

(2009) 08 CAL CK 0045

Calcutta High Court

Case No: Writ Petition No. 7987 (W) of 2002

Howrah Ganatantrik Nagarik
Samity and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 21, 2009

Acts Referred:

- Victoria Memorial Act, 1903 - Section 5
- West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 - Article 3, 1

Citation: (2010) 1 CALLT 151 : (2009) 2 ILR (Cal) 551

Hon'ble Judges: Tapan Kr. Dutt, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Subhas Dutta, for the Appellant; Anindya Mitra, Arijit Banerjee, Tapas Kumar Chowdhury, Naresh Balodia and P.K. Kedia for Respondent No. 3; Alok Kr. Ghosh and Achintya Banerjee for the K.M.C.; Tulsidas Maity, for the State-Respondent; Kallol Bose, for the W.B.P.C.B.; Tarak Nath Ghosh, for the H.R.B.C; Amit Prakash Lahiri and Mintu Kumar Goswami, for the A.S.I., for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.

By way of a supplementary affidavit, the Victoria Memorial Hall Committee has prayed for modification of the order dated 28th September, 2007 passed by a Division Bench of this Court which was passed on the basis of the supplementary affidavit affirmed by the writ Petitioner. This Court, by that order, passed certain directions for implementation of the recommendations of the committee of experts appointed by this Court for "preservation of the Victoria Memorial Hall (VMH)" which is, in substance, the subject-matter of this Public Interest Litigation.

2. It will appear from record that in this proceeding, this Court earlier had constituted a committee consisting of various experts for the better preservation of the VMH and the said committee had submitted its report and in such report, the committee suggested formation of a special committee which would advise the VMH from time to time regarding conservation and restoration of the said heritage building. It further appears from record that the VMH had sought for assistance of National Environmental Engineering Research Institute ("NEERI") and the NEERI, in the meantime, had submitted its detailed report on the Environmental Management Plan.

3. From such report, it will appear that the experts, in no uncertain term, opined that the pollution from the automobile exhausts was the most important causative factor in protecting the monument from the atmospheric environmental hazards. According to the report, the presence of various gaseous substances like CO, CO₂, SO₂, NO_x etc., when those come in contact with the moisture in the atmosphere, form different types of acids which are perilous to the marbles by which the VMH is constructed. The experts, therefore, recommended that the traffic on the roads around the VMH should be minimal with the complete ban on heavy vehicles. It was further suggested that the Bus terminus at Esplanade Area should also be shifted from the existing location. The NEERI had further observed that since the VMH is located amidst bustling urban areas with busy roads running all around its periphery, the traffic congestion and long detention of vehicles at traffic signals at roadways intersection increase vehicular emissions and consequently, synchronized auto-traffic-signal-system should be provided at all the junctions around the VMH for better and smooth flow of vehicles with minimum detention period.

4. The Division Bench by its order dated September 28, 2007 agreed with the views expressed by the experts in the field and accordingly, directed the Commissioner of Police, Kolkata to introduce synchronized auto-traffic-signal-system (if necessary, for the time being, auto-manual system, so long the timing is not wholly adjusted) in the portion of the roads indicated with the red mark in the map annexed to the said order so that there was no stoppage of any vehicle on those portions of the roads due to traffic signals except in case of extreme emergency. The Division Bench was, however, fully conscious that the red-marked area mentioned in the order was a busy area of the city and thus, did not ask the police authority to introduce the synchronized-auto-traffic-signal system in the entire red-marked area immediately. By the said order, the police authority was given discretion to implement the system part by part on experimental basis in those areas with the object of avoiding any consequential traffic congestion in other adjoining areas. Similarly, for effective implementation of the system, the police was given authority, if it found necessary, to bring any additional adjoining area within the said system. The Division Bench, however, directed the police authority to introduce the said system at least for limited hours of the day within a week from that day.

5. By the said order, the prohibition of parking of all cars on those red-marked portions as indicated in the map annexed to the order was immediately imposed and the Division Bench directed that such prohibition should continue for 24 hours-a-day including the holidays. However, relaxation to the said prohibition of parking was permitted only to the high foreign dignitaries or on special ceremonial occasions. The Division Bench further ordered that the aforesaid arrangements of synchronized auto-traffic-signal-system and the restriction of parking were imposed by way of experimental measures and in case of any problem arising out of introduction of such system and imposition of restriction, the same should be sorted out on being mentioned before this Court. The Court further held that a very busy hospital was situated in that locality and, therefore, the police authority would be at liberty to give exemption to the patients approaching the hospital in emergency from the restriction of the synchronized auto-traffic-signal-system.

