. We, therefore, direct that the writ petition be split into two proceedings, viz., WP 1420/82- [A] and WP 1420/ 82- [B]. The first one will deal with the actual reliefs sought for in the main writ petition and accordingly, the main reliefs which will be dealt with in WP 1420/82- [A] need not come before a five-Judge Bench and can be listed before a Two-Judges Bench to monitor the progress of the alternative scheme sanctioned in Crl. Misc. Petition No. 1360/94 and to consider the other reliefs prayed for in the writ petition.

19. W.P. No. 1420/82-[B] shall, however, be confined to the consideration of the larger questions which have been referred to the Constitution Bench by Fazal Ali and Venkataramiah, JJ. by their order dated 29.11.1982. This matter will be listed before a two Judge-Bench. To this extent, Crl. Misc. Petition No. 5587/1982 is allowed. The said Crl. Misc. Petition is disposed of accordingly. The Registry will take steps to split the writ petition into two proceedings and post them accordingly before appropriate Benches. Ordered accordingly.