

(2022) 10 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7857 Of 2020

Bidhan Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 38, 39

Citation : (2022) 10 PAT CK 0032

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Alok Kumar Jha, Pawan Kumar Singh, Anjani Kumar, Alok Kumar Rahi

Final Decision : Disposed Of

Judgement

Facts and Proceedings

1. This present public interest litigation is filed seeking direction for restoration of water supply in the Tarabigha Saidnala Canal in the village of Khirbhojna in District Nawadah, Bihar as also reconstruction of damage portion thereof. Additionally, the petitioner seeks specific direction to District Magistrate, Nawadah for the protection and preservation of the canal which had been damaged by some villagers leading to suspension of flow of water to twenty five villages.

2. It is contended by the petitioner that the pandemic and resultant lockdowns forced a large number of people to return home to Bihar leaving for them, no source of income other than tilling of their lands to produce food. It is submitted in para 7 of the petition that each of these 450 persons, a list of whose name is given as Annexure-1, have four family members each, at least, and so this crisis affects more than 1800 persons.

3. The lands in the village Tarabigha and the other villages in Block Katrisarai are majorly dependent upon the above mentioned canal which is running dry since

2017 due to blockade caused by villagers of Khirbhojna. Further, that an FIR has been lodged in this regard (Annexure-2). It is submitted that the villagers have no water for either consumption or agriculture leading to extinguishment of income and the opportunity to plan seasonal crops as also endangering the paddy plantation season fast approaching.

4. It is further averred that the State Government is sitting idle and no steps have been taken, either for reconstruction of damaged portions or for the restoration of water flow.

5. The matter was first taken up on 21.09.2020 and the State was directed to file reply. A counter affidavit dated 16.12.2020 on behalf of respondents no.1 to 3 and 5 to 7 was filed by Executive Engineer, Irrigation Division, Bihar Sharif, Nalanda. The following submissions are made:-

6. The villagers of Khirbhojna opposed the construction of said canal before the Additional Collector, Nawadah by filing PLA Case No.05/07-78-78/02/80-81. An order was passed on the same on 02.02.1980 stating that this objection was not maintainable. It is submitted that this order was not challenged and is, therefore, binding.

7. The notification for construction of this canal was issued on 01.06.1980 and the process for compensation to the land so acquired was initiated on 01.08.1981. The construction was completed in 2010-11.

8. Upon being informed by villagers of Tarabigha in October, 2017 that the bridge had been damaged/destroyed and the canal filled up, the Executive Engineer, Irrigation Division, directed S.D.O. Irrigation Sub-division no.03, Bihar Sharif to make an inspection and lodge an FIR against the miscreants. Assistant Engineer and Junior Engineer made an inspection wherein they were informed by villagers of Khirbhojna that CWJC No.16364 of 2017 titled as Indradeo Prasad v. State of Bihar & Ors. had been filed for restraining the construction of canal. The respondent no.7, namely Executive Engineer, Irrigation Division, Bihar Sharif vide letter 08.03.2018 requested Circle Officer, Warisganj to make an enquiry about this objection and submit a report which was not done. A reminder dated 23.03.2018 for the same was also sent. However, the same has not been submitted till date. On the same date, S.D.O. Irrigation Sub-division no.03, Bihar Sharif was also asked to submit a proposal with respect to damaged bridge and channel. However, the inspection earlier directed could not be carried out as the villagers of Khirbhojna did not allow S.D.O. Irrigation Sub-division no.03, Bihar Sharif to undertake such survey. The S.D.O. Nawadah as well as the Land Acquisition Officer, Nawadah were informed on 04.06.2018 about such status by Executive Engineer, Irrigation Division, Bihar Sharif.

9. It is submitted that respondents are taking all appropriate steps for reconstruction as well as those against the persons who destroyed the canal.

10. Petitioner then filed a rejoinder dated 19.07.2021 wherein it is submitted

that there exists no case bearing LA Case No.01/1979-80 relating to Tarabigha Said Nala and, therefore, the averments of the petitioner in CWJC No. 16364 of 2017 titled as Indradeo Prasad v. State of Bihar are false. The true details, it is submitted that PLA Case No.05/78-79 and L.A. Case No.02/80-81. Referring to the State counter affidavit, it is submitted that the proceedings had concluded in 1980 itself when the objections were disposed of by the learned Additional Collector and not challenged further, putting to question the proceedings before this Court initiated in 2017 and lastly it is submitted that the canals were completed in 2010-11 and were serving the need of several villages, therefore, the only reason to file proceedings before this Court in 2017 was to seek protection against the criminal cases lodged against them.

