Item No.4 and 5
(Video Conferencing)

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

[1] MC(PIL) No.16 of 2019

Ref:- PIL No. 24 of 2017

The Loktak Development Authority, Manipur
Represented by its Project Director having its Administrative
Office at Secured Building, 2nd Floor, AT Lane, North AOC,
Imphal West, Manipur-795001.

….. Applicant

- Versus –

Court on its own motion …. Respondent

[2] MC(PIL) No.47 of 2020

Ref: PIL No. 24 of 2017

The Commissioner/Secretary of the department of Tourism, Govt. of Manipur, Old Secretariat Building, Imphal West District, Manipur-795001.

… Applicant

Versus

1. The Court on its own motion.

…….Principal Respondent

2. The State of Manipur through the Chief Secretary.
3. The Department of Forest & Environment through the Commissioner/Secretary.
4. The Loktak Development Authority through its Director.
5. Union of India through Secretary, Ministry of Environment & Forest, Govt. of India.
6. Manipur state Wetlands Authority represented by the Director, Department of Environment & Ecology, Govt. of Manipur.

….Proforma Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR.JUSTICE A.BIMOL SINGH

For the applicant : Mr. Tushar Mehta, Solicitor General of India.
Mr. N.Kumarjit, AG
Mr.H.Lenin, Addl.AG
For the Respondents : Mr. Kh.Samarjit, Amicus Curiae
: Mr.Julius Riamei, Amicus Curiae

Date of Order :: 12.10.2020

ORDER (ORAL)

12.10.2020

Ramalingam Sudhakar, CJ

[1] Heard Mr. Tushar Mehta, learned Solicitor General of India for the applicant assisted by Mr. Lenin Hijam learned Addl.AG as well as Mr. N.Kumarjit, learned Advocate General for the State. Also heard Mr. Kh.Samarjit and Mr.Julius Riamei, learned Amicus curiae.

[2] M.C.(PIL) No.16 of 2019 has been filed by the Loktak Development Authority seeking permission of the Court to initiate the process of NIT to implement Loktak Inland Waterways Improvement Project.

[3] The prayer in MC(PIL) No.16 of 2019 is as follows:-

> " It is therefore prayed that the Hon'ble Court may graciously be pleased to pass an appropriate order for allowing the LDA to initiate the necessary process of NIT and others for implementation/execution/completion of the project "Loktak Inland Waterways Improvement Project" in the interest of public."

[4] Earlier on 13.01.2020, the Court passed the following orders as below.

" MC(PIL) No. 16 of 2019
With MC(PIL) No.14 of 2019
With P.I.L. No. 24 of 2017

The Loktak Development Authority, Manipur ….Applicant
- Versus –
Court on its own Motion .... Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE SHRI RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

13.1.2020
CJ

Heard learned Advocate General on the Miscellaneous Case on the project, namely, Loktak Inland Waterways Improvement Project. A detailed plan has been submitted by the Loktak Development Authority, on the basis of which the Government of India, Ministry of Shipping has sanctioned a sum of Rs.25,58,78,000/-(Ruppees twenty-five Crore Fifty Eight Lakh and Seventy eight Thousand only) with the advance installment in the proceeding dated 31.10.2019. In order to assess the nature of work to be undertaken by the Loktak Development Authority, the proposal sent to the Central Government is directed to be placed before this Court day-after- tomorrow (15.1.2020). A copy of the same to the Amicus Curaie as well to be furnished.

List on 15.1.2020.

JUDGE CHIEF JUSTICE"

[5] Again, the Court passed the following detail order on 15.01.2020 and is extracted as under.

"M.C.(PIL) No.16 of 2019
Ref:-PIL No.24 of 2017

The Loktak Development Authority … Petitioner
–Versus-
Court on its own motion … Respondent

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner :: Mr.N.Kumarjit, Advocate General
For the respondent :: Mr.Kh.Samarjit, Amicus Curiae
Mr. D.Julius Riamei, amicus curiae
Date of Order :: 15.01.2020

O R D E R (ORAL)

CJ,

[1] The earlier order of this Court dated 24.05.2018 passed in PIL No.24 of 2017 reads as follows:-

"PIL No.24 of 2017

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR.JUSTICE KH.NOBIN SINGH

24.05.2018
H.C.J,

[1] We have heard the learned Advocate General for the State. At the request of the Court, Shri L.Bhagaton, Project Director of the Loktak Development Authority and Shri.Kh.Temba, Chief Engineer, PWD, Manipur was present in the Court.We have also heard the Amicus Curiae, Shri Samarjit and Mr.Julius Riamei.

