

(2014) 12 RAJ CK 0140

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 115/2014

Hapu Ram Vishnoi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2014) 12 RAJ CK 0140

Hon'ble Judges : Prakash Gupta, J; Govind Mathur, J

Bench : Division Bench

Advocate : Pushpendra Singh Bhati, Additional Advocate General assisted by Sajjan Singh, Advocate for the Respondent

Judgement

1. By this petition for writ, the petitioner, a practicing advocate of this Court, has raised a very serious question relating to soil conservation, water harvesting and proper distribution of water in the Districts of Jalore and Barmer.

2. The Districts of Jalore and Barmer are part of the Western Rajasthan, known for wide spread Thar Desert and its arid climate. In the major part of the arid zone the river Luni, originating from Aravali Hills near Pushkar in District Ajmer, was only the major source of water beside the abstraction of underground water. The river Luni in rainy season carries water and flows through the Districts of Pali, Jodhpur, Jalore and Barmer. The people of the Districts aforesaid were facing scarcity of water even for drinking purposes from ages. In independent India efforts were made and are being made to meet this scarcity. The largest project of the Government of Rajasthan in this regard is Indira Gandhi Canal Project providing water for drinking as well as irrigation purposes in the Districts of Ganganagar, Hanumangarh, Bikaner, Jaisalmer and some part of Jodhpur. For the canal aforesaid the source of water is river Satluj. The other ambitious project is to bring water of river Narmada to the Districts of Jalore and Barmer.

3. As per the facts averred in the petition for writ the construction work of Narmada Canal commenced in the year 1993 with an estimated financial plan of

Rs. 1975 crores. The work presently is in progress in Tehsils of Sanchoore, Chitalwana and Gudamalani. The length of main canal is 74 kms. and the length of distributaries is 1719 kms. The canal is discharging about 1500 cusec water in the area concerned.

4. The cause of the petitioner is that due to improper management of water distribution the people are not getting optimum benefit of the project and further that a huge quantity of water is being wasted due to overflow. The overflowing water is causing great harm to the soil of the entire area. The details given by the petitioner in this regard read as under:--

"That the respondents are not properly distributing the water of actually needed persons and as such, the tail enders persons are not getting proper water facilities. Copy of the news paper cutting dated 5th Oct., 2012, 18th Nov., 2013 and 14th Dec., 2013 are being submitted herewith for ready reference and consolidatively marked as ANNEXURE-1 to the writ petition. As a matter of fact, the respondents are discharging the water in the Luni river and the Band was a constructed in the Luni river and due to over flow of the water, the Band is also going to be destroyed and as result thereof, the water of Narbada Nahar reached to the agricultural fields situated in the surrounding area of the Luni river and as such, the crops standing over their fields are going to be ruined due to over flow water of the Narbada Nahar through the Luni river. It is pertinent to mention here that there are several villages like Keriya, Lalpura, Deliya, Rampura, Sarda, Malipura, Silosan, Hoti Gaon, Ratoda, Koliya Ki Gaddi, Doothwa, Padardi, Rebariyon Ki Gadi, Marathawa, Bhatawas, Medha, Ratoda, Tembi, Tapi, Gallipa, etc. effected from this over flow water since two years.

That recently on 14th and 15th Dec., 2013, due to heavy discharge of water from the Narbada Nahar, the Jhakarda and Keriya Bandh have been destroyed and as a result thereof, there were some probability of flood at the dozen of villages surrounded by the Luni river as well as Nehad area and the villagers of the villages like Keriya, Lalpura, Deliya, Rampura, Sarda, Malipura, Silosan, Hoti Gaon, Ratoda, Koliya Ki Gaddi, Doothwa, Padardi, Rebariyon Ki Gadi, Marathawa, Bhatawas, Medha, Ratoda, Tembi, Tapi, Gallipa, etc. were effected from this over flow water and due to which, the crops standing at their fields have been ruined and the people of effected area have faced many problems to come and go at their destination and to earn livelihood. Copies of various photographs are being submitted herewith and consolidatively marked as ANNEXURE-4 to the writ petition.

That it is pertinent to mention here that the respondents are not properly distributing the water to actually needed persons and as such, the tail enders persons are not getting proper water facilities. As a matter of fact, the respondents are discharging the water in the Luni river and as result thereof, the water of Narbada Nahar reached to the agricultural fields situated in the surrounding area of the Luni river and as such, the crops standing over their fields are going to be ruined due to over flow water of the Narbada Nahar

through the Luni river and as such, there is a wastage of water.

