

Sanser Pal Singh vs Union Of India And Others on 5 August, 2022

Author: Satish Chandra Sharma

Bench: Chief Justice, Subramonium Prasad

\$~19.

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 11592/2022

SANSER PAL SINGH

Through: Petitioner in person.

versus

UNION OF INDIA AND OTHERS

..... Respon

Through: Mr. Chetan Sharma, Additional Solicitor General and Mr. Anil CGSC with Mr. Amit Gupta, Mr. Rishav Dubey, Mr. Sahaj Garg, Mr. Saurabh Tripathi, Advocates Respondent No.1/ UOI. Mr. Sameer Vashisht, Additional Standing Counsel with Ms. Sanja Nangia, Advocate for Respondent No.2/ GNCTD. Mr. Sanjay Lao, Standing Counsel with Ms. Supriya Manan & Mr. Karan Jeet Rai Sharma, Advocates along with Mr. Shankar Banerjee, ACP (Legal Division) and Mr. Vinod Sharma, Inspector (Legal Division) PHQ, Delhi Police, for Respondent No.3/ DP.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% 05.08.2022 C.M. Nos.34356-34357/2022

1. Exemptions allowed, subject to all just exceptions.

2. The applications stand disposed of.

W.P.(C) 11592/2022 and C.M. No.34358/2022

3. The Petitioner before this Court - a practising Advocate, has brought a very sensitive issue before this Court in respect of use of kite flying thread made up of Nylon, Plastic and other Synthetic

material commonly known as Chinese Maanjha. It has been stated by him that a large number of accidents are taking place in and around Delhi due to the use of Chinese Maanjha. A large number of people are getting injured, and not only people, even animals and birds are also becoming victims of Chinese Maanjha.

4. The petitioner has prayed for the following reliefs:

"a) Issue a writ in the nature of Mandamus or any other appropriate writ/direction/ order to the respondents to impose complete ban on flying, making, sale-purchase, storage, transportation of kites and objects used in making and flying of kite;

b) Pass any other or further order as this Hon ble Court may deem fit and just, in the facts and circumstances of the case, in the interest of justice."

5. The petitioner though has gone to the extent of making a prayer for imposition of complete ban on flying of kites, the said prayer for imposing a complete ban on flying of kites cannot be granted as kite flying is a part of our culture and heritage. However, the use of Chinese Maanjha / synthetic thread is certainly causing grave concern.

6. Learned ASG along with Learned Counsel for the Government of National Capital Territory of Delhi (GNCTD) have drawn the attention of this Court towards a notification issued on 10.01.2017 by the GNCTD, and the same is reproduced as under:

" (TO BE PUBLISHED IN THE DELHI GAZETTE
Extra-ordinary Part IV)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI DEPARTMENT OF ENVIRONMENT `C' WING, 6TH FLOOR, DELHI SECRETARIAT, NEW DELHI - 110002 New Delhi, 10-01-2017 NOTIFICATION No. F.12(508)/Env./Ban on Manja/2015/ 64-81. -WHEREAS, article 48-A of the Constitution of India, inter-alia envisages Protection and improvement of environment and safeguarding of forests and wild life. The state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country;

AND WHEREAS, during the kite flying, a lot of injury is caused to the people and birds on account of use of thread made out of plastic, nylon or similar such synthetic material including popularly known "Chinese thread/ manja" or any other thread coated with glass/ metallic components. These injuries many a times turn out to be fatal causing death of people and birds. It is, therefore, desirable to protect the people and birds from the fatal effects of the kite flying thread made out of plastic, nylon or similar such synthetic material including popularly known "Chinese thread/ mania" or any other thread coated with glass/ metallic components;

AND WHEREAS, during kite flying several kites get cut in the sky as a consequence of kite competition or otherwise. All these cut threads along with the kites remain on the land. Because of the very long life of the plastic materials and being non- biodegradable in nature, these threads become a cause of concern from environment point of view;

AND WHEREAS, extensive use of such kite flying thread which are nonbiodegradable, conductors of electricity often result in flash-over on the power lines and sub-stations, which may cause power interruptions to consumers, straining and damaging electrical assets, causing accidents, injuries and loss of life;

