



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2017

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THE HON'BLE MR.JUSTICE A.SELVAM
and
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

W.P(MD) Nos.22425 of 2015 and 20558 of 2016
and
W.M.P. (MD) Nos.14722, 17125 and 17087 of 2016

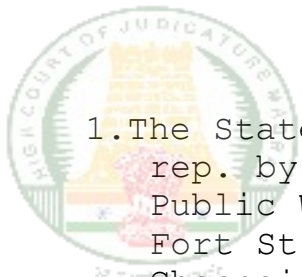
M.Appavu, Ex.M.L.A.
Dr.D.A.Prabakar

...Petitioner in W.P.No.22425/2015
...Petitioner in W.P.No.20558/2016

-vs-

- 1.The Chief Secretary to Government
of Tamil Nadu,
Fort St. Goerge, Chennai 600 009.
- 2.The Secretary to Government of Tamil Nadu,
Public Works Department
Fort St. George, Chennai - 9.
- 3.The District Collector,
Tirunelveli District,
Tirunelveli.
- 4.The Executive Engineer,
Public Works Department,
Thamirabarani Vadinila Kottam,
Tirunelveli.
- 5.The Managing Director,
State Industries Promotion Corporation
of Tamil Nadu,
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore, Chennai 600 008.
- 6.The Chairman/Managing Director,
Pepsi Soft Drink Solution Private Limited,
Prathishta Business Solution Private Limited,
No.6-1-249, Varadharaja Nagar,
Tirupathi - 517 501,
Andhra Pradesh.

...Respondents in W.P.No.22425/2015



1.The State of Tamil Nadu
rep. by its Principal Secretary,
Public Works Department,
Fort St. George,
Chennai 600 009.

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2.The State Water Resources Management
Agency, rep. by its Director/Member
Secretary, SWARMA,
Public Works Department,
Government of Tamil Nadu,
Taramani, Chennai - 600 113.

3.The District Collector,
Tirunelveli District
Tirunelveli 627 009.

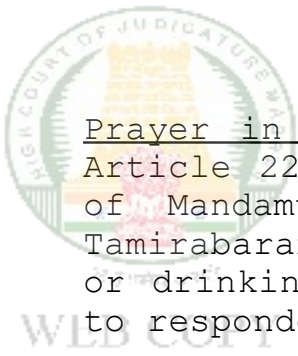
4.The Managing Director,
State Industries Promotion Corporation
of Tamil Nadu,
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore,
Chennai 600 008.

5.The Commissioner,
Maanur Panchayat Union,
Maanur,
Tirunelveli District.

6.The Chairman/Managing Director,
Prathishta Business Solution Private Limited,
Co-packers for PEPSI COLA COMPANY
SIPCOT Industrial Growth Centre,
Gangaikondan Village, Maanur Taluk,
Tirunelveli District.

7.The Managing Director,
South India Bottling Co(P) Ltd.,
Co-packers for PEPSI COLA COMPANY
SIPCOT Industrial Growth Centre,
Gangaikondan Village, Maanur Taluk,
Tirunelveli District. ... Respondents in W.P.No.20558/2015

Prayer in W.P.(MD) No.22425 of 2015 : Writ Petition filed under
Article 226 of the Constitution of India praying to issue a Writ
of Mandamus, forbearing 1 to 4 respondents from supplying
Tamirabarani River water either for the preparation of soft drinks
or drinking water under the name of mineral water to 6th respondent



Prayer in W.P. (MD) No.20558 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing 1 to 5 respondents from supplying Tamirabarani River water either for the preparation of soft drinks or drinking water under the name of mineral water or soft drinks to respondent 6 and 7 by this Court.

For Petitioners	: Mr.T.Lajapathy Roy in WP (MD) No.20558 of 2016 Mr.S.Meenakshisundaram in WP (MD) No.22425 of 2015
For Respondents	: Mr.M.Govindan, Spl.G.P. for R1 to 3 in W.P.No.20558/2016 and for RR1 to 4 in W.P.No.22425/2015 Mr.N.Adithya Vijayalayan for R4 in W.P.No.20558/2016 and for R5 in W.P.No.22425/2015 Mr.Ayiram K.Selvakumar, for R5 in W.P.No.20558/2016 and Mr.P.S.Raman, senior counsel for R6 for Mr.K.Prabhakar for R6 in both petitions Mr.Sathish Parasaran, senior counsel for Mr.V.Balakrishnan for R7 in W.P.No.20558 of 2016

C O M M O N R D E R

(Order of the Court was made by P.KALAIYARASAN, J.)

Two Public Interest Litigation Petitions have been filed under Article 226 of the Constitution of India, seeking direction forbearing the authorities from supplying Tamirabarani river water either for the preparation of soft drinks or drinking water under the name of mineral water or soft drinks to the Prathishta Business Solution Private Limited and South India Bottling Company (P) Ltd., by way of issuing writ of mandamus.

