

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.141 OF 2024

Abhay Dattatray Gogate & Anr. .. Petitioners
Versus
State of Maharashtra & Ors. .. Respondents

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Mr.Anil Sakhare, Senior Advocate with Mr.Bhavesh Parmar
and Ms.Reshma Nair i/b Devmani Shukla for the Petitioner.

Mrs.Neha S. Bhide, Govt. Pleader with Mr.O.A.Chandurkar,
Addl. Govt. Pleader with Mrs.G.R.Raghuwanwhi, A.G.P. for the
State/Respondent No.1.

Mr.Joel Carlos for the Respondent No.3.

Mr.G.S.Hegde, Senior Advocate i/b Ms.P.M.Bhansali for the
Respondent No.4/CIDCO.

CORAM: ALOK ARADHE, C.J. &
BHARATI DANGRE, J.
DATED : 10th FEBRUARY, 2025

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ORDER (PER BHARATI DANGRE, J.) :-

1. The two residents residing in the vicinity of Kondhane Dam Project, in their capacity as social activists, have approached this Court by filing the Public Interest Litigation, *inter alia*, seeking the following reliefs :-

(a) Rule be issued;

(b) For a writ or an order in the nature of a writ directing the Respondent No.3 i.e. Maharashtra Water Resources Regulatory Authority established under section 3 of the Maharashtra Water Resources Regulatory Authority Act, 2005 to discharge its duties

and functions conferred upon it under Chapter II of the said Act with specific reference to the G.R. dated 18.8.2017 (Exhibit F) pursuant to which tender notice dated 9.8.2024 issued by CIDCO (Exhibit I);

(c) For a writ or an order in the nature of a writ directing the Government of Maharashtra to expeditiously complete the Kondhane Dam Project as envisaged vide G.R. dated 18.8.2017 by keeping the escalated costs to the bare minimum;

(d) For a writ or an order in the nature of a writ directing the Government of Maharashtra to explain on affidavit the reason why Kondhane Dam Project which could have been completed at cost of Rs.606 crores in 2022-23 as per RTI Reply dated 11.10.2024 (Exhibit J) has been ignored and why it is being attempted to be completed at cost of Rs.1348.53 crores as envisaged in the tender notice dated 9.8.2024 issued by CIDCO (Exhibit I)."

2. We have heard learned senior counsel Mr.Anil Sakhare for the Petitioners, learned senior counsel Mr.G.S.Hegde for the Respondent No.4/CIDCO, learned counsel Mr.Joel Carlos for the Respondent No.3 and Mrs.Neha S. Bhide, learned Government Pleader for the Respondent No.1/State.

3. The present Petition revolves around Kondhane Dam Project, which is awaiting its completion from the year 2011 and the Petition proceed to state that upon constitution of the Maharashtra Water Resources Regulatory Authority, a statutory body, on 19/05/2011, a Resolution was passed by the Water Resources Department of Government of Maharashtra, conferring administrative approval for implementing the Kondhane Minor Irrigation Scheme in Taluka Karjat, District Raigad and out of the approximate expenditure for implementing the scheme to the tune of Rs.80,35,25,742/-, received administrative approval by bifurcating the expenses of the project. Accordingly, a tender notice was issued on the website of the Water Resources Department for construction of

Kondhane Minor Irrigation Dam as the work was to be executed through Konkan Irrigation Development Corporation (“KIDC”). Originally, the project involved construction of earthen dam with height of 39 meters and width of 250 meters, which was subsequently varied to 71 meters and width of 600 meters to cover eight (8) Municipal Corporations and Municipal Councils.

4. It is the contention of the Petitioners that they alongwith several other villagers, gave their land for the said project and approximately 30-40 percent work of the Dam was complete. However, in April 2012, the work was stopped on the pretext that the design did not receive approval from Central Design Organisation.

5. A Public Interest Litigation No.63 of 2012 was filed by one Mayank Gandhi and others, seeking various reliefs, including the relief of quashing and setting aside the sanction to the project and on 17/01/2014, this Court recorded that the petitioners are not objecting to the implementation of the project *per se*, but their objection is to the manner in which the project is being implemented. The petitioners also sought an independent enquiry to investigate into the sanctioning of Dams and this Court was informed that the Government had already appointed a Committee of three members, headed by Dr.Madhavrao Chitale to enquire into the alleged irregularities and the petitioners were permitted to raise a grievance before it.

