

(2008) 07 BOM CK 0006

Bombay High Court

Case No: PIL Writ Petition No. 1325 of 2003

Janhit Manch, Bhagvanji Raiyani
and Gaurang Vora

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: July 22, 2008

Acts Referred:

- Constitution of India, 1950 - Article 48A, 51A
- Environment (Protection) Act, 1986 - Section 15
- Water (Prevention and Control of Pollution) Act, 1974 - Section 2

Citation: (2008) 5 ALLMR 299 : (2009) 1 RCR(Civil) 774

Hon'ble Judges: Bilal Nazki, J; A.P. Deshpande, J

Bench: Division Bench

Advocate: Party in Person, for the Appellant; Pradeep Jadhav, AGP for Respondent No. 1, Abhay Patki, for Respondent No. 2, Rajiv Chavan and Rutuja Ambekar for Respondent No. 3, C.M. Lokesh and Ajit Kumar, for the Respondent

Judgement

Bilal Nazki, J.

This petition was filed in public interest claiming various reliefs. The matter has been pending in Court for a long time and when the matter was taken up by this Bench on 30th January, 2008 we had directed the Chief Secretary Respondent No. 1 and Respondent No. 5 Corporation to file their respective affidavits for the reasons given in the order itself. There are many reliefs claimed by the petitioners. We have heard petitioner No. 2 in person and the learned Counsel appearing for the respondents. Some of the reliefs claimed are the reliefs which could not be granted because they relate to geographical areas which are outside the jurisdiction of this Court. Therefore, the petitioner made a submission that he will confine this petition to the reliefs claimed for the areas which fall within the State of Maharashtra. The said reliefs are:

- (a) To immediately ban the practice of immersion of any idols of gods, goddesses, taja or otherwise under religious rituals or under any other pretext in natural streams as defined u/s 2 of The Water (Prevention and Control of Pollution) Act, 1974;
- (b) The respondents to provide adequate inspection and nuisance detection machinery on the Juhu beach and other natural streams against people throwing puja nirmalya and plastic bags and punish them as per rules;
- (c) The 1st and 5th respondents to construct adequate No. of toilets at the stretch of the beach between Santacruz and Khar Danda with adequate quantity of water supply;
- (e) To immediately ban the immersion of full or half burnt bones of dead bodies (Asthi Visarjan) or ashes thereof in the Water Streams as defined under The Water (Prevention and Control of Pollution) Act, 1974;
- (f) To ban the mass or community bathing during auspicious religious occasions such as Kumbha Melas, Chhath Parvas, Ekadashis, Shravan Mondays, etc. in the natural water springs under the scriptural edicts and under the provisions of The Water (Prevention and Control of Pollution) Act, 1974 and also under Article 48A and 51A of the Constitution of India;
- (g) To ban the use of water bodies and their banks for washing anything, bathing cattle, discharging faces, excreta and urinating;
- (h) To appoint the committee of experts for exploring the possibility of setting up a water treatment plant of appropriate size at the mouth of Mithi river in the Mahim creek for discharge of treated water;
- (i) To order all industries discharging effluents in Mithi River and 5 such other rivers across the country to set up water treatment plants of appropriate sizes to treat the effluents before discharging the same into water bodies.
- (j) To punish the officials and employees of the Respondents under the appropriate rules not performing their duty in protecting the environment and more particularly the natural water resource under their respective jurisdiction.
- (k) To levy the penalty to the people and the owners of the industries u/s 15 of The Environment (Protection) Act, 1986, violating the provisions of The Water (Prevention and Control of Pollution) Act, 1974 and other the closure of industrial units not complying the norms and standards required under the said Acts.
- (l) To make environment as compulsory subject in schools and colleges as ordered by the Supreme Court in [M.C. Mehta Vs. Union of India \(UOI\) and Others](#), .
- (m) The Honourable Court to recommend, if thought fit to the 1st and 3rd respondent to enact a legislation for setting up environment protection

commissions at national, state and district level headed by retired judges and judicial officers with powers to watch, monitor and give directions to the Central and State pollution boards on their working and also with powers to receive complaints from the public on environment violations to deal with and resolve the same.

