

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.01.2019

CORAM
THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.No.3344 of 2018
and
WMP.No.4093 of 2018

M/s. Tamil Nadu Schedule Tribe (Malayali)
Peravai (Regn.No.307/1993)
Rep by its President
Mr.T.Varatharaju
No.15, 2nd Street,
Kambar Nagar,
Chennai 600 082. Petitioner

.. Vs ..

1. The Secretary to Government
Government of Tamil Nadu,
Public Works Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Salem District, Salem.
3. The Revenue Divisional Officer,
Attur, Salem District.
4. The Tahsildar
Pethanayakanalayam Taluk,
Salem District.
5. The Village Administrative Officer,
Therkkunadu Village, Karumandurai,
Pethanayakanpalayam Taluk,
Salem District. Respondents

Prayer :- Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of a writ of
Mandamus forbearing the respondents from connecting by altering
the water course of odai/stream water from kaikan Valavu Village
to Karia Koil Reservoir.

For Petitioner : Mr.P.Srinivasan

For Respondents: Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by Mr.J.Pothiraj,
Special Government Pleader
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ORDER

(Delivered by DR.VINEET KOTHARI,J)

The petitioner M/s.Tamil Nadu Schedule Tribe (Malayali), Peravai, represented by its President Mr.T.Varatharaju, No.15, 2nd Street, Kambar Nagar, Chennai, has filed this Public Interest Litigation (PIL) writ petition on 12.01.2018 with a prayer that the Court may restrain the respondent Public Works Department, State Government, from constructing a water course or pipe line from the odai/stream water from Kaikan Valavu village to Karia Koil Reservoir and pass appropriate orders in this regard.

2. Upon issuance on notice, the respondents are represented and the Collector of Salem District Ms.Rohini R.Bhajibhakare has filed counter affidavit in the writ petition. The first affidavit was filed by the said Collector on 03.01.2019 and upon directions of this Court, further counter affidavit has been filed by the said District Collector on 18.01.2019. The fourth respondent, viz., Mrs.A.Shafiunnisa, Tahsildar, Pethanayakanpalayam Taluk, Salem District, has also filed a counter affidavit on 31.07.2018.

3. Learned counsel appearing for the petitioner has vehemently submitted before the Court that the construction of the said water course or pipeline of about 1 km length with catchment area of Kaikan Valavu Village, towards Karia Koil Reservoir will deprive the members of the petitioner Association of the said water course and therefore, the said project of the State Government, which is yet to be implemented, deserves to be cancelled and the Court may issue appropriate directions for the same.

4. On the contrary, Mr.S.R.Rajagopal, learned Additional Advocate General, assisted by Mr.J.Pothiraj, learned Special Government Pleader, upon instructions, has submitted that only the surplus water of the said catchment area, which is marked in brown colour in the map produced for the perusal of the Court, is sought to be diverted in the existing channel towards Karia Koil Reservoir because, on the other side, in the Gomukhi Reservoir, there are not only several other streams flowing into that Gomukhi Reservoir but the surplus water of the Gomukhi Reservoir has to be released in the Bay of Bengal and therefore, for better management of water resources and for providing water

through the Karia Koil Reservoir on the other side, the said pipeline about 500 meters is being laid under the project in question, which is in the final stage of the approval and the construction work, as envisaged, has to be completed before the forthcoming summer season in March 2019 and the same is in larger Public Interest and therefore, the said project of the State does not deserve to be interfered with by the Court. The learned Additional Advocate General further submitted that no loss is likely to be caused to the members of the Petitioner Association because the other streams are flowing towards Gomukhi Reservoir and that water can be used by them and only surplus water is sought to be transferred through the proposed project to the Karia Koil Reservoir for which pipeline is to be laid about one meter above the ground level of the bed of said stream and catchment area and that too, only in the North East Monsoon season between October and December. Therefore, the said project is for the benefit of the public at large and the present Public Interest Litigation writ petition is not a bona fide petition, which would require an interference by this Court. Learned Additional Advocate General, upon instructions, submitted before the Court that the pipeline in question will be placed one meter above the bed of the stream in question to facilitate flow of only the surplus water towards the Karia Koil Reservoir in opposite direction of Gomukhi Reservoir.

5. Having heard the learned counsel for the parties and upon perusal of the materials placed before this Court including the map, which is taken on record, we find that the project in question does not require any interference by this Court. The District Collector, in her second affidavit filed in this Court on 18.01.2019, has explained the situation in the following manner:

"5.It is necessary to state that the approximate quantity of the proposed utilized water is about 475 mcft, which is less than 3% of the water flowing to Gomukhi Reservoir. Accordingly the surplus water from the Kattaru, which is one of the tributary streams to Gomukhi Reservoir, is proposed to be utilized to Kariakovil Reservoir in order to preserve the ecology of its serving areas. It is necessary to note that only a meagre quantity of water, (i.e.) surplus water, from the stream is proposed to be utilized, which is found to be surplus, to feed the Kariakovil Reservoir. The capacity of the Gomukhi Reservoir and the flow of the streams supply to the above Reservoir does not affect to implementing the proposed scheme.