6. As pointed out earlier, by the said order, the Division Bench further accepted the recommendation of the experts that the Bus terminus at Esplanade area should be shifted to a distant place and for implementation of the proposal of shifting a Bus terminus in its entirety, the time limit of six months was granted. The Court, however, imposed total ban of heavy vehicles except public transport vehicles carrying passengers on all the immediate adjoining roads of the VMH within the period of one week from that day. The Division Bench further directed that all the hotels and restaurants situated within three kilometres from the VMH should use clean fuels, such as L.P.G. as suggested by the NEERI and the police authority was directed to see that within the distance of three kilometres from the VMH, there was no open oven on the pavements. Burning of leaves within that area was already prohibited by an earlier order.

7. The Division Bench after accepting the recommendation of the committee appointed by the Court held that there would be total ban of establishing new industrial units and expansion of the existing industries within 10 kilometres from the VMH with this modification that such restriction should be imposed in respect of those industries which emit CO₂, SO₂, NO_x or other gaseous substance which forms acids in contact with moisture in the atmospheres.

8. In that context, the Division Bench passed following direction upon the VMH to immediately start the development of green belt in the area in the following manner as suggested by the NEERI:

- a) Starting edge of the green belt should be by the side of the roads facing VMH.
- b) The first 2-3 rows of tall shrubby species up to 5 meters tall, followed by tall trees of 10-15 meters height with thick canopy.
- c) Tall trees should be planted in alternating rows to check the further horizontal dispersion through fanning effect.

9. The VMH Authority was directed to immediately start harvesting of rainwater in a properly designed water-holding structure avoiding the seepage/percolation in the ground water. It was further directed to take action for implementation of management of water bodies and restrict the all activities which might cause algal growth and accordingly, the VMH was directed to regularly monitor the biological water quality. Regarding extraction of underground water within the VMH premises, the VMH Authority was directed to strictly follow the provisions of West Bengal Groundwater Resources (Management, Control and Regulation), Act, 2005.

10. For the purpose of protection of the VMH marbles from aging, the Court observed that as it was not possible to alter or change the general design of the monument to eliminate places for accumulation of water and organic debris that provided a variable moist environment for biological growth, measures, such as, the repairs of the roofs, gutters and other water-shedding systems, improvement of drainage system and installation of a damp proofing to control rising damp and drying the stone masonry should continue with the suggestion of the experts. The Court further observed that as higher plants are generally grown in the cracks, and at the same time, various cavities and crevices had already been found, frequent vigilant inspections and timely curative measures, such as, repairing of open joints and sealing of cracks should be taken by the VMH authority. As installation of narrow flashing strips of thin-gauge copper had been proved to have a long-term inhibiting effect on biological growth on stonewalls as recognized by the experts, such measure as suggested by NEERI in paragraph 7.4 of the report was ordered to be immediately taken.

11. Ultimately, the Division Bench disapproved the suggestion of the experts appointed by the Court to find out feasibility of building any visitor's centre and exhibition area in a separate building to be constructed within the VMH compound. The Division Bench held that such an idea was contrary to the concept of protection of Historical monuments. For better utilization of the space for modernisation of gallery, according to the Division Bench, the existing Administrative Office might be removed to some other place and that space could be utilised for the extension of the gallery but in no circumstances, the Division Bench approved the idea of making any new construction within the VMH compound for the above purpose.

12. The other objection raised by way of this prayer for review is that some of the directions regarding rainwater harvesting were not approved by Central Groundwater Board, or the Environment Department of Jadavpur University. It is further contended that the expert committee has unanimously resolved that the construction of roof type water harvesting could not be accepted because of stability reason. It is further stated that the direction as regards the maintenance, development and greenery around the VMH, the Calcutta Horticulture Division had expressed contrary view vide letter dated December, 2008. The copy of which was annexed to the application.

13. We, therefore, first propose to consider the objection of the VMH for shifting of Administrative Office as observed in the order of the Division Bench.