2. The first relief claimed is that this Court should ban the practice of immersion of any idols of gods, goddesses, taja or otherwise under religious rituals or under any other pretext in natural streams. The petitioner has taken us to various religious scriptures to canvass that the immersion of idols in river cannot be justified on any count. According to the petitioner in the Mumbai Metropolitan Region alone about 1,50,000 Ganesh idols are immersed in rivers, wells, lakes and sea every year during 10 days Ganpati festival in the month of September. Out of these 1,50,000 Ganesh idols about 1,00,000 come to the share of the Mumbai beaches. These idols measure from 2 ft. to 20 ft. in height which are made of plaster of paris mixed with several ingredients and paints which are poisonous and fatal to marine life. Then he has contended in his petition that all religions preach love, compassion and nonviolence, particularly Hindu and Jain religions. The ban on cow slaughter is the state policy and due to intense agitation and fasting by some Jain munis against new slaughter houses the Union Government had to shelve the project. He also contended that Ganpati Bappa, so merciful and kind will hate a pooja destroying marine life.

3. So many reliefs have been claimed as is pointed out above. The petitioner appears to be mainly concerned with the immersion of the Ganesh idols during Ganpati festival days. Then he has taken quotations from Mahabharat and Ramayan and according to the shloka No. 95:1718 excerpted from Ramayan in Sanskrit and as per the translation in English given by the petitioner it appears to be a conversation between Lord Ram and Sita and according to it, Lord Ram says to Sita - "O Sita, sitting with you in this wonderful place, eating these sweet fruits and roots, neither do I want to return to Ayodhya nor do I desire a kingdom. The bank of this Mandakini river, frequented by elephants, where lions and monkeys come to drink water, decorated and lined by flower laden trees it is impossible that person does not forget sorrow and feels happy." He has referred to various other religious authorities to suggest that the pollution of atmosphere and water bodies was against every religion, particularly Hinduism. He also quoted the scripture, which says: "On arrival at the sacred waters of the Ganga, thirteen practices are forbidden. They are: defecation, washing of person, hands or sacred vessels, ablution, discharge of water, throwing of used floral offerings, rubbing filth, body shampooing, joking / merry making, frolicking, acceptance of donations, obscenity, offering inappropriate hymns/praises, discarding garments, beating and swimming across."

4. The counter affidavit filed by the Chief Secretary says, nobody can justify the pollution of atmosphere or of water bodies. This Court will not be in a position to

decide about what a religion permits and what a religion does not permit. But the public sentiments and the public interest sometimes do not go hand in hand and at times it is found difficult to reconcile between two and it is always necessary in such situations that the Government handle the matter in a way which would ultimately serve the public purpose. The Union of India has filed an affidavit through the Additional Director in the Ministry of Environment and Forests. It is submitted in his affidavit that the pollution caused by the immersion of idols is not disputed. He has further stated that the Central Government is seized of the matter and is taking further steps to evolve guidelines at National level for the immersion of idols and other pooja materials during festival and another occasions in the water bodies. The Chief Secretary in his affidavit has answered point by point the assertions made in the petition and has also stated in his affidavit that after the court passed an order on 30th January, 2008 directing him to file an affidavit a meeting was held with concerned departments to put up a report to him. On the basis of the said reports the affidavit was filed by the Chief Secretary. With regard to the ill effects of water and noise pollution, the Chief Secretary has maintained that creating public awareness would be as important as implementation of laws. But unfortunately the Chief Secretary has not given any details about its programme of creating public awareness about the pollution of water bodies and the environment in general. It is merely stated that for creating public awareness print and electronic media is being used. He has also stated that the environmental education is now being imparted to the school children which is a welcome step.

5. We expect that the Government would constitute a Committee and divide the methodology by which the public shall be made aware about the needs to protect the water bodies and the environment.

6. As there is no dispute that the pollution must be controlled, therefore, some reliefs claimed can immediately be granted such as a direction to respondents to construct adequate number of ladies and gents toilets at the stretch of the beach between Santacruz and Khar Danda. Therefore, we direct that the State Government should take up this construction of toilets at the earliest.

7. Other reliefs, mainly, are again with respect to the water bodies as the petitioners seek a direction that there should be ban on the immersion of full or half burnt bones of dead bodies or ashes in the water streams, the petitioners claimed that there should not be mass or community bathing during auspicious religious occasions in the water bodies. The Central Government in its counter affidavit has stated, as has been pointed out hereinabove, that the Government is seized of the matter and is taking further steps to evolve guidelines at National level for the immersion of idols and other pooja materials during festival and another occasions in the water bodies. We expect that the Central Government will consider laying down of guidelines for immersion of idols and would also consider related matters with regard to pollution of water bodies. Both the Union Government as well as the

State Government shall consider it expeditiously because the time lost involving the pollution might prove dangerous for environment of the country in long run.

8. With the above directions, the writ petition is disposed of.