

(1999) 10 AP CK 0030
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1158 of 1999

Donthi Narasimha Reddy

APPELLANT

Vs

District Collector and another

RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 3(1), 3(2)(v)
Environment (Protection) Rules, 1986 — Rule 5(4)

Citation : (2000) 2 ALD 446 : (2000) 2 ALD 440 : (2000) 4 ALT 486 : (2000) 1 AnWR 176

Hon'ble Judges : M.S. Liberhan, C.J; R. Ramanujam, J

Bench : Division Bench

Advocate : Mr. K. Balagopal, for the Appellant; Government Pleader for Revenue, Mr. G. Ram Rao, SC for MCH and Government Pleader for Municipal Administration, for the Respondent

Judgement

M.S. Liberhan, C.J.

1. In this writ petition, filed under Article 226 of the Constitution of India, as Public Interest Litigation, the petitioner seeks a writ of mandamus to the respondents to forthwith stop execution of Musi River Belt Project, also called as "Nandanavanam Project" undertaken by the respondents for cleaning and de-polluting the Musi river.

2. There is no dispute that the project in question was undertaken for a public purpose, namely, de-polluting the Musi river, to eradicate mosquito menace in the twin cities of Hyderabad and Secunderabad, to make the entire river belt as lungs space for the citizens of Hyderabad etc. Though the petitioner has no serious objection regarding the implementation of the project, but, he objects in regard to the manner in which it is sought to be executed, inter alia, on the grounds that (1) the project includes laying of roads, linking of highway roads, construction of parks, shopping complex and other recreational facilities abutting

the river bed leading to the likely displacement of hundreds of families living for decades on the sides of the river bed; (2) in years of normal rain fall, it will severely affect the availability of irrigation water and ground water in the down steams of the city in about 40 villages in Rangareddy and Nalgonda districts where the farmers have constructed small anicuts on the river and nearly 50,000 acres of land is being irrigated by utilising the river water and because of the project, there will be substantial reduction in the quantity of irrigation water in the said villages and the farmers who are doing cultivation for the last several years depending on the river water will be deprived of their livelihood; (3) No environmental public hearing was given by the respondents before approving the project as required by the Notification No. 318(E) of the Ministry of Environment and Forest of the Government of India dated 10-4-1997 issued in exercise of the power u/s 3 and 3(2)(v) of the Environment Protection Act, 1986 (for short "the Act") read with Rule 5(4) of the Environment (Protection) Rules, 1986 (for short "the Rules") read with the Notification SO 60(E) dated 27-1-1994 issued by the Ministry of Environment and Forests and no environmental clearance certificate was issued by the Government of India as contemplated under the Act and the Rules.

3. Before going into the merits of the case, we may refer to the notifications issued by the Ministry of Environment and Forests under the Government of India dealing with the environmental aspects. The Ministry of Environment and Forests issued the notification dated 27-1-1994 in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Act read with clause (d) of sub-rule (3) of Rule 5 of the Rules providing that no expansion or modernisation of any activity of pollution load is to exceed the existing one and that no new project listed in Schedule-I appended to the said notification shall be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure laid down in the said notification. The notification provides for the requirements and procedure for seeking environmental clearance of projects enumerated in Schedule-I. Briefly, we may state that the notification dated 27-1-1994 contemplates constitution of an Impact Assessment Agency (1AA), constitution of Experts Committee consisting of experts in each discipline, such as Ecosystem, Air/Water Pollution Control, Water Resource Management, ecology, environmental health etc., and providing of public hearing by the impact assessment agency. Schedule-II of the notification provides for application for clearance and Schedule-III provides for the composition of expert committee for environmental impact assessment. Before clearance is issued for any project, the various committees contemplated under the notification have to study the impact of the project in all respects as provided in the Act and the Rules and the Impact Assessment Agency has to solicit comments from the public by arranging public hearings for the purpose after giving one month's notice in two newspapers and thereafter only environmental clearance certificate will be issued. In continuation of this notification, another notification has been issued by the Government of

India in the Ministry of Environment and Forests in G.O. Ms. No.318(E), dated 10-4-1997 making certain amendments to the earlier notification dated 27-1-1994. Apart from this, the notification also added Schedule-IV, which contemplates a detailed procedure for public hearing. It is not necessary to deal with the various aspects mentioned in the said schedule. What is contemplated in the schedule is, process of public hearing, notice of public hearing, composition of public hearing panel etc. The panel consists of representatives of State Pollution Control Board, District Collector, Representative of State Government dealing with the subject, Representative of Department of the State Government dealing with Environment, three representatives of the local bodies, three senior citizens of the area nominated by the District Collector. The State Pollution Control Board shall cause notice for "Environmental Public Hearing" which shall be published in atleast two newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned duly mentioning the date, time of place of public hearing and it shall invite suggestions, views, comments and objections of the public and after hearing the public, the matter has to be processed in accordance with the provisions of the Act and the Rules and the procedure prescribed in the notification and thereafter decision will be taken in the matter of grant of clearance certificate. One of the main contentions of the petitioner is that no such "Environmental Public Hearing" as contemplated by the above notifications has been given in the instant case.

