

110

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25373-2022

Date of decision: 24.01.2024

JASBIR LAL

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. C.S. Singhal, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. This Court, had in relation to the writ grievance, as appertaining to the water occurring in the “Gair Mumkin Chappar” being unfit for human consumption, and, also thereby there is every likelihood of spreading of diseases, on account of ill-maintenance of the said water body, thus, on 01.03.2023, had made the hereinafter extracted directions, upon, the respondent concerned.

“1. The learned State counsel has placed on record the status report, which is taken on record.

2. The main grievance raised in the instant petition, is that, the water occurring in the gair mumkin chappar, is unfit for human consumption, and, also there is every likelihood of spreading of diseases on account of ill-maintenance of the said water body. However, in that regard, a perusal of the status report, as placed today before this Court, discloses that the

authority concerned, after collecting the water of the gair mumkin chappar, has sent the same to the Sub Divisional Officer, Water Supply and Sanitation, Phillaur, rather for an analysis thereof being made. However, it is stated that the report of the said Sub Divisional Officer is awaited.

3. *Therefore, for the institution before this Court, of the report of the Sub Divisional Officer concerned, the matter be listed on 3.5.2023.*

4. *At this stage, the learned State counsel has placed on record a copy of the statute nomenclatured as, The Punjab Water Resources (Management and Regulation) Act, 2020.*

5. *Therefore, on the subsequent date, the learned State counsel is directed to obtain instructions from the officer concerned, whether the said Act, is made fully functional, and, also whether the officers in the Irrigation and Public Health Department of the State of Punjab, are assigned the duty(ies), as contemplated in the Act (supra). Moreover, the learned State counsel is also directed to, on the subsequent date of hearing, apprise this Court whether the authority created under the Act (supra), has been, as a matter of fact notified to be created.”*

2. In terms of the directions relating to the above extracted directions, as pointedly relating to whether the water inside the ponds, is fit for human consumption, and, but obviously for an analysis thereof, being made, by the Sub Divisional Officer, Water Supply and Sanitation, Phillaur, thus the apposite therewith direction has been complied with. The said compliance is carried in Annexure R-4/5. A reading of Annexure R-4/5 reveals, that the sample drawn from the water body, on becoming tested, thus unfolding that the pond water is fit for human consumption.

3. However, the above unfoldings carried in Annexure R-4/5/T, do not satisfy, the judicial conscience of this Court, as it is not known as to in

whose presence, the said samples were collected, whereas, not only the

person in whose presence the samples were collected rather was required to be reported in the compliance affidavit, besides also the videography of the collections made from the relevant ponds, was to be done, besides the said video clips were required to be maintained with the quarter concerned. However, no speakings in the above regard occur in the compliance affidavit. Therefore, this Court for ensuring that regular testings are done of all the water bodies, thus a direction is required to be made, upon the respondent concerned, to make quarterly collections of the water inside all the ponds within the territory of Punjab, and, the said collections shall be accompanied by videography being done of the relevant sites, and, subsequently they be sent for analyses thereof, being made at the establishment concerned, and, the reports of the analyses, as, made thereons be maintained. In case there is any deficit in the quality of water occurring in the ponds concerned, thereupon the said deficiency be ensured to be remedied. The said mandamus be ensured to be complied with, within a period of one month from today, and, statistics on affidavit in respect thereof, be furnished before this Court, on an affidavit sworn by the Principal Secretary concerned.

4. A reading of Annexure R-4/3/T reveals, that after a survey becoming conducted by the Health Teams on their visiting the houses, at village Indina Kalaske thus reporting, that rather there was no indication with respect to spreading of any disease on account of the water occurring in the pond concerned. Furthermore, a reading of Annexure R-4/2/T appended with the reply, on affidavit, discloses that the J.E. and T.A., reporting that an incomplete construction has been made of the relevant pond, as became so constructed, under MGNREGA scheme in the year 2020. It is further stated

therein that, on account of the said incomplete construction, thus dirty water still remains inside the pond. In addition, it is also stated in the said annexure, that for ensuring that the incomplete work, rather becomes completed, thereupon not only the dirty water inside the pond, is required to become evacuated therefrom, besides subsequent thereto, fresh water is required to re-enter the pond concerned, for thereby its becoming fit both for irrigation, and, also may be for drinking purposes.

5. However, though it is also mentioned in Annexure R-4/1, that the water inside the pond has been evacuated, but yet solid waste had settled in the wells and inlet chamber. Therefore, it is stated therein, that the circulation of the water in the wells as per the design of the project rather was not happening. Therefore, as stated in the above referred annexure, it is also stated in Annexure R-4/1 that water from the storage chamber, is required to be drawn out therefrom, thus for begetting changings in the water levels, between the wells and storage chamber, whereupons, the relevant pond would become fully functional. A reference is made also to the resolution of the Panchayat, that as a part of an earlier project, a pipeline has been laid by the Panchayat thus connecting the pond concerned, rather with the second pond. The said pipeline is stated to be used for de-watering any kind of overflow from the pond under consideration to the second pond earlier. Nonetheless, as stated (supra), the same has not been done by the Panchayat, rather it is stated that regular de-watering of purified water from the pond for irrigation, thus would not have led to the apposite ill-situation. The effect of what has been state above, is that, the executing agencies concerned, are required to be ensuring that they in terms of the above annexures, thus make the promptest, and, completest removal of the earth

inside the relevant ponds, besides they are directed to expeditiously ensure, that there is de-watering of the dirty water, which has accumulated inside the pond, so that thereafter, the purified water which re-enters the relevant pond, thus becomes used either for drinking purpose, besides becomes used for irrigation purpose.

