
(2014) 08 KAR CK 0112

In the Karnataka High Court

Case No : Writ Petition No. 7288 of 2011 (LB-BMP-PIL)

Suo Motu

APPELLANT

Vs

Government of Karnataka

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Constitution of India, 1950 — Article 243ZE

Karnataka Preservation of Trees Act, 1976 — Section 3, 7(c), 8

Citation : (2014) 4 AKR 221

Hon'ble Judges : D.H. Waghela, C.J;Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Vaishali Hegde, Amicus Curiae, Advocate for the Appellant; R. Devdas, Prl. G.A. and Subramanya, Advocate for the Respondent

Judgement

D.H. Waghela, C.J.—The issue regarding the unfettered felling of trees was brought to the notice of this Court by a letter dated 06/11/2011 addressed by Justice Sri. D.V. Shylendra Kumar, expressing his concern over the unregulated felling of trees in the garb of development and road widening in the City of Bangalore. This Court has taken up the issue as a suo-motu public interest petition for consideration. The prayers sought for in the petition are as follows:--

(a) Issue of mandamus or appropriate order directing the 1st respondent to constitute a Tree Authority as mandated as per Sec. 3 of the Karnataka Preservation of Trees Act, 1976.

(b) Issue Writ or appropriate order directing the 1st Respondent to constitute Metropolitan Planning Committee for the city of Bangalore as envisaged in Article 243ZE of me Constitution of India.

(c) Issue writ or appropriate order in the nature of mandamus directing the 6th respondent to ensure that every order of tree felling will contain appropriate direction for replanting of trees in necessary proportions so as to maintain the prescribed standards as stipulated under Sec. 7(c) of the Karnataka Preservation

of Trees Act, 1976.

(d) Issue writ or appropriate order in the nature of mandamus directing the 1st respondent to set up a Tree Court involving representation in an advisory nature from the elected council of the Bruhat Bengaluru Mahanagara Palike, voluntary organisations, urban forestry experts, etc, to assist 6th respondent to arrive at proper decision in the manner of urban forestry in general and tree felling in particular.

2. This Court has examined the entire issue in relation to the decline in environment quality due to the increasing pollution with the reduction of tree cover in the City of Bangalore and recognizing the need to take precautionary measures to ensure that the Green cover of the city of Bangalore is protected and enhanced, keeping in mind, the intergenerational equity with a vision for the future.

3. In the course of hearing the petition, the BBMP through its statement of objections, has brought to our notice that the Tree Authority has been constituted vide Government Notification dated 11/06/2008 produced at ANNEXURE "R4".

4. However, it was urged by the learned Amicus Curiae that for the effective implementation of the provisions of the Karnataka Preservation of Trees Act, 1976, the constitution of the Tree Authority under the Act would have to be restructured, as at present, officials from the Forest Department are sent on deputation to the Bruhat Bangalore Mahanagara Palike and they constitute the Tree Authority. Taking cognizance of the said submission, a co-ordinate bench of this Court has, by an order dated 03/10/2012, observed as under:

"We have had a cursory glance of the Karnataka Preservation of Trees Act, 1976, especially so far as the availability of an appeal is concerned. In the first place, it appears to us that Section 8 postulates cases where an individual is desirous of removal of a tree and not wide scale felling of trees that are necessitated when roads are sought to be widened or highways are sought to be created. Prima facie, we feel that the public must be made aware of a proposal for removal of trees by issuance of public notice so that the objections can be invited. The Act does not provide any machinery in this regard.

Secondly, so far as the availability of an appeal is concerned, it seems to us that it may be futile and infructuous in those instances where the Tree Officer grants permission to fell a tree. Public perception is that such orders are executed almost instantly and at night. The Act does not seem to cater for such eventuality. Furthermore, so far as the constitution of the appellate body is concerned, it comprises of three members such as a Mayor or President of the Municipal Corporation, the Municipal Commissioner or Chief Executive etc., who are in effect the persons proposing the felling of a particular tree. This may amount to a person being a judge in his own cause, which is an anathema in law...."

In view of the above observations, we refrain from issuing explicit directions in this regard and observe that it is left to the wisdom of legislature to take appropriate decision with regard to reconstitution of the Tree Authority comprising of persons independent of the Bruhat Bangalore Mahanagara Palike (BBMP) so that "justice is not only done but is seen to be done".

5. While considering the above petition, several issues with regard to bringing about transparency and accountability in the functioning of the authorities when they undertake the work of plantation and monitoring of saplings, survival rate of the saplings, expenditure involved and public participation in the said exercise were brought to our notice.

6. In furtherance of the endeavour to retain and enhance the greenery in the city of Bangalore, it is brought to our notice that the BBMP in its meeting dated 26/05/2014 has constituted two tier committee viz., (i) a committee at the ground level called the Greening Committee, (Bangalore North and South) and (ii) A Co-Ordination Committee called "Samanvay Committee". The composition of duties and working of these committees have been placed before us by the learned Amicus Curiae in the Report dated 02/06/2014 filed before this Court. The primary task of these committees would be to identify the areas for plantation of saplings, to monitor the plantation of seedlings and ensure the maximum survival of the saplings planted. We are satisfied that the composition and the proposed working of the aforementioned committees would sufficiently take care of the objects sought to be achieved. It is imperative that all the authorities of the BBMP and the State Government should cooperate with the said committees and assist in the implementation of the recommendations and suggestions of the Committees. We further direct that all necessary approvals including "Job-Codes" are made available to the Forest wing of the BBMP latest by the end of April of the same year, so that the seasonal works of plantation of saplings do not suffer.

7. We are informed on behalf of the BBMP that provisions have been made for uploading all the information in the official website of the BBMP, regarding the Forest Wing, the plantations undertaken, the names of contractors, number of seedlings planted in each zone along with the ward name and number, the tree guards used for protecting the saplings and the location of the same. The aforementioned details have already been uploaded in the official website of BBMP and open to public scrutiny and enquiry. We are of the view that this would ensure transparency and accountability in matters relating to tree plantation within the limits of BBMP.

8. Learned counsel for BBMP, on instruction of the Chief Conservator of Forest Mr. Brijesh Kumar, submitted that payments to the contractors engaged for plantation of saplings for the year 2014-2015 will be released after ensuring that plantation of saplings is undertaken in a systematic and scientific manner and the saplings are also maintained in the manner stipulated in the contract. The BBMP shall also consider amending the terms of contracts awarded for planting

and maintaining new saplings, so as to ensure that the same contractor is required to plant new saplings in place of old saplings, if the old sapling withers away or not properly maintained. The BBMP will also consider inclusion of a condition in such contracts by which payments to be made under the contract may be withheld in case of any deficiency on the part of the contractor in proper planting and maintenance of the saplings at least for three years.

9. We deem it necessary to direct that felling of trees would be undertaken as an exception rather than a rule, and further that the tree officer and tree authority would fully satisfy themselves and certify that all other alternatives have been considered regarding the feasibility of the felling of trees. If any objections are received from the public, due consideration shall be given by assigning reasons. The tree officer and tree authority shall also consider the feasibility of transplantation of trees rather than felling of the same. Early action may be taken on implementing a web-based system wherein all the applications for tree felling and the decisions taken thereon be made available to the public in a transparent manner. With the above observations and directions, this petition is disposed, reserving liberty to aggrieved parties to initiate fresh proceedings, in case of irregularity/violations of the provisions of the Karnataka Preservation of Trees Act, 1976 and the undertakings given on behalf of the BBMP. It is also made clear that the Court may initiate suo-motu proceedings, if it finds any shortcomings or deficiencies in the functioning and implementation of the aforesaid objects.