In the High Court of Judicature at Madras

Dated: 11.03.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice M.M. SUNDRESH

Writ Petition No. 15663 of 2014

R. Muralidharan .. Petitioner

vs.

1. The Secretary
   Ministry of Law and Justice
   4th Floor, A-Wing, Shastri Bhawan
   New Delhi 110 001.

2. The Secretary
   Ministry of Environment & Forests
   Paryavaran Bhavan
   CGO Complex, Lodhi Road
   New Delhi 110 003.

3. The Secretary
   Ministry of External Affairs
   South Block, Central Secretariat
   New Delhi 110 001.

4. National Biodiversity Authority
   5th Floor, TICEL Bio Park
   Taramani, Chennai 600 113.

5. Controller General of Patents

Intellectual Property Office
Intellectual Property Office Building
GST Road, Guindy
Chennai 600 032. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare that Biodiversity Act (Central Act 18 of 2003) is unconstitutional, as it violates Article 14 and India's obligation under Paris Convention on Biological Diversity and direct the fifth respondent to discontinue the practice of linking Form-1 formalities under Indian Patent Act (Central Act 39 of 1970) to the Permission by fourth respondent.

For Petitioner : Mr. R. Muralidhran
(Party-in-person)
For Respondents : Mr. G. Rajagopalan
Addl. Solicitor General
assisted by Mr. Haja Mohideen Gisthi,
CGSC for R1 to R4
No Appearance for R5.

O R D E R

(Made by The Hon'ble The Chief Justice)

The Biological Diversity Act, 2002 (hereinafter referred to as 'the Act') was enacted to provide for conservation of biological diversity,

sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith. The Statement of Objects and Reasons sets out that biodiversity encompasses the variety of all life on earth and India is one of the 12 mega biodiversity countries of the world with only 2.5% of the land area while accounting for 7-8% of the recorded species of the world. This is apart from being rich in traditional and indigenous knowledge, both coded and informal. India being a Party to the United Nations Convention on Biological Diversity signed at Rio de Jeneiro on 05.06.1992, the Convention having come into force on 29.12.1993, the said Act was brought into force when it received the assent of the President on 05.02.2003.

2. There are different stakeholders in the biological diversity, including the Central Government, State Governments, institutions of local self-government, scientific and technical institutions, experts, non-governmental organisations, industry, etc. and the endeavour towards enacting the Act was to bring an equitable and balanced approach to the various stakeholders. This enactment was preceded by extensive and

intensive consultation process involving all the stakeholders with the following features:

> (i) to regulate access to biological resources of the country with the purpose of securing equitable share in benefits arising out of the use of biological resources; and associated knowledge relating to biological resources;
>
> (ii) to conserve and sustainable use biological diversity;
>
> (iii) to respect and protect knowledge of local communities related to biodiversity;
>
> (iv) to secure sharing of benefits with local people as conservers of biological resources and holders of knowledge and information relating to the use of biological resources;
>
> (v) conservation and development of areas important from the standpoint of biological diversity by declaring them as biological diversity heritage sites;
>
> (vi) protection and rehabilitation of threatened species;
>
> (vii) involvement of institutions of self-government in the broad scheme of the implementation of the Act through constitution of committees."

3. With the object of effective implementation of the provisions of the Act, a National Biodiversity Authority, State Biodiversity Boards and Biodiversity Management Committees are envisaged.

4. This enactment is sought to be assailed after more than twelve years of its enactment by the petitioner, an advocate, who also claims to be a Law Teacher, Mediator, Registered Patent Agent and Founder Trustee of Ragaveda Trust. Insofar as the constitutional validity of certain provisions of this Act is concerned, we may however note that the prayer is wide enough to seek the unconstitutionality of the Act as a whole!

5. In the petition, a reference has been made to certain provisions which require a person, whether an Indian resident or a foreign national, to comply with certain obligations as stipulated under Sections 6 and 19(2) of the Act, to obtain permission prior to / subsequent to the use of biological material for research while making an application for patent before the Indian Patent Office; Section 19(1) casting an obligation on Indian National to take permission before transferring findings of

research relating to biological material endemic to India and Section 20 obligating another permission before actual transfer of biological material. Apart from this, there are consequences of violation set out in Section 55(1) of the Act, both in terms of fine and imprisonment.

6. The case of the petitioner is that the writ petition relates to the interrelationship between International Law and Indian Municipal Law. However, before we proceed on this aspect, we must note that at the inception of this plea itself, we had put to the petitioner whether there can still be raised any doubt on this issue i.e. the Parliament, State Legislations or Local Law would prevail, if there is a conflict in this behalf. The petitioner did not now doubt the proposition, but, still advanced an elaborate argument as to how despite the country being signatory to the Paris Convention has decided to have an enactment which has some inconsistencies with the Convention.

7. The issue, in our view, is no more *res integra* and that too for quite some time. Suffice to refer to the judgment of the Supreme Court in **Gramophone Company of India Limited vs. Birendra Behadur Pandey**

and Others, AIR 1984 S.C. 667, where it was held as under:

> "5. There can be no question that nations must march with the international community and the Municipal law must respect rules of International law even as nations respect international opinion. The comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of nations or no. Municipal Law must prevail in case of conflict. National Courts cannot say "yes" if Parliament has said no to a principle of international law. National Courts will endorse international law but not if it conflicts with national law. National courts being organs of the National State and not organs of international law must

> perforce apply national law if international law conflicts with it. But the Courts are under an obligation within legitimate limits, to so interpret the Municipal Statute as to avoid confrontation with the comity of Nations or the well established principles of International law. But if conflict is inevitable, the latter must yield."

