

Chikkarangappa and anr. Vs. the Karnataka State Pollution Control Board, Bangalore and ors.

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Court : Karnataka

Decided On : Mar-08-2002

Reported in : 2002(4)KarLJ196

Judge : Tirath S. Thakur, J.

Acts : Environment (Protection) Act, 1986 - Sections 2, 6 and 6(2); Environment (Protection) Rules, 1986 - Rule 3 and 3(1); AIR (Prevention and Control of Pollution) Act, 1981 - Sections 17, 17(1), 22A and 31A

Appeal No. : Writ Petition No. 29604 of 2001

Appellant : Chikkarangappa and anr.

Respondent : The Karnataka State Pollution Control Board, Bangalore and ors.

Advocate for Def. : Gangadhar Sangolli, Adv.

Advocate for Pet/Ap. : C.B. Srinivasan, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

Tirath S. Thakur, J.

1. The respondent-Karnataka State Pollution Control Board has directed the closure of an industrial unit established in a residential locality of Nelamangala town on the ground that the same violates the permissible noise levels for residential areas. The petitioners have in the present petition assailed the said direction on several grounds, to which I shall advert after briefly setting out the facts in the backdrop whereof the challenge is mounted.

2. The petitioners are husband and wife. They own a residential premises situated within the town municipal limits of Nelamangala. They appear to have secured from the Municipal Council a licence to install power-looms in the said premises, which they have been operating for the past nearly ten years. On receipt of a complaint from the residents of the area that the operation of the power-looms causes noise pollution and results in inconvenience and discomfort to the residents, the Assistant Environmental Officer, Tumkur appears to have conducted an inspection on 24-6-2000. The inspection revealed that noise levels emanating from the power-looms were in excess of the standards stipulated for the residential areas. A show-cause notice was accordingly issued to the petitioners by the Environmental Officer calling upon them to explain as to why action should not be initiated under the provisions of law. The reply submitted by the petitioners through their Counsel inter alia pointed out that the petitioners had taken precautions to reduce the noise levels by fixing irremovable glass shutters for the windows and by providing metal shutters for the doors. It also pointed out that the height of the compound wall had also been raised from six feet to about eleven feet. This was according to the reply sufficient to ensure that no noise pollution whatsoever is caused by the operation of the power-looms. Not satisfied with the explanation, the Board decided to hear the matter and offered to the petitioners an opportunity of personal hearing to be held on. 9-1-2001 in terms of its letter dated 4-1-2001. The petitioners did attend the hearing on the date fixed but complained about the manner in which the entire matter was dealt with. In a communication addressed by the petitioners through their Counsel to the Board, the attitude of the Authority dealing with the matter was described as 'authoritative' and his style of functioning as 'autocratic'. The communication also demanded a further hearing to the

petitioners through their Counsel. A Vakalathnama was also enclosed with the same. The Board eventually passed an order dated 9-2-2001 in which it granted six months time to the petitioners to shift the power-looms failing which action in accordance with law was threatened. The petitioners have called in question the validity of the said order in the present writ petition as already indicated earlier.

3. During the pendency of these proceedings, the unit was inspected once again by the Deputy Environmental Officer of the Board on 11th of October, 2001 after notice to the petitioners. The inspection revealed that the noise level readings at the complainants' house were much higher than the maximum prescribed for the residential area even when out of the four power-looms installed by the petitioners, only one was operational. Based on the inspection and the recording of the levels, Deputy Environmental Officer has submitted a report to the Board, a copy whereof has together with the measurements taken during the inspection been produced by learned Counsel for the respondents along with a memo.

4. Appearing for the petitioners, Mr. Srinivasan submitted that the petitioners were in no position to dispute the correctness of the findings recorded by the inspecting team insofar as the noise levels generated by the operation of the power-looms was concerned. He however argued that the question of taking any action against the petitioners on the basis of the observations of the inspecting team would arise only if the Board had prescribed standards for noise either generally or for any pollution control area. He urged that there was nothing on record to show that the Government had declared the area within which the premises owned by the petitioners was located as an Air Pollution Control Area within the meaning of Section 19 of the Air (Prevention and Control of Pollution) Act, 1981. There was also nothing on record to suggest that either the Central Board or the Karnataka State Pollution Control Board had prescribed any standards for noise as a pollutant in exercise of their powers under the Act. So long as the Competent Authority had not declared 'Air Pollution Control Areas' under Section 19 and so long as the Central or the State Board had not under Sections 16 and 17 of the Act laid down standards for the quality of air and standards for emission of air pollutants into the atmosphere, the question of taking any action by way of closure of the units established by the petitioners did not arise. It was alternatively

contended that if any industrial plant emits an air pollutant in excess of the standards laid down by the State Boards, the only remedy open to the Board is to make an application to the competent Court for restraining such person from emitting such air pollutant in terms of Section 22-A of the Air (Prevention and Control of Pollution) Act, 1981. The Board, argued Mr. Srinivasan, has independent of the said provision no authority to take any action against the industrial unit on its own.