14. According to the VMH authority, it is basically a -museum and in support of such contention, references have been made to the various old journals indicating that the VMH was constructed for such purpose and the process of acquisition of various costly objects of art or old documents, manuscript, etc. had been initiated even prior to the actual construction of the VMH. According to the VMH authority, its recognised activities conform to the definition of a museum as given in Section 1 of Article 3 of the Statute of International Council of Museum, according to which, a museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purpose of education, study and enjoyment. The VMH Authority claimed that it is institutional member of international Council of Museums and had been paying subscription to the Indian branch of International Council of Museums. According to it, at the present, approximately, 29,000 items of objects of arts are stored within the VMH building and some of those are lying idle and not displayed to the public due to dearth of space.

15. The VMH Authority, however, has admitted that with the object of providing more space for display of the objects of art, in the year 1997, the Board of Trustees itself considered the feasibility of shifting the Administrative Office, the library and accommodation of the office in the vicinity of the VMH having an area of 20,000 square feet approximately and a sum of Rupees one crore was advanced to the Kolkata Municipal Corporation for booking a space in the building to be constructed by Kolkata Municipal Corporation at D.L. Khan Road. However, the said project did not mature and the Kolkata Municipal Corporation refunded Rupees one crore on April 23, 2003. It has been pointed that the total area of the VMH premises is 57 acres which is encircled with boundary walls. It has further been disclosed that in December, 2000 the Government of India advised the VMH authority to take steps for modernization of the VMH with the help of NATIONAL INSTITUTE OF DESIGN (in short "NID" a nationally acclaimed institution under the Government of India and the said NID in its report stated that the three main needs that the museum required:

1. Administration Needs;
2. Education and Knowledge Needs;
3. Cultural and Information Needs;

16. According to the report, for giving effect to the aforesaid three needs, it is necessary to have a full-fledged library, auditorium, achieves memorabilia shop and at the same time, participatory cultural activity should be resorted to and for the purpose of encouraging the children with art, specific step should be taken. It is

further pointed that lounge or cafeteria of high quality for relaxation and refreshment are to be constructed. It is further submitted that space for function to be located outside and for that purpose, either any building away from the main campus should be constructed which is impractical as it reduces control-by-proximity and hampers administrative effectiveness or otherwise, to construct a building in the campus marring the grand views of the monument and invoking unnecessary and disastrous competition with the monument. The NID, however, advised construction of a new building within the VMH campus at the south-eastern side where there is a structure for non-family duty quarters, dormitory, staff canteen, electrical installation, pump house and transformers, garages etc. It is suggested that upon demolition of the existing structure covering an area of 5000 sq. meters, a new building having plinth area of 2800 sq. meters can be constructed in order to provide sufficient space for administrative office and the balance area for library, exhibition galleries, meeting rooms, auditorium, publication sales counter, toilets and refreshment centre for the visitors. The new proposed building with a height of less than 10 meters will be covered under the canopy of trees and will not obstruct the view of the VMH tomb which is 56.0832 meters in height without the angel.

17. It is further stated in the affidavit that one CALCUTTA TERCENTENARY TRUST (in short "CTT") was established in 1990 as part of celebrations of 300th Anniversary of Calcutta and the cost of the project estimated at Rs. 48 crore would be borne out by the said Trust save and except the cost of construction of the Administrative Block which would be borne by the VMH Authority. According to the affidavit, contribution for the Administrative Block will be around Rs. 5 crore and the cost of providing alternative accommodation for existing staff would be Rs. 3 crore. The VMH is already holding Rs. 1 crore received back from the KMC, which are kept in a nationalized bank on fixed deposit and the balance amount will be provided in the budget of the VMH and will be secured from the Government of India. According to the affidavit, the concept of a new building had been examined by renowned Architects, namely, CULLUM & NIGHTANGLE AND M/S. DULAL MUKHERJEE & ASSOCIATES. The Architects had assured that the work of construction involved in the said project would not at all create any pollution problem or in anyway cause damage to the VMH. It has been further stated that on May 14, 2007 and prior to the order of this Court, the VMH Authority had with the approval of the Government of India entered into a MOU with the said Trust with the approval of the ministry of Culture as per the resolution of the Board of Trustees taken on May 8, 2007. MOU had been vetted by the Ministry of Law and some amendment has been incorporated in the said resolution.

