

(2021) 06 KAR CK 0040

Karnataka High Court

Case No: Writ Petition No. 817 Of 2008 (GM-RES-PIL)

Environment Support Group And
Another

APPELLANT

Vs

State Of Karnataka And Others

RESPONDENT

Date of Decision: June 15, 2021

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 151

Hon'ble Judges: Abhay S. Oka, CJ; Ashok S. Kinagi, J

Bench: Division Bench

Advocate: Vijaykumar A. Patil

Judgement

Abhay S. Oka, CJ

This writ petition was disposed on 11.04.2012 before the Division Bench. I.A.1/2021 under Section 151 of the Code of Civil Procedure, 1908 is filed

by Shri Leo Saldanha, petitioner No.2 (party-in-person) on 16.03.2021 praying to modify the final judgment and order dated 11.04.2012 in the above

writ petition in terms of the memo dated 05.03.2021 filed in W.P.No.38401/2014 produced vide Annexure-C. The interim application having been

heard and reserved, coming on for pronouncement of order, this day, the Chief Justice made the following:

ORDER ON IA NO.1/2021:

1. This interlocutory application is filed in a disposed of writ petition No.817 of 2008. The present applicant was the second petitioner in the disposed of writ petition. Apart from W.P.No.817/2008 which was the lead petition, there were other connected petitions. While dealing with the said writ

petitions, this Court extensively dealt with the issue relating to preservation and maintenance of the lakes in the State. A Committee headed by the then sitting Judge of this Court Hon'ble Justice Shri. N.K. Patil was appointed to deal with the issue of proper preservation and maintenance of the lakes in the State of Karnataka. A very exhaustive study was made by the said Committee and a very detailed report containing several recommendations was filed.

2. While disposing of the writ petition No.817/2008 and other connected matters by the Judgment and Order dated 11th April, 2012, this Court directed that survey of lakes and tanks in Karnataka shall be undertaken by demarcating the boundaries. It was directed that proper fencing shall be erected around the lakes. This Court directed that buffer zones having width of thirty meters around all the lakes shall be maintained and also directed for removal of unauthorized construction thereon. There were as many as eleven directions issued by this Court while disposing of the writ petition which read thus:

1. It is just and necessary that survey of lakes and tanks in Karnataka have to be undertaken by demarcating the boundaries and to make proper fencing.
2. The unauthorized construction within the 30 mtrs of peripheral lake area have to be removed.
3. Removal of silt as also, scientific de-weeding for the rejuvenation of some of the tanks and proper embankments have to be done periodically.
4. Flow of sewerage water into lakes and tanks have to be stopped. The channels, which feed the lakes, have to be properly protected and maintained.
5. The forest department shall undertake to plant the trees and saplings in the buffer area of the lake.
6. The Commissioner of BBMP shall be responsible for the proper maintenance and development of the lakes within the BBMP area.
7. For the Bangalore Metropolitan Area, the Commissioner, Bangalore Development Authority, the Chief Executive Officer, Lake Development Authority and Deputy Conservator of Forest shall be the Committee for proper maintenance and development of lakes in Bangalore Metropolitan

area.

8. In respect of City Municipal Corporation, the Deputy Commissioner of District, the Commissioner of City Municipal Corporation and Commissioner of Urban Development Authority shall be the Committee responsible for proper maintenance and development of lakes within the City Municipal Corporation area.

9. In respect of municipal areas, the Deputy Commissioner of District, Commissioner of Municipality and District Water Resources Officer shall be the members of Committee and they shall be responsible for proper maintenance and development of lakes situate in for municipal and taluka areas.

10. There shall be an Apex Committee consisting of Principal Secretary, Department of Revenue, Chief Executive Officer, Lake Development Authority and Member Secretary of State Legal Services Authority who shall oversee and supervise the maintenance of lakes by above state committees. The above stated committees shall send quarterly report about the maintenance and development of lakes to the Apex Committee, which shall supervise the development and maintenance of lakes. The Apex Committee can also entertain complaints and give proper directions to concerned committees for proper maintenance and development of lakes.

