

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.04.2018
CORAM
The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.2838 and 10117 of 2018

W.P.No.2838 of 2018

Lower Bhavani Farmers' Federation,
rep. by its President P.Kasiannan,
No.49, V-Sakthi Complex,
Mettur Road, (Opp Abiramani Theatre),
Erode - 638 011. ... Petitioner

vs.

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

2.The District Collector,
Erode District,
Erode - 638 011.

3.The Chief Engineer,
Public Works Department,
Water Resources Organization,
(Operation and Maintenance),
Chepauk, Chennai - 600 005.

4.The Chief Engineer, सतयमेव जयते
Public Works Department,
Water Resources Organization,
Coimbatore Division,
Coimbatore.

5.The Superintending Engineer,
Public Works Department,
Water Resources Organization,
Bhavini Basin Division,
Erode.

6.The Executive Engineer,
Public Works Department,
Water Resources Organization,
Lower Bhavani Basin Division,
Erode.

7.The Executive Engineer,
Canal Division, Irrigation,
Public Works Department,
Erode.

8.V.K.Venkatachalam

9.Tamil Nadu Generation and
Distribution Corporation (TANGEDCO),
rep. by its Chairman and Managing Director,
No.144, Anna Salai,
Chennai - 2. ... Respondents

(R9 impleaded as per order dated 2.4.2018
in WMP.No.5252 of 2018)

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a writ of mandamus
directing the respondents 1 to 7 to forthwith release 7 TMC of
water from the Bhavanisagar Dam to the lands served by odd turn
sluices in the Lower Bhavani Project channel for special
wettings, by considering the petitioner's representation dated
29.12.2017 and as assured by the 6th respondent by his
communication dated 18.01.2018.

W.P.No.10117 of 2018:

V.K.Venkatachalam .. Petitioner

सत्यमेव जयते
vs.

1.The District Collector,
Erode District,
Erode.

2.The Chief Engineer,
Water Resource Department,
Coimbatore Region,
Coimbatore.

3.The Superintending Engineer,
Water Resource Department,
Erode.

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4.The Executive Engineer,
Water Resource Department,
Lower Bhavani Basin Division,
Erode.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records comprised in Tha Na A/Va A2/KO.VAZHAKU/2017-1 dated 09.03.2018 on the file of the 2nd respondent and quash the same and consequently direct the respondents to release life water to serve the urgent life water and drinking water needs of the twenty villages surrounding the Odathurai Tank.

For Petitioner : Mr.C.S.K.Sathish
in W.P.No.2838 of 2018

Mr.V.Balamurugane
in W.P.No.10117 of 2018
and 8th respondent in
W.P.N.2838 of 2018

For Respondents : Mr.T.N.Rajagopalan
Government Pleader
for R1 to R7 in
W.P.No.2838 of 2018
and respondents in
W.P.No.10117 of 2018

Mr.S.K.Rameshuwaar
for 9th respondent
in W.P.No.2838 of 2018.

COMMON ORDER

(Order was made by Ms.Indira Banerjee, Chief Justice)

The writ petitioner in W.P.No.2838 of 2018, hereinafter referred to as "the first writ petition", represented by Mr.C.S.K.Sathish, learned counsel submitted that Bhavanisagar Dam was constructed across the River Bhavani for providing irrigation facilities to an extent of 2,07,000 acres in Karur, Tirupur and Erode Districts. The waters of River Bhavani flowing naturally used to be put to use of irrigating the lands by the side of River Bhavani.

2. It is also stated that Kalingarayan Anaicut was constructed near Bhavani town for providing irrigation facilities for about 12,000 acres of land in Erode District. To extend the water for irrigation to further areas, Kodivery Anaicut was constructed at Kodivery village in Erode District, upstream of Kalingarayan Anaicut and two channels, namely, Thadapalli and Arakkankottai channels, were formed for providing irrigation facilities to an extent of 19,700 acres of land.

3. The petitioner in the first writ petition claims that there are three major irrigation systems in the Bhavani Sub Basin which are: (i) Kodivery Anaicut; (ii) Kalingarayan Anaicut; and (iii) Lower Bhavani Project.

4. According to the petitioner in the first writ petition, the farmers of the area represented by the petitioner objected to construction of Kuntha, as that would affect the flow of water for irrigation.

5. It is alleged that an arrangement was arrived at between the farmers of the locality and the Government, whereby the Government agreed to release of 7 TMC of water for 1,03,500 acres of land covered under Odd turn slices as special wettings. However, by reason of supply of water to the Odathurai Tank, the farmers of the area represented by the petitioner are not getting adequate water supply.

