

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 220 of 2017  
and  
W.M.P. No. 209 of 2017

A. Shanmugasundaram

.. Petitioner

Versus

1. State of Tamil Nadu  
represented by Secretary to Government  
Public Works Department  
Fort St. George  
Chennai - 600 009
2. The Chief Engineer  
Public Works Department  
Water Resources Organisation  
Coimbatore - 641 001
3. The Superintending Engineer  
Public Works Department  
Water Resources Organisation  
Parambikulam Aliyar Basin Circle  
Maickaraickanpatty  
Pollachi - 642 003
- 4, Tamil Nadu Electricity Board  
represented by its Chairman  
Anna Salai  
Chennai - 600 002
5. The Chief Engineer - Hydal  
Tamil Nadu Electricity Board  
Anna Salai  
Chennai - 600 002

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents herein to release the water from Aliyar Dam through feeder channels for irrigation of sugarcane and paddy in and around Anamalai area as per the compendium and rules and regulations of water of Tamil Nadu Agreement of assuring water between Tamilnadu and Kerala as per the provisions of G.O. Ms.No.1150, Public Works Department dated 04.08.1993 and G.O. Ms. No.265, Public Works Department (Q.1) dated 07.06.2016.

For Petitioner : Mr. P.H. Aravindh Pandian, Senior Counsel  
for Mr. Karthikeyan Sekar

For Respondents : Mr. S.T.S. Murthy  
Additional Advocate General  
assisted by Mr. S. Rajeswaran  
Special Government Pleader

ORDER

The petitioner seeks for issuing a Writ of Mandamus directing the respondents herein to release water from Aliyar Dam through feeder channels for irrigation of sugarcane and paddy in and around Anamalai area as per the compendium and rules and regulations of water of Tamil Nadu Agreement of assuring water between Tamilnadu and Kerala as per the provisions of G.O. Ms.No.1150, Public Works Department dated 04.08.1993 and G.O. Ms. No.265, Public Works Department (Q.1) dated 07.06.2016.

2. The petitioner claims to be an agriculturalist engaged in cultivation of paddy crops in and around Anamalai Area. It is the contention of the petitioner that the agriculturists in and around Anamalai area depends on the water released or running in Aliyar river in the plains. It is his contention that Aliyar Dam was constructed mainly for storage of water to regulate and release the water to agriculturists periodically depending upon the demand. Further, the Government of Tamil Nadu has also framed rules for water regulation to safeguard the riparian rights of the old ayacuttars. According to the petitioner, there were agreements entered into between the States of Tamil Nadu and Kerala for sharing of the water from Aliyar dam to ensure continuity of supply of water for irrigation and therefore the farmers like the petitioner heavily depended on the water to be released from Aliyar dam. It is the specific contention of the petitioner that as per GO Ms. No.1150 dated 04.08.1993 water for irrigating 6400 acres of land owned by the petitioner and other co-farmers in the surrounding locality shall be provided by the respondents herein from 15th May of the previous year till 15th April of the succeeding year for 11 months. However, all of a sudden, during the year 2003, supply of water from the dam has been abruptly stopped by the respondents and therefore the Agriculturists Association has filed WP No. 12034 of 2003 for a Mandamus directing the respondents to release water from Aliyar Dam through feeder channel for irrigation of paddy and sugar cane crop in and around Anamalai Area. In the said writ petition, a counter affidavit has been filed and based on the counter affidavit, this Court disposed of the writ petition by observing that whenever water storage is improved, the respondents shall give priority to the petitioner proportionately. However, according to the petitioner, the respondents failed and neglected to release water even though there was sufficient storage was available in the Aliyar Dam during the relevant period.

3. The petitioner would submit that as on date, the water level in Aliyar Dam is 73.65 feet and the volume is 1003.65 mcft approximately. Thus, there is enough water in the Aliyar Dam and therefore, the Government also passed an order in GO Ms. No.265 dated 07.06.2016 directing release of water with a minimum volume of 2291 mcft and for Pollachi Town drinking water purpose, maximum of 1186 mcft was ordered to be released. However, the said Government Order has not been implemented by the respondents till date. As per the above said Government Order, water has to be supplied for irrigation from 02.10.2016 for 34 days with intervals for a maximum of 1112 mcft. considering the evaporation of water and availability of storage of water. The respondents 4 and 5 refused to release the water and such refusal to release water for Old Ayacuttars is unjust and arbitrary. In such circumstances, the petitioner has come up with this writ petition.

