



WP(MD)Nos.27753, 28914 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 21.12.2023

Pronounced on : 11.03.2024

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

WP(MD)Nos.27753, 28914 of 2023

and

WMP(MD)Nos.23860 to 23862, 24941, 24944, 24945 of 2023

WP(MD)No.27753 of 2023:-

1.S.A.Xavier

2.S.Arul Navarathinam

... Petitioners

v.

1.The Secretary to Government,
Public Works Department,
St. George Fort, Chennai - 9.

2.The Additional Principal Secretary to Government,
Water Resource Department,
St.George Fort,
Chennai.

3.The Executive Engineer,
Periyar Vaigai Basin Division,
Madurai.



WP(MD)Nos.27753, 28914 of 2023

4.The Divisional Engineer (Operations),
Periyar Vaigai Basin Division,
Madurai.

5.Pandi

... Respondents

[R.5 impleaded vide order dated 12.12.2023]

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the impugned Government Order passed under G.O.Ms.No.484, on the file of the second respondent dated 14.11.2023, quash the same as far as confining the period of irrigation as ten days is concerned and directing the respondents to irrigate both the Periyar water channel and Thirumangalam water channel in strict compliance to the regulations as enumerated in G.O.Ms.No.122, dated 21.04.2010, passed by the first respondent, by continuing the supply of irrigation of water for the period till 1st March 2024.

For Petitioners : Mr.K.R.Laxman

For Respondents : Mr.R.Baskaran,
Additional Advocate General
Assisted by
Mr.K.Balasubramani,
Special Government Pleader
for R.1 to R.4

Mr.R.Murali for R.5



WP(MD)Nos.27753, 28914 of 2023

WP(MD)No.28914 of 2023:-

1.S.A.Xavier

2.S.Arul Navarathinam

... Petitioners

v.

1.The Principal Secretary to Government,
Public Works Department,
St. George Fort, Chennai – 9.

2.The District Collector,
Madurai.

3.The Additional Chief Secretary to Government,
Water Resource Department,
St.George Fort,
Chennai.

4.The Executive Engineer (WRD),
Periyar Vaigai Basin Division,
Madurai.

5.The Divisional Engineer (Operations),
Periyar Vaigai Basin Division,
Madurai.

6.M.P.Raman

7.M.Murugan

8.Murugan
S/o.A.Gurusamy

... Respondents

[R.8 impleaded vide order dated 12.12.2023]



WP(MD)Nos.27753, 28914 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the impugned Government Order passed under G.O.Ms.No.481, on the file of the third respondent dated 09.11.2023 and the Water Balance Calculation dated 30.11.2023 on the file of the fourth respondent, quash the same and directing the respondents 1 to 5 to irrigate for both the Single Crop Area and Double Crop Area coming under the Periyar water channel and Thirumangalam water channel simultaneously in strict compliance to the regulations as enumerated in G.O.Ms.No.122, dated 21.04.2010, passed by the first respondent, by continuing the uniform supply of irrigation of water at-par with the other Vaigai Ayacut areas.

For Petitioners : Mr.K.R.Laxman

For Respondents : Mr.R.Baskaran,
Additional Advocate General
Assisted by
Mr.K.Balasubramani,
Special Government Pleader
for R.1 to R.5

Mr.K.Govindarajan
for Mr.R.Murali for R.7

Mr.G.Prabhu Rajadurai for R.8



WP(MD)Nos.27753, 28914 of 2023

ORDER

WEB COPY

The petitioners are Farmers, having lands at Mellakottai Village, Thirumangalam Taluk and Chelampatti Union, Ariyampatti Village of Madurai District. Their primary source of irrigation is through Thirumangalam Water Channel, which comes under Periyar Vaigai Water Irrigation Scheme, where the water is irrigated from the Vaigai reservoir. They are having Riparian rights from Vaigai reservoir (Vaigai Dam) as per G.O.Ms.No.122, Public Works Department, dated 21.04.2010. They have filed these writ petitions as against the Government Orders in G.O.Ms.No.481, dated 09.11.2023 and G.O.Ms.No.484, dated 14.11.2023 of the Water Resource Department. They have also sought for a direction for release of water to Thirumangalam Water Tank as per the regulations enumerated in G.O.Ms.No.122, Public Works Department, dated 21.04.2010.