8. As a result of the aforesaid, it is not necessary for us to delve into the long winding arguments and the pleadings which relate to the factual matrix prelude to the enactment of the said Act.

9. A plea of absence of intelligible differentia while making classification is also raised, particularly in the context of foreigners and Indians, which per se has to be rejected, as it cannot be said that both stand on the same footing except to the extent of the individual rights guaranteed under Articles 14 and 21 of the Constitution of India. Similarly, while dealing with the imposition of penalty and fine, it is stated that there is no uniformity in it. We may note that no factual matrix is before us, as it is not in a particular case that the issue is sought to be raised, but only the constitutional validity of the Act and certain provisions before us are sought to be assailed as hit by Articles 14

and 21 of the Constitution of India other than violation of Indian Treaty obligations.

10. We had at the inception put to the petitioner that when he seeks to lay such a challenge, the scope is very restricted. In fact, in a recent decision of the Division Bench of this Court in **Anti Corruption Movement vs. the Chief Secretary to Government of Tamil Nadu (Writ Petition No.10896 of 2013), decided on 10.03.2015**, an occasion arose to look into the scope of the constitutional validity of the provisions of an Act and it has been opined that the dual test to be applied for determining the constitutional validity is (1) legislative competence and (2) violation of Fundamental Rights guaranteed under Part-III of the Constitution of India. The petitioner does not seek to raise the issue of legislative competence. Thus, the endeavour of the petitioner is only to bring the challenge within the second parameter. No enactment can be struck down by just saying that it is arbitrary and unreasonable, and the endeavour should not be to somehow or the other find a constitutional infirmity to invalidate an Act. In fact, an enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and

the Legislatures, being the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court is not supposed to sit in judgment over their wisdom – vide **State of A.P. vs. McDowell & Company, (1996) 3 S.C.C. 709** and the Constitution Bench of the Supreme Court in **Union of India vs. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1**.

11. The burden is heavily on the person seeking to assail the constitutional validity, as the Court would be justified in giving a liberal interpretation in order to avoid constitutional invalidity. Even if very wide and expansive powers are given to an authority, they can be in conformity with legislative intent of exercise of power within the constitutional limitations – vide **Greater Bombay Co-op. Bank Ltd. v. United Yarn Tex (P) Ltd., (2007) 6 S.C.C. 236.**

12. Another relevant part of the observations which would be apposite to the present case is in the context of the pleas based on the possibilities of misuse which may occur and those aspects in the given facts of the case cannot be a ground to invalidate the constitutional

validity of the provision. The mere chanting of the provisions of Part-III of the Constitution of India would not suffice to declare a legislation constitutionally invalid. In fact, it has been observed in **Jalan Trading Company vs Mill Mazdoor Sabha, AIR 1967 SC 691,** that whether the scheme is best in the circumstances or a more equitable method could have been devised so as to avoid undue hardship would be irrelevant. The scales of justice are not designed to weigh competing social and economic factors and in such matters, legislative wisdom must prevail, and judicial review must abstain.

13. The grievances being made by the petitioner are really in the manner of the possibilities of problems which may arise in the implementation of the Act. They are apprehensions of the petitioner. The Act has been in force for twelve years. It is not as if the factual matrix before us requires the intervention of this Court on the ground of certain consequences which may surface on the applicability of the provisions of the said Act.

14. Learned Additional Solicitor General further points out to the challenge laid to Section 40 of the said Act before the Karnataka High Court in **Environment Support Group, Bangalore and another vs. National Biodiversity Authority, Chennai and Others, AIR 2014 (Karnataka) 20**. The Division Bench in fact transmitted the matter to the National Green Tribunal in view of the provisions of the National Green Tribunal Act, 2010, more specifically Section 14(1), which reads as under:

> "The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I."

15. The said Act is at serial no.7 of Schedule I. It is, thus, his submission that even in the given facts of the case, there are difficulties experienced in implementation of the enactment and those can be decided by the National Green Tribunal.

16. Learned Additional Solicitor General also submitted that the petitioner is an Advocate based in Karnataka and faced with the judgment of the Division Bench of the Karnataka High Court, his endeavour to approach this Court is only to avoid the consequences which would have arisen had he approached the Karnataka High Court. The petitioner of course disputed this position on the pretext that his challenge is much larger and he was originally enrolled with the Bar Council of Tamil Nadu.

17. Be that as it may, what emerges is the difficulty in implementation, something which the National Green Tribunal can sort out.

18. In elaborate submissions made by the petitioner, all that he persists with seems to be qua the implementational difficulties rather than any worth-while challenge to the constitutional validity of the Act within the parameters of the twin test referred to above. There was however no satisfactory answer to our queries in this regard.

19. Article 14 was cited, but without pointing out any issue relating to the absence of constitutional invalidity. Similarly, Article 21 was also cited on the issue of penal provisions, but once again without much appeal. We do believe that despite the petitioner being an Advocate, there is confusion over what is the challenge to the constitutional validity and what is the problem in implementation of the Act.

20. We, thus, find that the petition is completely misconceived and accordingly dismissed. No costs.

Index : yes [S.K.K., CJ] [M.M.S., J.]
Internet: yes 11th March, 2015.
ATR

Copies to;

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THE HON'BLE THE CHIEF JUSTICE
and
M. M. SUNDRESH,J.

ATR

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