6. In the writ petition being W.P.No.10117 of 2018, hereinafter referred to as "the second writ petition", it is the grievance of the petitioner that the residents of Odathurai Tank area are not getting potable drinking water.

7. Mr.V.Ayyadurai, learned Senior Counsel representing Kalingarayan Old Ayacut Farmers Welfare Association, which has filed an application, being W.M.P.No.12094 of 2018, as well as Mr.K.Kumaresh Babu, learned counsel representing Kodivery Anai Pasanatharangal Sangam, which has filed application, being W.M.P.No.11158 of 2018, seeking impleadment submit that grant of orders as prayed for in the first writ petition would deprive the farmers of their areas of water supply.

8. Supply of water is undoubtedly a matter of public interest. Even though the first writ petitioner might have moved the Court due to some private interest, the Court might interfere in public interest, where there is some illegality and/or injustice affecting the public at large and/or a group and/or section of people.

9. In Ashok Lanka v. Rishi Dixit, reported in AIR 2005 SC 2821, the Supreme Court opined that it is well settled that even in a case where a petitioner might have moved the Court in his

private interest and for redressal of personal grievances, the Court in furtherance of public interest, may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. This was also the view taken in Guruvayoor Devaswom Managing Committee v. C.K.Rajan, reported in (2003) 7 SCC 546, Shivajirao Nilangekar Patil v. Dr.Mahesh Madhav Gosavi, reported in (1987) 1 SCR 458, and Chairman & MD, BPL Ltd. v. S.P.Gururaja and others, reported in AIR 2003 SC 4536.

10. As held by the Supreme Court in Kuchchh Jal Sankat Nivaran Samiti v. State of Gujarat, reported in (2013) 12 SCC 226, the allocation of water is a matter of policy and how much water is to be released from the canal for a particular area or how much water is to be left with other regions are matters which require delicate balancing and consideration of complex social and economic consideration. There being no judicially manageable standards. It would be appropriate to leave such matters to experts of the Irrigation Management System and Water Resources Management.

11. As held by the Supreme Court in Aravali Golf Club v. Chander Hass, reported in (2008) 1 SCC 683, there must be judicial restraint in such matters.

12. Water being a basic necessity. Right to water is a basic human right, including in particular, drinking water. Considering the human rights aspect, this Court intervened and pursuant to the observations made when the first writ petition was entertained, orders have been passed for release of 1000 cusecs for four days; 2200 cusecs for six days and 3200 cusecs for ten days. Mr.Sathish appearing on behalf of the petitioner in the first writ petition submits that this is not as per the arrangement.

13. Mr.V.Balamurugan, learned counsel appearing for the petitioner in the second writ petition submits that the residents of Odathurai Tank are not provided adequate potable water for drinking.

14. Mr.Ayyadurai submits that the reliefs as claimed will deny his farmers water for irrigation. This Court cannot carry out the executive duties of determining exactly how much water should be given to each area.

15. We, however, direct some water has been released to the area represented by the first writ petitioner. So far as the second writ petition is concerned, the respondent authorities shall ensure that water supply for drinking is made available.

16. With these directions, we deem it appropriate to close the writ petitions. No costs. Consequently, WMP.Nos.3503 & 12070 of 2018 are closed. In view of the orders passed in the main writ petitions, the impleading applications, being W.M.P.Nos.12094 and 11158 of 2018 in W.P.No.2838 of 2018, are disposed of.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To:

1.The Secretary to Government,
Public Works Department,
Fort St. George, Chennai - 600 009.

2.The District Collector,
Erode District, Erode - 638 011.

3.The Chief Engineer,
Public Works Department,
Water Resources Organization,
(Operation and Maintenance),
Chepauk, Chennai - 600 005.

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Public Works Department,
Water Resources Organization,
Lower Bhavani Basin Division,
Erode.

7.The Executive Engineer,
Canal Division, Irrigation,
Public Works Department,
Erode.

8.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation (TANGEDCO),
No.144, Anna Salai,
Chennai - 2.

+1cc to Mr.V.Balamurugane, Advocate Sr.No.32162
+1cc to Government Pleader sR.No.32254
+1cc to Mr.S.K.Rameshkumar, Advocate Sr.No.32452
+2cc to Mr.C.S.K.Sathish Advocate Sr.No.32138
+1cc to Mr.K.Kumareshbabu, Advocate Sr.No.32161 dt.4.6.2018

KAN(CO)
sm:15.5.2018

W.P.Nos.2838 & 10117 of 2018



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