2. According to the petitioners, the distribution of water through Vaigai reservoir (Vaigai Dam) has been finalized vide G.O.Ms.No.122, Public Works Department, dated 21.04.2010 and as per this Government



WP(MD)Nos.27753, 28914 of 2023

Order, the Thirumangalam main channel has to be irrigated with 230 cusecs of water per day from 15th September to 1st March. This release of water is subject to the availability of water in Vaigai Dam of 6000 MCFT. The case of the petitioners is that the Vaigai Dam is now having 7000 MCFT of water and as such, expecting release of water till March 2024, the Farmers have also started agricultural activities, by investing huge amounts, in their fields. However, vide the impugned Government Orders, the release of water has been restricted for 10 days from 15.11.2023 to 25.11.2023. The respondents have also discriminated the single crop farmers by restricting the water supply to 10 days, whereas, on the other hand, for the double crop farmers, water is being supplied till the first of April, in violation of G.O.Ms.No.122, Public Works Department, dated 21.04.2010.

3.Learned Counsel for the petitioners made his submissions as follows:-

3.1.The double crop area has an opportunity to get water twice per year, whereas, the single crop area has only one opportunity to get water



per year. Therefore, the irrigation to single crop area ought not to have been restrained.

3.2.The statement of the respondents that the water has not reached beyond the level of 6000 MCFT in the month of September is not true, inasmuch as even as per the respondents' own report, the local storage was not taken into consideration. While computing the parameters for water release, the local storage was not included.

3.3.The present problem arose due to an administrative mistake committed by the official respondents. As per the Annexure in G.O.Ms.No.122, for double crop area, the 1st irrigation ought to have been commenced on 1st June, when the water capacity is at 4000 MCFT. However, by stating that there is no enough water, it was not done. But, as per the respondents' own report, as on 1st June, the Periyar Credit is computed to 3730 MCFT. When the Periyar Credit alone is 3730 MCFT and by including the local storage area, the entire storage would have gone more than 4000 MCFT. However, for reasons best known to them,



the official respondents did not release the water for the 1st June irrigation and its proportionate distribution of irrigation also got lapsed.

3.4. Having got lapsed, the question of activating the 1st June irrigation in the month of November is not permissible, as the next release of water on September 15 ought to have been given effect to, when the period has already crossed 15th September.

3.5. When the release of water for irrigation during September is concurrent and simultaneous for both single and double crop areas, the method of now choosing double crop over single crop is highly discriminative.

3.6. The forecast that there is a monsoon failure is not correct. Even then, the question of irrigating to one sector alone is arbitrary. Under distress, the water has to be shared among the two areas, namely, the single crop area and the double crop area.



WEB COPY

3.7.The Farmers in the double crop area have already moved out of their respective fields and in fact, there is less cultivation activities in the double crop area. Therefore, supplying water to the double crop area has to be relooked *in toto*.

4.Learned Additional Advocate General for the official respondents made his submissions as follows:-

4.1.The writ petitions are not maintainable, inasmuch as it is the policy decision of the Government to release the water, as per the availability and the requirements for drinking as well as for irrigation purpose based on the report of the Water Resource Department.

4.2.The Periyar Vaigai irrigation system includes meeting the requirements of drinking water schemes in Madurai Corporation and surrounding Municipalities and Panchayats, apart from the irrigation of lands.



4.3.The availability of water in the Periyar Lake and Periyar credit in Vaigai Reservoir stands at 7721 MCFT. However, the collective water requirement for irrigation in the Cumbum Valley Double Crop area (Upto Feb 2024), First Crop of Double Crop area of PMC (Upto Kallandri), as well as the water supply needs for Theni District, Madurai Corporation, Andipatti and Sedapatti for drinking water purposes, stands at 8986 MCFT. The difference of 1265 MCFT would be met out by the anticipated inflow during the month of December (1004 MCFT) and January (321 MCFT).

