



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2018

CORAM:

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**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.P (MD) No.5153 of 2014

and

W.M.P (MD) Nos.7841 and 17048 of 2016

Mass Education and Action for
Rural Development Society,
Represented by its President
R.Thangaraja
12-2-18A-1, Venkateswara Bhavan,
Pandian Nagar,
Kariapatti - 626 106,
Virudhunagar District.

... Petitioner

Vs.

1. The Secretary,
Central Board of Irrigation & Power,
Malcha Marg, Chanakyapuri,
New Delhi - 110 021.
2. The Chief Secretary to the
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai - 600 009.
3. The Chief Secretary,
Government of Kerala,
Tiruvendram.
4. The Chief Conservator of Forests and
Additional Director - II,
Tamil Nadu Forest Academy,
P.B.No.1061, Forest Complex,
R.S.Puram,
Coimbatore - 641 002.
5. The Director General,
National Water Development Agency,
18-20, Community Centre,
Saket, New Delhi - 110 017.



6. The Secretary,
Ministry of Water Resources,
River Development & Ganga Rejuvenation,
Government of India,
626, Shram Shakti Bhavan,
Rafi Marg, New Delhi - 110 017.

... Respondents

**(R5 & R6 are impleaded vide order of this Court
dated 12.08.2016 in M.P. (MD) No.1 of 15 in W.P (MD)
No.5153 of 2014)**

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to materialize the project report for implementing the scheme in order to excavate the irrigation channel from Pampa Achan Kovil River through the proposed Alagar Dam at Alagar Mountain to Vipar Basin River.

For Petitioner	: Mr.V.Muniasamy
For Respondents	: Mr.A.K.Baskara Pandian Special Government Pleader for R2 & R4 Mrs.S.Srimathy for R1, 5 & 6 No appearance for R3.

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

This writ petition is filed as a Public Interest Litigation by the petitioner namely, Mass Education and Action for Rural Development Society, Pandian Nagar, Kariapatti, Virudhunagar District. The petitioner would state that the petitioner in this writ petition filed as a Public Interest Litigation would aver, among other things, that in southern Tamil Nadu, there are five districts namely, Virudhunagar, Ramanathapuram, Sivagangai, Madurai and Tirunelveli and those districts are drought prone areas and most of the residents of the said districts are depending upon agricultural activities for eking out their livelihood.

2. During British regime, in order to address their grievance, Periyar Dam was constructed in the year 1875 and for the purpose of providing irrigation facilities to Madurai, Dindigul, Theni and also to Ramanathapuram.

3. It is the specific case of the petitioner that if "Pampa-Achan Kovil - Vipar Link Project" is implemented, it would result in diversion of surplus water from the perennial Pampa river flowing in Kerala State to the proposed Alagar Dam at Alagar Mountain through 26 Kms. of the proposed main channel and in the event of the implementation of the said project, irrigation facilities would be



available to an extent of 91,400 Hectares of land spread over in the above said five districts in the State.

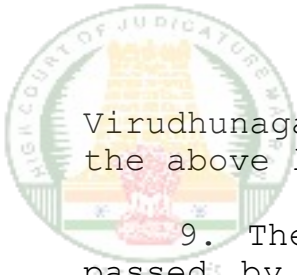
4. The petitioner has also pointed out that the Pampa river annually discharges 240 TMC of water in Arabian Sea and if the said water is diverted through the above said project, not only the residents of five districts are all benefited, but also the State of Kerala in the form of power generation and other benefits.

5. The petitioner in this regard was repeatedly corresponding with the concerned authorities and since it failed to evoke any response, he also submitted a representation, dated 26.03.2013 to the respondents herein and despite receipt and acknowledgment, is the petitioner society is yet to be favoured with any kind of response and hence, came forward to file this writ petition. The writ petition was admitted on 25.03.2014 and notices were ordered.

6. The third respondent has filed the counter affidavit stating that the Government of Kerala has opposed to the said project and the said project cannot be implemented for the reason that the Pamba and Achan Kovil rivers are not inter-state rivers and the Kerala Legislature has also passed a resolution opposing the transfer of water from Pamba and Achan Kovil rivers to Tamil Nadu and in the event of the said project being implemented, necessarily three dams have to be constructed and in that event, several thousands of acres of lands would be submerged and prayed for dismissal of the writ petition.

7. The respondents 5 and 6 had filed their counter affidavits stating, among other things, that the National Water Development Agency (NWDA) was established in July 1982 as a Registered Society under the Ministry of Irrigation (Now Ministry of Water Resources, River Development and Ganga Rejuvenation), to carry out detailed studies, surveys and investigations in respect of the peninsular component of National Perspective for Water Resources Development and the Resolution dated 19.05.2011 was also passed as to the transfer of surplus waters to the other States which are in need of the same. The said agency has also prepared a feasibility report and circulated the same among the concerned State Governments and as per the procedure in place, once the respective State Governments have approved the feasibility report, then a "Detailed Project Report" would be prepared based on the consensus of all the concerned State Governments and especially, only on receipt of the concurrence from the riparian States.