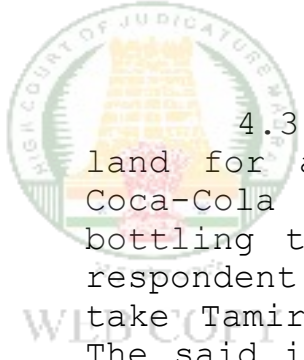
2.W.P.(MD) No.20558 of 2016 has been filed for issuance of writ of mandamus, forbearing from supplying of water to Prathishta Business Solution Private Limited and South India Bottling Company (P) Ltd., whereas, W.P.(MD) No.22425 of 2015 has been filed for issuance of writ of mandamus forbearing the authorities from supplying Tamirabarani water to Prathishta Business Solution Private Limited. Both the writ petitions relate to same issue about supply of Tamirabarani water for preparation of soft drinks and mineral water, common order is passed. Ranking of parties as in W.P.(MD) No.20558 of 2016 will be referred in the order.

<https://hcservices.ecourts.gov.in/hcservices> 3rd petitioner in W.P.(MD) No.22425 of 2015, Mr.Appavu, basically an agriculturist has been serving for the cause of people for the past 20 years and had been elected as Member of

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<https://hcservices.courts.gov/In/hcservices>

4.2.2000 acres of barren land in Gangaikondan village of Tirunelveli District was acquired by Government of Tamil Nadu for the purpose of promotion of industries by SIPCOT in 1996. More than 45 industrial establishments and commercial institutions have commenced their works and it is in a slow pedaling stage. There are 27 industries in the Sipcot complex at Gangaikondan village. They are being supplied 18,40,871 litres (0.040 MGD) per day. In the same manner, there are 73 industries in Sipcot complex at Tuticorin. They utilize 15,89, 769 litres (0.35 MGD) per day. Services, M/s. Besa Sterlite industry alone is utilizing 94,37,133 litres (2.08 MGD) per day.



4.3. On 30.01.2004, the Sipcot has leased out 31.54 acres of land for a period of 99 years for the purpose of establishing Coca-Cola - Beverage and drinking water processing unit and for bottling them to South India Bottling Co. (P) Ltd., the seventh respondent. The said establishment itself is being permitted to take Tamirabarani river water through the agency of TWAD board. The said institution is permitted to take at the rate of Rs.37.50 for every 1000 litre of water. The said industry is taking 3.5 lakhs litres to 9 lakhs litres of water daily. Running licence has been given with a stipulation that in case of drought condition prevailing in and around the factory, the seventh respondent has to take care of the supply of drinking water along with the exchequer and the institution dropped out the instruction into air.

4.4. The Government of Tamil Nadu had leased out 36 acres of land to M/s. Prathishta Business Solutions for a period of 99 years at a nominal rate of Rs.15 lakhs per acre and that too only for the purpose of establishing a drinking water factory. It had also been agreed to sell 15 lakhs litre of water per day at the rate of Rs.37.50 per 1000 litres of water. Selling of Tamirabarani water to the water intensified industries will create a great set back to the agriculturist and the residents, who are already utilizing the water from the river. At present, there is acute shortage of drinking water in Tirunelveli Municipal Corporation, Municipalities, Town Panchayats and Village Panchayats lying within above mentioned four districts. In the common interest of the residents of the said four districts, both the industries should not be permitted to take water from Tamirabarani.

4.5. The Government of Tamil Nadu declared Gangaikondan, where the Sipcot is located as National Sanctuary-Spotted Deer park-Protected Area. If the operation of the above said two industries are being continuously allowed, there will be an endangered situation to the protected spotted deer inside the said notified National Sanctuary. Any agreement among Government agencies involving the use of water for domestic and municipal water supply, irrigation, hydro power production, industrial or other commercial uses, water shed, coastal areas and environmental protection measures shall, in all cases, be subject to review and approval by the Council (WRCRC), as per G.O.Ms.No.1404 dated 30.09.1993. Such an approval from the Council was not obtained for according permission to the above mentioned water based industries through Sipcot for the supply of water from Tamirabarani.

4.6. Public Trust Doctrine demands water should be used for common people in preference to the multinational corporate services and to sell the national resources at a price. Proper management of our limited water resources will be essential enabling to avoid the growing conflicts and the possibility of

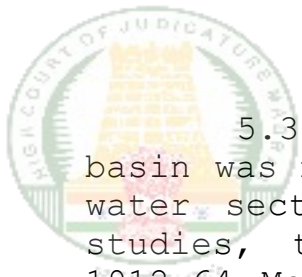


social unrest in the country in future due to water scarcity. Therefore, the authority are to be directed to forbear from supply of water to the above said two water based industries.

5.The respondents 2 to 4, the Government authorities filed their counter separately in W.P.(MD) No.20558 of 2016 and the gist of their counter are as follows:

5.1.The Government of Tamil Nadu through SIPCOT with the sole object of establishing and promoting industries for the purpose of generation of employment opportunity and also to improve the economy of the State, ordered for setting up factories including manufacturing of drinking beverages or drinking water. The river Tamirabarani is fed by rain fall during both the south west and north east monsoons. There are seven upper Anaicuts, which were constructed during pre-British period and the 8th one Srivaikuntam Anaicut was constructed during the British period. The drinking water supply from river Tamirabarani is being made by the concerned Municipal/Panchayat authorities and also by TWAD board according to need and necessity. The Sipcot has established an Industrial Growth Centre at Gangaikondan village in Tirunelveli District over an extent of 1991.58 acres based on G.O.Ms.No.311 Industries dated 04.08.1993. Sipcot has allotted 940.45 acres of land to 62 number of units; out of which 27 number of companies are functioning and others are at different stages of implementation. In G.O.Ms.No.279 dated 14.05.1998, Government of Tamil Nadu permitted Sipcot to draw 3MGD of water from Tamirabarani surface water. Sipcot has also established an Industrial complex in Tuticorin during the year 1984 over an extent of 1083.59 acres and allotted 846.10 acres of land to 93 number of units; out of which, 79 number of units are functioning and others are at different stages of implementation. M/s.Sesa Sterlite Industry is utilizing an average quantity of 2.05 MGD against the committed quantity of 3.00 MGD of water per day.