4.4.The additional requirement of water for the petitioners' Single Crop Area is 7485 MCFT. The total water requirement for irrigation (Upto Feb 2024) and drinking water (Upto May 2024) stands at 16471 MCFT (Upto Feb 2024). Consequently, there is a shortage of 8750 MCFT for irrigation and drinking purposes. This shortage would not be met out by anticipated inflow and as such, the release of irrigation water for Single Crop (PMC and TMC) is not feasible.



WP(MD)Nos.27753, 28914 of 2023

WEB COPY

4.5.As per G.O.Ms.No.122, Public Works Department, dated 21.04.2010, the release of Periyar irrigation water at 900 cuseus for 45,041 Acres in the double crop area's first crop scheduled from 1st June to 1st March is subject to the condition that the minimum combined storage in the Periyar Lake, Periyar credit in Vaigai Reservoir and local system tanks should be above 4000 MCFT. Due to insufficient rainfall in the Periyar catchment area, the combined storage in the Periyar Lake, Periyar credit in Vaigai Reservoir stood at only 3730 MCFT as on 01.06.2023. Hence, the release of irrigation water for the first crop of double crop area scheduled on 1st June of 2023 has been halted.

4.6.As per G.O.Ms.No.122, Public Works Department, dated 21.04.2010, the release of Periyar irrigation water at the rate of 2030 cusecs (900 + 900 + 230) for the Periyar main canal, covering an ayacut of 45,041 Acres for the double crop area's second crop, a single crop area of 85,563 Acres and Thirumangalam main canal, encompassing 19,439 Acres, respectively, scheduled from 15th September to 1st March, is



WP(MD)Nos.27753, 28914 of 2023

subject to the condition that the combined storage in the Periyar Lake, Periyar credit in Vaigai Reservoir system tanks being above 6000 MCFT.

4.7.As on 04.10.2023, though the combined storage of Periyar water reached 4000 MCFT, the Ayacutors of double crop were not provided with water and they were requested to wait for getting additional storage. On 19.10.2023, a meeting was convened with farming members of both single and double crop to represent their views. It was concluded that irrigating the entire total ayacut of 1,50,043 Acres would not be feasible due to deficiency of rainfall in the catchment area and limited water storage in the Dam.

4.8.Thereafter, the Government has passed G.O.Ms.No.481, Water Resource Department, dated 09.11.2023, ordered to release 900 cusecs for a period of 45 days at full discharge and 75 days under the turn system, totalling 120 days, for irrigation in the double crop areas (First Crop) from 10.11.2023 onwards, which was supposed to be released for 1st June cultivation.



WP(MD)Nos.27753, 28914 of 2023

4.9.Vide G.O.Ms.No.484, Water Resource Department, dated 14.11.2023, the Government has issued orders to release 900 cusecs for PMC and 230 cusecs for TMC for a period of 10 days starting from 15.11.2023 onwards for drinking purpose.

5.We have considered the rival submissions made on either side and perused the available materials placed on record.

6.The Periyar-Vaigai Water Management System is governed by the Rules prescribing 'Riparian Rights' by way of 'Periyar Credit' and 'Vaigai Credit' as framed in G.O.Ms.No.461, Irrigation Department, dated 21.02.1935, amended by G.O.Ms.No.309, Public Works Department, dated 08.02.1939 and G.O.Ms.No.3810, Public Works Department, dated 18.09.1953. After the construction of Vaigai Dam, G.O.Ms.No.1689, Public Works Department, dated 22.11.1974 was issued and finally, amended vide G.O.Ms.No.122, Public Works Department, dated 21.04.2010.



