

**BEFORE THE HON'BLE HIGH COURT OF
KARNATAKA AT BANGALORE**

W.P. No. 817/2008 (PIL) & Connected Cases

Between:

Environment Support Group & Another

...Petitioners

And

State of Karnataka and others

...Respondents

**REPORT DATED 10.10.2011 SUBMITTED BY THE
COMMITTEE APPOINTED BY THE HON'BLE HIGH COURT**

In

W.P. No. 817/2008 (PIL) & connected cases

On the matter of

**Private Participation in the process of rejuvenation of
lakes & tanks in & around the City of Bangalore**

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Bangalore

10.10.2011

Justice N. K. Patil

JUDGE, HIGH COURT OF KARNATAKA
& CHAIRMAN,
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Date: 10-10-2011.....

PREFACE

The Hon'ble High Court while hearing the matter in WP No.817/2008 requested the Committee for lakes to conduct public hearing and formulate a policy for adopting or otherwise of Private Public Participation in the development of lakes.

The Committee met on several occasions and deliberated the matter. Further, public hearing was also conducted and the views of the experts were also elicited. The Committee also examined the feasibility of adopting Private Public Participation in the development of lakes.

The Committee after hearing the interested persons and by considering the other material placed before it as well as having regards to the law laid down by the Hon'ble Supreme Court has prepared a report for kind perusal of the Hon'ble High Court.

I must express my deep appreciation for all the Members and others who assisted the Committee in preparing the report.

Bangalore.

Date: 10-10-2011



(N.K.PATIL)

JUDGE, HIGH COURT OF KARNATAKA
& CHAIRMAN, HIGH COURT LEGAL
SERVICES COMMITTEE, BANGALORE

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Hon'ble Justice CHIEF JUSTICE AND H.G.RAMESH

07/07/2011

Order in WP 817/2008

The Committee appointed by this Court vide its order dated 26.11.2010 has submitted a progress report dated 06.07.2011. The aforesaid progress report is taken on record, subject to all just exceptions.

During the course of hearing today, Sri.Udaya Holla, learned Senior Advocate and the learned counsel representing private respondents projected the issue of private public participation in the process of rejuvenation of lakes and tanks in and around the city of Bangalore. Such private public participation can be of two kinds. Firstly, wherein the private party participates gratis i.e. without the desire of any commercial benefits, and the second, when the said private participation is based on a consequential commercial interest.

Undoubtedly, private public participation is a part of the developmental process in today's 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.

It is apparent from the progress report submitted by the Committee, that there are as many as 182 lakes/tanks, which need to be looked after and preserved, in furtherance of the ongoing process initiated at the consequence of the filing of Writ Petition No.817/2008. The financial burden cannot be borne by the Bangalore Development Authority and the Bruhat Bangalore Mahanagara Palike. We are satisfied, that the financial burden involved should be borne on an annual basis by the Bangalore Development Authority and the Bruhat Bangalore Mahanagara Palike on the one hand, and by the State government, in equal proportion. The State government

shall however not be required to contribute funds in excess of those actually spent in any year by the Bangalore Development Authority and the Bruhat Bangalore Mahanagara Palike put together. For the aforesaid purpose, the State government shall provide a separate budget head. Keeping in mind the amount ear-marked by the Bangalore Development Authority and Bruhat Bangalore Mahanagara Palike for the ongoing works, the funds assigned in the annual budget for tank/lake rejuvenation shall be released on a quarterly basis, and made available for the execution of the ongoing works. We are also informed, that on some of the tank/lake beds, houses have been built by the State government under the Ashraya scheme. The aforesaid houses have been allotted to houseless and siteless individuals belonging to the lowest strata of society, free of costs. There is no dispute about the fact, that the tank/lake beds could not have been utilised for the aforesaid purposes, and that, the said use is wholly unauthorised. However, keeping in mind the fact, that houses have been constructed under the Ashraya scheme, we consider it just and appropriate, to direct the State government to provide alternative houses to such of the houseless/siteless individuals, who have been allotted houses constructed on tank/lake beds in a phase manner. Such accommodation shall be made in furtherance of the recommendation of the Committee constituted by this Court on 26.11.2010. List again on 12.10.2011.