6. Since the Kondhane Dam was also one of the project under investigation, the project did not proceed ahead. As a

result, the contracts came to be cancelled on 23/09/2016 by a Government Resolution, when the Water Resources Department directed cancellation of all projects relating to KIDC, since the enquiry was being conducted in all these contracts by the Anti Corruption Bureau. On 18/08/2017, Kondhane project was handed over to City and Industrial Development Corporation (“CIDCO”), Navi Mumbai.

7. Being aggrieved by the termination of contracts, on 03/11/2016, bunch of writ petitions were filed before this Court, which resulted into stay of the termination order of the contractors and KIDC moved the Court for vacating the stay, by informing that on 19/06/2020, the enquiry has been closed and by order dated 08/06/2021, the Court permitted KIDC to execute the project, either through the original petitioners (contractors) or through an interested party by following due process.

8. On 09/03/2023, the pending Public Interest Litigation No.63 of 2012 came to be disposed of, by recording the contention of the petitioner/contractor that it is ready to complete the work at the same cost and, therefore, liberty was granted to CIDCO to execute the instant project and it was also recorded that CIDCO deposited cost of Rs.99.15 crores with the State Government and the Government shall take steps with regard to the payment as may be permissible, for which the petitioner/contractor is entitled to.

9. On 09/08/2024, CIDCO invited e-tenders from experienced prospective bidders for construction of Kondhane

Dam and its allied works by using Roller Compacted Concrete Technology and the Petitioners under the RTI sought information about the expenditure to be incurred, which form part of the Petition.

10. The grievance of the Petitioners before us, which we could gather from the pleadings in the Petition, is about the expeditious completion of the project, but at the same time it is also a grievance raised that the cost of the project was Rs.706.16 crores earlier and Rs.100 crores were already paid to the contractor and, therefore, the project cost cannot now exceed more than Rs.606.16 crores, but the tender notice has now reflected the estimated cost of the Kondhane Dam Project at Rs.1348.53 crores.

Allegations are levelled in the Petition that the increase in the cost is due to design prepared by a Non-Government Agency and despite the fact that the earthen dam design was already prepared and approved earlier, which had a cost of Rs.706.16 crores. It is, therefore, the contention of the Petitioners that there is no justification in changing the nature of Dam from earthen to concrete, when 30-40 percent work is complete and more than Rs.100 crores are already spent and when the earlier contractor has agreed to execute the work as per the original terms and conditions at the same rate i.e. the project cost at Rs.706.16 crores. It is the contention of the Petitioners that the politicians/bureaucrats are proceeding with undue haste, as according to them, the project can be implemented for lesser value.

11. We as a Writ Court, exercising jurisdiction under Article 226 of the Constitution of India, do not possess any expertise as regards construction of a Dam and if the concerned authorities of the State Government have floated a tender for construction of Dam, by using Roller Compacted Concrete Technology and have estimated its price to be Rs.1348.53 crores, we feel that in absence of any expertise in this regard, we would be justified in not showing any indulgence at the instance of the Petitioners, who are also not the experts in the field and are the public spirited citizens. It is trite position of law that the Courts shall not interfere in the policy making sphere of the Government, unless the policy is demonstrated to be illegal, arbitrary or violative of fundamental rights of the citizens and merely because the project would incur high expenses, is not a ground to show any indulgence. Since, we have noted that the earlier tender was floated in the year 2011 and some work of the Dam was completed on the basis of the designs that were approved then, there is no embargo for the Respondents in changing the design after a lapse of more than decade, depending upon the existing necessity as on date, by adopting a new technology, which definitely likely to incur more expenses and estimation of the project is, therefore, at a higher level. Also the escalation in the prices, as well as the material and labour must also be a relevant factor, to be borne in mind.

12. We, therefore, refuse to show any indulgence to the Petitioners and dismiss the Public Interest Litigation, since our jurisdiction under Article 226 of the Constitution of India will not allow us to grant the relief sought in the Petition.

Hence, the Public Interest Litigation is rejected.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)