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GOPI AQUA FARMS AND ORS. ETC.

v.

UNION OF INDIA

JULY 29, 1997

B

[SUHAS C. SEN AND S.P. KURDUKAR, JJ.]

Constitution of India 1950 : Article-32.

C

Article 32—Acqua Farms—Filing Writ petition challenging the notification dated 19.2.91 after the decision of this court involving the notification was pronounced—Writ petitioners contending that they were not parties in the earlier case before this court—Held—The writ petitions not maintainable—Environment (protection) Act 1986.

Code of Civil Procedure 1908 :

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Order 1 Rule 8—Held—In a Public Interest Litigation there is no question of invoking the principle of order 1 Rule-8—Public Interest Litigation.

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The writ petitioners who were not parties to the proceedings in the case of *Jagannath v. Union of India* filed the present writ petitions under Article 32 stating that the decision was not binding on them. Their case was that the cause of action arose after and because of the Judgment in *Jagannath* case. The petitioners also challenged the impugned notification dt. 19.2.91 as *ultra vires* Environment (protection) Act 1986 and also violative of the fundamental right guaranteed by the constitution. It was also urged on behalf of the petitioners that Aqua Farms are not industry.

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Dismissing the writ petitions, this court

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HELD : 1.1. The present writ petitions are not maintainable. This is an attempt to get rid of the judgment passed by this court in the case of *S. Jagannath v. Union of India and others* and if the prayers made in the writ petitions are granted the judgment will be robbed of its efficacy and the Aqua farms will carry on their business merrily notwithstanding the direction to the contrary given in that Judgment. Writ not maintainable.

[125-H; 126-A-B; 127-G]

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Jagannath v. Union of India and Ors., [1997] 2 SCC 87, referred to.

1.2. Investigation into facts relating to shrimp culture was made and reports were obtained from various sources like NEERI, Central Board for prevention and Control of Water pollution and various other authorities. The case of *Jagannath* received widest publicity and a large number of shrimp farmers and organizations representing them appeared in court and placed their points of view about the dispute. Public notices were issued in large number of news papers all over India in English as also in local language and also informing about the next date of hearing as 17.10.95. Special care was taken to notify the individual aqua farms to issue public notices in daily news papers which have circulation in the coastal areas, and the case was heard over a span of two years. A few persons cannot come up and say that they were not parties in that case and that the judgment does not bind them and that the case should be heard all over again. [126-C-D; 127-E-F]

Makhan Lal Waza & Ors. v. State of Jammu & Kashmir & Ors., [1971] 3 SCR 832, relied on.

2. The notification dated 19.2.91 was the basis of the judgment in *Jagannath* case and there is no explanation as to why the validity of the notification was not challenged at the time when *Jagannath* case was heard.

[128-A-B]

3. In a Public Interest Litigation the question of invoking the principle of Order 1 & Rule 8 of the Civil procedure code will not apply. [126-E]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 107 of 1997 Etc.

(Under Article 32 of the Constitution of India.)

T.R. Andhyarujina, Solicitor General, Altaf Ahmed, Additional Solicitor General, K.K. Venugopal, R. Mohan, Ms. Indira Jaisingh, K.R. Nambiar, M.C. Mehta, Ms. Seema Midha, A. Mariarputham, Ms. Aruna Mathur, V.C. Pragasam, R.C. Verma, A.D.N. Rao, Ms. Manju Kainth, M.P. Vinod, Sanjay Parikh, Ms. Anitha Shenoy, Ms. Aparna and Rajgopal for the appearing parties.

The Judgment of the Court was delivered by

SEN, J. These writ petitions under Article 32 must be dismissed in

- A *limine*. This is nothing but an attempt to get rid of the judgment passed by this Court in the case of *S. Jagannath v. Union of India and Others*, [1997] 2 SCC 87 by a side wind. A large number of review petitions have been filed against that judgment and are now pending to be heard. If the prayers made in the writ petitions are granted, the judgment will be robbed of its efficacy and the Aqua farms will be able to carry on their business merrily.
- B notwithstanding the direction to the contrary given in that judgment.

On behalf of the writ petitioners, Mr. K.K. Venugopal has argued that the writ petitioners were not parties to the proceedings before the Court in the case of *Jagannath* and the decision is not binding upon them.