11. In support of the public interest for which this writ petition stands filed, Sri Gautam Kumar Kejriwal, learned Advocate, has filed detailed written submissions, wherein he has urged the court to consider, broadly, the following points and aspects-

Irrigation: A Historical Overview

12. One of the most important uses of natural water available on the earth is in the agricultural activities. Water is the most important requirement for carrying out farming activities as no crop in the fields can come out in absence of water.

13. Agriculture is the primary basis of human life on the earth and will continue to be the same and such important basis of human life is based on availability of consumable water on the earth.

14. The most vital among all such essentials is water and system of irrigation. It is not possible to think of agriculture without water.. Irrigation is a systematic movement of water from its source to the agricultural field where it is required to meet the need of crops. In absence of a proper system to channelise the movement of water from its source to the desired spot, there is no use and purpose of such water despite it being present in the source. Irrigation being a system of taking water to the fields, it requires a concept and logic together with the mechanics so as to facilitate the availability of the most essential requirement of agriculture. It will not be an exaggeration to say that no agriculture can be visualised in absence of a prompt irrigation system. Irrigation system therefore has been of top importance right since the human race learnt about fertility of land and possibility of agricultural activities and product in the shape of food. The system of irrigation in its crudest form was the stepping stone for an agricultural activity by the first man on the earth. This is how, the agricultural sector flourished and till date, human beings are dependent for their food upon the same.

15. The first irrigation commission was established in the year 1901. The said commission was constituted to primarily make a study of the existing irrigation system and to explore the scope of further development and advancement thereof with the help of modern techniques and utilisation of existing scientific

methods.

16. The said commission recommended three issues to be considered and carried out by the government – 1) restoration of productive irrigation works 2) construction of storage works to provide irrigation water 3) measures to stimulate construction of private irrigation works.

17. After independence in 1947, the biggest challenge the Indian government faced which was to strike a balance between the ever-growing population and sufficiency of food grown by the fields in the country. The uprooting of the British rule had not only left social and political impressions but the most identifiable impact was seen in the economic side of the nation. The traditional system of agriculture in India basically confined to the labour of the agriculturists was not enough to answer back the local demands of the countrymen. There was a need of technological and strategic reinforcement in the agricultural sector so as to catch hold of the rising demands which every moment threatened to lower down the status of the nation and push it towards spreading begging bowl before other countries in the world for at least food.

18. The top priority inside the country in those mid-1960s was the prime importance be paid to the agricultural sector so as to liberate the country from shackles of import of food grains from other countries. It would not be wrong to state that though India had achieved political independence but in terms of food and other basic resources the dependence was yet to be wiped out.

19. The green revolution mission further helped in upgrading the socio-economic development of the major part of the Indian population as the said revolution was based on the use of advanced technology in the agricultural sector in order to increase the output by leaps and bounds. Initially the spread of the said mission smacked of giving rise to some social inequality as some of the sectors in the country grew up fast as compared to others but in course of time, instead of confining itself to the limited expansion made by it, the mission in fact spread across the whole country resulting in remarkable growth of agrarian society which also helped in achieving rural prosperity and regional inequalities. The members of the agricultural sector also found growth in their social status, lifestyle and improvement in other aspects of human life then the title agricultural lifestyle. The initial days of the green revolution era was viewed as giving rise to class polarisation but by efflux of time, the said mission invariably benefited the whole the rich and catalyst class or poor, weak and landless farmers.

20. A series of programs for upliftment of rural class of the agricultural Society were launched by the governments. To name a few, "Garibi Hatao" campaign was initiated in the late 60s and 70s the sole object of which was to reach out to the rural, poor and landless farmers to eradicate the social evil of inequality and need of minimum financial support to survive. Not only that, other programs namely "Rural Works Program" (RWP), "SFDA", "MFAL", "Crash Scheme For Rural

Employment" (CSRE), "EGS" in Maharashtra etc. were also launched.

21. The sole aim behind launching of such schemes was to ensure upliftment of poor and marginalised farmers so as to match rather surpass the capitalist and rich on the strength of their own morale. The other object behind such schemes was to ensure enhanced production per unit of land by the farmers.

22. The green revolution necessarily included mechanised farming wherein various tools, machinery and equipments were used to carry out farming activities. It was initially felt that organised farming will discourage labour and would give rise to another evil of idleness of labourers who would starve. But the ground reality turned out to be different as the mechanised farming replaced not labourers but Bullock's and other such aids which did not include labourers. The mechanised system of farming indispensably required labourers with skills. In fact, the mass scale adoption of mechanised farming in the state of Punjab required additional labour inputs which had fallen short in course of time.

23. That is how, the agricultural sector right since initial years of post-independence era has witnessed a steep rise with the help of policies, willpower, induction of new strategies and technologies, introduction of mechanised farming and ensured upliftment of socio-economic status of the citizens of India.

