

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

204

**CWP-4255-2017 (O&M)
Date of decision: 29.01.2024**

Gram Panchayat village Kambo Dhai Wala and others

...Petitioners

VERSUS

The State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. K.S. Boparai, Advocate for the petitioners.

Mr. P.S. Bajwa, Addl. AG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present writ petition is for issuance of directions to the respondents to manage and control the Harikay Reservoir Water which is unregulated and unmanaged and consequently results in water logging/inundation of fields of the residents of three villages namely Dhun Dhai Wala, Kamboj Dhai Wala and Chamba Kalan, in Tehsil and District Tarn Taran, including the land of the petitioners. Further prayer has been made to direct the respondents to award and release the compensation to the petitioners for the losses suffered by them to their crops on account of the flooding of their agricultural fields.
2. Learned counsel for the petitioners contends that the petitioners are the residents of above said three villages and the combined land holding

of the villages is more than 4000 acres. It is contended that the respondents-State had constructed a reservoir namely, “Harikay Water Reservoir”, on two major rivers i.e. Satluj and Beas. The said project had been started in the year 1952 and various steel gates had been fitted to control the outlet of water from the reservoir and manage the flow of excess water by opening the said gates, in the event of any exigency.

3. He further contends that the respondents have neither got the gates repaired nor opened the same in last 63 years due to which the said gates have been become non-functional and the same has been a recurring cause of inundation of the villages/the agricultural land of the petitioners.

4. It is contended that the original capacity of the reservoir is 1 lac cusecs and that the same has been reduced on account of non-desilting of reservoir. He further contends that the respondent-State has not been compensating the farmers appropriately for loss suffered by them and thus prays for the following directions:

- (i) That the respondent-State should be called upon to maintain proper embankments of the water supply to the reservoir so that there is no water spillage and inundation of the fields of the petitioners and/or the lands in the said villages.
- (ii) That the respondent-State should ensure that the regular de-silting of Harikay Dam is carried out and that the reservoir capacity is maintained at the optimum level.
- (iii) That the respondent-State should be directed to ensure

that the survey of the crop losses incurred be undertaken expeditiously and an appropriate compensation, as assessed by the competent authority of the department of agriculture, be disbursed without any delay. Further, the assessment of loss suffered ought to be done as per applicable norms.

5. Counsel for the respondents-State makes a reference to the reply filed by way of affidavit dated 22.12.2017 on behalf of respondents No.1, 2, 4 and 5 wherein it has been averred that the flooding of the fields did not occur on account of mis-management/lack of proper storage at the Harikay Reservoir and was/is only because of its back pressure, due to natural calamities like heavy rains, floods etc. It is contended that it is not practically or scientifically possible to permanently control and manage the excessive water flow at the Harikay Water Reservoir beyond its holding capacity. He further contended that the Harikay Water Reservoir is having a fixed level of 690.00 feet (plus/minus 1 feet) and despite the best efforts, in case the flow of water comes beyond the fixed levels of the Harikay Reservoir, the consequent back pressure causes inundation to the adjacent fields.

6. He further submits that the depth of the Harikay Reservoir has never been reduced and that there is no silt accumulation. The desilting operations are carried out from time to time and that the State has been making payments of compensation to the affected farmers for the losses suffered by them. He further refers to the above said reply to contend that

the steel gates have been installed at the Harikay Reservoir to control the outlet of the water of the reservoir and the same are opened at an exigent time and thereby diverting the excess water towards Pakistan. It is also submitted that the contention of the petitioner that the gates have never been opened or repaired is incorrect. A specific assertion has been made that the gates are fully functional and are duly repaired from time to time. There are 46 gates on the dam out of which 31 gates are at the Harike Barrage which control the excess water flow and other 15 gates are of Canals which facilitate irrigation of agricultural fields. The level of the outlets releasing water for the canals from Harikay Reservoir has been adjusted by the Experts/Engineers as per technical considerations and silt excluders have been made available at the Barrage Gates for de-silting from upstream side. He, however, contends that the circumstances of natural calamities such as heavy rains, floods etc. are uncontrollable and incomprehensible. Hence, no further mechanism can be put in place.

7. Even though the above response was filed in the year 2018, however, no replication disputing the claim by the respondents was filed. The stand of the respondents has thus remained un-rebutted and it disputes the claims raised and allegations levelled. Counsel for the State further submits that all preventive, precautionary and restitutive measures are being taken by the State.

8. Taking into consideration the respective uncontroverted pleadings and without commenting on the merits of the rival contentions, the present writ petition is **disposed of** with the following directions:

- (i) That the Additional Chief Secretary/Principal Secretary of the Department of Irrigation shall ensure that adequate and appropriate steps are taken to maintain the capacity of the Harikay Dam Reservoir as initially fixed i.e. by regular desilting process. He shall also issue appropriate direction to the concerned executing agencies that the canals/river are properly maintained so that the same do not lead to a breakage due to normal degradation result into consequent flooding of adjacent fields under the normal circumstances.
- (ii) That in the event of natural calamities causing flooding of the fields of the farmers, the department of agriculture shall carry out a proper survey of the crop loss, that may have been suffered by the farmers, and make its recommendations to the revenue authorities in a time bound manner and preferably within a period of **three months** from such loss being reported.
- (iii) That the concerned officials of the revenue department shall thereupon assess the compensation as per norms and ensure that the appropriate compensation, as assessed in accordance with norms, is promptly disbursed to the aggrieved farmer preferably within a period of **two months** from the receipt of such communication.

The respondents-State shall also ensure that

the compensation/damages suffered by the farmers of the above said villages in the previous years, for which the assessment had already been made, be released to the petitioners/aggrieved farmers, if not already released, within a period of three months from the date of receipt of certified copy of this order.

- 9. **The writ petition is accordingly disposed of in above terms.**
- 10. **All other misc. applications, if any, stands disposed of.**

29.01.2024
Mangal Singh

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No