5.2.On 21.10.2004, the Sipcot has allotted an extent of 30.89 acres of land on 99 years lease basis to M/s.South India Bottling Company (P) Ltd (R7) for manufacture of soft drinks, aerated water with a committed quantity of 18 lakh litres per day. Sipcot has allotted an extent of 36 acres of land to M/s.Prathishta Business Solution Private Limited (R6) on 99 years lease basis at prevailing rate of Rs.15 lakhs per acres for manufacture of soft drinks, fruit juices and water plant for Pepsico with committed quantity of 15 lakhs litres per day. Sipcot is supplying water to the above water intensive units at the commercial rate i.e. 1-1/2 times of the prevailing rate at the rate of Rs.37.50 per thousand litres. Sipcot is supplying water to the allottees from SIPCOT water supply scheme based on the rates approved by the Government of Tamil Nadu and companies are not drawing water directly from Tamirabarani river.



5.3. The Micro level reappraisal study of Tamirabarani river basin was made during 2014-2015 with available statistical data in water sector and it was published in March 2015. As per the studies, total water potential of Tamirabarani river basin is 1912.64 Mcum or 67.545 Mcft. Total water demand in Tamirabarani basin for different planning stages (domestic, Irrigation (including losses), live stock, industries and Ecological) is given below in Mcum:

2014	-	1606.81
2020	-	1637.57
2023	-	1686.61
2040	-	1742.70

Tamirabarani river basin is surplus by 305.83 Mcum (16.0%) in the year 2014. The studies shows that there is no scarcity of water in the subsequent years and no other massive development which alters the water balance. It has also been recommended to conserve the surface water in the upper reaches by forming new tanks/ponds according to the topography of the area to avoid surplus out flow into sea as well as by transferring the surplus water of Tamirabarani river basin to adjoining basins.

5.4. As of now, there is no scarcity of water and rainfall is still expected. If any distress arises, drinking water and agriculture will be given top priority. Only this year average rainfall is low compared to the normal rainfall. It happens once in 20 years or 30 years. This cannot be taken for arriving a policy decision by Government. Even this year top preference was given to the agriculture by releasing water and one crop harvested by farmers in Kar season. Harvest of crop made in Advance Kar season also. Only water not used for agriculture and drinking water purposes is given for the industrial estate in Gangaikondan. As water is replenishable every year by monsoon it is not frittered away by this generation and exhausted. If not used, it will go into the sea as a waste. The irrigation activities and combined water supply scheme will not suffer due to supply of water to Sipcot industries by WRO/PWD. Water balanced details of Tamirabarani system

Total yield (short rainfall, free catchment area, tributary) is 39483.60 Mcft.

Usage (agricultural, combined water supply and industrial usage water) 34464.51 Mcft.

Balance (surplus) is 5049.09 Mcft.

The quantity of water utilised by the two water based industries is 43 Mcft, which is only 0.80% of surplus water (5049.09 Mcft), as waste. These two industries used only around 20% of water allotted to Sipcot and less than 1% of water let into sea every normal season.



5.5.The Government of Tamil Nadu declared Gangaikondan as National Sanctuary - Spotted Deer Park as per G.O.Ms.No.150 Department of Environment and Forests dated 01.10.2013 and also declared the boundaries for the deer park and there is no 4 kms radius restriction.

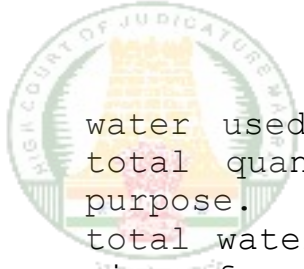
5.6.With a view to ensure that the fruits of industrialization reach the southern Districts and thereby improve the socio-economic status of the people living in southern District, the Government of Tamil Nadu have extended various relief and concessions to the industrial units coming up in southern Districts.

5.7.The petitioner in W.P.(MD) No.20558 of 2015 is having ulterior motive against the two water based companies and he by his parochial attitude try to frighten all the industries in Sipcot complex and in the Tamirabarani region with ulterior motive. When he was the Chairman of Red Cross Society, Tirunelveli, various complaints were received as to the malpractices done by him and as per the enquiry report of Sub Collector, Cheranmahadevi with concrete proof, the District Collector ordered to resign the petitioner in W.P.(MD) No.20558 of 2016 from the Chairmanship of Red Cross Society, Tirunelveli and accordingly, he resigned his post.