AND WHEREAS, it is also a well known fact that the activity of the birds is at peak during 6:00 AM to 8:00 AM in morning and from 5:00 PM to 7:00 PM in evening and it is desirable to protect the birds including the vultures which are getting extinct day by day and classified as rare and endangered species, and there is a need to protect them from such fatal kite flying thread/ manja ;

AND WHEREAS, a draft notification, in exercise of the powers conferred by section 5 of the Environment (Protection) Act, 1986 (29 of 1986), sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 read with Government of India, Ministry of Home Affairs, Notification No. S.O. 667 (E) dated the 10th September, 1992, was published in the Delhi Gazette vide No. F. 12(508)/Env./Ban on Manja/2015/3494-3510 on 16th August 2016 by the Government, inviting objections and suggestions from all concerned in the stipulated time, i.e., 60 days from the date of publication of the said notification; AND WHEREAS, the objections and suggestions received from the public with respect to the said draft notification, have been considered by the Expert Committee appointed by the Government;

Now, therefore, in order to prevent the adverse effects on human beings, cattle population, birds, soil and ecology and in exercise of the powers conferred by section 5 of the Environment (Protection) Act, 1986 (29 of 1986) read with Government of India, Ministry of Home Affairs' Notification No. SO 667 (E), dated 10th September, 1992, the Hon'ble Lieutenant Governor of the National Capital Territory of Delhi, hereby issues the following directions:-

Directions:-

1. There shall be complete ban on the sale, production, storage, supply, import, and use of kite flying thread made out of nylon, plastic or any other synthetic material including popularly known as "Chinese manja" and any other kiteflying thread that is sharp or made sharp such as by being laced with glass, metal or any other sharp materials in the National Capital Territory of Delhi.
2. Kite flying shall be permissible only with a cotton thread, free from any sharp/ metallic/ glass components / adhesives/ thread strengthening materials.

Authorized Officers:-

The following officers are hereby authorized to implement this notification in their respective jurisdiction, namely:-

1. Officers of the rank Tehsildars and above of Revenue Department, Govt. of NCT of Delhi.

2. Officers of the rank Wildlife Inspectors and above of the Forest Department, Govt. of NCT of Delhi.
3. Officers of the rank Sub-Inspectors and above of Delhi Police.
4. Sanitary Inspectors, General Licensing Inspectors and Public Health Inspectors of the MCDs.

Monitoring:-

The Chairman and Member Secretary (DPCC) and the Sub- Divisional Magistrates of the respective area/ jurisdiction are authorized to file complaint under section 19 of the Environment (Protection) Act, 1986, as already empowered vide Notification no. 349 (E) dated 16th April, 1987 as amended up to date.

The Sub-Divisional Magistrates will take action on the basis of the report submitted by Tehsildars and above of Revenue Department, Sub-Inspectors and above of Delhi Police and Sanitary Inspectors, General Licensing Inspectors and Public Health Inspectors of the MCDs.

Member Secretary, DPCC will initiate action on the basis of the report of Wildlife Inspectors and above of the Forest Department.

Sub-Divisional Magistrates and Member Secretary, DPCC shall file monthly report to Chairman, DPCC. This notification shall come into force on the date of its publication in Delhi Gazette.

Note : The violation of directions issued under section 5 of the Environment (Protection) Act, 1986, or the rules made thereunder shall be punishable under section 15 of the said Act which include imprisonment upto five years and / or with fine which may be extended to Rs. One Lac or with both.

By order and in the name of the Lt. Governor of the National Capital Territory of Delhi, Sd/-

(Chandraker Bharti) Secretary (Environment & Forests)"

7. The aforesaid notification imposes complete ban on use of Chinese Maanjha and other similar material and a Monitoring Committee has also been constituted to look into the matter. The Respondents have stated that they are ensuring strict compliance of the aforesaid notification.

8. It is also brought to the notice of this Court that the National Green Tribunal (NGT) has passed an order on 10.08.2020 prohibiting manufacture, sale, storage, purchase and use of thread made of Nylon, synthetic material and/or coated with synthetic substance which is non-biodegradable for

kite flying; and the said order of the NGT has been circulated to all authorities and strict compliance of the same is being ensured.

