

Appanna and ors. Vs. the State of Karnataka and ors.

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Court : Karnataka

Decided On : Feb-13-1980

Reported in : AIR1980Kant113; 1980(2)KarLJ92

Judge : K.S. Puttaswamy, J.

Acts : [Constitution of India](#) - Articles 46, 162 and 226

Appeal No. : Writ Petn. Nos. 15206 to 15211 of 1979

Appellant : Appanna and ors.

Respondent : The State of Karnataka and ors.

Advocate for Def. : Annadayayya Puranik, Addl. Govt. Adv., ;Chinnappa and ;K. Kambeyanda, Adv.

Advocate for Pet/Ap. : A.N. Jayaram, Adv.

Judgement :

ORDER

1. In these petitions under Art. 226 of the Constitution the petitioners have challenged the order of Government bearing No. PWD 227 IIB 77 (P) dated 26-9-1979 (Exhibit L) according administrative sanction for the construction of a tank near Murkani, Kasba Hoblk Kanakapura. Taluka, Bangalore District. For brevity and convenience, this Site will be hereinafter referred as site B.

2. A stream or called as a `halla' in Kannada joining the river Arkavathi, a tributary of river Cauveri, runs across several village of Kaseba Hobli of Kanakapura Taluk. For some time past, stated to be for more then two decades, there is a proposal to construct a tank or a bund to store - water that flows in that stream and thus provide irrigation facilities to certain parts of the said area. According to the surveys and investigations conducted by the technical wing of Public Works Department, a tank can be constructed at `B' site and also at - a nearby place called as Karekal Voddu For brevity and convenience, Karekal Voddu site will be hereinafter referred to as site 'C'. On all sides it is admitted that a tank can be constructed on either of these sites and the same is technically feasible. Apart from the technical feasibility of the sites, the subordinate officers of the Department ex ed the question from the point of view of benefits to small marginal farmers, advantages and disadvantages to the members of the Scheduled Castes and Scheduled Tribes (hereinafter referred as S. Cs. and S. Ts. The officers of the Department to the level of Superintending Engineer, except furnishing the technical data for the construction of a tank on the afore said two sites evidently having regard the controversy generated in the area, did not furnish their clear and definite opinion on the selection of one to the exclusion of the other. On 6-10-1978, the Chief Engineer, Minor Irrigation and Public Health, in the company of his subordinates inspected the sites and reported to Government on 20th August, 1979 (Exhibit G) to select site `B' in preference to site `C' for the various reasons, stated therein. In the said letter, the Chief Engineer, apart from expressing his opinion on the technical and financial aspects to select site 'B', also stated that in the interest of S. Cs. and S.Ts. of the area, it was desirable to select site 'B'. So far as advantages and disadvantages to S. Cs and S. Ts., the Chief Engineer stated thus:

'From the above statements it can be seen that the number of beneficiaries in respect of site `B' are 22 Scheduled Castes and scheduled Tribes people while at site the beneficiaries of Scheduled Castes and Scheduled Tribes are only nine. Further, it may be stated that no persons belong to S. C. & S. T. are affected at site `B' while 12 Scheduled Castes and Scheduled Tribes are affected at site V.'

On an examination of the recommendations of the Chief Engineer, Government by its order dated 26-9-1979 (Exhibit L) has accorded its sanction to construct a tank at site 'B'. Paras 3 and 4 of, the said order that contains the reasons for selecting site 'B' on the basis of which the whole controversy has centered round, reads thus

'The cost per acre works out to Rs. 2,194 against the maximum limit of Rs. 2,750. Benefit cost ratio with 5 and 10 per cent interest rate works out to 3.94 and 2.40 respectively. Hence, the project is financially feasible.