6.The sixth respondent Prathista Business Solution Private Limited in W.P.(MD) No.20558 of 2016 in its counter contends as follows:

6.1.The respondent industry manufactures packaged drinking water for Pepsico India Holdings Pvt. Ltd., by employing around 150 employees including contract workmen. This unit has been drawing only approximately 0.33 MLD of water every day for manufacture of packaged drinking water. Considering the future requirement based on proposed expansion of the Unit, 1.5 MLD was allotted. There are other water intensive units at the industrial growth centre in Gangaikondan village, which draw more quantity of water than what is drawn by this respondent. Based on the recommendations of the water utilisation committee, the State Government had vide G.O.Ms.No.279 dated 14.05.1998 permitted drawal of 3 million gallons per day of water (MGD), which converts to 13.62 MLD of surface water from Tamirabarani river by the Sipcot for use by the units at the industrial growth centre in Gangaikondan village.

6.2.The Sipcot has allotted approximately 5.20 MLD of water to the industries located at the Gangaikondan industrial growth centre. On such allotment, approximately 2.02 MLD of water is being supplied to the industries in the Gangaikondan industrial growth centre. The approximate average quantum of 0.33 MLD of



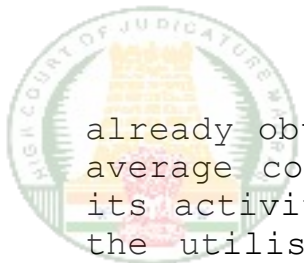
water used by this respondent is only a very small fraction of total quantum drawn from the Tamirabarani river for industrial purpose. This respondent's consumption is less than 1% of the total water permitted to be drawn by the Sipcot from Tamirabarani river for industries at its industrial estates at Gangaikondan and Tuticorin. This respondent's entitlement to draw water is based on the agreement with the Sipcot and hence, is contractual.

6.3. The petitioners have no locus-standi to file the writ petitions as the arrangement between this respondent and the Sipcot with regard to the supply of water is purely contractual. The petitioners have sought to target this respondent and South India Bottling Company Private Limited with ulterior motive and to seek publicity, when it is a well known fact there are several other industries which are being supplied water by Sipcot much in excess of the quantity being supplied to this respondent. The industries have to coexist to maintain a balance. This respondent's unit is located at a safe distance from the sanctuary. The existing industrial growth centre at Gangaikondan was established way back in the year 1997. Whereas, the Government of Tamil Nadu declared part of Gangaikondan as National Sanctuary in 2013. Industries have been set up and operated at the industrial growth centre without any hindrance or cause of concern to the spotted deer park. This respondent's factory does not fall within the buffer zone of the sanctuary and there is also a 6 lane highway between the sanctuary and the industrial growth centre. This respondent does not manufacture cool drinks at its manufacturing unit at Gangaikondan village. It manufactures only packaged drinking water.

7. The 7th respondent South Indian Bottling Company Private Limited, in its counter contends as follows:

7.1. The petitioner in W.P.(MD) No.20558 of 2016 by himself admitted that he appeared in few cases on behalf of this respondent company. The petitioner as an Advocate was dealing with the cases of this respondent company for nearly three years. Due to unethical practice of petitioner, his legal service was dispensed with, following which the petitioner has filed various petitions against this respondent company before various Fora and several cases before this Court and National Green Tribunal. The present writ petitions does not involve any issue of Public Interest and is only an attempt by the petitioner to settle his personal grievance with the present respondent.

7.2. After clearance from water utilization committee, the Government passed the Government order permitted the Sipcot to draw water from Tamirabarani river surface for its industrial growth centre in Gangaikondan. The State water policy 2016 framed by Government of Tamil Nadu does not mandate seeking of fresh permission for existing industries/industrial estates, which have



already obtained permission from the appropriate authorities. The average consumption of 0.263 MLD of water by this respondent for its activities is far lesser than the allocated quantity and also the utilisation of few other factories in Sipcot. There is no specific bar for setting up water based industries in Sipcot. This respondents employs directly 350 people in its premises. 95% of those employees are from the local area. Apart from that, additional 600 workmen are indirectly employed through transportation, sales and distribution centres. Thus, livelihood of more than 900 families depends completely on the functioning of the company. The petitioner having failed in several attempts to stall the business activities of this respondent has come forward with this writ petition under the guise of public interest litigation with misrepresented facts, with a view to harass the present respondent to settle the personal grievances.

8.The petitioner in W.P.(MD) No.20558 of 2016 filed rejoinder to the counter filed by the third respondent (District Collector), fourth respondent (Sipcot) and seventh respondent (South India Bottling Co. (P) Ltd.), In those rejoinders, the petitioner denied the contentions of the above said respondents and also the allegations made against the petitioner in W.P.(MD) No.20558 of 2016. Sipcot failed to get permission from water utilisation committee before allotting Tamirabarani river water to Sipcot. Sipcot in the State of Tamil Nadu developed 20 industrial complex so far. No other industrial complexes owned by the Sipcot except Gangaikondan, housed any water based industries, throughout the State. The sixth and seventh respondents violated the predefined norms of allocation of land and water distribution policy and entered into a prohibited contractual agreement with the Sipcot for utilizing the natural resources-river water as raw material. The other industries housed in both Gangaikondan and Tuticorin are termed as non-water based industries, who are generating multiple thousands of employment opportunities both at Gangaikondan and Tuticorin. The seventh respondent is running a fully automated and cent percent bottling unit.