5. The unit established by the petitioners operates on electricity. It is not disputed that the petitioners have taken a 5 hp connection from the authorities for running the power-looms installed by them. The expression 'industrial plant' as defined in Section 2(k) of the Act means, any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere. The term 'air pollutant' is defined by Section 2(a) of the Act to mean any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment. The fact that the petitioners' unit is an industrial plant, which is emitting air pollutant in the form of noise and is consequently amenable to action under the provisions of Air (Prevention and Control of Pollution) Act, 1981 is therefore much too clear to require any elaboration.

6. Section 16 of the Act prescribes the functions of the Central Board, whereas Section 17 sets out the functions, which the State Boards are required to discharge. One of the functions, which the Central Board is in terms of Section 16(2)(h) required to discharge is to lay down standards for the quality of the air. Insofar as the standards for emission of air pollutants is concerned, the same are to be prescribed under Section 17(g) by the State Boards having regard to the standards for the quality of air laid down by the Central Board. Section 19 vests the State Government with the power to declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of the Act. In exercise of the said power, the State Government has in terms of a notification dated 30th of May, 1998 declared the entire State of Karnataka as an air pollution control area for purposes of the Act. A copy of the said notification has been placed on record by Counsel appearing for the

respondents, in the light whereof the submission made by Mr. Srinivasan that no such declaration has been made can no longer hold water.

7. Coming then to the question whether the State Board has in terms of Section 17(g) prescribed the standards for air pollutants discharged into the atmosphere, a reference to Rule 3 of the Environment (Protection) Rules, 1986 framed by the Central Government in exercise of its powers under Sections 6 and 25 of the Environment (Protection) Act would be necessary. The said rule inter alia provides that for purposes of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be those specified in Schedules I to IV to the said Rules. Sub-rule (2) of Rule 3 empowers the Central Board or a State Board to specify more stringent standards than those provided in Schedules I to IV, in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons therefor in writing. Industries, operations and process specified in Sub-rule (1) or (2) of Rule 3 have to comply with the prescribed standard within a period of one year.

8. It is not the case of the respondents that they have prescribed a more stringent standard insofar as discharge of air pollutants in the form of noise are concerned. The result is that the standards prescribed under Rule 3 of the Rules mentioned above would alone be relevant for purposes of determining whether any violation is being committed by the petitioners. Reference to Schedule III which prescribes the ambient air quality standards in respect of noise would show that so far as residential areas are concerned, the limits of noise during daytime cannot exceed 55 decibels and 45 decibels during the night. In the case of the unit established by the petitioners however the report of the inspecting team clearly shows that even when only one power-loom is in operation, the noise level recorded within the premises of the complainant was much beyond the maximum of 55 decibels. The fact that the measures which the petitioners claim to have taken in the nature of providing irremovable glass shutters for the windows and a metal door has not made any difference in bringing to the noise levels within the permissible limits is therefore clearly established.

9. Mr. Srinivasan however argued that the standards prescribed in terms of Rule 3 of the Rules could not be made a basis for any action against the petitioner. He urged that the expression 'environmental pollutant' as defined under the Environment (Protection) Act, 1986 did not include noise. Section 2(a) of the Air (Prevention and Control of Pollution) Act, 1981 defines 'environmental pollutant' thus:

' 'Air pollutant' means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment'.

10. The power to make rules has been conferred upon the Central Government by Section 6 of the said Act. The relevant portion of the said provision may also be extracted at this stage.--

'6. Rules to regulate environmental pollution.--(1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in Section 3.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.--

(a) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas'.

11. According to Mr. Srinivasan although Section 6 empowers the Central Government to prescribe the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas, yet since noise is not by the definition given in Section 2(b) an 'environmental pollutant', the question of it being treated as one while empowering the Government to make rules did not arise. He urged that Rule 3 insofar as the same prescribed the allowable limits of noise as a pollutant was ultra vires of the provisions of the Environment (Protection) Act, 1986 hence deserved to be struck down. By the same logic, he urged that Section 6 of the Act insofar as it authorises the Government to make

rules regarding the maximum allowable limits of concentration of pollutants including noise was ultra vires of the Environment (Protection) Act, 1986 and deserved to be declared so.