8. It is also pointed out by the respondent 5 and 6 in their counter affidavit that the Kerala Legislative Assembly has unanimously passed a resolution urging the Central Government to drop the said proposal and in paragraph 7 of the said counter, has given the technical details and also indicated that as per the feasibility report prepared during the year 1995, the project would provide an annual irrigation of 91,400 Hectares located in



Virudhunagar, Tirunelveli and Tuticorin Districts of Tamil Nadu and the above link will utilise 634.76 Mm3 of the said water.

9. The attention of this Court was also invited to the order passed by the Honourable Supreme Court in Writ Petition (Civil) No.512 of 2002 with Writ Petition (Civil) No.668 of 2002, dated 27.02.2012 and it is the stand of the respondents 5 and 6 that the scope of judicial review of policy decision is limited and since the petitioner did not raise any ground, the writ petition is not maintainable.

10. The Government of Tamil Nadu has also filed the counter affidavit supporting the implementation of the said project and it has also given concurrence to interlinking of rivers concerning Tamil Nadu and also nominated some of the members for the above said committee and the Union of India, Ministry of Water Resources, has also constituted the above Special Committee during May 2013 and the Government of Tamil Nadu is continuously and actively pursuing with the National Water Development Agency and hence supported the stand of the petitioner.

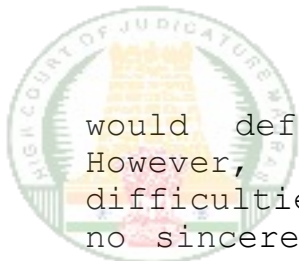
11. Mrs.S.Srimathy, learned counsel appearing for the respondents 5 and 6 has drawn the attention of this Court to the counter affidavit and would submit that unless concurrence is given by the concerned State Governments, the project cannot be implemented and would further add that this Court may not also issue any positive direction for implementation of the said project, in the absence of the concurrence of the Government of Kerala.

12. This Court has considered the rival submissions and also perused the materials placed before it.

13. A perusal of the counter affidavit of the respondents 5 and 6 would *prima facie* indicate that if the said project is implemented, the lands in Virudhunagar, Tirunelveli and Tuticorin Districts of Tamil Nadu and agricultural activities would get benefited.

14. It is also pertinent to point out at this juncture that no interest or effort is shown by the State of Tamil Nadu to maintain the water bodies and it is not out of place to mention that very many water bodies are disappearing either due to encroachment or in the form of unauthorised/illegal constructions. This Court can also take judicial notice of the fact and day in and day out, very many writ petitions are filed before this Court for removal of encroachments from the water bodies and no proper and effective steps are being taken to preserve the water bodies.

15. It is to be noted at this juncture that our forefathers had realised that the State is going to remain as water deficient one and put up very many artificial lakes and ponds; so that, the water would percolate and the ground water level would increase which



would definitely benefit the agriculturists and other users. However, without realising the said objects, especially the difficulties faced by the people of Tamil Nadu during drought times, no sincere and effective steps have been taken to alleviate their grievance and whatever projects are available, it only remains on paper.

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16. The Honourable Supreme Court in the order dated 27.12.2012 made in Writ Petition (Civil) No.512 of 2002 "In Re: Net Working of Rivers" along with Writ Petition (Civil) No. 668 of 2002, in paragraph 63 has observed as follows:

"We would recommend, with all the judicial authority at our command, that these objects are in the national interest, as is the unanimous view of all experts, most State Governments and particularly, the Central Government. But this Court may not be a very appropriate forum for planning and implementation of such programme having wide national dimensions and ramifications. It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement this inter linking of rivers program for the benefit of the nation as a whole".

17. In the considered opinion of this Court, it is technically a policy decision and under the guise of issuing a writ of Mandamus, this Court cannot issue any positive direction as to the implementation of the decision taken/to be taken by the National Water Development Agency. This Court also lacks territorial jurisdiction to direct the third respondent namely, the Government of Kerala to give its' consent for implementation of the said project.

18. This Court, in the light of the above said limitation, is not in a position to pass any positive order/direction for implementation of the said project. Therefore, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

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+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 45538
+ 1 CC TO M/s.S.SRIMATHY, ADVOCATE IN SR No. 45421
+ 1 CC TO Mr.V.MUNIASAMY, ADVOCATE IN SR No. 45427

MR

TE/SKN-RSK/SAR-1 : 09/04/2018 : 6P/10C

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