9.The sixth respondent in its reply to rejoinder contends that the Government had given permission to Sipcot to draw 3MGD water from Tamirabarani only after getting approval from the water utilisation committee. Sipcot has a special economic zone in Gangaikondan. The sixth respondent industry is not located in the special economic zone. But, it is in the industrial growth centre established by Sipcot.

10.The learned counsel for the petitioners contended that the sixth and seventh respondents are water based industries and the supply of water to these industries will create a great set back to the agriculturists and residents, who are utilising the water from Tamirabarani river; that it is against the public trust doctrine that permission to draw water was accorded without the



approval by a Council WRCRC and that there will be endanger situation to the National Sanctuary - spotted deer park - protected area by allowing these two industries.

11. The learned Special Government Pleader and the counsel appearing for the authorities inter alia contend that supply of water to the industries does not in any way affect either the agricultural or domestic use; that only with the approval of water utilisation committee, permission was granted to Sipcot by the Government for drawal of water; that only a small quantity from surplus water is given to Sipcot including two industries mentioned in these two writ petition and therefore, these writ petitions are to be dismissed.

12. The learned senior counsel for the sixth respondent argued that only very minimum quantity of water is drawn by the sixth respondent and the Government has permitted Sipcot to draw surface water from Tamirabarani after getting approval from water utilisation committee and there is no inconsistency with the constitutional laws or arbitrariness to interfere with by this Court. It is further contended that the writ petitions are aimed only two industries when there are other units in the same zone drawing more quantity than the two units viz., R6 and R7.

13. The learned senior counsel for the seventh respondent mainly argued that the petitioner in W.P.(MD) No.20558 of 2016 has filed the writ petition against the seventh respondent to settle his personal grievances as his legal service was dispensed with by the seventh respondent due to his unethical practice. It is also contended that only minimum quantity of surplus water is drawn by the seventh respondent.

14. The river Tamirabarani is a perennial river. It has its origin in the Western Ghats. It flows through the Tirunelveli District and thereafter it passes through various towns in Tuticorin District and the excess water flows into Bay of Bengal. The said river is the sole resource of water for drinking purpose and irrigation purpose. Through the integrated drinking water projects, Tirunelveli, Tuticorin, Ramnad and Virudhunagar Districts are supplied with drinking water. It has 8 Anaicuts. Out of these 8, 7 were constructed during 1365-1731 A.D and the 8th one was added during the Colonial period. The Anaicuts divert water from the river via 11 canals of 283 km in length.

15. For the purpose of promotion of industries by Sipcot, the Government of Tamil Nadu acquired about 2000 acres of land in Gangaikondan village of Tirunelveli District in 1996. Sipcot has allotted 940.45 acres of land to 62 number of units; out of which 27 units are functioning and others are at different stages of implementation. Sixth and Seventh respondents viz., Prathishta Business Solution Private Limited and South India



Bottling Company (P) Ltd. are two out of 27 functioning companies in Gangaikondan Sipcot area. The primary apprehension of the petitioner is that the sixth and seventh respondents, being water intensive units, if allowed to draw water from Tamirabarani river, the rights of the public, particularly, the agriculturists will be affected.

16.The learned counsel for the petitioner cited the decision of the Hon'ble Supreme Court in Dr.Mahesh Madhav Gosavi V. Shivajirao Nilangekar Patil and others reported in (1987) 1 SCC 228 and contended that it is the duty of the Court to enquire into the allegations, if the allegations are brought to the notice of the Court disclose a lamentable state of affairs. The Hon'ble Supreme Court has held as follows:

"36.The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice."

17.The learned counsel for the petitioner has also brought to the notice of this Court the judgment of the Hon'ble Supreme Court in M.C.Mehra V. Kamalnath and others reported in (1997) 1 SCC 388 as to the doctrine of public trust. In the above judgment, the Hon'ble Supreme Court has held as follows:

"24.The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine.

25.The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly ownership. The said resources being a gift of nature, they should be made freely available to everyone



irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

"Three types of restrictions on governmental authority are often thought to be imposed by the public trust; first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

Therefore, as per the judgments of the Hon'ble Supreme Court, this Court has to look into as to whether the allegations made in the petitions disclose a lamentable state of affairs and whether the river water has been drawn affecting the rights of the common people by deviating public trust doctrine.

18. The learned senior counsel for the sixth respondent has also cited the decision of the Hon'ble Supreme Court in *Kuchchh Jal Sankat Nivaran Samiti and others V. State of Gujarat* and another reported in (2013) 12 Supreme Court Cases 226 and contended that judicial review as to contractual powers of Government bodies would apply in order to prevent arbitrariness or favoritism. He further argued that policy decision of the Government cannot be interfered with unless it is inconsistent with the constitutional laws or is arbitrary or irrational. In the above judgment, the Hon'ble Supreme Court has held as follows:

"12. We have given out most anxious consideration to the rival submissions and we find substance in the submission of Mr. Divan. We are conscious of the fact that there is wide separation of powers between the different limbs of the State and, therefore, it is expected of this Court to exercise judicial restraint and not encroach upon the executive or legislative domain. What the appellants in substance are asking this Court to do is to conduct a comparative study and hold that the policy of distribution of water is bad. We are afraid, we do not have the expertise of wisdom to analyse the same. It entails intricate economic choices and though this Court tends to believe that it is expert of experts but this principle has inherent limitation. True it is that the Court is entitled to analyse the validity of the different means of distribution but it cannot and will not term a particular policy as fairer than the other. We are of the opinion that the



matters affecting the policy and requiring technical expertise be better left to the decision of those who are entrusted and qualified to address the same. This Court shall step in only when it finds that the policy is inconsistent laws or is arbitrary or irrational.

