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Karnataka High Court Committee strongly discourages “commercial” involvement in lake management and rejuvenation

In a significant development, the Committee appointed under the Chairmanship of Justice Mr. N. K. Patil, Judge of the Karnataka High Court and Chairman High Court Legal Services Committee, in response to the Public Interest Litigation by Environment Support Group challenging the privatisation of management and rehabilitation of lakes in Bangalore (WP 817/2008), has strongly recommended that “private sector participation solely based on consequential commercial interest” is not a desirable model” (emphasis in original).

The Committee was constituted by the Principal Division Bench of the High Court to formulate a long term plan to conserve and manage lakes of Bangalore, and involved top officials of 9 agencies connected with lake management. This objective was achieved in the formulation of a comprehensive plan for the “Preservation of Lakes in the City of Bangalore” with inputs from Petitioners and the Respondents under the Chair of Justice Patil. This report was submitted to the High Court Principal Bench and was comprehensively accepted per its order of 3rd March 2011 and implementation is being monitored quarterly by the Court. As the Court observed then, the report “satisfies all the prayers made at the hands of the petitioners in the instant writ petition, except the one pertaining to leaseholders, who have made construction in the periphery of the lake, or are in the process of making such construction” referring to lakes already privatised.

On the contentious policy relating to privatisation of lakes , the High Court in its interim order of 7th July 2011 directed as follows:

“Undoubtedly, private public participation is a part of the developmental process in todays world. However, there are inherent limitations therein. Even though there may not be any objections to private public participation without commercial benefits to the concerned private party; there may be serious consequences, wherein a private commercial interest is at the back of the mind of concerned private entrepreneur. In order to ensure, that a balanced and reasonable policy is formulated on the issue in hand, which would reduce the financial burden on the State government, as also, the governmental organizations participating in the project, we are of the view, that the committee constituted by this Court (in furtherance of the order passed by the motion bench on 26.11.2010) should grant a hearing to the petitioners, as also, the intending private partners, and thereupon, formulate a policy depicting parameters of such private public participation, wherein the limits of commercial involvement shall be defined. These parameters shall include the fee chargeable from the public (who wish to enjoy the benefits of lake rejuvenation. Accordingly, learned counsel for the rival parties may seek a firm date from the Member Secretary, High Court Legal Services Committee, so that the Committee can grant an opportunity of hearing, to all interested parties, before the framework of the policy can be formulated. The Committee is requested to frame separate parameters for private public participation, in cases wherein the private participation is without private commercial interests, as also, where the same is solely based on consequential commercial interest.”

Justice Patil's Committee held 5 meetings thereafter to deliberate the nature of the policy that would be most suitable to the long-term sustenance of lake systems. After providing opportunities of hearing to all parties involved, it submitted its report before the High Court on 12 October 2011. This report (copy enclosed) has comprehensively addressed the issues involved and made 10 recommendations, one of which explicitly states that “**commercial exploitation of any lake cannot be allowed under any circumstance**”. (Emphasis supplied)

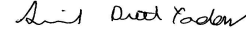
To arrive at this recommendation, the Committee has observed that “the private entrepreneurs to whom the lakes have been handed over for maintenance have not been able to do complete justice to ecology. Ultimately, “Profit Motive” has prevailed over the “Public Interest” and “Public Trust””. It has also observed that “any model involving

“Private Public Participation” wherein “Dominion over the Natural Resource” belonging to the State is handed over to a Private Entrepreneur either for rejuvenation or for management/maintenance, the same is likely to result in an anomalous situation requiring constant supervision by the State and its Authorities to ensure that there is no deviation from the state policy and norms. At times, it becomes extremely difficult for the State and its Authorities to find a workable solution which furthers public interest and prevent the private entrepreneur from making an unjust enrichment at the cost of the general public and natural resources which belong to the State”. On such rationale proposing that **“it becomes just and necessary that the participation of private sector in the rejuvenation and development of lakes and tanks in and around the city of Bangalore has to be highly discouraged if not eliminated”.** (Emphasis supplied)

Submissions of this Committee will be deliberated before the Principal Bench of the Karnataka High Court on 3rd November 2011.



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Encl.: Report dated 10.10.2011 submitted by the Committee appointed by the Hon'ble Karnataka High Court in WP No. 817/2008 (PIL) and connected cases