[2] The issue raised in this PIL is pursuant to the order of the Hon'ble Apex Court in SLP No.230 of 2000. In terms of order dated 3.4.2017 the PIL has been listed before this Court to monitor the conservation/preservation and development of Loktak Lake/Wetland. M.C.(PIL) No. 16 of 2019

[3] Certain details were projected by the Project Director as to how he intends to proceed with the preservation/conservation and development of the Loktak Lake. The Chief Engineer, PWD, on his part informed that the Ministry of Road Transport and Highways is developing the road from Airport to Churachandpur. The

distance of Loktak Lake/Wetland, from the National Highway is about 2.14 Kms., that is maintained by the State PWD. The Chief Engineer, pointed out that the existing road has been damaged and a part of it has sunk into the water. Therefore, the department needs not less than two crores of rupees to establish the four-lane, 2.14 Km. link-road to enable the tourists and others to access the beautiful Loktak Lake/Wetland.

[4] But before we proceed on the above issue relating to Loktak Lake/Wetland, as has been pointed out by the learned Amicus Curiae, the issues will have to be considered in terms of the Ministry of Environment, Forest and Climate Change, Notification dated 26.9.2017 notifying a new wet of rules called, Wetlands (Conservation and Management) Rules, 2017, published in the Gazette No.802 dated 26.9.2017. The scope of the Rules is as follows:

> "7. Delegation of powers and functions to the State Governments and Union Territory Administrations.-
> (1) The concerned Department of the State Government or Union Territory Administration shall, within a period of one year from the date of publication of these rules, prepare a Brief Document for each of the wetland identified for notification, providing:-
> (a) demarcation of wetland boundary supported by accurate digital maps with coordinates and validated by ground trothing;
> (b) demarcation of its zone of influence and land use and land cover thereof indicated in a digital map;
> (c) ecological character description;
> (d) account of pre-existing rights and privileges;
> (e) list of site specific activities to be regulated within the wetland and its zone of influence;
> (f) list of site specific activities to be regulated within the wetland and its zone of influence;
> (g) modalities for enforcement of regulation."
>
> As per the Rules, in so far as wetlands of international importance under the Ramsar Convention and wetlands notified by the Central Government and the State Government, the provisions of the new rules will have to be followed.

[5] Rule 3 speaks about the applicability of the Rules which provides that the wetlands categorised as 'wetlands of international importance' under the Ramsar Convention and wetlands notified by the State Government and the Central Government shall be preserved, conserved, as specified.

[6] In terms of Rule 4, Restriction on activities in wetlands have been specified. Rule 4 reads as follows:

> "4. Restrictions of activities in wetlands.-(1) The wetlands shall be conserved and managed in accordance with the principle of 'wise use' as determined by the Wetlands Authority.

In terms of Rule 5, the Central Government has constituted the State Wetlands Authority in each States with members numbering one to eighteen. Rule 5 (3) provides for co-opting other members not exceeding three in number, if required.

[7] Rule 5(4) provides for the powers of the State Wetlands Authority, which reads as follows:

> "5.(4). The State Wetlands Authority or Union Territory Wetlands Authority shall exercise the following powers and perform the following functions, namely:-
> (a) prepare a list of all wetlands of the State or Union Territories within three months from the date of publication of these Rules;
> (b) prepare a list of Wetlands to be notified within six months from the date of publication of these Rules taking into cognizance any existing list of wetlands prepared/notified under other relevant State Acts;
> (c) recommend identified wetlands, based on their brief documents, for regulation under these Rules;
> (d) prepare a comprehensive digital inventory of all wetlands within a period of one year from the date of publication of these Rules and upload the same on a dedicated web portal developed by the Central Government for the said purpose; the inventory to be updated every ten years;
> (e) develop a comprehensive list of activities to be regulated and permitted within the notified wetlands and their zone of influence;
> (f) recommend additions, if any, to the list of prohibited activities for specific wetlands;
> (g) define strategies for conservation and wide use of wetlands within their jurisdiction; wise use being a principle for managing these eco systems which incorporates sustainable uses (such as capture fisheries at subsistence level or harvest of aquatic plants) as being compatible with conservation, if eco system functions (such water storage, ground water recharge, flood buffering) and values (such as recreation and cultural) are maintained or enhanced;
> (h) review integrated management plan for each of the notified wetlands (including trans-boundary wetlands in coordination with Central Government), and within these plans consider

continuation and support to traditional uses of wetlands which are harmonized with ecological character;

(i) in cases wherein lands, within boundary of notified wetlands or wetlands complex have private tenancy rights, recommend mechanisms for maintenance of ecological character through promotional activities;

(j) identify mechanisms for convergence of implementation of the management plan with the existing State/Union Territory level development plans and programmes;

(k) ensure enforcement of these rules and other relevant Acts, rules and regulations and on half-yearly basis (June and December of each calendar year) inform the concerned State Government or Union Territory Administration or Central Government on the status of such notified wetlands through a reporting mechanism;

(l) coordinate implementation of integrated management plans based on wise use principle through various line departments and other concerned agencies;

(m) function as nodal authority for all wetland specific authorities within the State or Union Territory Administration;

(n) issue necessary directions for conservation and sustainable management of wetlands to the respective impending agencies;

(o) undertake measures for enhancing awareness within stakeholders and local communities on values and functions of wetlands; and

(p) Advise on any other matter suo-motu, or as referred by the State Government/Union Territory Administration."

[8] Rule 5(6) provides(a) State Wetlands Authority to form a Technical Committee to review brief documents, management plans and advise on any technical matter referred by the Wetland Authority; and (b) a grievance committee consisting of four members to provide a mechanism for hearing M.C.(PIL) No. 16 of 2019Page 5 and forwarding grievances raised by public to the authority. Rule 5(7) provides the period of meeting of the Technical Committee and Grievance Committee.

[9] In view of the above, we direct the Chief Secretary of the State Government, who is at Sl.No.2 in Rule 5(1) of the Rules to inform the Court whether the Committee has been formed in terms of the Wetlands (Conservation and Management) Rules, 2017. Such a response should be filed immediately on or before 5.6.2018.

[10] Rule 7 provides that the Department of the State Government to prepare a brief document of the wetlands on various items, as follows:

"(a) demarcation of wetland boundary supported by accurate digital maps with coordinates and validated by ground trothing;

(b) demarcation of its zone of influence and land use and land cover thereof indicated in a digital map;

(c) ecological character description;

(d) account of pre-existing rights and privileges;

(e) list of site-specific activities to be permitted within the wetland and its zone of influence;

(f) list of site specific activities to be regulated within the wetland and its zone of influence; and

(g) modalities for enforcement of regulation;"

Dehors the formation of the State Wetlands Authority, the State of Manipur has formed Loktak Development Authority(LDA), headed by the Chief Minister. The LDA is already taking up certain aspects of development of Loktak lake/wetland.

[11] The authority shall prepare the document in terms of Rule 7 (1) (a) to (g). This will be helpful for notifying wetlands and also for preservation, conservation and development activities.

[12] The learned Advocate General states that pursuant to the notification, in the State of Manipur, State Wetlands Authority has been constituted. The Director, Department of Environment and Ecology for the State of Manipur is the Member Secretary.

[13] In order to effectively monitor the Wetlands and to take up the work of Preservation, Conservation and Development, we are inclined to implead the Manipur State Wetlands Authority represented by the Director, Department of Environment and Ecology as respondent in this writ petition. The learned Advocate General, will represent the said Authority.

[14] The newly impleaded Director, Department of Environment and Ecology shall file an affidavit showing details of all the Wetlands declared by the State of Manipur consequent to the 2017 Rules, the steps taken for preservation, conservation and development of the Wetlands in the State of Manipur and all other relevant details. Special emphasis shall be given in so far as the Loktak Lake/Wetlands and the wetlands adjacent to it as well. This

is because the development of Loktak Lake/Wetland is a great importance to the State of Manipur particularly for tourism.