6.It is respectfully stated that the apprehension of the Petitioner that the check dam at Kaikanvalavu Village will get affected resulting in decrease in water sources is beyond imagination. The proposed

scheme is only to make use of available surplus water and the scheme shall be implemented only in such a way that the same does not affect the environmental and ecological balance, as apprehended by the Petitioner. Further the scheme is proposed only after due consideration on the safeguards and welfare of the tribal people.

7.It is submitted that the surplus water only proposed to be taken from kattaru at a kaikanvalavu village. The same is estimated to be utilized only during the north east monsoon. The Gomukhi Reservoir is more than 35 Km away from the Kaikanvalavu and gets the water from several streams including one of this Kattaru. It is necessary to state that kattaru is not the only source to Gomukhi Reservoir, the same gets water from many other tributaries from its catchment area of 113sq.miles. It is necessary to state that there is surplus water for 11 years in Gomukhi Reservoir, this is based on the report of Public works Department Investigation team assessing the same for the past 15 years (i.e. 2002 to 2016). The surplus water available is proposed to be channelizing to kariakovil Reservoir, so as to utilize the surplus water entering in the sea as waste. The said Channelizing shall no way affect the rights of the Tribal people as alleged by the Petitioner. It is also stated that the beneficiaries of the new proposed scheme are eight hamlets who are the same tribal people and also it is pertinent to note that the tribal people have requested to implement the Scheme.

8.It is submitted that the Petitioner impediment stating that the legitimate rights of the people in this Tribal villages and hamlets would be deprived due to this proposed scheme is unsustainable. It is to state that the surplus water will be taken only during the rainy season i.e. from October to December from the Kattaru in Kaikanvalavu village. During the said period, the immediate lower down area downstream of Kaikanvalavu village also shall get the usual benefits from the adjoining and homogeneous streams joining to the Kattaru. The catchment area of Kattaru above the proposed diversion point is only 3.70 sq.miles which is very meagre and negligible as compared to Gomukhi Reservoir catchment of 113 sq.miles above the catchment area of 3.7 sq.miles is in need reaches. Therefore the apprehension of the petitioner to agitate this implementation of the proposed scheme is unmerited."

6. With the above averments made in the affidavit based on relevant records and the map, we prima facie find that only the

surplus water of the catchment area of the aforesaid Kaikan Valavu village is sought to be transferred to the stream up to Karia Koil Reservoir so that the said Reservoir, which is said to be usually filled only to the extent of 40% of capacity, can store some more water for the benefit of the people living around that Reservoir. The map produced before us, as argued by the learned Additional Advocate General, shows that some water of Gomukhi Reservoir, which has a large catchment area of 113.00 sq.miles, was required to be released into the Bay of Bengal. If the respondent Public Works Department of the State Government has found it expedient to create a channel of pipeline of about 500 meters only under the said project, which is questioned before us, we do not have any contra material to arrive at a different conclusion to supersede such policy decision of the State Government nor the Court will substitute its own wisdom over it without any concrete and contra material available before it.

7. There is no material placed on record before us to establish that the members of the Petitioner Association would be completely deprived of the water resources because of the said Project undertaken by the respondent Public Works Department. Prima facie, it appears that there are other streams also passing around the said area to meet the need of water for the people including the members of the Petitioner Association and if the respondent State thinks it fit to undertake certain projects in public interest to provide a better management of water resources, which is undoubtedly a very valuable life line resource for the people, then such project cannot be struck down by exercising extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is a matter of fact and the requirements of people are expected to have been taken into account by the concerned authorities, who are required to approve such project and unless evidence to the contrary is placed before the Court, the sanction and validity of such projects cannot be questioned by invoking the writ jurisdiction of this Court.

8. We do not find any larger public interest to be served, if the project in question was to be interfered with by the Court in the present case.

With these observations, this Writ Petition is closed. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jrl/Dua

To

1. The Secretary to Government
Government of Tamil Nadu,
Public Works Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Salem District, Salem.
3. The Revenue Divisional Officer,
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5. The Village Administrative Officer,
Therkkunadu Village, Karumandurai,
Pethanayakanpalayam Taluk,
Salem District.

+1cc to Mr.P.Srinivasan, Advocate, S.R.No.5260
+1cc to the Government Pleader, S.R.No.5027

W.P.No.3344 of 2018

SJ(CO)

rrs 21/03/2019



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