12. The challenge to the vires of Rule 3 and Section 6 of the Act must, in my opinion, fail for more than one reason. It must fail because although the petitioners have prayed for striking down Section 6(2)(b) of the Act, the Union of India has not been arrayed as a party respondent to the petitions. The challenge to the constitutionality of the provision is thus all told non-serious. It must also fail because, the doctrine of ultra vires has no application to the situation at hand. A rule framed by the delegate of the Legislature may be declared ultra vires of the parent Act if it is in excess of the power that is delegated under the enactment. In the case of Rule 3, it is not so, because Section 6 of the Act clearly empowers the Government to frame such a rule. A legislative enactment may in turn be said to be ultra vires of the provisions of the Constitution if it violates any fundamental right of the citizen or is in excess of the legislative competence of the Parliament or the Legislature enacting the same. The doctrine of ultra vires has however no application where one provision of the Act is sought to be played against another provision of the same enactment as is the attempt in the instant case. In cases where the provisions enacted in the legislation appear to be incongruous or in conflict with each other, the function of the Courts is to discover the real intention underlying the legislation by smoothening the rough edges. The Court cannot throw up its hands or feel helpless because of what may appear to be contradictory or anomalous in the enactment. It can also not ignore one part of provision of the enactment while giving effect to another part or provision. The Court has to adopt an approach that harmonises the provisions and advances rather than defeats the purpose of the legislation. That being so, the question that arises is whether the meaning of the expression 'environmental pollutant' as defined in Section 2(b) of the Act can be said to be exhaustive so as to exclude from the same 'noise' as a pollutant. It is no doubt true that Section 2(b) confines the meaning of the term 'pollutant' to solid, liquid or gaseous substances present in such concentration as may be or tend to be injurious to environment. It is also true that noise is strictly speaking neither a solid nor a liquid or gaseous substance. But the fact that Section 6 while empowering the Central Government to prescribe the

maximum allowable limits of concentration of various 'environmental pollutants' has specifically included noise as one such pollutant clearly shows that noise was never intended to be excluded from what would constitute environmental pollutants. A conjoint reading of Sections 2(b) and 6 leaves no manner of doubt that noise is within the scheme of the provisions of the Act an environmental pollutant, the standards whereof could have been prescribed by the Central Government in Rule 3 of the Environment (Protection) Rules, 1986.

13. That brings me to the question whether the Board has any power independent of Section 22-A of the Act to take action against the offending unit. Section 22-A deals with cases, where the Board apprehends that emissions in excess of the standards laid down by the State Board are likely to be discharged by reason of any person operating an industrial plant or otherwise in any air pollution control area, it may approach the competent Magistrate, who can on receipt of any such application from, the Board make an order restraining the discharge of the emission of any air pollutant and authorise the Board in the case of violation of such a direction to implement the same in such manner as may be specified by the Board. That power does not, in my opinion, impinge upon the powers otherwise exercisable by the State Boards under Section 17(1) to inspect air pollution control area, assess the quality of air and take steps for the prevention and controlling pollution in such areas. It also does not impinge upon the power that is vested in the Board under Section 31-A to issue any directions in writing to any person, officer or authority in regard to matters that fall within the scope of its powers and functions under the Act. Read conjointly Sections 31-A and 17(f) sufficiently empower the Board to issue directions for closure of an offending unit even without taking recourse to Section 22-A of the Act. The argument that the Board can even when the violation is established, do no more than approach the Magistrate under Section 22-A must accordingly be rejected.

14. It was lastly argued by Mr. Srinivasan that the petitioners were entitled to ask for consent from the Board under Section 21 of the Act. He submitted that if the unit is situate in a pollution control area, the unit holder could apply to the Board for consent subject to such conditions as may be stipulated by the Board in terms of Sub-section (5) of Section 21. There is, in my opinion, no quarrel with the

proposition that no person can without the previous consent of the State Board establish or operate any industrial plant in an air pollution control area. No such consent was however applied for or obtained by the petitioners for the unit established by them although the area where the unit is established is located within a pollution control area declared to be so as early as in May 1998. The establishment of the unit is therefore unauthorised and in violation of the provisions of the Act. What makes the position worse for the petitioners is that the unit is located in a purely residential area. Although the petitioner appears to have obtained a licence from the Town Municipal Council of Nelamangala, yet the said licence has also been withdrawn, which withdrawal has been assailed by the petitioners in a writ petition that is pending before this Court. Be that as it may, the fact that the petitioner could have asked for consent, which they have not in fact applied for or obtained before establishing the unit does not make any improvement in their case.

15. In the result, this writ petition fails and is accordingly dismissed, but in the circumstances without any orders as to costs.

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