

(2025) 01 JH CK 1742

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 4663 of 2009

Bhanu Pratap Shahi

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 24-01-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 01 JH CK 1742

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Gautam Kumar Choudhary, J

Bench : Division Bench

Advocate : Mahesh Tewari, Ankur Anand, Sachin Kumar, Surabhi, Prashant Pallav, Shivani Jaluka

Final Decision : Disposed Of

Judgement

M.S. Ramachandra Rao, CJ

1) In this Public Interest Litigation, the petitioner seeks a direction to the respondents-authorities to ensure completion of the project of construction of the barrage at Baradih in the District of Garhwa for providing irrigational and other facilities to the cultivators residing in the said district.

2) According to the Writ petition, the original petitioner was a social spirited person and was fighting for construction of Kanhar Dam since 1970.

3) According to him, Kanhar Reservoir Project was initiated by the erstwhile Bihar Government which was also subsequently approved by the Central Government, but in view of the delay, there was an alternative proposal of construction of Kanhar Barrage made by the petitioner.

4) It is stated that Garhwa District is chronically drought affected and irrigation provided in the district is quite inadequate and there is frequent failure of crops for want of adequate rains.

5) According to the original petitioner, there was a detailed survey done and

Kanhar Reservoir Report was submitted to the Government of India in March 1975, but for some reason or the other, the project could not be implemented by the Government due to lack of clearances from the other States. In view of the technical difficulties, the petitioner suggested to the Government and sought for an alternative proposal for construction of barrage in order to provide relief to the people of the district who were waiting for irrigation facilities and power supplies since independence.

6) It has been stated in paragraph 9 of the writ petition that in view of the abnormal delay in getting clearance from the State of Chhattisgarh, the petitioner made an alternative proposal to construct a "Barrage" at Baradih instead of constructing "Kanhar Dam" on the following grounds:

(i) The Kanhar Project is estimated to cost Rs.4000 Crore, whereas, the cost of "Barrage" is estimated to Rs.800 Crore only. Hence, "Barrage" is cheaper to be constructed.

(ii) Through Low Canal System, more than 70% of land of Garhwa may be brought under irrigation, as such, the Low Canal System of "Barrage" would be more beneficial to Garhwa district.

(iii) The "Barrage" can be completed within shortest possible period, whereas, Kanhar Dam shall take long time in its completion.

(iv) The proposed "Dam" has become a very complicated issue, whereas, the proposed "Barrage" is completely free from any controversy.

(v) "Barrage" may provide an earlier relief to the drought-prone Garhwa district, whereas, the proposed "Dam" shall take years together because it is a big project and other States are also involved.

(vi) There can be no displacement if the proposed "Barrage" is constructed, but the proposed "Dam" may displace a large number of people of all concerned States.

(vii) The proposed "Barrage" would not only provide irrigational facilities, but it shall also provide 32 M.W. electricity to the people of Garhwa district.

(viii) The possibility of submergence of large areas of all the concerned States has been already declared if the "Dam" is constructed, but in case of construction of "Barrage", submergence is not at all possible.

7) According to the petitioner, this proposal for construction of "Barrage" was duly considered by the State Government and a six-man technical committee was constituted on 01.12.2006 and it was directed to submit its report by 20th December 2006.

8) It is stated that thereafter survey work for Barrage construction was completed and report was also submitted. According to the petitioner, nothing much has happened thereafter and for reasons best known to the Government,

nothing has been done forcing the people to file the instant Public Interest Litigation. He contended that non-implementation of the alternative Barrage construction proposal made by the petitioner was collective failure of the Government administration calling for the interference of this Court in this Public Interest Litigation.

9) Over a period of time, several pleadings were filed by both parties.

10) Recently, in September 2024, the Chief Secretary for the State of Jharkhand has filed a counter affidavit referring to certain forest clearances and environmental clearances. There is also a reference to a tender issued on 20.05.2020 which was subsequently cancelled on the ground that only one bidder participated in the bid.

11) It is stated that thereafter another tender was issued on 24.12.2020 in which three bidders participated, but only one bidder was found technically responsive whose financial bid was opened, but he failed to clarify activity by justification and detailed breakup analysis with price breakup and so his bid was also cancelled.

12) It is also stated that a third tender was invited on 12.03.2021 in which two bidders participated and only one bid was found to be responsive. It is stated that administrative approval was obtained on 30.12.2021 and the work was allotted to the responsible bidder on 06.01.2022.

13) It is also stated that certain steps were being taken to obtain forest clearances. It is also stated that there is necessity to obtain 'N.O.C.' under the Forest Rights Act. The process of obtaining forest clearances and environmental clearances appears to be ongoing since substantial diversion of forest land has to be done.

14) It is stated that only after all statutory clearances are granted, further 18 months would be required for land acquisition and after such land acquisition, five more years would be required for construction of the whole project and not only Kanhar Barrage.

15) It is admitted that providing irrigation facilities as well as drinking water facilities to persons falling under the Palamau Division is the utmost priority of the State Government. There is also mention of requirement of securing investment clearances from the Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti, Government of India, and that approval from the Government of India for funding of the project was also awaited.

16) Thus, the various difficulties in constructing the barrage have been set out in detail and further time is sought for completion thereof.

17) The difficulties mentioned by the respondents in starting the construction of the barrage cannot be brushed aside and unless all the requirements of law are

complied, it would not be possible for the respondents to proceed with the project.

18) Issues of this nature are very complex and it must be left to the discretion of the executive to decide when and in what manner they wish to complete the work of the project in light of the factual difficulties being faced.

19) It is not a matter for this Court to determine in exercise of its writ jurisdiction under Article 226 of the Constitution of India and fix any timeline for completing the construction of the barrage.

20) Since the respondents have stated categorically that they wish to take further steps to ensure that the project in question proceeds further and since it is to take further time in view of the difficulties expressed, we see no reason to keep this Public Interest Litigation pending.

21) Accordingly, the same is hereby closed.