[15] We call upon the Director, Member Secretary, to coordinate with the Project Officer, LDA, who is also a member of the State Wetlands Authority and provide all the details to the Court in terms of Rule 7 of the 2017 Rules, on the next hearing date.

[16] The Chief Engineer, PWD assures that the department will take temporary measures for maintaining the road so as to enable the authorities to visit the Loktak Lake for the purpose of implementation of the various measures to preserve, conserve and develop the Loktak lake/Wetland.

[17] The Chief Engineer, further states that he will submit a project for developing a full-fledged road under the North East State Infrastructure Development fund. We will examine the scope of the project after it is submitted by the Chief Engineer, PWD.

[18] List the matter on 18.6.2018 for preliminary report by the Member Secretary, State Wetlands Authority. Preliminary report by the Project Director, LDA and also by the Chief Engineer, PWD.

Copy of this order may be furnished to the learned Amicus Curiae, learned Advocate General, Member Secretary, State Wetlands Authority, the Project Director, LDA and the Chief Engineer, PWD.

This order will be uploaded on the net.

JUDGE CHIEF JUSTICE"

[2] Learned Advocate General produced a copy of the Revised Project Proposal Loktak Inland Waterways Improvement Project, September, 2019 to the Court and amicus curiae.

[3] While hearing the learned AG and Mr.Kh.Samarjit and Mr.D.Julius Riamei, learned Amici Curiae, it was pointed out that the Loktak Wetland is a wetland contained in the list declared in the Ramsar Convention. Hence, the Wetlands (Conservation and Management) Rules, 2017 will apply as observed earlier.

[4] The State Wetlands Authority is the nodal agency to implement the Wetlands (Conservation and Management) Rules, 2017 including approval of the Waterways Improvement Project. This has to be done before undertaking any such project as above. We find that the Wetlands (Conservation and Management) Rules, 2017 imposes onerous responsibility on the Wetlands Authority to perform specified duties. Rule 7 provides for the following:-

> "7. Delegation of powers and functions to the State Governments and Union Territory Administrations.—
> (1) The concerned Department of the State Government or Union Territory Administration shall, within a period of one year from the date of publication of these rules, prepare a Brief Document for each of the wetland identified for notification, providing:—
> (a) demarcation of wetland boundary supported by accurate digital maps with coordinates and validated by ground truthing;
> (b) demarcation of its zone of influence and land use and land cover thereof indicated in a digital map;
> (c) ecological character description;
> (d) account of pre-existing rights and privileges;
> (e) list of site-specific activities to be permitted within the wetland and its zone of influence;
> (f) list of site specific activities to be regulated within the wetland and its zone of influence; and
> (g) modalities for enforcement of regulation;
> (2) Based on the Brief Document, the Authority shall make recommendations to the State Government or Union Territory Administration for notifying the wetlands.
> (3) The State Government or Union Territory Administration shall, after considering the objections, if any, from the concerned and affected persons, notify the wetlands in the Official Gazette, within a period not exceeding 240 days from the date of recommendation by the Authority.
> (4) (a) In case of trans-boundary wetlands, the Central Government shall coordinate with concerned State Governments and Union Territory Administrations to prepare the Brief Document containing information as listed in sub-rule (1).
> (b) Based on the Brief Document, the National Wetlands Committee shall make recommendations to the Central Government for notification of the wetland.
> (c) The Central Government shall, after considering the objections, if any, from the concerned and affected persons, notify the wetlands in the Official Gazette, within a period not exceeding 240 days from the M.C.(PIL) No. 16 of 2019Page 8 date of recommendation by the Committee.
> (5) (a) The Central Government shall create a dedicated web portal for information relating to wetlands. (b) The Central Government, State Government and Union Territory Administration shall upload all relevant information and documents pertaining to wetlands in their jurisdiction."