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**In the matter of
“ Private Participation in the process of rejuvenation of
lakes & tanks in & around the City of Bangalore”**

Chairman Hon'ble Sri. Justice N.K. Patil Judge, High Court of Karnataka Chairman, Karnataka High Court Legal Services Committee	
Sri. P.N. Srinivasachari , IAS Secretary Revenue Department	Sri. A.S. Sadasivaiah, IFS (retd) Chairman Karnataka State Pollution Control Board
Sri. P.B. Ramamurthy , IAS Chairman Bangalore Water Supply & Sewerage Board	Sri. I.B. Srivastava , IFS Principal Chief Conservator of Forests, Karnataka State
Sri. Bharat Lal Meena , IAS Commissioner Bangalore Development Authority	Sri. Siddaiah, IAS Commissioner Bruhat Bangalore Mahangarapalike
Sri. P.N. Srinivasachari , IAS Secretary Minor Irrigation Department , Gok	Sri. K.S. Sai Baba , IFS Chief Executive Officer Lake Development Authority
Sri. H.B. Mukunda Director, Town Planning, Gok	

1. When the matter came up for hearing on 07.07.2001, the Hon'ble Court made the following order, the relevant portion of which is extracted below :

"The Committee appointed by this Court vide its order dated 26.11.2010 has submitted a progress report dated 06.07.2011. The aforesaid progress report is taken on record, subject to all just exceptions.

During the course of hearing today, Sri.Udaya Holla, learned Senior Advocate and the learned counsel representing private respondents projected the issue of private public participation in the process of rejuvenation of lakes and tanks in and around the city of Bangalore. Such private public participation can be of two kinds. Firstly, wherein the private party participates gratis i.e. without the desire of any commercial benefits, and the second, when the said private participation is based on a consequential commercial interest.

Undoubtedly, private public participation is a part of the developmental process in today's 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."

2. In order to frame separate parameters for private public participation, (hereinafter referred to as the PPP model for short) in cases where in the private participation is without private commercial interests, as also, where the same is solely based on consequential commercial interest, the Committee under the Chairmanship of Hon'ble Sri. Justice N.K. Patil held meetings on 14.07.2011, 30.07.2011, 24.09.2011, 01.10.2001 and 07.10.2011.
3. The deliberations of the proceedings are summarized below for ready reference :
 - a) The Petitioner No. 2 during his oral submissions, opposed the PPP model for the maintenance of the existing lakes by making reference to Court decisions and certain models followed in other parts of the country and also abroad mainly on the

on the ground that any PPP model with commercial interest infringes the rights of the common man and the same is per se opposed to public interest and "Public Trust " doctrine evolved by the courts of law. The Petitioner No. 2 also filed Written Submissions and Additional Submissions.

- b) The Environmentalist Mr. Yellappa Reddy expressed his views with reference to preservation of feeding zones and nesting zones for water fowls and migratory birds, The natural recreational services from natural breeding habitats ie., both aquatic plants , aquatic animals , migratory animals demanding ecological purity and other ecological niches. He also emphasized on the preservation and maintenance of water bodies .
- c) During the meeting, it was pointed out that the following are the amounts spent by the BDA, BBMP for the purpose of undertaking the work of the rejuvenation and development of various lakes (without any contribution from the private sector) in and around the city of Bangalore :

Sl. No.	Name of the Authority	Amount in Crores
1	Bangalore Development Authority	67.47
2	Bruhat Bangalore Mahangara Palike	53.59

- d) The factual position with regard to the developmental activity undertaken by Lake Development Authority, Bangalore Development Authority and Bruhat Bangalore Mahanagara Palike , in respect of various lakes in and around Bangalore is detailed below :

LAKE DEVELOPMENT AUTHORITY :

- i) The Lake Development Authority has 11 lakes in its custody in the city of Bangalore. Out of these,4 lakes ie., Hebbal lake, Nagawara lake, Vengaihanakere and Agara lake were developed under National Lake Conservation Programme, Indo Norwegian Environmental Programme and other schemes. However, for the purpose of maintenance and further development of these lakes, the Lake Development Authority has signed Agreement/s in the year 2007 with certain private Entrepreneurs covering Hebbal lake, Nagawara lake, Vengaihanakere lake and Agara lake. However, the Agreement in respect of Agara lake is terminated by the LDA and the matter is pending for adjudication before the Hon'ble High Court in W.P. No. 29052/2009.