WP(MD)Nos.27753, 28914 of 2023

7.As per G.O.Ms.No.122, Public Works Department, dated 21.04.2010, the release of Periyar irrigation water at 900 cusecs for 45,041 Acres in the double crop area's first crop scheduled from 1st June to 1st March is subject to the condition that the minimum combined storage in the Periyar Lake, Periyar credit in Vaigai Reservoir and local system tanks should be above 4000 MCFT.

8.Similarly, as per this Government Order, the release of Periyar irrigation water at the rate of 2030 cusecs covering an ayacut of 45,041 Acres for the double crop area's second crop, a single crop area of 85,563 Acres and Thirumangalam main canal, encompassing 19,439 Acres, respectively, scheduled from 15th September to 1st March, is subject to the condition that the combined storage in the Periyar Lake, Periyar credit in Vaigai Reservoir system tanks should be above 6000 MCFT.

9.With a grievance that the Government has restricted the supply of water for the single crop to ten days, the Ayacutors, who are doing single crop cultivation, have filed these writ petitions.



WEB COPY

10. According to the respondents, due to insufficient rainfall in the Periyar catchment area, the combined storage stood at 3730 MCFT [as against the cut-off limit of 4000 MCFT] as on 01.06.2023. Therefore, the release of water for the first crop of double crop scheduled on 1st June, as per G.O.Ms.No.122, Public Works Department, dated 21.04.2010, has been halted. Now, the combined storage stands at 7840 MCFT as on 09.11.2023 and therefore, they have passed G.O.Ms.No.481, Water Resource Department, dated 09.11.2023, to release 900 cusecs for a period of 45 days at full discharge and 75 days under the turn system, totalling 120 days, for irrigation in the double crop areas (First Crop) from 10.11.2023 onwards, which was supposed to be released for 1st June cultivation.

11. When the Government has framed certain guidelines, there would be reasonable expectation from the Farmers that they would get water for irrigation purpose. Therefore, they could not be found fault with. At the same time, the respondents claim that Periyar Vaigai



WP(MD)Nos.27753, 28914 of 2023

Irrigation System includes meeting the growing drinking water requirements in Madurai Corporation and other Municipal Towns and that if the water is released as per the petitioners' demand, then there would be a shortage of 8750 MCFT for irrigation and drinking purpose, which would not be met out by the anticipated inflow. Keeping that in mind, they have passed G.O.Ms.No.484, dated 14.11.2023, for release of water for drinking purpose for 10 days.

12.In view of the stand taken by the Department that they are to cater the growing needs of drinking water in Madurai Corporation and other Municipal Towns with the available water, apart from supplying water for irrigation, this Court is inclined to issue any positive directions. However, the respondents are expected to adhere with the guidelines which were framed as a rule prescribing Riparian rights from the Vaigai Reservoir. If the Government has to concentrate much on new drinking water projects, then they have to reframe / amend the guidelines. In fact, it is the specific case of the petitioners that several Double Crop Farmers have moved out of the field and there is less



WP(MD)Nos.27753, 28914 of 2023

cultivation activities in the double crop area. Therefore, the official respondents are expected to reframe the guidelines as enumerated in G.O.Ms.No.122, Public Works Department, dated 21.04.2010, after hearing all the parties concerned.

With the above observations and directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S.,J.] [B.P.,J.]
11.03.2024

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

To

- 1.The Secretary to Government,
Public Works Department,
St. George Fort,
Chennai – 9.
- 2.The Additional Principal Secretary to Government,
Water Resource Department,
St.George Fort,
Chennai.



WP(MD)Nos.27753, 28914 of 2023

3.The Executive Engineer,
Periyar Vaigai Basin Division,
Madurai.

4.The Divisional Engineer (Operations),
Periyar Vaigai Basin Division,
Madurai.

5.The District Collector,
Madurai.



WEB COPY



WP(MD)Nos.27753, 28914 of 2023

G.R.SWAMINATHAN, J.
and
B.PUGALENDHI, J.

gk

WP(MD)Nos.27753, 28914 of 2023

11.03.2024