[5] On the basis of Rule 7, a comprehensive plan for wise use of wetlands/brief document for the purpose of maintaining its ecological character, achieved through implementation of ecosystem approach within the context of sustainable development has to be prepared and approved. Rule 4 gives details of restriction of activities in wetlands. It was pointed out that Rule 4 (vi) prohibits constructions of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years from the date of commencement of the rules besides other restrictions. As to whether such study and determination has been made by the Wetlands Authority is not evident from the Revised Project Proposal.

[6] The affidavit filed on 11.11.2019 by Shri Yanglem Nabachandra Singh, Director of Environment, Government of Manipur, Member Secretary, Manipur State Wetland Authority is bereft of any particular. Para No.3 and 4 of the affidavit are extracted as below:-

> "3. That with regard to above direction (a) & (b), the answering respondent humbly submits that there is no new project or development programme so far has been taken up by the Directorate of Environment and Manipur State Wetland Authority in and around Loktak Lake.
>
> 4. That with regard to above direction (c) the answering respondent submits that as there is no project or developmental programme being taken up by the Directorate of Environment and Manipur State Wetland Authority in and around Loktak Lake, utilization of fund does not arise."

[7] A reading of the affidavit as above makes it clear that the State Wetlands Authority is not in the know of project of the Loktak Development Authority. It is also clear that the Wetlands (Conservation and Management) Rules, 2017 has not been implemented in letter and spirit and the earlier order not followed. The State Wetland Authority has not submitted its wise use of wetlands /brief document which would be the primary document for the purpose of taking up Loktak Inland Waterways Improvement project. This is a priority.

[8] Keeping in line with the Wetlands (Conservation and Management) Rules, 2017, the State Wetlands Authority is directed to submit a detailed action plan indicating wise use of wetlands/brief document in so far as Loktak lake is concerned so as to proceed further on the issue of Loktak Lake Inland Waterways Improvement project as proposed by the Loktak Development Authority.

The emphasis at the first instance should be for maintenance of the ecological character, achieved through implementation of ecosystem approach within the context of sustainable development subject to restrictions of activities in Wetlands as provided under Rule 4 of the 2017 Rules. The Wetlands Authority shall prepare a report on the basis of Rule 7 which has been already extracted above.

[9] List again on 29.01.2020. A copy of this order be issued to learned AG, to the respondents No. 4 and 5 and to the learned Amici Curiae.

JUDGE CHIEF JUSTICE

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[6] On the basis of the order of this Court, the Integrated Management Plan for Wise Use of Loktak Lake, Manipur (2020-2025) has been prepared and submitted on July, 2020. Annexure-E-1 of the Addl. Affidavit dated 25.8.2020 filed in PIL No. 24 of 2017 is the Integrated Management Plan for Wise Use of Loktak Lake, Manipur (2020-2025). This document was filed before the Court on 26.8.2020 by Mr.P.Tamphamani, learned Govt. Advocate, a copy of which has been circulated to the learned Amicus Curiae and also to other parties. In the meanwhile, on 14.9.2020, the Directorate of Environment and Climate Change, Govt. of Manipur forwarded this Integrated Plan for Wise Use of Loktak Lake to the Joint Secretary, Ministry of Environment, Forest and Climate Change, Govt. of India for review and endorsement.

This review and endorsement of the Ministry of Environment, Forest and Climate Change, Govt. of India is awaited.

In the meanwhile, Shri Tushar Mehta, learned Solicitor General of India appearing for the State of Manipur pleaded that the Loktak Inland Waterways Improvement Project is funded by the Ministry of Shipping, (IWT Section), Govt. of India, referable to proceedings dated 31.10.2019, Annexure-X/2 in MC(PIL) NO. 16 of 2019. In that, in principle approval to the Government of Manipur's project, namely, Loktak Inland Waterways Improvement Project" under Central Sector Scheme has been approved. It is at this stage that the Court wanted clearance from all the authorities including the Wise Use plan and as a result, the Integrated Management Plan for Wise Use of Loktak Lake, Manipur (2020-2025) has been submitted as mentioned earlier. The learned Solicitor General of India stated that this amount is likely to lapse if the NIT is not allowed to proceed further. He further stated that the clearance from the Ministry of Environment, Forest and Climate Change, Govt. of India will be taken for the project in issue. Besides all other statutory requirements will be scrupulously followed, required permission, clearances will be taken before the project is taken up for implementation. However, the NIT should be allowed to proceed subject to the condition of getting all necessary clearances as indicated above. This will avoid delay of the project.