The Lake Development Authority has given 6 lakes to various institutions under "Adopt Lake Policy" for maintenance to various institutions for a limited period. The said period has now expired and the various institutions ceased to have any role by virtue of the handing over of the lakes for maintenance. These

lakes are under the process of resumption and as per the Government Order dated 19.04.2010, these lakes will be resumed and handed over to BBMP.

ii) **BANGALORE DEVELOPMENT AUTHORITY :**

The Bangalore Development Authority has 45 lakes in its custody out of which 11 lakes are already developed. The remaining 34 lakes are at various stages of development and rejuvenation . It is to be noted that the resources for the same are mobilized without any private sector participation. The Bangalore Development Authority has written a letter dated 24.06.2011 to the State Government seeking funds for the development of the lakes already in the custody of BDA and other lakes (182 lakes in the Bangalore City limits and 179 lakes in the Green Belt Area) to be handed over to BDA for taking developmental work.

iii) **BRUHAT BANGALORE MAHANAGARA PALIKE :**

There are 132 lakes in the custody of BBMP out of which rejuvenation and development of 16 lakes is already completed. It is to be noted that the resources for the same are mobilized without any private sector participation. As regards the remaining 116 lakes , the BBMP has taken up the rejuvenation and development and the same is under progress.

- e) The Respondent Nos 15, 16, and 17 filed their written submissions in support of adopting a PPP model by quoting certain examples and mainly submitted that there is dearth for financial resources for the State and the participation of private sector which brings in lot of financial resources has to be encouraged.
 - f) During the meeting, Dr. Najeeb Ahmed, Regional Director , Central Ground Water Board, Sri. C.J. Jagadisha , Scientist-RRSC, South, NRSC, ISRO and Sri. Inayathulla, Professor , Bangalore University gave to suggestions on the suitability of the PPP model for maintenance of lakes.
 - g) The Members of the Committee also provided valuable inputs in terms of suitability of the PPP model for maintenance of lakes with reference to pros and cons of the same.
4. In the backdrop of the aforesaid proceedings, the point which arise for consideration by the Committee is **-Whether the rejuvenation of lakes and tanks in and around the city of Bangalore can be accomplished without participation of the private sector with or without commercial interest ?**

5. In order to suitably answer the aforesaid question keeping the "Ecology " as the focal point , it is appropriate to refer to a quotation extracted by the Hon'ble Supreme Court in the case of A.P. Pollution Control Board Vs Prof. M.V. Naidu (reported in 1999 (2) SCC 718 –

"The basic insight to ecology is that all living things exist in interrelated systems; nothing exists in isolation. The world system is one weblike; to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for all the rest . Our actions are not individual but social; they reverberate throughout the whole eco system ."

[Science Action Coalition by A. Fritsch, Environmental Ethics: Choices for Concerned Citizens, 3-4 (1980] (1988, Vol. 12, Harv. Env. L. Rev. at p. 313)

6. When we apply the above principle to certain lake development projects undertaken with private participation , the experience has been by and large unsatisfactory in as much as in most of the cases, private sector has over taken the regulatory functions of the State and its Authorities and have not allowed the "Public Interest " to prevail over the "Private Interest ". 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". The grievance of the general public in relation to free access, charge of user fee, maintaining the ecological balance, water bodies etc. have not been satisfactorily redressed thus giving scope

for the general public to complain that their interests have not been adequately taken care of while implementing the projects involving "**Private Public Participation**" Model.

7. When we explore the judicial thinking in India in deciding matters involving application of environmental law, it is relevant to refer to paragraph 33 of the Apex Court Judgement in A.P. Pollution Control Board Vs Prof. M.V. Naidu (reported in 1999 (2) SCC 718 , which reads as hereunder :

" A basic shift in the approach to environment protection occurred initially between 1972 and 1982. Earlier, the concept was based on the "assimilative capacity" rule as revealed from Principle 6 of the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide policy makers with the information and the means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it *presumed* that relevant technical expertise would be available when the environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th Principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the "precautionary principle" , and this was reiterated in the Rio Conference of 1992 in its Principle 15 which reads as follows :

"Principle 15. - In order to protect the environment , the precautionary approach shall be widely applied by States according to their capabilities . Where there are threats of serious or

irreversible damage, lack of *full scientific certainty* shall not be used as a reason for proposing co-effective measures to prevent environmental degradation ."