That it is pertinent to mention here that there are several villages affected from this over flow water since last two years and due to heavy discharge of water from the Narbada Nahar, the Jhakarda and Keriya Bandh have been destroyed and as a result thereof, there were some probability of flood at the dozen of villages surrounded by the Luni river as well as Nehad area and the villagers of the villages like Keriya, Lalpura, Deliya, Rampura, Sarda, Malipura, Silosan, Hoti Gaon, Ratoda, Koliya Ki Gaddi, Doothwa, Padardi, Rebariyon Ki Gadi, Marathawa, Bhatawas, Medha, Ratoda, Tembi, Tapi, Gallipa, etc. were affected from this over flow water and due to which, the crops standing at their fields have been ruined and the people of effected area have faced many problems to come and go at their destination and to earn livelihood. As such, the petitioner is entitled to get indulgence from this Hon"ble Court on this ground also.

On account of not properly providing the water facilities to the residents and agriculturists of the Jalore and Barmer Districts, the public at large are facing great hardships as the crops standing over their fields are going to be ruined and there is no drinking water facility available to them and their land are going to be made useless due to scarcity of water. It is further pertinent to mention here that the respondents are not properly distributing the water to actually needed persons and as such, the tail enders persons are not getting proper water facilities, whereas a matter of fact, the respondents are discharging the water in the Luni river and as such, the crops standing over their fields are going to be ruined due to over flow water of the Narbada Nahar through the Luni river and as such, the public at large is facing great hardship and hence, the respondents have caused huge losses to the public at large and as such, the petitioner is entitled to get indulgence from this Hon"ble Court on this ground also."

5. With the factual foundation noticed above, the prayer of the petitioner is as under:--

"the respondents may kindly be directed to properly distribute the water to the villagers and agriculturists of the Jalore and Barmer districts and the respondents may further kindly be directed to stop the wastage of the water overflowing from the Luni river and the respondents may further kindly be directed to patrol the water distributaries and main canal."

6. A detailed reply to the writ petition has been filed on behalf of the respondents with assertion that Narmada Canal is being carved out by the Central and State Government jointly and the project is in progress. The entire project is likely to be completed within a period of two years, but presently too adequate water is being discharged and distributed to the needed persons. The entire project is covering the States of Madhya Pradesh, Gujarat and Rajasthan. In the State of Rajasthan its length is about 74 kms. with a capacity of 2500 cusec water. The canal shall cover a big part of western districts in the State of Rajasthan where scarcity of water is enormous. Some of the area in the State of Rajasthan is at

higher altitude, therefore, water is to be lifted through electricity motors. On non-availability of adequate electricity, some quantity of surplus water required to be discharged by overflow in Luni river. It is necessary to save the main canal from being damaged. It is pointed out that due to irrigation facilities extended by the Narmada Canal Project, there is a tremendous enlargement of the crop area. While accepting the problem of water logging it is stated that the respondents are keeping a vigil eye and necessary remedial measures shall be taken expeditiously.

7. On behalf of the respondent State an additional affidavit sworn-in by Shri Raj Kumar Yadav, Executive Engineer, Narmada Canal Project, Division-II, Sanchores has been filed stating therein that to meet with the challenge of water logging and other problems arising due to overflow of excess water, the Government of Rajasthan has taken initiative and convened a meeting of the Principal Secretary, Department of Mines; Principal Secretary, Public Works Department; Principal Secretary, Department of Revenue; Principal Secretary, Department of Water Resources and Principal Chief Conservator of Forests on 5.9.2014. The meeting was presided by the Chief Secretary, Government of Rajasthan. The details of the deliberations taken place in the meeting are detailed in affidavit as under:--

"That in the said meeting issues raised in the PIL were discussed and during the course of meeting, Water Resources Department apprised the Chairman that construction work of Narmada Canal Project has not been completed and is under progress. It will be completed within a period of 2 years. The share of water allotted to the PHED is being partially used by them, due to non commencement of their schemes. Proper distribution of water for irrigation as well as drinking purpose shall be maintained simultaneously with the completion of the project. On completion of whole activities of the project in all respect of irrigation and drinking water supply, there shall be proper distribution in both the districts i.e. Jalore and Barmer and chances of releasing of water in Luni River as well as in Jhakharda depression shall be rare and occasional. It was decided in the meeting to ensure timely completion of the project and till that to ensure unobstructed flow of water in the Luni River to Khar Rann. The Department shall ensure minimum use of escape at Jhakharda depression as per report of Zoological Survey of India to develop Jhakharda depression as Wet Land habitats to fulfill the obligation of Ministry of Environment and Forest. Public Works Department apprised that road from Ramji-Ki-Gol to Dholi Nadi, which is around 3 km, gets submerged on excess release of water in Jhakharda depression requires raising and another road from Panal-Ki-Beri to Jhakharda, length 6 km, would required shifting of road, for which acquisition of land will be required, which may take at least 4 years, PWD was of the opinion that since canal work is going to be completed in around 2 years and release of excess water in Jhakharda depression will be minimized. It was decided that considering the scarce public resources it will be not worthwhile to take up these works. Mines Department apprised that at present lease held by RSMMM Ltd. In Jhakharda depression district Barmer is not operational due to non availability of

Environment clearance. It would take at least 2 to 3 years to obtain the same and hence, no action is required at this stage. In view of environmental aspect it was decided that the Forest Department shall take activities as per the provisions made in the Narmada Canal Project Report. It was decided that the Education shall ensure safe passage for the students of Government Primary School, Jhakharda. In the same manner, direction was given to the Medical and Health Department to take preventive measures to mitigate the causes of seasonal diseases in Jhakharda depression in district Barmer.