18. According to the Board of Trustees, the only practicable solution is shifting of Administrative Office to the new building to be constructed at the South-East side of the campus of the VMH where the old building for accommodating the staff etc. is located. According to them, this concept will also help modernizing the VMH as a

museum. According to the VMH, the Administrative Office and Library should be made within the same campus; otherwise, it would cause serious inconvenience and lead to engagement of additional workforce and lack of effective control over the entire staff of the VMH. It is pointed out that the Administrative Office and Library now occupies a space of 334.04 square meters which upon shifting to the new building within the same campus would become available for display of printing of art materials. It has also been stated that it is impossible to get any office accommodation in the vicinity of the VMH and, therefore, this Court should modify the order dated 28th September, 2007 prohibiting construction of the annexe building resolved by the Board of Trustees at the meeting held on 8th May, 2007 and the said supplementary affidavit might be taken to be an application for the said purpose. It is further submitted that if this Court be pleased to allow the prayer, then the Administrative Office, Storage, Library, Publication Sales Counter, Exhibition Space can be shifted to its immediate vicinity in the proposed annexe building and the resultant space would become available for display of remaining objects of art and other articles which are kept stored within the main building. The VMH as a museum can thus be developed and the requirements of museum can be met.

19. The aforesaid prayer has been opposed by the Petitioner and according to the Petitioner if the VMH Authority is permitted to make construction of a new building within the VMH compound, the entire object of the present public interest litigation which is pending before this Court from the year 2002 will be totally frustrated. The Petitioner submits that this Court for the last 7 years has passed several orders for protecting the monument itself and for that reason, even did not hesitate to minimise the pollution level of the area by making stringent prohibitions of various nature.

20. Mr. Dutta, appearing in person submits that in one hand, this Court has passed orders prohibiting even parking of the vehicles and removal of bus stand from Esplanade area for protecting the museum from pollution hazards but the VMH, on the other hand is praying for construction of new building within the compound for the purpose of construction of auditorium, restaurant, space for relaxation etc. to make it a busy business complex. Mr. Dutta, in this connection, relies upon the VMH Act and contends that the Act does not speak of running of any museum and thus, the object of construction of a building is totally contrary to the statute by which the VMH is constituted. According to Mr. Dutta, the VMH Authority is free to acquire new property and construct modern museum and shift the articles, now preserved in the VMH building, but in no case, this Court should permit the VMH Authority to make new construction within the campus of the existing building. As regards the other point regarding rainwater harvesting and the various proposals, which are contrary to the recommendation of NEERI, Mr. Dutta prays for rejection of those views as the NEERI is considered to be the most recognized authority on the subject. Mr. Dutta, therefore, prays for dismissal of the present application for review.

21. Therefore, the first point that arises for determination in this application is whether this Court should review the last paragraph of the earlier order by which a prohibition was imposed in making any new construction within the campus of the VMH.

22. In order to appreciate the question involved on this point, we propose to consider the Victoria Memorial Act, 1903 for the purpose of ascertaining the object of the said Act.

23. It appears that the said Act was enacted with the intention to erect at Calcutta a building as a memorial of the life and reign of Her late Majesty Victoria of the United Kingdom of Great Britain and Ireland, Queen, Empress of India, and for this purpose, large sums of money had been subscribed by the princes and people of India; at a meeting of the subscribers held in Calcutta, certain persons were appointed a Provisional Executive Committee to take custody of the said money and consequently, it was expedient to make provision for the erection, maintenance and management of the memorial and for the appointment of a permanent body of Trustees.

24. By the said Act, all sums of money then in the custody of the said Provincial Executive Committee and all other property, whether moveable or immoveable, which had been or which might thereafter be given, bequeathed or otherwise transferred for the purpose of the said memorial or acquired for the said purpose by the Trustees should vest in the Trustees. The Trustees may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulation, not inconsistent with the Act and the Rules made thereunder for enabling the body to discharge its functions under the Act. Section 5 of the Act gives right to the Central Government by notification in the Official Gazette to make Rules to carry out the purposes of the Act. The Rules should be enacted substantially for erection, maintenance, management of the memorial, the care and custody of the object deposited therein and the conditions under which the public shall have access thereto and also for providing the mode of appointment of the Trustees, the period of their duration of office, the manner in which the meeting of the Trustees will be held and of taking decision by them including the extent of their power of delegation.