9. It is also stated that First Information Reports (FIRs) have been registered against persons who are violating the order passed by the NGT and the notification issued by the GNCTD. Some FIRs have been registered under Section 304A IPC where persons have passed away due to use of Chinese Maanjha.

10. It has also been brought to the notice of this Court that in as many as 255 cases, action has been taken against the persons selling, making, storing & transporting the banned Chinese Maanjha from 01.01.2017 to 31.07.2022, and the said drive is still going on.

11. The Respondents have also brought to the notice of this Court an order dated 18.07.2022 issued by the ACP, Sub-Division - Mehrauli in exercise of powers under Section 144 of the Code of Criminal Procedure, 1973 in respect of imposing of ban on use of Chinese Maanjha. Copy of the order passed under Section 144 is reproduced as under:

" ORDER

1. Kite flying has been a passionate spot in Delhi. For kites flying, various types of the threads, known as Manjha in common parlance, are used including ordinary manjha and special manjha.

2. Whereas, of late, a new type of 'Manjha' with metallic powder coating is available in the market. This type of „Manjha is not only very strong but also a good conductor of electricity. Due to a fine metal coating, whenever such „Manjha entangles/ comes in contact with overhead electricity supply cables including high voltage lines, electric current runs through the manjha thread, resulting in danger of electrocution of the kite flyer or unsuspected passer-by and also causing disruption of the power supply system.

3. And whereas, it has been found that the threads with metallic powder coating, being used for kite flying are good conductors of electricity and are dangerous to electrical installation as well as to the persons using them as it may cause flash over the overhead transmission lines and electrocution of the individual. It has also been noticed that the threads coated with metallic powder or any other such chemical material, being used for kite flying, are causing injury, danger to human life as well as other living beings, for example birds, animals etc.

4. Whereas, balloon advertising, gliding, micro light flying etc. are also common and cheap source of advertisement and fun such that unidentified/identified /flying objects can be picked up by the Air Defense Guns which will be placed on various rooftops in area of this sub-division Mehrauli, Delhi on the occasion of Independence Day, Raksha Bandhan and Teej Festival

5. And whereas, it is necessary to take suitable security measures to prevent danger to the electrical installations, annoyance to the public, danger to human life and safety and the disturbance of the public tranquility.

6. Now, therefore, in exercise of the powers conferred upon me by Section 144 of the Code of Criminal Procedure, 1973 (No.2 of 1974) read with Govt. of India, Ministry of Home Affairs Notification No. F-11036/1/2008 (i)-UTL, dated 31.10.2008, I, VINOD NARANG, Assistant Commissioner of Police, Sub-Division Mehrauli, Delhi, do hereby order that no person shall store or sell or use the special 'Manjha' viz. metallic powder coated 'Manjha' in the entire jurisdiction of Sub-Division Mehrauli, Delhi.

This order shall come into force with effect from 18.07.2022 and shall remain in force for a period of 30 days i.e. up to 16.08.2022 (Both days inclusive) unless withdrawn earlier

8. Any person contravening this order shall be punishable under section 188 of the Indian Penal Code.

9. As this notice cannot be served individually on all concerned, the order is hereby passed ex-parte. It shall be published for information of public through Press and broadcast over all India Radio and by affixing copies on the Notices Boards of all Deputy Commissioners of Police, Assistant Commissioners of Police, Tehsil Officers of the Districts, all Police Stations concerned and the offices of the NDMC & MCD.

Sd/-

(VINOD NARANG) Asstt. Commissioner of Police Sub Division Mehrauli, ND."

12. Learned Standing Counsel has stated before this Court that all the ACPs are also issuing similar orders in respect of area under their respective jurisdiction.

13. In the light of the aforesaid, no further orders are required to be passed in the present PIL. However, the State is directed to ensure strict compliance of the order passed by the NGT as well as the earlier order passed by the Government on the subject.

14. The petition stands disposed of in the aforesaid terms.

SATISH CHANDRA SHARMA, CJ SUBRAMONIUM PRASAD, J AUGUST 5, 2022 B.S. Rohella