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24. Though Bihar is rich in terms of availability of agricultural soil with good texture and productive quality but there seem to be a general dearth of proper planning in the irrigation sector. Gangetic soil is alluvial in nature which is too fertile and fit enough for cropping. But, in absence of effective plans, the gangetic water and other sources available in the state are not put to their best level of utilization which affects the magnitude of agricultural output which Bihar can deliver owing to its large expanse of agrarian lands.

25. Bihar holds a population of about 10 crore people and is one of the most densely populated state in the country. Despite such being the condition of the population, there is enough potential available in the agrarian sector as the land available in the state is fertile and favourable for crops.

MAJOR IRRIGATION PROJECTS AND MEDIUM IRRIGATION SCHEMES.

26. The status of major irrigation projects presently available on the official website of the water resources Department of the Government of Bihar is that in total 20 such projects have already been completed. Similarly, 103 medium irrigation schemes have already been completed. As per the information available on the official website of the water Resources Department of The Government of Bihar, there are as many as 9 major irrigation schemes and 9 medium irrigation schemes under implementation.

27. The figurative picture available on the website of the Water Resources Department would show at least the conscious realisation of the need of

upgradation and strengthening of the irrigation system in the State. However, the true endeavour is yet to be seen from the level of the government especially in light of the facts and circumstances of this case which is an instance of utmost neutrality of the governance towards handful of petty miscreants in an area who could dare to damage a serving canal and that also on grounds of non-payment of compensation or complaint against acquisition of land for construction of such canal after a period of 37 years of its acquisition followed by construction and putting into service of the general public in due course. (Page-28 of the Written Argument of the petitioner)

28. It would be relevant to refer to an excerpt from the great scholarly work namely ARTHASHASTRA authored by the great intellectual "KAUTILYA" as regards the duties of a king:

"He shall build storage reservoirs, (filling them) either from natural springs or with water brought from elsewhere; or, he may provide help to those who build reservoirs by giving them land, building roads and channels or giving grants of timber and implements. Similar help shall be given to those who build shrines and sanctuaries.

If anyone refuses to participate in a cooperative effort of all the people in a settlement to build a reservoir, his labourers and bullocks shall be made to do his share of the work. He shall pay his share of the cost but shall not receive any share of the benefits.

The ownership of the fish, ducks and green vegetables obtained from the reservoirs shall rest with the King."

[Verse 2.1.20 – 24 of Arthashastra]

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29. The issued highlighted by the petitioner is one of importance. Water is one of the core essentials of life. Food production is an equally important and essential corollary thereof, and undoubtedly therefore, irrigation is indispensable.

30. Throughout history right to this day, in the age of globalization, India has been an agrarian economy with 54.6% of the total work force, as according to the 2011 Census, being engaged in agricultural or allied sector activity. [Dr. Neelam Patel and Dr. Tanu Sethi, Rural Women; Key to New India's Agrarian Revolution <https://www.niti.gov.in/rural-women-key-new-indias-agrarian-revolution#:~:text=India%20is%20an%20agrarian%20economy,to%20agriculture%20and%20allied%20sector>] According to the Food and Agriculture Organization of the United Nations, 70% of the India's rural household depends on agriculture for livelihood and 82% of these farmers are either small or marginal farmers. [India at a glance, Food and Agriculture Organization, UNO <https://www.fao.org/india/fao-in-india/india-at-a-glance/en/>]

31. Agriculture and Irrigation both form part of responsibilities entrusted to the

State under List II of the Seventh Schedule of the Constitution of India. Entry 14 thereof pertains to agriculture and reads- "Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases." Entry 17 reads- "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to provisions of Entry 56, List-I."

32. The instant cases, therefore, clearly fall within the exclusive domain of the State.

33. In such a situation, the duty of the State to ensure, in keeping with the goals of development and promotion of sustainable agriculture, that irrigation facilities should be properly available cannot be understated.

34. The canals duly constructed for the purposes of irrigation and water requirements of the villages surrounding, were damaged/destroyed for which a first information report has been filed, back in the year 2017. However, no considerable headway has been made in restoring the water supply to the approximately 25 villages depending on it. Kautilya's Arthashastra mentions ensuring irrigation facilities as one of the duties of a King. By extension, particularly in a democratic, welfare State, these duties lie with the Government. Five years have passed, in which the country has faced one of the greatest unknowns known to human kind- Pandemic Covid-19 and yet water supply is nowhere in sight for Tarabigha Saidnala Canal.

35. It is at best, questionable state of affairs where the Courts are called upon to issue directions to protect the carrying out essential activities, not only for the individual/groups affected but also impacting the larger society.