That the technical feasibility in release the water from Escape also precedes in such eventuality. The Escape works as a safety valve and they are provided as per I.S. Code. The establishment of Escape and their working assumes importance for the safety of any canal. It is humbly submitted that without using Escape, running of any canal is highly impossible because safety of the canal has to be ensured in the first instance.

That water is released from Sardar Sarovar Dam situated in Gujrat and in reaching Rajasthan, it undertakes journey of 509 kilo meters to reach first Escape situated at 51.450 kilo meters of Narmada Main Canal of Rajasthan portion. In unavoidable circumstances such as breach of any distributory, power failure and un-expected rain in the area and other situations, the water has to be released from Escape."

8. From perusal of the details of the deliberations, it appears that the respondents are mainly depending upon completion of the project. They are not having any immediate plan to meet with the problem of the water logging and further proper distribution of the excess water. The respondents may be right in saying that the water logging in the area concerned is due to excessive availability of water from the State of Gujarat and for certain other reasons and that can be met only after completion of the entire project, but we are of the view that immediate grievance of the people cannot be left unattended. The adverse effects of water logging are well known. The northern part of the State of Rajasthan is already facing a big problem of water logging in the canal area. A huge part of land has already been spoiled due to the problem of water logging and the apprehension of the petitioner about spoiling of soil in the districts of Jalore and Barmer cannot be said absolutely ill-founded. As per the scientific studies following are the major adverse effects of water logging:--

"1. Depletion of oxygen in root zone and increase of CO₂ due to water logging. An aerobic condition adversely affects micro-organisms while harmful organisms proliferate and restrict the plant growth.

2. Physical or chemical and biological activities in the soil are disturbed due to low temp as a result of water logging. Thus pest and diseases infestation problem arises.

3. Water logging makes field operations difficult on impossible.

4. The adverse effects of water logging get accelerated when the capillary water brings salts from lower horizon of soil or they are present in the ground water used for irrigation.

5. Water logging adversely affect the soil water plant relationship there by creating ecological imbalance.

6. Secondary salinization caused by the salts which are brought up from lower horizon strict the uptake of moisture and nutrients in the plant roots and create toxic effect in the root system.

7. Due to excess soluble salts the physical condition of soil deteriorates. Highly deteriorated alkali soils have very low infiltration rates. Most rainfall goes as runoff, causing crop damages in adjoining area.

8. Crops yields reduced and some times crop failure due to inadequate uptake of moisture and nutrients and due to the injurious effect of salts or deteriorated soil condition.

9. Fodders grown in salt-affected soils may contain high molybdenum in or selenium and low amount of zinc. The nutritional imbalance may cause disease in live stock.

9. As already stated, water is spreading in the area concerned from last number of months and even as per the respondents that shall remain as it is for at least 2-3 years to come. In this period the entire land shall be spoiled and that will cause great harm not only to the peasantry but to environment and ecology at large. An immediate action, thus, is required to be taken. We are of the view that the Government of Rajasthan must seek advise of the experts to meet the problem of water logging, may that be by the interim drainage or otherwise. It shall be appropriate for the Government to avail necessary advise from the experts in this regard.

10. The Chief Secretary, Government of Rajasthan, thus, is directed to reconvene the meeting of the High Level Committee that met on 5.9.2014 to consider the immediate measures require to be taken to meet with the problem of water logging. It shall also consider the drainage of water to the other needy area. Petitioner Shri Hapu Ram Vishnoi, during the course of arguments, pointed out certain measures deserves to be taken to meet this problem, he may submit all these details to learned Additional Advocate General Dr. Pushpendra Singh Bhati, appearing on behalf of the respondents, within a period of one week from today. Learned Additional Advocate General shall forward the same to the Chief Secretary, Government of Rajasthan to take into consideration the same in the meeting of High Level Committee. The committee, if considers appropriate, may also call the petitioner to participate in its meeting. We also deem it appropriate to direct the respondents to avail necessary assistance from the International Water Management Institute, Anand, Gujarat; Advance Centre for Water Resources Development and Management, Pashan, Pune, Maharashtra; Water

and Power Consultancy Service (WAPCOS) and also from the experts of the Department of Soil Conservation, Department of Water Resources and the Department of Environment in the State of Rajasthan. The assistance of the institutions and individuals aforesaid is required to be taken as early as possible. The details of the measures require to be taken and assistance availed are also required to be placed on record by the respondents on next date of hearing i.e. 06.01.2015.

Put up on 6th January, 2015.