13. Candidly speaking, we do not have the expertise to law down the policy for distribution of water within the State. It involves collection of various data which is variable and many a times policy formulated will have political overtones. It may require a political decision with which the Court has no concern so long it is within the constitutional limits. Even if we assume that this Court has the expertise, it will not encroach upon the field earmarked for the executive. If the policy of the Government, in the opinion of the sovereign, is unreasonable, the remedy is to disapprove the same during election. In respect of policy, the Court has very limited jurisdiction. A dispute, in our opinion, shall not be appropriate for adjudication by this Court when it involves multiple variable and interlocking factors, decision on each of which has bearing on others."

Bearing this judgment also in mind, let this Court analyse the divergent contentions of both the parties.

19. According to the Government, the irrigation activities and combined water supply schemes will not suffer due to the supply of water to the Sipcot industries. Water balanced details of Tamirabarani system is given by the Government as follows:

1. Tirunelveli district Average rainfall (30 years)	- 841 mm
2. Yield available considering free catchment area	- 17482.80 Mcft
3. Yield contribution from Tributary	- 22000.80 Mcft
4. Total yield	- 39483.60 Mcft
5. Actual cultivated requirement for single crop and double crop with Thamiraparani system	- 25506.68 Mcft
6. Combined water supply and industrial usage water withdrawal quantity (283/11/57) x 365	- 8957.83 Mcft
7. Balance (Surplus)	- 5049.09 Mcft.

20. According to the Government, quantity of water utilised by the sixth and seventh respondents is 43 Mcft only, which is only 0.80% of surplus water, which goes to the sea as waste.

20.1. According to the Government, the Micro level reappraisal study of Tamirabarani river basin was made during 2014-2015 with available statistical data in water sector and it was completed in March 2015. As per the studies, total water potential of Tamirabarani is given as follows:



Surface water potential : 883.20 Mcum or 31.190Mcft
Ground water potential : 1029.44 Mcum or 36.355Mcft
Total water potential of the basin : 1912.64 Mcum or 67.545 Mcft

20.2.The total water demand in Tamirabarani river basin for different planning stages is given thus:

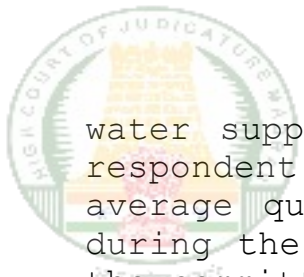
Sl. No	Type of Demand	Total Demand in Mcum				
		2014	2020	2023	2030	2040
1.	Domestic	134.9	149.94	158.1	178.98	213.84
2.	Irrigation (including losses)	1402.56	1402.56	1402.56	1402.56	1402.56
3.	Live stock	39.6	39.18	39.2	39.67	41.37
4.	Industries	25.33	37.05	42.92	56.57	76.09
5	Ecological	4,42	8,83	8.83	8.83	8.83
	Total	1606.81	1637.57	1651.62	1686.61	1742.70

20.3.Water balance in the year 2014 has been calculated as follows:

Water Potential for the year		1912.64 Mcum or 67,545 Mcft
Water demand for the year		1606.81 Mcum or 56,744 Mcft
Surplus		305.83 Mcum or 10,800 Mcft
%Surplus with respect to potential		16.0%

Therefore, according to the Government, there will also be surplus water flowing waste into the sea.

21.The Government of Tamil Nadu, by G.O.Ms.No.279 dated 14.05.1998, with the approval of water utilisation committee permitted to draw 3 MGD of water from Tamirabarani surface at the side of Maruthur Anaicut for water supply scheme to new growth centre of Tamil Nadu Corporation of Industrial Infrastructure Development Limited (TACID) at Gangaikondan village in Tirunelveli District. Though 3 MGD has been permitted to be drawn, the Sipcot is drawing an average quantity of only 0.50 MGD per day. Sipcot executed water supply agreement to supply 15 Lakhs litres of water per day and 6 to 9 lakhs litres of water per day to sixth and seventh respondents respectively. There is a proposal of enhance



water supply to 18 lakhs litres of water per day to the seventh respondent. But, the sixth and seventh respondents are drawing an average quantity of 3.41 and 2.63 lakhs litres of water per day during the year 2016 - 2017, which works out 22.73% and 29.22% of the committed quantity.

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22.It is pertinent to note that as per the government order, Sipcot is permitted to draw water only from the surface and not directly from Tamirabarani river. As per the study report and stand of the government, only surplus water is permitted to be drawn by Sipcot and out of which, as per contractual agreement, the sixth and seventh respondents have been drawing only less quantity of water than the committed quantity. There is no scientific proof or material on the side of the petitioners to show that drawal of water by sixth and seventh respondents will adversely affect the agriculture or domestic users.

