

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2018

Pronounced on : 14.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.23254 of 2018

K.K.Ramesh

..... Petitioner

vs.

- 1.Union of India,
Represented by its Secretary,
Ministry of Water Resources,
No.412, Shram Shakti Bhawan,
Rafi Marg, New Delhi - 110 001.
- 2.The State of Tamil Nadu,
Represented by its Chief Secretary,
Secretariate,
Chennai - 600 009.
- 3.The State of Tamil Nadu,
Represented by its Principal Secretary,
Municipal Administration and Water
Supply Department,
Chennai - 600 009,
Chairman TWAD Board.
- 4.The State of Tamil Nadu,
Represented by its Secretary,
Public Works Department,
Water Resources Organization,
Fort St. George, Secretariat,
Chennai - 600 009.
- 5.The Engineer - in - Chief,
Water Resources Department,
Chepauk, Chennai -5 (W.E).

6.The Chief Engineer,
Operation and Maintenance,
Water Resources Department,
Chepauk, Chennai - 5 (W.E.).

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 1st respondent to allot more amount of funds for the expenses here under mentioned and to instruct the 2 to 6 respondent to

a) To formulate an Expert committee to interlink all the tanks and Kanmays and Ponds, water channels and water lines with all Rivers in Tamil Nadu State to prevent the flood waters which goes to Bay of Bengal sea.

b) To construct more check Dams all over Tamil Nadu.

c) To remove all the encroachments in water lines and water channels all over Tamil Nadu.

d) To punish the government officials who supported the encroachers and failed to protect the water bodies in Tamil Nadu.

e) By considering the petitioners representation dated 08.08.2018.

For Petitioner : Mr. K.K.Ramesh - party in person

ORDER

The instant writ petition is for a writ of Mandamus directing the 1st respondent to allot more amount of funds for the expenses here under mentioned and to instruct the 2 to 6 respondent, to formulate an Expert committee to interlink all the tanks and Kanmays and Ponds, water channels and water lines with all Rivers in Tamil Nadu state to prevent the flood waters which goes to Bay of Bengal sea, to construct more check Dams all over Tamil Nadu, to remove all the encroachments in water lines and water channels all over Tamil Nadu, to punish the government officials who supported the encroachers and failed to protect the water bodies in Tamil Nadu, by considering the petitioners representation dated 08.08.2018.

2. Though the prayer is one for constituting an expert committee to interlink all the tanks and Kanmays and Ponds, water channels and water lines with all Rivers in Tamil Nadu, construct check Dams, removing encroachments etc. The writ petition primarily is on the failure of monsoons, lesser yield of agriculture and consequently waiving of agricultural loans. Few paragraphs which will highlight the actual motive of the writ petition is as under:-

"5. I state that there is no monsoon rain in Tamil Nadu for the past 5 years. So there is a no release of

water from the Mettur Dam in due time for the agricultural operation. So 75% of the lands in the delta area are without cultivation for the past 4 years. Likely there is no water in the lake, ponds and other water bodies for the past 4 years. Moreover, the well irrigated lands are not cultivated for the past 4 years for the want of water in the well. The 90% of the lake irrigated lands and the well irrigated lands are without cultivation for the past 4 years. The agriculturist are becoming poor day by day without any income. In the meantime the State Government and the Central Government are taking stringent steps to collect the loan granted to the agriculturist. The state and Central Governments are aware that there are no waters in the river, lake ponds and the agricultural wells. So our association raised a demand before the state and Central Governments to write off the agricultural loans of the agriculturist."

(emphasis supplied)

8. I submit that due to failure of north east monsoon and south west monsoon for the 3 years the Agriculture in Tamilnadu have been worstly affected and lakhs and lakhs of Agri laborers lost the works and in some places Agri laborers were migrating to some other district for searching jobs. In some districts in Tamilnadu unable to repay the bank loan some tens of farmers committed suicide due to short fall of rain.

(emphasis supplied)

9..... At his panchayat in kannadi in palakka, the farmer claims that this time only 10% crops were cultivated. " My son and I are both farmers, and our family is completely dependent on the cultivation. I have never seen such a situation in my whole life. Now the problem is how I will sow the seeds next April with no cash in my hand. My family will starve," said Sivadasan. The latest figures as of December 21, 2016 from the directorate of agriculture sho that 17, 128 hectares of cultivable land across the state have been affected by the drought. Crop loss stands at more than Rs. 90 crore.

