

Gopi Aqua Farms

Vs

Union of India

(S. C. Sen, S.P. Kurdukar JJ)

29.07.1997

JUDGMENT

-

SEN,J.

1. These writ petitions under Article 32 must be dismissed in limine. This is nothing but an attempt to get rid of the judgment passed by this Court in the case of S. Jagannath Vs. Union of India and Others (1997) 2 SCC 87 by a side wind. A large number of review petitions have been filed against that judgment and are now pending to be heard. If the prayers made in the writ petitions are granted, the judgment will be robbed of its efficacy and the Aqua farms will be able to carry on their business merrily notwithstanding the direction to the contrary given in that judgment.

2. On behalf of the writ petitioners, Mr. K.K. Venugopal has argued that the writ petitioners were not parties to the proceedings before the Court in the case of Jagannath and the decision is not binding upon them. This argument is not acceptable for several reasons. The case of Jagannath had received widest publicity. Various investigations into facts relating to shrimp culture was made, reports were obtained from various sources like NEERI, Central Board for Prevention and Control of Water Pollution and various other authorities. It is difficult to believe that the petitioners were unaware of all these events. A large number of shrimp farmers and organisations representing them appeared in Court and placed their points of view about the dispute.

3. Secondly, in a case like this, there is no question of invoking the principle of Order 1, Rule 8 of the Code of Civil Procedure. It was public interest litigation. There are Aqua Culture farms all over India along the coast-line. A large number of them appeared and the case was argued at great length for very many days and the decisions was ultimately given. Now, a few persons cannot come up and say that they were not made parties in the case or that they were unaware of that case altogether and, therefore, the judgment does not bind them and the case should be heard all over again. If this practice is allowed, there will be no end to litigation. This practice was deprecated by this Court in the case of Makhanlal Waza & Ors. Vs. State of Jammu & Kashmir & Ors. (1971) 3 SCR 832.

4. Moreover, this case was heard over a span of two years. Special care was taken to notify the individual Aqua farms to the State Governments and the Union Territories. For this purpose, an order was issued to the following effect on 24th August, 1995 :

"We are of the view that it would be in the interest of justice to have full representation before us so far as individual aqua farms in various States/Union Territories are concerned. We, therefore, adjourn the hearing to 17.10.1995. Meanwhile, we direct the coastal States/Union Territory Governments through their

learned counsel who are present in the Court to issue individual notices to all the aqua farms which are located in their respective territories. It may be stated in the notices that the same are being issued under the direction of this Court. It should also be specifically mentioned that if they want to be heard in these matters by this Court, they be present through their counsel/representatives in the Court, on the next date of hearing, which is 17.10.1995. We also direct the Marine Product Export Development Authority (MPEDA), through its counsel, Mr. Harish N. Salve, to do the same exercise at its level also, Apart from that, we further direct all the State Governments/Union Territories to issue public notices in this respect in daily newspapers which have circulation in the coastal areas, informing the aqua farms regarding the hearing of these matters in this Court on 17.10.1995. This may be done on two consecutive days. Notices and publication be completed within 3 weeks from today. Meanwhile, we direct all the State Governments/Union Territories not to give fresh licences/permission for setting up/establishment of any aqua farm in their respective territories till further orders."

5. Pursuant to this order, individual notices were given and also widest possible publicity was given about this case. The persons affected were directed to appear in Court to place their case. Public Notices were also issued in large number of newspapers all over India in English and also in local language informing the aqua farms about the pendency of the litigation and the date of next hearing i.e. on 17.10.1995. In view of these facts it is difficult to believe that the writ petitioners did not receive any notice or were unaware of the pendency of the case of Jagannath before this Court or that the aqua farms were actually involved in that case. Because of all these reasons we are of the view that now that the judgment has been pronounced these writ petitions are not maintainable.

6. Mr. Venugopal sought to argue that the cause of action in his case arose after and because of the judgment delivered in Jagannath's case. His case is that the impugned notification dated 19.2.91 was ultra vires Environment (Protection) Act, 1986 and also violates his fundamental right guaranteed by the Constitution.

7. We are not inclined to examine the merits of these contentions because the impugned notification dated 19.2.91 was the basis of the judgment in Jagannath's case. There is no explanation why the validity of this notification was not challenged at the time when Jagannath's case was heard. A point was also taken that an aqua farm is not an industry.

8. The Solicitor General appearing on behalf of the Union of India opposed the prayer for quashing the declaration of the notification dated 19.2.91 as ultra vires but supported the contention that the aqua farms were not industries. The contention of the Solicitor General was that Jagannath's case proceeded on the basis of wrong assumption of fact.

9. On behalf of the respondents, Mr. M.C. Mehta and Ms. Indira Jaisingh contended that neither the notification was challenged before the Court in Jagannath's case nor was any argument advanced that aqua farms could not be treated as industries. It was not the stand of the union of India and the various States who were represented in Court nor any of the aqua farms that the aqua farms were not industries.

10. In any case this point that the aqua farm is not an industry has been taken in the Review Petitions and will have to be considered there. We are of the view that these writ petitions are misconceived. We need not express any opinion on the merits of the contentions made by Mr.

Venugopal. We hold that, in the facts and circumstances of this case, these writ petitions are not maintainable and are dismissed. There will be no order as to costs.