4. On a careful reading of the notifications referred to above, with the assistance of the learned Counsel for the parties, prima facie, we are of the considered view that they are applicable only in cases where there is expansion or modernisation of any pollution load which exceeds the existing one or where any new project is undertaken. Here, it is not the case of either expansion or modernisation of any activity of pollution load. It is otherwise an act or activity meant to reduce the pollution load rather than increasing the pollution. The procedural requirement envisaged by the notifications is that a person who desires of undertaking any project in any part of India or for expansion any existing industry or project listed in the Schedule-I of the first notification shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi, in the proforma given in Schedule-II of the first notification. It provides various requirements to be fulfilled and it is not necessary for us to deal with them. The learned Counsel for the petitioner has relied upon item No.2 of Schedule-I which mentions "River Valley Projects including hydel power, major irrigation and their combination including flood control". Item No.21 deals with Highway Projects. Learned Counsel for the petitioner contends that since the project in question provides for cleaning and depolluting the Musi river, it comes under "River Valley Project" and vehemently argued that the genesis as to what is a river valley project, has to be determined from the words "including hydel power or major irrigation and their combination including flood control". He contends that once the project is construed as a "river valley project", the respondents have to necessarily apply

to the Central Government for issuance of an environmental clearance certificate and consequently environmental public hearing as ordained by the notifications is required to be held for clearing the project. Even otherwise also, the learned Counsel contends that since the project provides for linking of two national highways, that itself is a "Highway Project" as categorised under Item No.21 of Schedule-I and consequently, on this ground also, the procedural requirement of obtaining environmental clearance certificate from the Central Government as required under the Act and the Rules is quite essential and it also pre-supposes an environmental public hearing.

5. At this stage, the background on which the Government contemplates the project as reflected in the counters filed by the respondents may be referred to. On a factual matrix, it emerges that there are two rivers, one is called Moosa and the other is called Eesa on the upper reaches of Hyderabad. With a view to protect the people of twin cities from the recurring floods of these two rivers and to provide drinking water to the Metropolis of Hyderabad and Secunderabad, two major drinking water supply reservoirs were built across these two rivers during the Nizam's periods. As a necessary consequence, down stream of these two reservoirs formed into river Musi and it constituted as one of the tributaries to the river Krishna. The city of Hyderabad is located on both sides of the river Musi. With the down fall of the rains in catchment areas, the river bed became vacant land which provided an opportunity for encroachments and unauthorised occupations. We may hasten to add that it is averred in the counter that people have been cultivating the lands on either side of the river bed in the city though agriculture is banned by the Municipal Corporation of Hyderabad, vide G.O.Ms.No.12, Housing, Municipal Administration and Urban Development Department, dated 10-1-1986. Letting out of the drain water, domestic effluents, industrial waste into the river has resulted in the water being highly polluted emanating very foul smell resulting in breeding of mosquitoes in the river. The State Government in its efforts to reduce the pollution of the river and in order to provide refreshing lungs space for the citizens of Hyderabad and to eradicate mosquito menace, after conducting scientific tests, seminars, group discussions and perambulation of the entire river belt with the assistance of experts for a period of two years, prepared the project called "Nandanavanam Project" comprising of short range, medium range and long range plans of action. Under the project, the persons who are affected are being rehabilitated by providing individual houses with all the basic civic amenities as approved by the Hyderabad Urban Development Authority (HUDA), the families going to be affected are identified and nearly 2000 families are being benefited by the Housing Schedule which is part of the project and the Government has already sanctioned Rs.20.00 crores to take up the Housing Colonies. The main object of the project is to facilitate free flow of the stagnated water by providing a centralised channel and to provide green belt on the bunds of the river. The project also contemplates linking of two highways in order to reduce the traffic congestion in the city. Number of departments viz., Revenue Department, MCH, Hyderabad

Metropolitan Water Supply and Sewerage Board, Quli Qutub Shah Urban Development Authority, IIUDA, Horticulture, R and B Department took a joint decision to come out with the said project and the various items of work which the above departments have to attend, have been detailed in the counter. It is stated that already 1200 families residing in various localities of the river bed have already been provided with alternative accommodation.

6. The main thrust of the learned Counsel for (lie petitioner is that the project will reduce the quantity of irrigation water available to the farmers in the down stream of the river for cultivation of about 50,000 acres of land in forty villages. While on the other hand, the contention of the respondents is that since the project is implemented only in the Hyderabad city, right from Bapughat to Ring road bridge at Nagole, there will be no depletion of quantity of irrigation water and flow of water will be maintained in good manner in the river bed. In the light of the averments made in the counter, it would be reasonable for us to infer that there is no mala fide intention on the part of the state and the project has been taken up for the welfare of the people of the city by involving number of Government Departments; therefore, one individual or group of individuals cannot contend that the project would be harmful or the matter has not been taken up in the larger public interest. It would be reasonable to assume and presume that the State machinery acts in the interest of public only without any malice or mala fide intention and when there are two aspects to be looked into i.e., urbanisation and agriculture, the Government being a welfare State, will certainly consider the pros and cons of the project and the effect of the project on either of the two. The Court cannot substitute its view for the well reasoned and considered view taken by the Government, even if it is taken to be erroneous.