....This is the first time in 42 years that the Mysuru region has received scanty rains, forcing farmers to abandon agriculture activities. " The worst story of the drought is that even parts of the Western Ghats, such as Kodagu and Hassan ditriacts, failed to records normal rainfall, drying up dams in Cauvery basis of water," an agriculture department official claimed, pointing out how farmers in Mandya district, part of the Krishnaraja Sagar dam ayacut area have failed to

harvest even a single paddy crop this year. Chief minister Siddaramaiah recently said the state had suffered a crop loss of Rs.25,000 crore. The Karnataka government has asked the Centre for a Rs.4,702.54 crore package to help tide over the drought. It has also constituted four teams to tour and assess the drought's severity in the four revenue divisions Bengaluru, Kalaburagi, Belagavi and Mysuru. The teams, comprising junior ministers and headed by a senior (senior) minister, toured villages, taluks and district headquarters until December 20 to submit a report recommending measures to tackle the drought."

The above mentioned paragraphs show that the writ petition is actually a bogey and the real intention is to get the crop loan waived by the State. This tactics cannot be appreciated.

3. To Substantiate the prayers, the petitioner has filed the entire "Nidi Ayoke Report". A perusal of the entire Nidi Ayoke Report does not indicate that the said report promotes interlinking of tanks and Kanmays and Ponds, water channels and water lines with all Rivers in Tamil Nadu or to construct the check Dams.

4. It is well settled in the name of Judicial activism, the Court must not run the Government. The Hon'ble Supreme Court of India in the case of Divisional Manager, Aravalli Golf Club and another Vs. Chander Hass and another, reported in 2008 (1) SCC 683, at paragraphs 28 and 29, has observed as under:-

"28. Jagdambika Pal case [Jagdambika Pal v. Union of India, (1999) 9 SCC 95] of 1998, involving U.P. Legislative Assembly and Jharkhand Assembly cases of 2005, are two glaring examples of deviations from the clearly provided constitutional scheme of separation of powers. The interim orders of this Court, as is widely accepted, upset the delicate constitutional balance among the judiciary, the legislature and the executive, and was described by Hon'ble Mr J.S. Verma, the former C.J., as judicial aberrations, which he hoped that the Supreme Court will soon correct.

29. Hon'ble Justice A.S. Anand, former Chief Justice of India has recently observed: "Courts have to function within the established parameters and constitutional bounds. Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The

danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counterproductive and undermine the credibility of the institution. Courts cannot 'create rights' where none exist nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become 'judicial adventurism', the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile—failure to bear this in mind would lead to chaos. Public adulation must not sway the judges and personal aggrandisement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the Government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties."

5. The Hon'ble Supreme Court of India in the case of Narmada Bachao Andolan v. Union of India, reported in (2000) 10 SCC 664, at paragraphs 233 and 234, has observed as under:-

"233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the

people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the

function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

6. Similarly, in the case of BALCO Employees' Union (Regd.) v. Union of India, , reported in (2002) 2 SCC 333, has referred to and followed all the judgements of the Hon'ble Supreme Court of India by quoting the above said paragraphs.

7. The prayer sought for is therefore cannot be granted and it is to be noted that the writ petition is seems to be targeted towards waiving of crop loans. The above mentioned paragraphs of the writ petition shows that there is some organization which is working behind the petitioner and the petitioner is not benafide. However, keeping in mind the facts that the petitioner has appeared in person, we are not inclined to impose any costs. The writ petition stands dismissed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Union of India,
Ministry of Water Resources,
No.412, Shram Shakti Bhawan,
Rafi Marg, New Delhi - 110 001.

2.The Chief Secretary,
State of Tamil Nadu,
Secretariate,
Chennai - 600 009.

3.The Principal Secretary,
State of Tamil Nadu,
Municipal Administration and Water
Supply Department,
Chennai - 600 009,
Chairman TWAD Board.

4.The Secretary,
State of Tamil Nadu,
Public Works Department,
Water Resources Organization,
Fort St. George, Secretariat,
Chennai - 600 009.

5.The Engineer - in - Chief,
Water Resources Department,
Chepauk, Chennai -5 (W.E.).

6.The Chief Engineer,
Operation and Maintenance,
Water Resources Department,
Chepauk, Chennai - 5 (W.E.).

W.P.No.23254 of 2018

GSP (16/11/2018)

सत्यमेव जयते
WEB COPY