23.Sipcot was established in Gangaikondan with the sole object of establishing and promoting industries for the purpose of generation of employment opportunity and also to improve the economy of the State. The industries have to coexist to maintain a balance. Sustainable development is order of the day. Seventh respondent has filed Provident Fund particulars for 350 workers working in the unit. According to the seventh respondent, about 600 workers are indirectly employed. Similarly about 150 persons are employed by sixth respondent.

24.Considering the surplus water flowing into the sea as per the study report, minimum drawal of water by the sixth and seventh respondents pursuant to the contractual agreement and the generation of employment in the area, this Court is of the view that the allegations made by the petitioners do not show any lamentable state of affairs. Further, there is absolutely no hindrance in utilising the river water by the common people and there is no deviation of doctrine of public trust. As rightly pointed out by the learned senior counsel for the sixth respondent, the Government permitted the Sipcot after getting approval from the water utilisation committee and the Sipcot in turn entered into a contract for supply of water.

25.The petitioner mainly contends that for drawal of water from Tamirabarani water, approval of Water Resources Control and Review Council (WRCRC), was not obtained as per the State Water Policy 2016. The drawal of water has been permitted to Sipcot from the Tamirabarani surface as per G.O.Ms.No.279 dated 14.05.1998. The said G.O. reads thus:

"The Government in the G.O. First read above have Constituted a Committee known as Water Resources Control and Review Council (WRCRC). In the above Government order, the Government also directed that all the water supply schemes costing over Rs.10 lakhs and all medium



irrigation schemes costing Rs.25 lakhs and above should be placed before the committee which will consider the schemes and under their recommendation to Government regarding the utilization of the Water resources for irrigation, drinking water and Industrial purposes. The Government in the G.O. Second read above have reconstituted the above Committee and directed, that all Water supply schemes for consideration and clearance.

2.The water utilization Commitgteee in its meeting held on 17.3.98 considered of water supply schemes submitted by TWAD Board and TACID the water utilization Committee had cleared the 6 schemes and recommended to the Government for clearance and approval.

3.The Government after examination approve the water supply schemes mentioned in the Annexure and cleaned by the water utilization committee in itsw meeting held on 17.3.98.

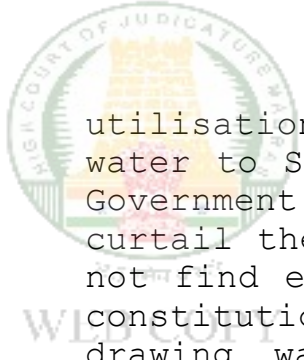
4.The Engineer-in-Chief and the Regional Chief Engineer, Chennai, Pollachi, Tiruchirapalli and Madurai are requested to permit the TWAD Board and TACID to draw water at the specified places and the specified quantity with the conditions laid down in the Annexure to this government Order. The Water charges will be as per the order in force.

Annexure

Bind of water supply schemes approved by the Government, the recommendation of the Water Utilization Committee was held on 17.3.98

Name of Schemes	Remarks
1 to 5 ****	
6.Drawal of 3 MGD of water from Tamiraparani surface water at upstream of Marudur Anicut for water supply scheme to new growth centre of Tamil Nadu Corporation of Industrial Infrastructure Development Ltd. (TACID)at Gangaikondan in Tirunelveli District.	The proposal was approved. However, the committee observed wherever water is available to be provided.

Thus Water utilisation Committee constituted by the Government considered and approved for drawal of 3 MGD of water from Tamirabarani surface at the side of Marudur Anicut for water supply scheme to new growth centre of Tamil Nadu Corporation of Industrial Infrastructure Development Ltd., (TACID) at Gangaikondan in Tirunelveli District. The condition has also been stipulated that water will be provided, whenever water is available. Thus, it is made clear that with the approval of water



utilisation committee constituted by the Government, drawal of water to Sipcot has been permitted. As per the condition, if the Government feels that there is scarcity of water, Government can curtail the Sipcot from drawing water. Therefore, this Court does not find either arbitrariness or deviation from the provisions of constitutional laws in allowing the sixth and seventh respondents drawing water from the surface of Tamirabarani river through Sipcot.

26.The learned senior counsel appearing for the sixth and seventh respondents have also brought to the notice of this Court that there are industries in Gangaikondan Sipcot zone utilizing more water than sixth and seventh respondents and the petitioners have targetted only these two respondents. It is seen from the records filed by the petitioners that there are units in Sipcot drawing more water than these two units. When there is no prohibition for setting up of water intensive units in the Sipcot, questioning the drawal of surface water from Tamirabarani that too after allotment of land and establishment of units is not just and reasonable. It is also pertinent to mention again that only a smaller quantity of water is drawn by Sipcot from the surface of Tamirabarani river for supplying to all the industries including the respondents sixth and seventh in the Sipcot zone, Gangaikondan.