There was a controversy over the selection of the site. Representations were received to shift the site lower-down so that more water can be stored and more area irrigated. Investigations were conducted for this, Karekal Voddu site and the cost of the work was estimated. According to this the estimate for the work was Rs. 26.55 lakhs and an area of 1129 acres could be brought under irrigation. Cost per acre -worked out to Rs. 2,361. In addition to this increased cost per acre the tank would submerge more area. It has been reported that the proposed site at Karekal Voddu would affect lands of 12 Scheduled Castes and Scheduled Tribe persons, whereas the proposed tank which is recommended by the Chief Engineer would not affect the lands of any Scheduled Caste and Scheduled Tribe persons. Also at the proposed site, more number of Scheduled Caste and Scheduled Tribe people will be benefited than from the tank at other site. The Chief Engineer has furnished detailed comparative statement for all these aspects for both the sites. From the statistics furnished by the Chief Engineer, it is clear that site proposed by Chief Engineer is more advantageous than the other site.'

3. While furnishing a number of details in support of their case to select site 'C' as against site 'B', the petitioners dispute the correctness of the figures furnished by the officers and the Government for selecting site 'B' 'Secondly the petitioners have urged that one of the reasons given by Government viz., that the project would not affect or benefit the members of the S. Cs. and S. Ts. was an irrelevant consideration in selecting the site. Lastly, they have urged that site 'B' has been selected for collateral considerations viz. at the pressure and influence of the local M.L.A. who is a good friend of respondent No. 5, who has come on record at his

own request

4. In their joint return, respondents 1 to 4 while justifying their action, have denied the allegations of the petitioners that the recommendations of the officers or the decision of the Government was on account of any pressure by the local M.L.A. They have urged that the predominant factors that weighed with Government for selecting site 'B' was technical feasibility and financial consideration and the area to be submerged which are all relevant in deciding the question.

5. In his separate return, respondent No. 5 has supported respondents 1 to 4. He has denied the allegations made against him by the petitioners. He has urged that the factors on which Government has accorded its sanction are relevant to the subject.

6. Sri A. N. Jayaram, learned counsel for the petitioners contended that one of the reasons given by Government for selecting site 'B' in preference to site 'C' viz., the advantages and disadvantages to the members of the S.Cs. and S. Ts. was an irrelevant reason, and the decision based on an irrelevant ground has to be quashed. Elaborating his contention, Sri Jayaram maintained, that an irrigation project, at any rate, a project that was started for the benefit of the general public as in the present case, cannot be sanctioned in the interest of a particular class of citizens whether they be S. Cs. and S. Ts. Sri Jayaram relied on a large number of Indian and English decisions and several passages of Halsbury's Laws of England (Vol. I) made on Administrative Law and Lord Dennings Discipline of Law -to sustain his contention that an order is: reviewable and the scope of review in such matters. (sic)

7. Sri Annadaysya puranik learned Additional Government Advocate, supported the order of Government. He maintained that the two dominant reasons given by Government were relevant and that one reason if held to be not relevant, does not by itself justify this Court to invalidate the order on that ground alone. In support of his contention Sri Puranik strongly relied on the rulings of the Supreme Court in the State of Maharashtra v. Babulal Kriparam Takkamre : [1967]2SCR583 and in Swaran Singh v. State of Punjab : AIR 1976 SC232 .

8. Sri Chinnappa K. Kambeyanda, learned Counsel for respondent N06 5 adopting the arguments of Sri Puranik urged that one of the reasons -given by Government viz advantages and disadvantages to S. CA and S, Ts. was a relevant reason and the same was constitutionally and legally permissible. In support of his contention Sri Kambeyanda strongly relied on Art. 46 of the Constitution.

9. Learned counsel for the respondents also urged that the petitioners have no locus standi to challenge the order of Government. As this contention goes to the root of the matter, I propose to examine the same tint.

10. The petitioners who are owners of lands in and around the area where the tank is to be constructed or should have been constructed according to them, can even be described as persons that have suffered a personal injury by the impugned order. Assuming that they have not suffered a personal injury, in such an event also, they have sufficient interest in the subject-matter and, therefore have locus standi to challenge the order. On any principle they cannot be called as busy body meddlesome interlopers. In cases of this nature all that the petitioners have to show is that they have a sufficient or substantial and genuine interest in the subject-matter [Vide K. Ramadas Shenoy v. Chief Officer, T. M. Council, Udipi : [1975]1SCR680 , Jasbhai M. Desai v. Roshan Kumar : [1976]3SCR58 and R. Rama Jois v. State of Karnataka (ILR (1978) 2 Kant 982) In this view, I hold that the 'petitioners have locus standi to challenge the order and, therefore, it is necessary to decide their case on merits.