- C This argument is not acceptable for several reasons. The case of *Jagannath* had received widest publicity. Various investigations into facts relating to shrimp culture was made, reports were obtained from various sources like NEERI, Central Board for Prevention and Control of Water Pollution and various other authorities. It is difficult to believe that the petitioners were unaware of all these events. A large number of shrimp farmers and organisations representing them appeared in Court and placed their points of view about the dispute.
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- Secondly, in a case like this, there is no question of invoking the principle of Order 1, Rule 8 of the Code of Civil Procedure. It was a public interest litigation. There are Aqua Culture farms all over India along the coast-line. A large number of them appeared and the case was argued at great length for very many days and the decision was ultimately given. Now, a few persons cannot come up and say that they were not made parties in that case or that they were unaware of that case altogether and, therefore, the judgment does not bind them and the case should be heard all over again. if this practice is allowed, there will be no end to litigation. This practice was deprecated by this Court in the case of *Makhanlal Waza & Ors. v. State of Jammu & Kashmir & Ors.*, [1971] 3 SCR 832.
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- Moreover, this case was heard over a span of two years. Special care was taken to notify the individual Aqua farms to the State Governments and the Union Territories. For this purpose, an order was issued to the following effect on 24th August, 1995 :
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- "We are of the view that it would be in the interest of justice to have full representation before us so far as individual aquafarms in various States/Union Territories are concerned. We, therefore, adjourn the hearing to 17.10.1995. Meanwhile, we direct the
- H

coastal States/Union Territory Governments through their learned A
 counsel who are present in the Court, to issue individual notices
 to all the aquafarms which are located in their respective ter-
 ritories. It may be stated in the notices that the same are being
 issued under the direction of this Court. It should also be specifi-
 cally mentioned that if they want to be heard in these matters by B
 this Court, they be present through their counsel/representatives
 in the Court, on the next date of hearing, which is 17.10.1995. We
 also direct the Marine Products Export Development Authority
 (MPEDA), through its counsel, Mr. Harish N. Salve, to do the
 same exercise at its level also. Apart from that, we further direct C
 all the State Governments/Union Territories to issue public notices
 in this respect in daily newspapers which have circulation in the
 coastal areas, informing the aquafarms regarding the hearing of
 these matters in this Court on 17.10.1995. This may be done on
 two consecutive days.

Notices and publication be completed within 3 weeks from D
 today. Meanwhile, we direct all the State Governments/Union
 Territories not to give fresh licences/permission for setting up/es-
 tablishment of any aquafarm in their respective territories till
 further orders."

Pursuant to this order, individual notices were given and also widest E
 possible publicity was given about this case. The persons affected were
 directed to appear in Court to place their case. Public Notices were also
 issued in large number of newspapers all over India in English and also in
 local language informing the aqua farms about the pendency of the litigation F
 and the date of next hearing i.e. on 17.10.1995. In view of these facts
 it is difficult to believe that the writ petitioners did not receive any notice
 or were unaware of the pendency of the case of *Jagannath* remove before
 this Court or that the aqua farms were actually involved in that case.
 Because of all these reasons we are of the view that now that the judgment G
 has been pronounced, these writ petitions are not maintainable.

Mr. Venugopal sought to argue that the cause of action in his case H
 arose after and because of the judgment delivered in *Jagannath's* case. His
 case is that the impugned notification dated 19.2.91 was *ultra vires* Environ-
 ment (Protection) Act, 1986 and also violates his fundamental right guaran-

A teed by the Constitution.

We are not inclined to examine the merits of these contentions because the impugned notification dated 19.2.91 was the basis of the judgment in *Jagannath's* case. There is no explanation why the validity of this notification was not challenged at the time when *Jagannath's* case was heard. A point was also taken that an aqua farm is not an industry.

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The Solicitor General appearing on behalf of the Union of India opposed the prayer for quashing the declaration of the notification dated 19.2.91 as *ultra vires* but supported the contention that the aqua farms were not industries. The contention of the Solicitor General was that *Jagannath's* case proceeded on the basis of wrong assumption of fact.

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On behalf of the respondents, Mr. M.C. Mehta and Ms. Indira Jaisingh contended that neither the notification was challenged before the Court in *Jagannath's* case nor was any argument advanced that aqua farms could not be treated as industries. It was not the stand of the Union of India and the various States who were represented in court nor any of the aqua farms that the aqua farms were not industries.

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In any case this point that the aqua farm is not an industry has been taken in the Review Petitions and will have to be considered there. We are of the view that these writ petitions are misconceived. We need not express any opinion on the merits of the contentions made by Mr. Venugopal. We hold that, in the facts and circumstances of this case, these writ petitions are not maintainable and are dismissed. There will be no order as to costs.

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N.A.

Petitions dismissed.