6. Necessarily, there is lack of completest construction of the relevant pond, and, the said has happened, because the relevant agency, which is the Panchayat concerned, or the BDPO concerned, has completely failed in their respective duties, to ensure the obviation of the above desilting. Therefore, it is but necessitated, that a direction be made, upon the BDPO concerned, and, also to the Sarpanch of the village concerned, to within 2 weeks, from today, ensure that there is complete de-watering besides desilting of the relevant ponds, thus for thereafter all concerned, ensuring, that the said incomplete construction of the pond, does not continue to enure, whereby the villagers may become deprived to make a well user of the usable water of the pond. Subsequently, a mandamus is also made, upon the executing agency concerned, that the incomplete pond becomes completed within two weeks thereafter. Thereafter, the agencies concerned, are directed to regularly ensure that purified water enters into the relevant pond, so that it becomes fit for human consumption, besides becomes fit for irrigation purposes.

7. Furthermore, a direction is also required to be made to the agencies concerned, to in terms of The Punjab Water Resources (Management and Regulation) Act, 2020 (hereinafter referred to as “the Act of 2020”), ensure that there is regular apt maintenance, and, optimum functionality rather for all the relevant purpose(s) of the relevant pond.

8. In the above regard, in terms of the orders made by this Court, on 01.03.2023, a direction was passed, upon the learned State counsel to file an affidavit from the concerned, whether the said Act, is made fully functional, and, also whether the officers in the Irrigation and Public Health Department of the State of Punjab, are assigned the duty(ies), as contemplated in the Act of 2020. Furthermore, a direction was also passed, upon, the learned State counsel to ensure, that on the subsequent date of hearing, he apprises this Court whether the authority created under the Act of 2020, has been, as a matter of fact, thus notified.

9. In pursuance to the said made direction, an affidavit has been sworn by the Principal Secretary to the Government of Punjab, Department of water Resources, and, the relevant portion of that affidavit is extracted hereinafter.

“3. That in compliance with the aforesaid directions of the Hon’ble Court, the information sought by this Court is submitted as under:-

(i) That the Punjab Water Resources (Management and Regulation) Act, 2020 was promulgated and notified on 12 Feb. 2020.

*(ii) That in pursuance of provisions contained in Sub-Section (1) of Section 3 of the aforesaid Act, an authority namely; ‘The Punjab Water Regulation and Development Authority has been constituted vide notification dated 18.3.2020 published in the Punjab Government Gazette on 19.3.2020 (Copy attached at **Annexure R-1**); and is fully functional.*

(iii) That vide order No.E 30537 IPJ-3/204, dated 5.5.2022, the District Implementing Committees headed by the respective Deputy Commissioner of each district for Water Regulation and Development under section 29 of the aforesaid Act have also been constituted for implementing and monitoring

*the directions being issued by the Punjab Water Regulation and Development Authority. A copy of the said order dated 5.5.2022 is also being appended at **Annexure R-2** for the kind perusal of this Court.*

(iv) That the District Implementing Committees have been constituted in each district and is working primarily for the management of ground water level.”

10. A reading of the above extracted portion of the relevant affidavit unfolds, that the Act of 2020 has been promulgated and notified on 12.02.2020, besides it is also unfolded therein, that the said Act has been made fully functional, inasmuch as, all the implementing and monitoring agencies, as contemplated thereins, have been activated, thus as revealed by Annexure R-2, appended to the said affidavit. Moreover, it is also stated in the said affidavit, that the District Implementing Committee, has been constituted in each district, and, the functions assigned to the said District Implementing Agencies, is to primarily work for the management of ground water level.

11. Learned State counsel submits, that the relevant pond is but a ground water body, and, therefore, its upkeep, maintenance, and, management is to be done in terms of the Act of 2020.

12. In consequence, the Principal Secretary concerned, is directed to ensure, that the implementing agencies constituted under the Act of 2020, ensure the upkeepings, besides maintenance of the water bodies, within the State of Punjab.

13. It appears that this Court had made an order, on 20.09.2023, order whereof becomes extracted hereinafter.

“1. An incomplete compliance affidavit has been filed, as such, the same is returned.

2. *Though a reading thereof reveals, that the relevant Authority constituted under the statute has been made functional, but the relevant statistics, for discerning what action takings have been done by the Statutorily contemplated Authority, has not been revealed in the said affidavit. Therefore, a further direction is made, upon the respondent concerned, to purvey inputs and statistics to this Court in respect of the action takings by the Authority constituted under the relevant statute. In respect of the above, a compliance affidavit be tendered by the Officer concerned, on or before the subsequent date of hearing.*

3. *For the afore purpose(s), list on 24.01.2024.”*

14. The purpose for making the said order was not merely mechanical, but was to ensure that inputs, and, statistics become provided to this Court, by the Principal Secretary concerned, so that this Court becomes well equipped to, in terms of the deficiency in management, and, upkeepings, thus of all the relevant ponds, in the State of Punjab, thus make orders that responsibility becomes fixed upon the Panchayat concerned, or qua the BDPO concerned, so that thereby there is a deterrence in future against ill-maintenance, and, ill-upkeepings of ponds, which are meant for not only maintaining ecological balance, but also subserve the able functions of catering to the drinking water needs, besides to the needs of the farmers to irrigate their fields from the water therein.

15. However, the said order has not been meted compliance, despite the said order becoming passed, on 20.09.2023. Therefore, the Principal Secretary concerned, who has sworn an affidavit, on 12.09.2023, is directed to within 2 months from today file an affidavit to be sworn by him, in completest alignment and in tandem with the directions (supra), made by this Court.

16. Though in terms of the above directions, the writ grievance becomes allayed, thus, thereby this Court though closes the writ petition. However, the statistics and inputs (supra) are yet required to be placed before this Court.

17. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

24.01.2024
Ithlesh

(LALIT BATRA)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No