11. The first respondent is directed to comply the above said directions by passing necessary orders in accordance with law for ensuring proper preservation, maintenance and development of lakes"".

3. Subsequently, this Court has dealt with the issue of maintenance, protection, rehabilitation and rejuvenation of lakes and Raja Kaluves across the State of Karnataka in Writ Petition No. 38401/2014 and other connected matters. The applicant- second petitioner in W.P.No. 817/2008 got impleaded himself as the respondent No.8 in the said writ petition (38401/2014). The present application (IA-1/2021) is filed in the disposed of writ petition No.817/2008 seeking modification of the directions contained in paragraphs-7 to 10 of the final Judgment and order. The prayer in the application is for

constituting (i) Gram Panchayat Lake Protection and Rehabilitation Committees in rural areas, (ii) Ward Level Lake Protection and Rehabilitation Committees for the Municipal Corporation area, (iii) Council Level Lake Protection and Rehabilitation Committees for Municipal Council area, (iv)

District Level Lake Protection and Rehabilitation Oversight Committees, (v) Bengaluru Metropolitan Lake Protection and Rehabilitation Oversight Committee and (vi) the Karnataka Lake Protection and Rehabilitation Apex Committee. In short, the prayer is for constituting the aforesaid six

Committees by modifying the directions contained in paragraphs 7 to 10 of the operative part of the Judgment which are quoted above.

4. The second petitioner-applicant who is the respondent No.8 in W.P.No.38401/2014 appearing in person had invited our attention to the fact that this

Court has passed an order in W.P.No. 38401/2014, directing to conduct survey of all the lakes and its buffer zones in the entire State. This Court also

directed removal of encroachments on the lakes and its buffer zones. The second petitioner pointed out various Government Orders issued for

constituting the Committees as per the directions contained in paragraphs 7 to 10 of the operative part of the Judgment and order passed in the

disposed of writ petition. He submitted that there are no Committees constituted for monitoring the protection and rejuvenation of lakes at Gram

Panchayat level, Municipalities level and district level. He has also tendered on record a summary of proposals placed before this Court in the form of

prayers in this interlocutory application. The second petitioner has also prayed for laying down the functions of the Committees and he has also prayed

for constitution of a ""Quasi Judicial Committee"" for Bengaluru urban district for attending to the grievances and disputes in a forum open to the general

public. He submitted that only if the Committees, as prayed by him are established, the directions issued in the disposed of writ petition as well as the

pending writ petitions can be effectively implemented.

5. The learned Additional Government Advocate has placed on record a copy of the Notification dated 4th January, 2014 by which, the Bengaluru

Metropolitan Planning Committee Rules, 2013 were framed. He invited our attention to the constitution of the Metropolitan Planning Committee as

provided in the said Rules. His submission is that too many Committees should not be established. He urged that the Deputy Commissioner should not

be a part of multiple Committees.

6. We have considered the submissions. Amongst eleven clauses in the operative part of the Judgment and order dated 11th April, 2012 passed in

W.P.No. 817/2008 and other connected matters which we have quoted above, the first five directions are generally applicable to all the lakes in the

entire State. The direction is to carry out a survey of all the lakes and tanks in the State of Karnataka by demarcating the boundaries. There is a

direction to demarcating of thirty meters buffer zone around all the lakes. There also directions issued for removal of silt, scientific de-weeding for the

rejuvenation of the lakes etc.

7. During the course of hearing of writ petition No.38401/2014, it was noticed that though the Committees have been constituted having jurisdiction

over Bengaluru metropolitan area, the City Municipal Corporation areas, all Municipal Council areas and though there is a Apex Committee

constituted having jurisdiction over the entire State, there are no Committees constituted at district level to monitor the implementation of the orders

passed by this Court in the final judgment and order.