[7] Similarly, MC(PIL) NO. 47 of 2020 has been filed for the following relief:-

> " In view of the above facts and circumstances, it is therefore prayed that your Lordship be pleased to allow the Respondent No.6 to proceed with the World Class project namely, "Loktak Lake Eco-Tourism Project" in and around the Loktak Lake, Bishnupur District, Manipur, "with a condition that all the necessary prior permissions and approvals of all appropriate authorities, be taken by the State/Respondent No.6 before proceeding with the said Loktak Lake Eco-Tourism Project" in the interest of justice, fair play and equity as well as also to avoid multiplicity in proceeding."

[8] In this case, the Preliminary Project Report is the Annexure-A/3, page No.29. For this project, the funding is by the Asian Development Bank, Japan. Shri Tushar Mehta, learned Solicitor General of India points out that the funds for this Project will also lapse if the NIT is not permitted subject to same conditions as stated earlier. The NITs in both the cases have not been taken up only because of the Hon'ble High Court's order restraining the authority from proceeding without the necessary clearances. The learned Solicitor General of India assures the Court in both the issues the clearance from the Ministry of Environment, Forest and Climate Change, Govt. of India as well as other Ministry concerned will be obtained before the project is implemented. For the present, he seeks the permission of the Court to proceed with the NIT subject to the condition that all necessary clearance from the various Union and State Departments/Ministries authorities concerned will be taken. The Pollution Control authority will also look into the project in detail.

[9] We have considered the prayers in both the MC(PIL) NO.16 of 2019 and MC(PIL) NO.47 of 2020. We have heard the learned Advocate General for the State, N.Kumarjit Singh, the Addl.Advocate General, Lenin Hijam, Mr.Kh.Samarjit and Mr. Julius Riamei, the learned Amicus Curie for the Court.

[10] At the outset, it has to be pointed out that the PIL No. 24 of 2017 is taken up on the direction of the Hon'ble Supreme Court considering the fact that the Loktak Lake is a Ramsar site and we have interdicted the State and the authorities from proceeding further unless and until a proper Wise Use plan for management of Loktak Lake is prepared and all other statutory requirements are complied with. Accordingly, on the persuasion of the Court, Integrated Plan for Wise Use of Loktak Lake,(2020-2025) has been prepared and submitted to the Ministry of Environment, Forest and Climate Change, Govt. of India on 14.9.2020, a copy of which has been placed before

the Court. It is for the Ministry of Environment, Forest and Climate Change, Govt. of India to review the Management Plan and give its approval or suggestions, if any, on its merit. We hope and trust that the Ministry of Environment, Forest and Climate Change, Govt. of India will take all necessary action in this regard and also inform the State if there is any other requirement to be complied with before the Integrated Management Plan of Wise Use of Loktak Lake is approved. Subject to this condition, the reason for permitting the State authorities, namely, Loktak Development Authority and the Tourism department to proceed with the NIT can be considered as reasonable request because they have complied with the basic requirement of providing the Integrated Management Plan of Wise Use of Loktak Lake (2020-2025). This will enable the Union Government and other authorities to assess the nature of the project and guide the two departments of the State Government in a proper manner. On pragmatic assessment of the issue, necessary guidelines for Wise Use of Loktak Lake in relation to Loktak Inland Waterways Improvement Project as well as Eco Tourism project will have to be issued by the various Departments of the Union of India. It is a decision they have to take on the merits of the proposal keeping in mind the environment and ecology of the Ramsar site.

[11] Subject to condition that all the necessary statutory clearance will be obtained from all departments concerned, more particularly, from the Ministry of Environment, Forest and Climate Change, Govt. of India, we permit the applicants in both the Misc. Application No.16 of 2019 and No.47 of 2020 to proceed with the NIT. Both the Misc. Applications stand ordered as above.

JUDGE CHIEF JUSTICE

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