7. So far as the contention of the learned Counsel for the petitioner that it is a "River valley Project" is concerned, we are not inclined to accede to the same. The project undertaken for cleaning and depolluting the river, not interfering with, the free flow of water or disturbing the ecology of the area, cannot be presumed to be a river valley project. The counter-affidavit repeatedly reiterates that the project was undertaken to reduce the pollution of the river in the city as the stagnation of polluted water is resulting in mosquito menace and the object of the project is to make the river belt as a refreshing lungs space for the citizens of Hyderabad. When the Government has come up with such a laudable project in the larger interest of the people of the city and when it is clearly stated in the counter that the project is being implemented only in the city and there will be no reduction in the quantity of irrigable water in the down streams of the villages, it cannot be said that the villages in the down stream will be affected and the project will affect the environment in and around the river. Further, the project is not meant for the generation of hydel power or to provide water for irrigation purposes or meant for flood control so that it can be construed as a "river valley project" as categorised under item No.2 of Schedule-I of the first notification, thereby necessitating the State to obtain environmental clearance

certificate from the Central Government. By any stretch of imagination, it cannot be compared to be a "River Valley project". There is no iota of evidence produced before us to show that the project is in the nature of a "River Valley" project, except relying on the notifications.

8. Yet another contention of the learned Counsel for the petitioner is that since the project also provides for linking of two highway roads, it comes under "Highway Project", consequently, the requirements as contemplated under the Act and the Rules read with the notifications have to be complied with. We are of the view that providing of a link road connecting two National Highways or the State Highways cannot by any stretch of imagination be regarded as a "Highway Project" so that it can be brought under the purview of the Act and the Rules read with the notifications aforementioned. Even otherwise also, declaring a project as a highway project or highway road is within the realm of the Central Government. Under the project in question, for convenience and free flow of traffic, it was thought fit to link the highway roads and the same has not been declared to be a highway either by the State or by the Central Government. Therefore we are not able to accept the contention of the learned Counsel for the petitioner that linking of two highways is a highway project.

9. Since we have held that the project undertaken is neither a "River Valley Project" nor a "Highway Project" as categorised in Schedule-I of the first notification dated 27-1-1994, we are of the view that the requirement of applying for environmental clearance certificate to the Central Government and conducting of environmental public hearing thereof as contemplated by the notifications referred to above does not arise. The object of the project is to contain the pollution in the river and to create a healthy environment in the city. Various recreational activities such as parks etc., are also contemplated in the project. Further, the people of the city are often suffering from severe foul smells emanating from the river on account of letting out of drain and other waste effluents by the public and the industries into the river.

10. In the counter, it is also stated that pursuant to the interim directions of this Court, alternative accommodation has already been provided to 1200 families affected by the project at Karmanghat with all facilities of water, electricity, public transport and also provided with ration cards. Cultivation by the unauthorised occupations in and around the river has already been banned by the MCH. It is also stated in the counter that valuable land in and around the river bed has been occupied by some persons with vested interests and are trying to knock away the land. The project has been formulated after elaborate discussion with professionals, academicians, scientists, city planners and representatives of the people at several levels by conducting seminars, conferences meeting etc., and it is being implemented with the co-ordination of several departments.

11. We, therefore, do not find it to be a fit case to interfere in this public interest litigation with the laudable project undertaken by the State Government for the welfare of a larger community. If such matters are subjected to judicial review

and the Courts interfere with the implementation of the projects taken up by the Government for the welfare of the public in order to evolve a strategy to contain the pollution in the river and to create a healthy environment in the city, it would amount to gagging the progress and development of the state in its totality. Conscious elected representatives of the people respond to the public enlightenment and they are answerable to the public if there are any commissions and omissions in the project and if it affects the large number of persons. Such matters cannot be subjected to judicial review as a substitute of accountability of the elected representatives.

12. After going through the material on record and hearing the learned Counsel for the petitioners, we are of the considered view that the State has applied its mind to the various aspects of the matter and had come up with the praise worthy project for the benefit of a larger section of the society. The project undertaken by the Government, as detailed in the counter-affidavit, in our view, is neither a "River Valley Project" nor a "Highway Project" as categorised in Schedule-I of the notification dated 27-1-1994 and consequently does not require issuance of any environmental clearance certificate by the Central Government nor any "Environmental Public Hearing" as contemplated under the Act and the Rules and the notifications referred to above is required to be given as the project is only meant to reduce the pollution in the river and for creating pollution free atmosphere in the city and for a good healthy environment and to protect the public from health hazards etc. In view of the object with which the project was undertaken by the Government, we find no ground to interfere with the matter in public interest litigation in exercise of our discretionary writ jurisdiction. However, we may hasten to add that the petitioner will be at liberty to make any representation to the authorities if the project makes any adverse impact on any section of the society which the authorities will consider appropriately.

13. In view of the observations made above, the writ petition is liable to be dismissed and it is accordingly dismissed. No order as to costs.