8. A perusal of Annexure-C to the application (IA-1/2021), and note submitted by the second petitioner will show that he expects this Court to virtually

rewrite paragraphs 7 to 11 of the operative part of the Judgment and order, defining the details of the functions of the Committees and to create a

quasi judicial authority. The application filed by the second petitioner is not for a review of the Judgment and order which was delivered way back on

11th April, 2012. Therefore, this Court is of the considered view that it will be inappropriate to make an extensive modifications in the said final

judgment and order passed in a disposed writ petition. But, under the final Judgment, there are no Committees formed at district level. Only for the

purpose of ensuring that District Level Committees are formed to supervise the implementation of the directions issued in the judgment and order, a

modification will have to be made by directing the State Government to constitute District Level Committees which will have jurisdiction over the

entire district, except the limits of the Municipal Corporation and Municipal Council areas.

9. The learned Additional Government Advocate stated that there are large number of Municipal Corporations and Municipalities in the State and as

the Deputy Commissioners of the districts are part of the Committees having jurisdiction over all the Municipal Corporations and Municipal Councils

areas, the Deputy Commissioners will be overburdened. There is a substance in this submission which requires consideration. Therefore, we propose

to direct that in the Committees established in the Municipal Corporations and Town Municipal Councils areas, the jurisdictional Assistant

Commissioners shall be the members of the said Committees instead of the Deputy Commissioners. As far as the District Level Committees are

concerned, we propose to appoint the Deputy Commissioners of the districts as the Chairperson and the Member Secretary of the District Legal

Services Authorities as the Secretary. In addition, there shall be three officers of higher level in the district from forest department, minor irrigation

department, environment department/the Karnataka State Pollution Control Board as the members. The District Level Committee will monitor the

implementation of the directions issued in the Judgment and Order of this Court in the entire district except the Municipal Corporation and Municipal

areas within the district for which Committees have already been constituted.

10. In view of the fact that in Writ Petition No. 38401/2014, this Court is monitoring the implementation of the directions issued in the Judgment dated

11th April, 2012 passed in W.P.No.817/2008 and has also issued further directions for maintenance and/or rejuvenation of the lakes/tanks in the entire

State, the petitioner who is the eighth respondent in the said writ petition (38401/2014) can always seek directions to the Committees so appointed in

this writ petition and can also seek directions for inviting the experts as special invitees to the meetings of the Committees. He can seek prayer

regarding Committees giving open hearing for considering grievances of the citizens.

11. Accordingly, we pass the following:

ORDER

i) After paragraph nine in the operative part of the Judgment and order dated 11th April, 2012 in W.P.No.817/2008, following additional paragraph '9-

A' shall be incorporated;

9-A. In respect of each District, there shall be a District Level Committee which shall be responsible for maintenance and development of

lakes/tanks situated in the District (except the areas covered by the limits of Municipal Corporations and Municipalities for which, Committees have been constituted) which shall consist of following members:

- i) The Deputy Commissioner of the district as the Chairperson,
- ii) The Chief Executive Officer of Zilla Panchayat- member,
- iii) Higher Officer of appropriate level working in the Forest department - member,
- iv) Higher Officer of appropriate level working in the minor irrigation department - member,
- v) Higher Officer of appropriate level working in the environment department/Karnataka State Pollution Control Board - member,
- vi) The Member Secretary of the District Legal Services Authority shall be the Secretary of the said Committee, The officers at serial numbers (iii) to (v) shall be nominated by the State Government;
- ii) The directions contained in paragraph-9 of the operative part of the Judgment and Order dated 11th April, 2012 passed in disposed of

W.P.No.817/2008 shall stand modified to the effect that instead of the Deputy Commissioner of the district, the jurisdictional Assistant Commissioner

shall be the member of the Committees constituted for the Municipal Corporations and other Municipal areas;

- iii) As observed earlier, it will be open for the second petitioner who is eighth respondent in W.P.No.38401/2014 to seek appropriate directions in the said writ petition regarding the functions of the Committees and for securing the presence of experts as special invitees to the meeting of the Committees and other reliefs;

Accordingly, the interlocutory application (IA-1/2021) is disposed of with the above directions.