8. The above principles of law as enunciated by the Hon'ble Supreme Court in the year 1999 has not seen any deviation and holds the field event today perhaps with more force.
9. It is to be noted that 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 stated 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.
10. Therefore, 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. However, a limited participation without there being any " transfer of interest " may be considered by evolving certain safety measures to ensure that private sector will not participate with the sole objective of making profit in disregard

of the environmental aspects which are of paramount importance . The underlying principle being "Development/Investment" can never be at the cost of the Ecology, inter alia, involving preservation of feeding zones and nesting zones for water fowls and migratory birds, The natural recreational services from natural breeding habitats ei., both aquatic plants , aquatic animals , migratory animals demanding ecological purity and other ecological niches. The experience has revealed that these features do not find an appropriate place in the desired proportion in any PPP model.

11. It is to be noted that "Private Sector " claims its justification for unlimited participation on the ground of lack of financial resources with the State and its Authorities. The experience has revealed that "lack of financial resources " even if admitted to be true cannot be a sole reason to allow any unlimited participation of the private sector. The funds can be augmented in several ways ie., Government aid, collection of cess, collection of user fee, collection of advertisement tax etc. Hence, justification for unlimited participation of "Private Sector" on the ground of "lack of financial resources " cannot be accepted since it does more harm to the general public than the expected good.
12. Thus, the position emerging out of the consideration of the above points is "private sector participation solely based on consequential commercial interest" is not a desirable model for the present. However, this conclusion cannot be understood to mean that

private sector has no role in the rejuvenation , development and maintenance of lakes. Their support can be taken provided there is no scope for "Colonization".

13. As regards Agara lake (presently in the custody of Lake Development Authority) the subject matter of W.P. No.29052/2009, ,the same may have to await the decision of the Hon'ble High Court.
14. As regards other lakes not forming the subject matter of any pending litigation, in order to achieve the objective of rejuvenation, development and proper maintenance of lakes and tanks in and around the city of Bangalore (**not involving participation of the private sector with any commercial interest**) the following are the some of the recommendations :
 - i) Continue with the work of rejuvenation and development of various lakes as per the Action Plan dated 21.02.2011 by mobilizing the resources out of internal funds and Government aid as per the formulae evolved by the Division Bench in its order dated 07.07.2011. The private sector participation for rejuvenation and development of lakes with commercial interest shall not be allowed.
 - ii) After the rejuvenation and development, decentralize the work of maintenance of lakes and tanks at the Ward / Division level. However, the financial control has to remain with

the State or its Authority who is entrusted with the task of maintenance of a particular lake ie., LDA, BBMP , BDA etc.

- iii) Constitute a Lake Management Committee consisting of officers of BDA, BBMP, BWSSB, LDA, Pollution Control Board etc. and prominent members of public at the local level. In this regard , participation of non-governmental organization/s with philanthropic objectives be encouraged.
- iv) The Lake Management Committee is encouraged to act as an advisory body to give suggestions for effective functioning of the Lake Management Committee.
- v) The participation of any Private Entrepreneur in the maintenance of any Lake will be limited to sponsoring any programmes and giving donations with philanthropic objectives and without any commercial interest.
- vi) The aforesaid limited participation without any commercial interest is recognized with the sole purpose of giving an opportunity to the private entrepreneur to enable them to discharge their corporate social responsibility .
- vii) The local Lake Management Committee must be encouraged to evolve an arrangement of limited private sector participation without any commercial interest, keeping in mind the local needs and requirements. Care has to be

taken to ensure that while evolving such local arrangement, no deviation is made from the spelt out policy that "Dominion " over the lake always remains with the State and its Authorities and under no circumstances there is transfer of interest and / or proprietary right in the lake .

- viii) The concerned Ward Office must be entrusted with the task of collection of any User Fee for the purpose of maintaining a lake. This task can be outsourced in the manner as it is being done for charge of parking fee by the BBMP.
- ix) The commercial exploitation of any lake cannot be allowed under any circumstances. The fishing rights have to remain with the State and its authority. In a given situation, boating activity (ie., Pedal boats and Battery operated boats only which do not cause pollution) may be permitted. A Code of Conduct regarding maintenance of the lake has to be evolved containing Dos and Don'ts. The Code should provide for stringent punishment in case of any violation.
- x) In order to maintain the lakes absolutely pollution free strict enforcement measures are required to be taken by the competent authority.

Chairman Hon'ble Sri. Justice N.K. Patil Judge, High Court of Karnataka Chairman, Karnataka High Court Legal Services Committee	
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