36. The concept of a welfare State has formed part of the judicial approach to Part III of the Constitution of India for a number of years. In *Lala Ram v. Union of India* (2015) 5 SCC 813:

"9. A welfare State denotes a concept of Government, in which the State plays a key role in the protection and promotion of the economic and social well being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to "greatest good of greatest number and the benefit of all and the happiness of all". It is important that public weal be the commitment of the State, where the State is a welfare State. A welfare State is under an obligation to prepare plans and devise beneficial schemes for the good of the common people... A welfare State provides State-sponsored aid for individuals from the cradle to the grave. However, a welfare State faces basic problems as regards what should be the desirable level of provision of such welfare services by the State, for the reason that equitable provision of resources to finance services over and above the contributions of direct beneficiaries would cause difficulties. A welfare State is one, which seeks to ensure maximum happiness of maximum number of people

living within its territory... Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the State by protecting all their economic, social and political rights. These rights may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare State, and a welfare State would not qualify as one, unless it strives to achieve the same. (See also *Dantuluri Ram Raju v. State of A.P.* [(1972) 1 SCC 421], *N. Nagendra Rao & Co. v. State of A.P.* [(1994) 6 SCC 205 : 1994 SCC (Cri) 1609] and *N.D. Jayal v. Union of India* [(2004) 9 SCC 362] .)”

37. In *N.D. Jayal v. Union of India* (2004) 9 SCC 362 Hon’ble the Supreme Court observed:-

“137. When natural resources are exploited in a big way for big projects by the State with all sincerity and good intentions for general common benefit, social conflicts arise as a natural adverse consequence. Generally, the conflicts arise between marginal farmers, peasants and other landless persons who survive on natural resources and those who are better off, rich or affluent and who desire to undertake agriculture and industry. When river projects for dams are undertaken to generate electricity and improve irrigation facilities, conflicts arise between people living upstream who have to necessarily lose their source of living and habitat and those living downstream who need water and electricity for their homes, industries and agricultural fields. When such social conflicts between different social groups i.e. upstream population and downstream population, between rural population and urban population, between the poor surviving on natural resources and others needing natural resources for further development arise, what should be the duty and priorities of the State and its authorities who have undertaken the projects? When such social conflicts arise between the poor and more needy on one side and rich or affluent or less needy on the other, prior attention has to be paid to the former group which is both financially and politically weak. Such less-advantaged group is expected to be given prior attention by a welfare State like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the preamble, fundamental rights, fundamental duties and directive principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood.”

38. Within the reach of fundamental rights guaranteed under the Constitution of India, Article 21 guarantees a right to livelihood. In *Olga Tellis v. Bombay Municipal Corpn.* (1985) 3 SCC 545, Hon’ble the Supreme Court observed as follows with respect to the unimpeachable connection between the right to life and the right to livelihood:-

“32... The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken

away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in *Baksey* [347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois* [(1877) 94 US 113] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v. State of U.P.* [AIR 1963 SC 1295: (1964) 1 SCR 332: (1963) 2 Cri LJ 329]."

39. Sri Gautam Kumar Kejriwal, learned Advocate appearing for the petitioner, has highlighted a list of 450 people who, as a result of the Pandemic and consequent difficulties have only their farmland to rely upon for sustenance and with the damage and non-availability of water in the canal in question, even this avenue is compromised. (Para-7, 16 to 18 of the writ petition and Annexure-1 thereof).

40. In *Olga Tellis*⁵, Hon'ble the Supreme Court held the right to livelihood as an essential part of right to life, although in

a different context- the holding in this regard would apply across all cases. Here, delay on part of the State has denied the enjoyment of these rights to the people of Village Tarabigha and similar 25 villages in Block-Katrisarai in the District Nawadah.

41. The right to life and livelihood are, as is clear from the above, connected in inextricable terms and the State is constitutionally bound to ensure that such right of livelihood is not denuded, save and except in accordance with procedure established by law. Well, by no extension or stretch of imagination can it be said that the non-supply of water in a canal causing wide spread issues to those

dependent on it, is in accordance with law.

42. In light of the above, we issue the following directions:-

(i) The constituent authorities of the State would take all measures with expedition to repair the damaged canal and restore water supply thereto.

(ii) The District Magistrate, Nawadah upon completion of repair works and restoration of water supply would take steps to ensure that no further damage is caused to the canal or any other public property as a result of anti-social elements.

(iii) The FIRs filed in connection with the destruction of public property in above terms be taken to their logical and lawful conclusion at the earliest.

43. Writ Petition stands disposed of in above terms.

44. Interlocutory applications, if any, shall also stand disposed of.