

*THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

+Writ Petition No.3165 of 2009

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% : 16-02-2015

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Gadde Babu Rao, Ex. M.L.A.,
Cheepurupally Village and Mandal,
Vizianagaram District.

... Petitioner

And

\$The State of Andhra Pradesh,
Represented by its Principal Secretary,
Irrigation & CAD (Maj. Irri(i) Department),
Hyderabad and others.

....Respondents

!For the petitioner : Sri Taddi Nageswara Rao

For Respondents 1 to 4 : Sri B. Mayur Reddy, Additional A.G.

for G.P. for Irrigation

For Respondent No.5 : Sri B. Narayan Reddy

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> Head Note:

? CITATIONS:

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SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

Writ Petition No.3165 of 2009

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DATED:16.02.2015

Between:

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Cheepurupally Village and Mandal,
Vizianagaram District.

... Petitioner

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
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Writ Petition No.3165 of 2009

Order: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This Public Interest Litigation has been filed questioning the Government Orders, G.O. Ms. No. 155, Irrigation & CAD (PW.MAJ.IRRI.I) Department, dated 24.7.2008 and G.O. Ms.No. 44, Irrigation & CAD (Maj.IRR.I) Department, dated 9.3.2006, as being illegal and arbitrary.

In support of the aforesaid prayer, in the body of the writ petition, ignoring the other unnecessary details, we note that the grievance of the petitioner is that the project was intended for providing irrigation facilities for 1,84,000 acres and the capacity of the tank is 2.50 T.M.C. and F.R.L. is at plus 105 Meters. It is alleged that without changing the project design, the 4th respondent herein, seems to have submitted proposals for sanction of additional distributory system required to irrigate 14,400 acres located in Bobbili Constituency.

We have seen the stand of the Government in the counter

affidavit.

It is stated in paragraph-9 of the counter affidavit that the excavation work of Gajapathinagaram Branch Canal is being taken up to provide irrigation and drinking water facilities to upland areas and drought prone mandals of Cheepurupalli, Garividi, Gurla and Merakamudidam of Cheepurupalli Constituency and Dattirajeru and Gajapathinagaram Mandals of Gajapathinagaram Constituency of Vizianagaram District. The new Ayacut is proposed by utilizing the surplus water partly and balance dependable water of total allocation of 16 TMC to Andhra Pradesh. The capacity of the Barrage has not been changed and the R&R aspect of the scheme was also not affected. As such, the R&R plan approval issued by the Government of India, Ministry of Tribal Affairs, holds good. While planning Irrigation Scheme, first preference will be given to drinking water and next preference will be given to provide irrigation facilities to agricultural lands. The next priority is industrial requirement.

In paragraph-10 of the counter affidavit, it is stated amongst others as follows:

“Before issuing G.O. Ms. No.155, dated 24.7.2008, all the parameters influencing the functioning of Right Main Canal has been examined and after satisfying with the capacity of canal and availability of water, the said orders were issued by the Government.”

No affidavit in reply has been filed controverting the aforesaid averments and statements of the counter affidavit.

We have heard the learned counsel for the petitioner, who reiterated the statements made in the writ petition on factual aspect.

Therefore the area of the dispute which requires

consideration of this is whether the two Government Orders challenged before us require a judicial scrutiny or not ?

It is settled principle of law that in the field of expertise, the Court cannot substitute its own opinion in order to discard any expert's suggestion, on which, the Government has acted upon, in particular in absence of counter expertise. In this context, we have seen the order dated 24.7.2008, which is the ultimate decision of the Government. In paragraph-5 thereof, we have noticed the Government has acted on the basis of the report of the Chief Engineer, North Coast, Visakhapatnam. The relevant portion thereof is set out hereunder.

“Government have examined the matter carefully, keeping in view of the report of Chief Engineer, North Coast, Visakhapatnam. It is decided to accept the proposal of the Chief Engineer, North Coast, Visakhapatnam. Accordingly, administrative approval for an estimate of Rs.70.47 crores (Rupees Seventy Crores and Forty Seven Lakhs Only) is accorded to take up the work relating to excavation of Gajapathipalem Branch Canal taking off from KM 97.7 of Thotapalli Right Main Canal to provide irrigation facilities to additional area of 15,000 acres beyond Gadigedda by allowing canal water to cross Gadigedda by means of an aqua duct.”

Therefore, it is clear from the aforesaid Government Order that it has not passed the order without any material. The report of the Chief Engineer, North Coast, Visakhapatnam has been considered and thereafter decision has been taken. It is not suggested that Chief Engineer has no competence. The Court cannot interfere with a decision taken by the Government rationally, so to say, with the acceptable materials. This project, no doubt, involves lot of civil engineering and it is within the realm of technical expertise. The report of the Chief Engineer has not been brought to our notice nor it has been alleged that the said report is un-acceptable in any sense.

In other words, the report of the Chief Engineer has not been challenged here on the ground of illegality or irrationality. In the absence of these allegations, we are unable to entertain the grievance of the petitioner.

Under the circumstances, the writ petition is devoid of any merit and it is accordingly dismissed.

Consequently, the miscellaneous applications, if any pending, shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,
J

16th February, 2015

Note: Reportable.

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