

2008 (4) KHC 362

THE KERALA HIGH COURT

Hon'ble Mr. Justice V. Giri

Harikuttan P. and Others v. District Collector and Others

W. P. (C) No. 20787 of 2008(Y), decided on 30th September, 2008

Constitution of India – Article 21, Article 51A – Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala) – Unauthorised sand mining in the Vembanad river – If the Executive is given the power under Act, it is upto the officials to exercise the power, in such a manner that the menace is curbed – Any failure on the part of the authorities to use this power would amount to an unpardonable failure and lapse on their part

Facts of the case

The petitioners are fishermen. Earlier there were sand hills in the Vembanad backwaters stretching over several kilometres. In the place of sand hills, there are hollow pits having a depth upto 10 metres due to the unauthorised removal of sand by the 'sand mafia'. The petitioners contended that fishing operations were totally paralyzed because of huge pits with a depth of 10 metres. Collection of lime-shell also became impossible. Ext.P1 order was passed by the District Collector, Alappuzha, prohibiting, as it were unauthorised sand mining in the Vembanad river. The writ petition is filed *inter alia*, for a direction to the respondents to enforce and implement Ext. P1 order.

Disposing the writ petition, the Court held:

It has been categorically opined by experts that large scale removal of sand would result in the death of the river itself and obviously this will lead to depletion of the ground water resources. One will have to remember that this exploitation is being done for sheer commercial reasons. In other words, a handful of men are engaged in exploiting the natural resources, which obviously belongs to the public in general. If the Executive is given the power by the Kerala Protection of River Banks (Protection and Regulation of Removal of Sand) Act, 2002, it is upto the officials to exercise the power, in such a manner that the menace is curbed. Any failure on the part of the authorities to use this power, would amount to an unpardonable failure and lapse on their part. (Para 5)

Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Kerala) – Unauthorised sand mining in the Vembanad river – Sincere, legitimate and completely faithful steps will have to be taken by the Government at its highest level to save the river and to curb the unauthorised removal of sand from its bed and banks – Directions issued by the High Court to curb unauthorised removal of sand from Vembanad lake

Held:

The Additional 8th respondent, Secretary to Government, Revenue Department, shall, forthwith, constitute a committee headed by the Secretary of the Revenue Department, consisting of the District Collector, Kottayam, District Collector, Alappuzha, Superintendent of Police of Alappuzha and Superintendent of Police, Kottayam and the Director of Mining and Geology and such other Officers in the Revenue Department and/or Police Department, as the Government deems fit and appropriate, to monitor the removal of sand from Vembanad lake and see that unauthorised removal of sand therefrom is curbed and prevented with utmost seriousness and efforts. The Additional 8th respondent shall see that stringent measures are taken by the authorities exercising powers under the Act, if necessary with the help of Police officials, against those persons, who are determined to contravene the provisions of the Act. (Para 9)

Case Law Referred:

Susetha v. State of T.N., 2006 KHC 1067 : AIR 2006 SC 2893 : 2006 (6) SCC 543 : 2006 AIR SCW 4026 : 2006 (7) Scale 640 : 2006 (6) Supreme 193; (Para 7)

Advocates

K. Jaju Babu; M. U. Vijayalakshmi; Brijesh Mohan;

T. S. Shyam Prasanth;

Sreelatha (*Government Pleader*);

For Petitioners

For Respondents

JUDGMENT

1. The petitioners are Fishermen by profession. They reside in Poochackal at Panavally, within the limits of Panavally Grama Panchayat in Cherthala Taluk. They earn their livelihood by fishing operations and collection of lime-shell from the Vembanad Backwaters at Poochackal/Panavally area. Earlier there were sand hills in the Vembanad backwaters stretching over several kilometres, where there were precious natural resources. It is pointed out that over the year, such natural sand hills in the backwaters have vanished due to unauthorised removal of sand without sanction from any authority. In the place of sand hills, there are hollow pits having a depth upto 10 metres due to unauthorised removal of sand by the "sand mafia". Pursuant to the enactment of the Kerala Protection of River Banks (Protection and Regulation of Removal of Sand) Act, 2002, Ext. P1 prohibitory order was passed on 16/06/2007 by the District Collector, Alappuzha, prohibiting, as it were the unauthorised sand mining in the Vembanad river. There was also a direction to the Revenue, Police and Geology Departments to take strict action against the violators. Notwithstanding Ext. P1, the unauthorised removal of sand continued. The petitioners point out that fishing operations were totally paralyzed, because of huge sand pits with a depth of 10 metres. Collection of lime-shell also became impossible. Though the Irrigation Department had strengthened the banks of the backwater by constructing protecting walls, the same have fallen on account of the unauthorised removal of sand. Complaints Exts. P2 to P6 did not elicit any positive response and hence this writ petition, seeking the following reliefs:

(i) issue a writ of mandamus or other appropriate writ, order or direction, directing the respondents to strictly enforce and implement Ext. P1 prohibitory order in Panavally and Poochackal area of Vembanad backwaters especially more particularly from Manappuram East area to Perumbalam in Cherthala North of Alappuzha District and from Narakadavu North area to Poothotta of Vaikom North in Kottayam District;

(ii) issue a writ of mandamus or other appropriate writ, order or direction, directing the respondents to consider Exts. P2 to P4 and take immediate steps for enforcing and implementing Ext. P1 prohibitory order especially more particularly from Manappuram East area to Perumbalam in Cherthala North of Alappuzha District and from Narakadavu North area to Poothotta of Vaikom North in Kottayam District;

(iii) issue such other and further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and

(iv) award costs of this petition.

2. Pursuant to a direction issued by this Court, the 1st respondent has filed a statement. Paragraphs 3 and 4 of the statement read as follows:

(3) In Cherthala region some reports regarding the unauthorised removal of sand from kayal were obtained and strict instructions were issued to take action against those who violate the prohibitory order. A team of squad under the leadership of Deputy Collector (LR) was constituted for surprise inspection in the areas all over the District. So many cases were reported regarding illegal transportation of kayal sand through vehicles and country boats. Police authorities also seized many of the vehicles and country boats and reported to this office for taking legal actions.

(4) In this District, after 16/06/2007, there were 288 vehicles and 60 numbers of country boats seized and legal actions were taken. A total amount of Thirteen lakhs were collected as fine and the amount collected are deposited to River Management Fund. In addition to imposition of fine, the sand in the boats are also sold in public auction. The vehicles seized with river sand, actions were taken according to the Kerala Protection and Regulation of Removal of Sand Act, 2001.

4. Again, pursuant to another direction issued by this Court, the Circle Inspector of Police has filed an affidavit. Paragraphs 6 and 8 read as follows:

"It is submitted that even though sand mining is going on in Vembanadu lake, such sand is not being transported through Poochackal and Cherthala Police Station limits. We have effectively controlled the unloading of sand from the country-made boats on the banks of Vembanadu lake in Poochackal and Cherthala Police Station limits. Transportation of the same from the banks through the landed area of Cherthala and Poochackal Police Station limits is also effectively controlled by posting police personnel round the clock at two places as stated earlier. Lack of necessary amenities for patrolling in the backwaters causing much inconvenience in the prevention of unauthorised removal of sand in the lake. But by combined efforts of Revenue Authorities, Geology Department and Police Department of Alappuzha, Kottayam and Ernakulam Districts it can be effectively controlled. Further actions are being taken in this regard."

5. On a bare reading of the affidavit of the Circle Inspector, one gets a feeling that the deponent apparently was not interested in the discharge of his duties with any degree of diligence or sincerity. But, on closer scrutiny, I find that what he has stated is his helplessness in not being provided with necessary men and materials to counter what is described as one of the more serious menaces which haunt our 'society'. It is not difficult to realise that what is required are corrective remedial measures on a war-footing to curb unauthorised removal of sands from river banks in the State, lest we Court ecological disasters of the highest magnitude. It has been categorically opined by experts that large scale removal of sand would result in the death of the river itself and obviously this will lead to depletion of the ground water resources. One will have to remember that this exploitation is being done for sheer commercial reasons. In other words, a handful of men are engaged in exploiting the natural resources, which obviously belongs to the public in general. If the Executive is given the power by the Kerala Protection of River Banks (Protection and Regulation of Removal of Sand) Act, 2002, it is upto the officials to exercise the power, in such a manner that the menace is curbed. Any failure on the part of the authorities to use this power, would amount to an unpardonable failure and lapse on their part.

6. The Secretary to the Revenue Department has been impleaded as an additional respondent. This was done on a suggestion made by the Court because it felt that remedial action will have to be taken at the highest level of the Government.