4. The learned Senior counsel appearing for the petitioner would contend that the petitioner, as a cultivating farmer, is heavily depended on the water to be released by the respondents to ensure the irrigation to his land where he has raised paddy and sugarcane. According to the learned Senior counsel for the petitioner, due to non-release of water as per the various orders passed by the Government, the crops are withering away. The respondents also failed and neglected to implement the orders passed by the Government in G.O. Ms.No.1150, Public Works Department dated 04.08.1993 and G.O. Ms. No.265, Public Works Department (Q.1) dated 07.06.2016 as per which water ought to have been supplied with effect from 08.06.2016 but it was not done. Therefore, he prayed for issuing appropriate direction to the respondents to effect supply of water to save the agricultural crops.

5. The learned Additional Advocate General appearing for the respondents, by placing reliance on the counter affidavit, would contend that due to deficient inflow of water to Aliyar Dam, the respondents could not give effect to the orders passed by the Government. The available water is not even sufficient to meet the drinking water requirement besides meeting the generation of Hyder electric power. The available water is being shared between the States of Tamil Nadu and Kerala. In the Joint Water Regulation Board meeting held in December 2016 between the officials of the two States, the supply patter of water could not be decided due to meagre quantity of water available. The allegations raised by the petitioner that water was released only to New Ayacuttars is not correct inasmuch as whatever quantity of water available has been proportionately released to old Ayacuttars and new Ayacuttars to save the standing crops. It is admitted in the counter that as per GO Ms. No.1150, Public Works Department dated 04.08.1993, water has to be supplied for 11 months continuously for 6400 acres of lands, however, it depends on the inflow/storage in the Aliyar reservoir. In any event, according to the learned Additional Advocate General, the petitioner cannot, as a matter of right, seek for implementation of the orders of the Government. The

compendium Rules is only a guideline for releasing water in a normal year. As 2016-2017 being a distress year without adequate quantity of water, the petitioner cannot expect supply as hitherto made. The allegation that water is being utilised for generation of Hydro power is denied and priority is being given only for drinking water and irrigation of the standing crops. According to the learned Additional Advocate General, as on 09.01.2017, only 50% of water storage is available and therefore, he prayed for dismissal of the writ petition.

6. I heard the submissions of the learned Senior counsel for the petitioner and the learned Additional Advocate General appearing for the respondents. On perusal of the records, it is seen that there is a variation in the submissions made by the learned Senior counsel for the petitioner and the learned Additional Advocate General appearing for the respondents with regard to the quantum of water available in the dam. There is also dispute with regard to the water which is being utilised for generation of Hydro electricity power. In any event, release of water for irrigation or drinking water needs depends upon the availability of it in the Dam and it is for the respondents to take a decision with regard to the same.

7. At this stage, the learned Senior counsel for the petitioner would submit that even though the petitioner sought for a larger relief in the writ petition, he restricts his relief to the limited extent of issuing a direction to the respondents to release atleast 100 mcft of water for the present taking note of the fact that the standing crops are withering away owing to non-availability of water.

8. Having regard to such submissions made by the learned Senior counsel for the petitioner and taking into consideration of the fact that the respondents shall not deny releasing of water for irrigation purpose, of course, it depends only on the availability of the water, this Court is of the view that a direction can be issued to the second respondent to consider the legitimate request of the petitioner for release of atleast 100 mcft of water to save the standing crops. Accordingly, the second respondent is directed to consider the claim of the petitioner for release of atleast 100 mcft of water to Anamalai Area, where the petitioner is cultivating the lands, to save the standing crops and a decision thereon shall be taken by the second respondent within a period of one month from the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

To

1. The Secretary to Government  
State of Tamil Nadu  
Public Works Department  
Fort St. George  
Chennai - 600 009
2. The Chief Engineer  
Public Works Department  
Water Resources Organisation  
Coimbatore - 641 001
3. The Superintending Engineer  
Public Works Department  
Water Resources Organisation  
Parambikulam Aliyar Basin Circle  
Maickaraickanpatty  
Pollachi - 642 003
- 4, Tamil Nadu Electricity Board  
represented by its Chairman  
Anna Salai  
Chennai - 600 002
5. The Chief Engineer - Hydal  
Tamil Nadu Electricity Board  
Anna Salai  
Chennai - 600 002

+1cc to Government Pleader sr.13849

+2cc to B.Karthikeyan, sr.13747

+1cc to S.K.Rameshuwar, Advocate for TNEB sr.13889

rr(co)  
ss(8/3/2017)

WP No. 220 of 2017

WEB COPY