

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.821 OF 2018
IN
PUBLIC INTEREST LITIGATION WP NO.10 OF 2017

Hirabai Kavlekar. Applicant.

Versus

The Collector (North Goa) and others. Respondents.

Ms. Asha Desai, Advocate for the Applicant.

Mr. D. Lawande, Advocate General with Mr. Deep Shirodkar,
Additional Government Advocate for the Respondents No.1,2,4,5
& 6.

Mr. Vinoj K. Daniel, Advocate for Respondent No.7.

Mr. Devidas Pangam, Advocate for Respondent No.8.

Mr. S.G. Dessai, Senior Advocate with Ms. Shalaka Shelke,
Advocate for Respondent No.14.

Mr. A.D. Bhobe, Advocate for Respondent No.16.

Ms. Vinita Palyekar, Advocate for Respondent No.17.

Ms. Sameera Bhat, Advocate for Respondent No.20.

Mr. Nigel Da Costa Frias, Advocate for the Petitioner in PILWP
No.10 of 2017.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 24 October 2018.

P.C.:

By this Application, the Applicant is seeking directions as under :

(a) The authorities concerned be directed to keep the sluice valve open during the period from end of September to first week of June i.e. until the entire paddy is harvested so as to ensure that the water collected during the monsoon is supplied through the irrigational channel to the farmers in the village beyond the reservoir and applicant can cultivate and harvest the paddy on the basin of the reservoir i.e. in the manner in which it was originally utilised.

(b) The WRD officers be directed to hand over a key of the sluice valve to the applicant as the applicant is always available on site and is familiar with the maintenance of the water table and the water cycle to be maintained of the reservoir as it was maintained by them from time immemorial.

2. When the Application came on board, we had placed the matter for consideration of the Executive Engineer, Water Resources Department whom we had called upon to decide the issue keeping in mind the various orders that have been passed in the PIL Writ Petition. The Water Resources Department has looked into the prayers made by the Applicant and has observed thus :

“By a miscellaneous civil application no.821 of 2018, Hirabai Kavlekar has prayed that the sluice valve be kept

open from the end of September to 1st week of June and that the Water Resources Department be directed to hand over the keys of sluice valve to her as it was maintained by her from time immemorial.

The application has been considered by the undersigned, pursuant to direction by the Hon'ble High Court by dated 09/10/2018.

In the application it is stated that the sluice valve was always maintained by the applicant. This statement is not correct as the sluice valve is controlled and maintained by the Water Resources Department, the statement is also contrary to case of the applicant in the Civil Suit No.19/2010 which is cleared from the document produced by the applicant.

The Officers of the Water Resources Department visits the area to monitor the water level from time to time specially during the monsoon. As regards release of water, the same is done normally in first week of November. However that also depend on when the withdrawal of monsoon actually takes place, even as regard other dams/reservoir in the State of Goa the same pattern is followed.

Before releasing the water, the Department has to also consider the position as regard other lands which are cultivated during monsoon and where harvesting yet to be completed. The release of water therefore depend on the demands/request of the general farming community of the area and not the demand of the one particular farmer. It has been noticed that in that area where cultivation was done during monsoon harvesting is yet to be fully completed. The release of water at this stage may also affect such crops.

As regard handing over the keys to the applicant, this request cannot be accepted, the water stored in the

Bondwal tank has to be released depending on the needs and requirement of the majority of the farmers in the area. Monitoring is therefore required to be done by Officer of Water Resources Department who have technical knowledge and cannot be left to any private individual.

Considering the overall scenario and the factual situation on site, in my opinion release of water if can be done by 10th November. The Department should do so only if the same is allowed by the Hon'ble High Court."

3. The learned Counsel for the Applicant submitted that the Applicant is an agricultural tenant and being an agricultural tenant, under Section 38 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, she has right to operate the sluice gate and this right overrides everything else, even the orders of the Court. It is contended that the paddy crop season has commenced now and if the water is released on 10 November 2018, then the paddy crop will be lost. The learned Advocate General submitted that normally release of water is done in the first week of November, but, however, due to late withdrawal of the monsoon, it has been decided that it would be prudent not to release the water now, but on a later date i.e. 10 November 2018, subject to order of the Court.

4. The Water Resources Department which has been established by the State for distribution of water in the State of Goa

would naturally be in a better position to take a decision as regards climatic conditions and appropriate distribution. Not only the right of the Applicant to water is involved, but of various others as well. Water is a limited and dwindling resource and there are several competing claimants for its consumption. In the PIL Petition, we had passed series of orders, one of which had led to even establishment of Task Force for the protection of the lake, who has also described the wetland is of ecological importance.

5. Therefore, in such matters we have to take a holistic view and not merely the basis of the right put forward by the Applicant. On the basis of presumptions, we cannot override the subjective satisfaction of the Water Resources Department to delay the release of water for this particular year. The learned Advocate General points out that the water would be released in November only if the Court grants permission to the same. The State will decide about the release of water keeping in mind various orders that we have passed in the PIL Writ Petition.

6. In this view of the matter, we do not find any reason to interfere in this Application. The Civil Application is disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.