

State of Jammu & Kashmir

Vs

Swami Scahchidanand S.C.S. Purnanad

Civil Appeal No. 1045 of 1999

(CJI Dr. A.S. Anand, Srinivasan, N. Santosh Hegde JJ)

22.02.1999

ORDER

Dr. A.S. Anand, J.

1. Leave granted.

2. The Division Bench of the High Court in writ petitions filed in public interest by various persons and Organisations challenging the regulations made by the appellant in the conduct of Amar Nath Yatra to the Holy cave inter-alia directed the appellant to keep open the Baltal route, on a permanent basis in a manner similar to Vaishno Devi route. Certain other directions were also issued. The State has put in issue the Ordcer of the Division Bench.

3. On 17th August 1998, the following Order was made by the Bench :

Mr. Dipankar Gupta, learned senior counsel says that the State would comprehensively examine the matter in the light of the judgment of the High court and respond as to what valuable suggestions made by the High Court are acceptable to it and what objections the State has towards other which are not accepted. Eight weeks' time for doing the needful is granted. List thereafter.

4. Subsequently, the supplementary affidavit was filed on behalf of State of Jammu and Kashmir by Shri Sonam Dorjey. The relevant portion of the affidavit reads thus :

2.Without prejudice to the said contention I say that the Petitioners are aggrieved by inter-alia, the following directions issued by the Hon'ble High Court in its impugned order.

(a)it will be desirable and easy to maintain the Baltal route as an open route as permanent and open as it has made the route to Vaishno Devi open and permanent route.

(b) As far as traditional route via Pehalgam is concerned, if anything is required to traverse, the State Government should carry out improvements in that route also. We expect provide the State Government will be able to provide clear hygienic routes not only through the traditional route by Pehalgam, but also through the Baltal route.

3. I say that as regards directions (a) above, it is submitted that the Hon'ble High Court failed to appreciate that the Amarnath Shrine unlike the Mata Vaishno Devi

shrine is only during the Annual Amarnath Yatra (which lasts approx. 40 days in a year). IN the circumstances, the State Government undertakes that it shall endeavour to keep Baltal route open during the 40 days period of Yatra as far as practicable and weather and other physical conditions permitting. This is more so because of the following reasons : (Emphasis supplied)

a) I say that this is more so taking into account the fact that on the 15th of November every year the road beyond Sonamarg is officially declared closed by Project Beacon, which is a unit of the Border Roads Organisation, which in turn is under the Ministry of Defence, Government of India. That in this regard it is relevant to refer to the opinion received from Chief Engineer (P) Beecon which states :

i) that the terrain and weather conditions in the Zojila area. Unprecedented and heavy snowfall accumulation of 2-3 feet overnight resulting in triggering of avalanche due to variation in temperature during the day when the temperature goes high. The avalanches further bring mass earth alongwith them thus creating devastation as well closure of road. The route from Baltal to Amarnath and Amarnath to Pehalgam is all under slide zones which are required to be stabilized and opened fully for Amarnath Yatra in a brief period of 2-3 months i.e. end of June and end of August with heavy maintenance. However, during monsoon every year there are slides and even the small path of area get covered with snowfall.

(ii) the August accumuation of snow is between 6 to 7 ft. in Zojila area and much more in the Baltal towards Amarnath area and in area between Chandanwari-Pehalgam in the minor Himalayas, the temperature goes down below minus 30 degree at night and even upto minus 15 degree during the day. Tragedies which have been taking place every year in Zojila have been reported in 1982, 1986, 1992, 1994, 1996 and Amarnath in 1992 and 1997.

(b) In bus service to Sonamarg is officially withdrawn around the same time and buses ply only up to Gund in the winters, because it is not physically possible for these vehicle to go beyond due to extremely dangerous and heavy avalanches at Ganagir gorge where the snow depth some times exceeds 40 feet.

(c) Baltal is 10 kilometers away from the main Neel Grad road and the track to the Holy Cave is an additional 13 Km. from Baltai.

(d) It may be mentioned that a number of tragedies have occurred on the Sonamarg road during winters due to heavy avalanches, resulting in one instance in about 200 deaths a few years ago.

(e) Opening the Baltal route before July has not been possible because of avalanches. This year, it was possible to keep the road open for such a long period primarily because this has been a low rainfall year with an unprecednnted heat which melted snow early.

(f) The main sliding zone is in the Brarimarg areas at a higher altitude than the holy cave itself. During rains this area becomes prone to shooting stones and landslides and is , therefore, extremely hazardous to pilgrims during the rainy season.

(g) Snowfall is so high that leave alone Baltal or Sonamarg, even the road beyond Gund gets closed around the month of December to March every year and even project Beacon, which comes under the Ministry of Defence, Government of India has not been able to clear this stretch which is a much lower altitude than Baltal. As far as Bararimarg is concerned, it is 5000-6000 unable to keep Sonamarg road open, which has superior technical resources, available technic strength.

4. As regards the direction (b) *it is stated that the State Government shall continue to make improvement on the Pahalgam route to the Holy Amarnath Cave and will continue its effort to provide clear hygienic routes to the Holy Amarnath Cave through Pahalgam during the 40 days Amarnath Yatra.*

(Emphasis ours)

5. I further submit that the State Government is, however, aggrieved by the direction to keep the said two routes open throughout the year. In this regard, I submit that the State Government is spending substantial sums on the Amarnath Yatra every year, including on the infrastructure. This sum in certain years has reached figures as high as Rs. 6 crore, as in 1997-98 and in any case is rarely less than Rs. 2 crore which is a very substantial share of the total tourism budget (1998 - Rs. 21 crore and Rs. 16 crore 1997). Further any development of the infrastructure would require at least one year and the services of a top-class consultant to prepare estimates. Work on the project can only start around early July 1999. Even this project report will be based on merely one working season. In the circumstances, it is submitted that it is not possible even with the technical aids to keep Baltal route open throughout the year, considering the nature of the terrain and weather conditions.

5. After giving this matter our careful consideration, we are of the opinion that the stand taken by the State Government contained in paragraphs 3, 4 and 5 of the above affidavit, for the reasons recorded therein, is fair. The reasons furnished by the State Government are sound relevant and bear scrutiny. Those reasons appeal to us. Accepting those reasons, the impugned order deserves to be modified.

6. We accept the undertaking of the appellant as contained in paragraphs 3 to 5 of the supplementary affidavit reproduced above. The directions given in the judgment of the High Court shall stand modified to the extent and in the manner indicated in paragraphs 3 to 5 of the supplementary affidavit (supra).

7. In the view that we have taken, we refrain from dealing with the other questions in the matter including the question whether the subject debated in the writ petitions filed in public interest was at all capable of directions in the absence of any judicially manageable standards as well as about the territorial jurisdiction of the Delhi High Court to deal with case.

8. All the appeals shall stand disposed of in the above terms, but without any order as to costs.