

VEMA CHINA KOTESWARA RAO

A

v.

DISTRICT COLLECTOR AND ORS.

* FEBRUARY 15, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

B

Government Orders—Administrative decision—To install statue of Ex. MLA—Challenged in Public Interest Litigation as illegal being contrary to a particular Government order of 2000—High Court holding it as legal as it was in accordance consonance with a Government Order of 2003 which had superceded the Order of 2000—On appeal, held: Decision to install the statue was in accordance with the subsequent Government Order—Court should exercise judicial restraint in administrative decisions—Judicial restraint.

C

A writ petition as public interest litigation was filed seeking to declare the action of the respondent in permitting the third respondent to construct and install a statue of his father an Ex. MLA as arbitrary and illegal, being contrary to GOMs No. 393 dated 13.6.2000. High Court dismissed the same on the ground that the decision was legal in view of the GOMs No. 55, Transport, R&B, (R-1) Department, dated 8.4.2003, which superceded GOMs No. 393 dated 13.6.2000. Hence the present appeal.

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Dismissing the appeal, the Court

HELD: 1. The decision was in accordance with Clause 4 of GOMs No. 55, Transport, R&B, (R-1) Department, dated 8.4.2003. Hence the same cannot be interfered. There must be judicial restraint regarding administrative decisions. [Para 10] [743-F]

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Tata Cellular v. Union of India, AIR (1996) SC 11, relied on.

2. It cannot be said that GOMs No. 55, Transport, R&B, (R-1) Department, dated 8.4.2003 does not authorize individuals to erect a statue on Government premises but it contemplates permission only for organizations. The order refers to organizations only in para 5. Para 5 has nothing to do with land belonging to the Government, in which case para 4

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A applies. Hence so far as land belonging to the Government is concerned, the setting up of a statue thereon is not restricted to organizations, and permission for doing so can even be granted to individuals provided it is recommended by the Statue Committee contemplated by para 4. In the present case, the Statue Committee has made the recommendations. [Paras 11 and 12]

[743-F, G; 744-B-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 781 of 2007.

From the Judgment and Order dated 28.2.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in WP No. 282/2005.

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John Mathew for the Appellant.

T.V. George for the Respondents.

The Judgment of the Court was delivered by

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MARKANDEY KATJU, J. 1. Leave granted.

2. This appeal has been filed against the impugned judgment of the Andhra Pradesh High Court dated 28.2.2005 in Writ Petition No. 282 of 2005.

3. Heard learned counsel for the parties and perused the record.

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4. The judgment of the Andhra Pradesh High Court was delivered on a writ petition filed as a 'Public Interest Litigation' to declare the action of the respondent in permitting the third respondent to construct and install the statue of his father, an Ex. MLA, as arbitrary and illegal being contrary to GOMs No.393 dated 13.6.2000.

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5. A counter affidavit had been filed in the writ petition in which it was stated that the respondents have followed the rules contained in GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003 which superceded GOMs No.393 dated 13.6.2000.

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6. The Andhra Pradesh High Court dismissed the writ petition in view of the GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003.

7. We have perused the GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003. Clause No.4 of the same states :

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"4. If statues/monuments are unavoidable on roads, they should

be located only on large traffic islands, public gardens, parks, premises of Government buildings, town halls or places of public importance. In case, any approval of Government is required, recommendation by a Statue Committee headed by the District Collector and comprising Superintendent of Police, Superintendent Engineers (R&B), Chairman/CEO, Local Municipal Body, Superintending Engineers (PR), Superintending Engineer (AP Transco) and the concerned Executive Engineer (R&B) is mandatory. This Committee which may also draft if necessary representatives of other Departments, should examine all aspects before making any recommendation including possibility of proposed statues obstructing the flow of traffic, future expansion of roads and the design of the roads, the water supply and sewerage pipe lines, electrical and telephone wires and cables as well as the local situation. The size of the statue/monument, metal used & the design should also be considered and a site plan shall be prepared and approved by committee before forwarding to the Government."

8. It appears that a meeting of the Statue Committee was held in the Collector's chamber, Ongole on 22.11.2004 and we have perused the Minutes of the said meeting. Thereafter another meeting was held in the Collector's chamber, Ongole on 12.12.2004 and we have perused the proceedings of the said meeting also.

9. In the meeting of the Statue Committee the Members agreed on erection of the statue of late Vema Yellaiah, Ex. MLA and Ex. Chairman, S.C. Corporation within the Mandal Complex site at Chimakurthy.

10. In our opinion the said decision was in accordance with the Clause 4 of GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003. Hence we cannot interfere. It is well settled that there must be judicial restraint regarding administrative decisions vide *Tata Cellular v. Union of India*, AIR (1996) SC 11.

11. Learned counsel for the appellant submitted that GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003 does not authorize individuals to erect a statue on Government premises but it contemplates permission only for organizations. We cannot accept this submission. It may be noted that GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003 refers to organizations only in para 5 of the said GOMs which states :

A “The concerned organization who wants to install/erect the statue/monuments should procure land on payment of compensation to the concerned land owners/concerned department as the case may.”

B 12. A comparison of para 4 and para 5 of GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003 shows the difference between the two. Para 5 deals with land belonging to private persons on which the statue is proposed to be erected. Para 5 has nothing to do with land belonging to the Government, in which case para 4 applies. Hence so far as land belonging to the Government is concerned the setting up of a statue thereon is not restricted to organizations, and permission for doing so can even be granted to individuals provided it is recommended by the Statue Committee contemplated by para 4. There is no dispute that the Statue Committee has made the recommendation in this case.

C 13. As regards the constitutional validity of GOMs No.55, Transport, R&B, (R-1) Department, dated 8.4.2003 the same has not been challenged before us and hence we are leaving this question open.

D 14. For the reasons given above this appeal is dismissed.

K.K.T.

Appeal dismissed.