27.The learned senior counsel for the sixth and seventh respondents also argued that the petitioners are under the wrong notion that the respondents 6 and 7 are Foreign companies and both the companies are of Indian companies. Both the writ petitions are focussed mainly on the ground that supplying water to the water intensive companies will create endangered situation with scarcity of water to the agriculturist and domestic users and the dispute does not revolve on the nature of soft drinks manufactures by the seventh respondent.

28.Yet another contention of the petitioner is that national sanctuary - spotted deer park - protected area has been declared by the Government of Tamil Nadu in Gangaikondan village and the factories of sixth and seventh respondents are situated within 4 km radius of the said protected spotted deer park and therefore, there will be an endangered situation arise to the protected spotted deer inside the national sanctuary. Sipcot was established in the year 1998 and the deer park was declared in the year 2013. According to the Government, the government order declared the spotted deer park with the boundaries and there is no 4 km radius restriction. It is also to be noted that there is six way highway lane is situate in between the deer park and Sipcot area. It is also to be pointed out that the petitioner in W.P. No. 1045 of 2016 is aiming only sixth and seventh respondents saying that the existence of said two units will endanger the existence of the spotted deer, when there are several other units

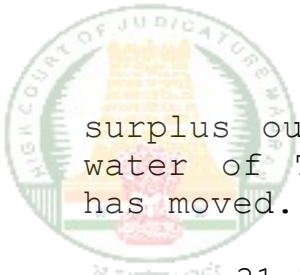


functioning in the same Sipcot area at Gangaikondan village. This itself shows the ulterior motive of the petitioner in W.P.(MD) No.20558 of 2016.

29.The person having personal interest should disclose the same, when he files public interest litigation petition, as per the rules framed by this Court to regulate public interest litigation by virtue of Article 226 of Constitution of India. Only after seeing the allegations as against the petitioner in the counters filed by the respondents, the petitioner admits in his rejoinder that he was the advocate for seventh respondent for some years. The District Collector, in his counter specifically says that the petitioner in W.P.(MD) No.20558 of 2016 Dr.D.A.Prabakar is a known person for doing malpractices. On the basis of the enquiry report of the Sub Collector, Cheranmahadevi with concrete proof as to the malpractices, the petitioner was ordered to resign from the post of Chairman of Red Cross Society, Tirunelveli and accordingly, he resigned.

30.The seventh respondent averred in his counter that the petitioner was dealing with the cases of the seventh respondent for nearly three years and due to unethical practice of the petitioner, his legal services was dispensed with. Thereafter, which the petitioner filed various petitions against the respondent before various Fora and several cases before this Court and National Green Tribunal, Southern Zone. He further averred that the present writ petition does not involve any issue of public interest and it is only an attempt by the petitioner to settle the personal grievances with the seventh respondent. The seventh respondent has also filed copies of petitions and cases filed by the petitioner in various Fora against the seventh respondent. Considering the above factors, this Court has no hesitation to conclude that the petitioner has approached this Court with malafide intention for vindicating enmity. A person prompted by personal gain or any oblique consideration has no locus-standi to file public interest litigation. Further, the public interest litigation should not be allowed to be misused for vindicating enmity. The seventh respondent is not exaggerating to contend that the petitioner in W.P.(MD) No.20558 of 2016 is an extortic and filed the writ petition under the guise of public interest litigation. For the above reason also, the writ petition in W.P.(MD) No.20558 of 2016 is not maintainable.

31.Before parting with, this Court records its anguish that there is no move by the Government to improve the irrigation system during the past 70 years after Independence and all the 8 Anicuts along Thamiraparani river with 11 canals to the length of 283 Kms. were constructed during 1365-1731 AD and during colonial
<https://hseviscourts.gov.in/Services/> after micro level study and recommendation to conserve the surface water in the upper reaches by forming new tanks/ponds according to the topography of the area to avoid



surplus outflow into sea as well as by transferring the surplus water of Thamiraparani river basin to adjoining basins, nothing has moved.

31. For the aforesaid reasons, both the writ petitions deserve to be dismissed. Accordingly, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar.

To

1. The Chief Secretary to Government of Tamil Nadu,
Fort St. George, Chennai 600 009.
 2. The Secretary to Government of Tamil Nadu,
Public Works Department, Fort St. George, Chennai - 9.
 3. The District Collector, Tirunelveli District,
Tirunelveli.
 4. The Executive Engineer, Public Works Department,
Thamirabarani Vadinila Kottam, Tirunelveli.
 5. The Managing Director, State Industries Promotion Corporation
of Tamil Nadu, 19-A, Rukmani Lakshmipathy Road,
Post Bod No.7223, Egmore, Chennai 600 008.
- +1CC to M/S.T.Lajapathi Roy, Advocate, SR.No. 12226
+1CC to M/S.R.T.Arivukumar, Advocate, SR.No. 12164
+1CC to M/S.K.Prabhakar, Advocate, SR.No. 12194
+2CC to M/S.N.Adithya Vijayalayan, Advocate, SR.No. 12151,12152
+1CC to M/S.V.Balakrishnan, Advocate, SR.No. 12044
+1CC to the Special Government Pleader, SR.No. 12274

order made in
W.P(MD) Nos.22425 of 2015
and 20558 of 2016
and
W.M.P. (MD) Nos.14722, 17125
and 17087 of 2016
02.03.2017

Arul