25. A plain reading of the provisions of the Act makes it clear that by virtue of the said Statute, the properties acquired for the purpose of memory of Queen Victoria, present and future, should vest in the Trustees who will have the power in accordance with the Act and the Rules for preservation of those properties and also for spending money that will be given by the Central Government for the purpose of erection, maintenance, management of memorial and the care and the custody of the objects deposited therein. 26. It is, therefore, clear that the Victoria Memorial Act does not mandate that all the activities of the trust should be confined to the VMH campus. It is needless to mention, that the Trustees have the right to acquire new

property for the purpose of better management of the memorials. We find substance in the contention of Mr. Mitra, the learned senior advocate appearing on behalf of the VMH, that for a long time, the VMH is functioning basically as a museum and various articles have not only been collected by way of donation from various sources but in recent times, have also been purchased out of the fund supplied by the Central Government. Although, it is strenuously contended on behalf of the Petitioner that property which has no connection with the memory of Queen Victoria should not be acquired, within the scope of the present public interest litigation which has been filed for preservation of the present structure of the memorial, the rare one among the existing magnificent buildings in this world, we have not gone into such question. We have restricted our scrutiny to decide whether our order, earlier passed, to preserve the existing structure, has in anyway created any impediment in the activity of the VMH within the provision of the Act. We have already pointed out that the Act permits the Trustees to acquire new property movable or immovable under the control and supervision of the Central Government and thus, there is no bar in running its activity from different premises.

27. Since the present VMH structure was erected as memorial of Queen Victoria and this public interest litigation was entertained basically for the purpose of protecting the structure which is magnificent in nature, we are required to decide whether any further structure should be permitted to be raised within the Victoria Memorial Campus at the peril of the present structure.

28. By the order sought to be reviewed, this Court has already held that having regard to the nature of the structure which is unique in nature and one of the wonderful objects in the world, the beauty of the structure and its value should not be marred in anyway for the purpose of construction of auditorium, cafe etc. and we are convinced that any new construction within the campus would be detrimental to the present structure situated thereon. In the past, the VMH Authority itself took decision for acquiring new Administrative Office in D.L. Khan Road by paying a sum of Rs. 1 crore to the Calcutta Municipal Corporation and at that time, the then Trustees did not feel any inconvenience in setting up administrative office in a different place; if that project has failed for any reason, there is no bar in acquiring any new property whereupon it can construct additional building for the purpose of carrying on its activity even as museum for the memory of Queen Victoria. Instances are not rare where an administrative office is situated away from the main museum (Salar Jung Museum, for instance) nor is there any bar of extending the museum by construction of new building elsewhere keeping a very limited activity in the original site for the purpose of saving the beautiful building from ruin due to running of brisk activities thereon. We, thus, find that there is no just ground for permitting the VMH Authority to make new construction within the VMH compound.

29. As regards the other observations of various so-called experts, we are of the view, that after hearing the parties and considering the report of the renowned

experts appointed by this Court, the Court, in the past, having passed the direction for preservation of the greenery of the Victoria Memorial Hall, the same cannot be discarded simply because such opinion has not found favour with some of the individual officers of either CPWD or of a particular department of the Government or a particular University. The preservation of rainwater is essential as pointed by the NEERI and in the order dated September 28, 2007 the order of rainwater harvesting was rightly passed. There was no direction for harvesting rainwater at the roof of the building as complained in the affidavit.

30. It appears that the prayer for review has been filed without appreciating the import of the said order regarding preservation of greenery. We find from the affidavit that the sole object of the VMH Authority is to make the said campus a place of brisk activities and entertainment without caring for the protection of the monument itself which was constructed pursuant to the object of the Act. Moreover, for the purpose of the preservation of and display of the additional articles which have been subsequently acquired and which have no connection with the memory of Queen Victoria, we are of the view that there is no just reason for giving permission to construct a new building within the VMH campus. The VMH Authority is free to extend its activity in accordance with law after acquiring new property which is consistent with the object of the Act, Rules and the Regulation, but there is no ground for restricting its extended activity within the original VMH complex itself which would be perilous to the existing structure. We have already pointed out that the Act itself approves acquisition of further property, either moveable or immovable, and thus, the order passed by this Court in the past has in no way created any impediment in the activities of the VMH in accordance with law; on the other hand, if the prayer of further construction is allowed for the purpose of the activities mentioned hereinabove, the constant efforts of this Court in preserving the existing memorial for the last seven years by passing various prohibitive orders would be totally frustrated.

31. We, thus, find no substance in the prayer of review of the earlier order dated September 28, 2007 and the same is dismissed.

32. In the facts and circumstances, there will be, however, no order as to costs.

Tapan Kumar Dutt, J.: I agree.