7. Vembanad lake is a source of 'fresh water'. It is an extremely valuable asset. A regular erosion from the banks of Vembanad will have the certain effect of killing the river as such, leading to the dearth of valuable resources and extinguishment of water resources, as pointed out by the petitioners. Apparently, where there were sand hills extending over kilometres in the Vembanad lake, there are now pits having a depth of more than 10 metres. The extent of ravaging the rivers have been subjected to, can only be imagined. The highest Court in the land has expressed a categoric opinion. The Supreme Court in the judgment in *Susetha v. State of T.N.*, 2006 (6) SCC 543¹ held as follows:

Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognised in Articles 47 and 48A of the Constitution of India. Article 51A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife. [See *Animal and Environment Legal Defence Fund v. Union of India*, *M. C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India* and *Intellectuals Forum v. State of A.P.*]

8. It is again mentioned in paragraph 17 of the judgment: "whereas natural water storage resources not only required to be protected, but also steps are required to be taken for restoring the same if it has fallen in disuse." Needless to say, the Supreme Court has issued this direction, keeping in mind the opinion which was expressed in the earlier decisions of the Supreme Court for protecting the rivers and other water resources. One should remind oneself that even in the matter of considering the preventive and remedial measures to be taken to curb the menace of unauthorised removal of sand from river banks and river beds, there is a defining point as in any other sphere of human activity, beyond which it would be virtually impossible to restore the *status quo*. If the ravaging and exploitation of the natural resources, as is happening in the context of unauthorised removal of sand from river banks and river beds goes on, as they do now, then those engaged in the task of enforcing the law and administering the same may, ultimately have to throw their hands in despair, pleading helplessness. They might have either reached that stage or may be fast approaching the same. With all the emphasis at this Court's disposal, it is made clear that sincere, legitimate and completely faithful steps will have to be taken by the Government at its highest level to save the river and to curb the unauthorised removal of sand from its bed and banks.

9. In the result, the writ petition is disposed of with the following directions:

(a) The Additional 8th respondent, Secretary to Government, Revenue Department, shall, forthwith, constitute a committee headed by the Secretary of the Revenue Department,

consisting of the District Collector, Kottayam, District Collector, Alappuzha, Superintendent of Police of Alappuzha and Superintendent of Police, Kottayam and the Director of Mining and Geology and such other Officers in the Revenue Department and/or Police Department, as the Government deems fit and appropriate, to monitor the removal of sand from Vembanad lake and see that unauthorised removal of sand therefrom is curbed and prevented with utmost seriousness and efforts.

(b) The Additional 8th respondent shall see that stringent measures are taken by the authorities exercising powers under the Act, if necessary with the help of Police officials, against those persons, who are determined to contravene the provisions of the Act.

(c) It must be ensured that preventive measures are addressed to the actual removal of sand from the river beds and banks. It will not suffice if preventive measures are addressed only to the transportation of sand from the banks.

(d) If the Government finds it necessary that there should be total prohibition in the removal of sand from the Vembanad river for a particular period, however prolonged it may be, an order shall be passed restraining the same.

(e) Taking note of the version given by the Circle Inspector of Police, Cherthala Police Station that the Police officials have not been provided with sufficient number of mechanized boats to follow those persons, who are involved in unauthorised removal of sand from river beds and banks, the Secretary to the Revenue Department shall take steps to see that adequate resources are made available to the Police Department by way of vehicles, boats as also adequate number of personnel to pursue those persons who are involved in the unauthorised removal of sand.

(f) The committee constituted by the Revenue Department shall also call for the reports from the bodies constituted under the Act, empowered to issue passes for transportation of sand taken from the river bed and river banks, as the case may be, and cause an audit to be made in that regard with specific reference to the total number of vehicles which were actually seized during a particular period, on allegations of unauthorised transportation of illicitly mined sand and then verify whether the details, if any, given by the authorities as to the number of passes issued in this regard is in any manner relatable to the total quantity of sand which was detected as unauthorisedly being transported, *i.e.* to say being transported otherwise than on the strength of the passes issued by the competent authority.

(g) Based on the materials so made available, the Government shall, at its highest level, take further remedial and preventive measures in the matter of sand mining from the river beds and river banks.

(h) Though the petitioners have espoused a cause relatable to the Vembanad lake, it is one of uniform application to the entire state, as such. The directions issued to the Secretary, Revenue Department therein shall be carried out in relation to other river banks and river beds, in the State as well.

Writ petition is disposed of with the above directions.