11. Sri Jayaram, in my opinion, rightly did not seriously pursue the contention based on the allegations of mala fide made by the petitioners. The petitioners do not name the Minister that decided the matter or any officer that made recommendation as being biased against them or the others that are agitating to select site V. In my view, the allegations of the petitioners to sustain their plea of mala fides are vague and general and that plea has necessarily to be rejected and I, therefore, reject the same.

12. From the numerous decided cases and passages in the well-known treatises on Administrative Law, cited at the bar the following principles may be taken, as well settled.

13. Indisputably there is no law regulating the location, the authority that should decide and the factors that should be taken into consideration before locating an irrigation project in our country and, at any rate, in our State. When Government decides to locate an irrigation project at any place, there is no lies between it and others and, therefore, judicial or quasi-judicial considerations will not and do not arise in such matters. By no stretch of imagination the power exercised by the State Government can be called as legislative. From this, it follows that in these matters the power exercised by Government is only executive power. Sri Jayaram also rightly did not contest this position.

14. A decision of a Government in exercise of its executive power is review able by this Court under Art. 226 of the Constitution. But, the extent of judicial review is limited to examining whether Government has acted bona fide and on relevant considerations only and the same cannot be examined as if it is an appeal. When more than one site is technically and financially feasible as in the present case, which of the two sites should be selected, is exclusively for Government to decide. In matters like these, an order can be validly and legally made by Government even without furnishing reasons and the Court cannot compel Government to give reasons. But, when Government itself chooses to give reasons, though it is not bound to give reasons, this Court can examine the validity of the reasons to the extent whether they are relevant to the subject and no more. If any of the reasons given by Government is found to be irrelevant, the Court can only strike down the order but cannot substitute its own reasons or uphold the order as it can do in cases of judicial or quasi-judicial orders. Bearing these principles in mind, I will examine the merits of the contentions urged for the petitioners.

15. Out of the three reasons given by Government, the first two reasons viz., technical feasibility and the cost per acre and the benefit of cost ratio or financial soundness, are undoubtedly relevant to the subject, which was not rightly disputed by Sri Jayaram. But, his entire criticism is directed to the reason relating to S. Cs. and S. Ts.

16. We should not forget the stark realities of our country in which different classes or groups of society are economically and socially weak resulting in serious social

and economic imbalances and that among them the members of the S. Cs. and S. Ts. as a class, probably occupy the first place, for which reason the Constitution has made many special provisions to ameliorate their economic and social conditions. One of them is Article 46 of the Constitution- Part IV 'Directive Principles of State Policy' and the same enjoins the State to promote with special care the 'economic interests of the weaker sections of the people, and, in particular of the S. Cs. and S. Ts.' Directive principles are not enforceable in a Court of Law. But, the State can and may be expected to take all steps necessary to achieve any or all the matters provided in Part IV of the Constitution. When the State gives effect to any of the directive principles enshrined in Part IV of the Constitution, it will be acting in the public interest and its actions will undoubtedly be legal and valid.

17. What then is the meaning of terms 'economic interests' that have not been defined is the next question that arises for consideration. In ascertaining the meaning of those terms, two important principles or special Rules in the interpretation of Constitution should be borne in mind. First is the classical words of Chief Justice Marshall in *McCulloch v. Maryland* (1819-4 WN 316) that a constitution is expounded and is not interpreted like a Municipal Act. Second is that a broad and liberal spirit should inspire those whose duty it is to interpret a Constitution (Vide *J. K. Gas V. King Emperor*, (1947) 52 CWN (FR) 25: (AIR 1947 FC 38).

18. A wide and comprehensive meaning should be given to the terms 'economic interests'. The best definition of the term 'economics' appropriate in the context, without concerning ourselves with the origin of the term, the later developments and various theories attached thereto will be found in the *Encyclopedia of Social Sciences* (Vols. V-VI) contributed by that distinguished economist R. A. Soligman and that reads thus.

'ECONOMICS

The Discipline of Economic, Economics deals with social phenomena centering about the, provision for the material' needs of the individual and of organized groups. It was once maintained that in order to claim the right to separate

existence an intellectual discipline line must have a distinct subject-matter and a specific methodology. As tested by this criterion the above definition is highly unsatisfactory; the line of demarcation between the subject-matter of economics and that of other social scientific disciplines is very shadowy, and no mention is made of a special methodology. Yet to make this definition more specific would be to enter at once into the realm of controversy, to engage in a battle of words, in which slightly different nuances of definition disguise radical differences in approach and emphasis in the study of the subject. Economics, which has long been and will perhaps ever continue to be the battleground of nationalizations for group and class interests, has suffered more than any other discipline from the malaise of polemics about definition and method. Economics was defined as a science of wealth and as a science of welfare it was spoken of as centering about the business enterprise and as including the entire range of economic behavior, it was declared to be essentially abstract and deductive or essentially empirical and descriptive; it was proclaimed by some as a science and by others as an art. The modern student regards these controversies not as dispassionate attempts to attain by logical means to eternal verities but as the reflection in one field of changes in *Zeitgeist* and of shifts in the class structure of economic society. He is more frankly concerned with specific problems suggested by the thousand and one maladjustments in the function of the economic system; and he endeavors to bring his intelligence to bear upon their solution without concerning himself with the question whether the problems are purely economic in character or whether the procedure, employed is in line with the approved methodology of economics.

For this purpose the broad definition of economics given above should be entirely adequate; It indicates that economics is a social scientific discipline and that it is connected with the relations of man to man arising out of processes directed to the satisfaction of material needs.' From this it follows that everything connected with the well being of the country, an area or a group of people classified as weaker sections or S. Cs. and S.Ts. would be covered by 'economic interests'. The meaning of the term 'irrigation, and its impact to an area is neatly stated in the Encyclopedia of Britannica (Vol. 12) in these words:

'Irrigation is an artificial application of water to land. Modern irrigation and the associated practices of drainage, fertilization, mechanization and mass production for special markets under professional management are producing a revolutionary efficiency in agriculture that, along with an attractive and profitable way of life, best guarantees food and fibre for the fast-growing population of the world.

Normally vegetation grows on soil watered by rain. Where rain is so seasonal that it does not meet the requirements of a particular crop or is deficient or practically non-existent, the drying of the soil to an ever-increasing degree retards, until it eventually prevents, vegetable growth. Irrigation can give better results than nature itself produces by fitful rainfall, because water can be given regularly just when it is needed.' When an irrigation facility is provided to an area, the entire structure of the area is completely transformed and the lands of those land-holders growing only dry crops depending on rain water only are transformed to evergreen lands yielding high profits and thereby improving the economy of the area. An irrigation facility specially conceived and established or conceived with a greater emphasis and the interests of the members of the S. Cs and S. Ts., will undoubtedly serve their economic interests. The surveys and investigations made disclose that the construction of a tank at site 'B' would not affect any of the members of the S. Cs. and S. Ts in the sense that no member of those classes would be uprooted from the lands, but would positively help them to have irrigation facilities. How many of the members of S. Cs. and S. Ts. would be benefited by constructing a tank at site IV or not at another site is a matter exclusively for the Government to decide and this Court cannot examine the decision of Government as if it is an appeal and reach a different conclusion. As I apprehended our Constitution and in particular Art 46 of our Constitution permits Government to take into consideration the interests of S Cs. and S. Ts. in deciding to locate an irrigational facility at any place and in that view, the criticism that Government has been influenced by an irrelevant consideration is liable to be rejected.

19. In the light of my above discussion, I hold that there is no merit in the contentions urged for the petitioners and the rule issued in these cases requires, to be discharged. Rule Issued is, therefore, discharged.

20. In the circumstances of the cases, I direct the parties to bear their own costs.

21. Rule discharged.

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