
(2011) 05 JH CK 0051

In the Jharkhand High Court

Case No : Writ Petition (P.I.L.) No. 4663 of 2009

Hemendra Pratap Dehati

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Citation : (2011) 05 JH CK 0051

Hon'ble Judges : Prakash Tatia, Acting C.J.; Harish Chandra Mishra, J

Bench : Division Bench

Judgement

Prakash Tatia, Actg. C.J.

1. Heard learned Counsel for the parties.

2. We are constrained to observe that the Principal Secretary, 3. Water Resources Department, Government of Jharkhand and Principal Secretary, Water Resources Department, Chhatisgarh, failed to comply with the order dated 6th May, 2011 in its true spirit rather to say they acted against the order dated 6th May, 2011 which is apparent from their report dated 12th May, 2011 submitted alongwith the affidavit dated 16th May, 2011.

3. We are again constraint to observe that a plan to construct the Dam was conceived in the year 1974 over the river Kanhar and the process of survey for the purpose of taking a final decision is going on for the last more than 36 years. The decision to construct a dam on the river was of the Government and not of the public. Need was felt in the year 1974 for construction of a dam over the river. Only thing done was that the monetary benefit was given to the employees and officers of the Government appointed by the Government since 1974. Every year millions of rupees were spent only on account of salary and allowances and by the year 2008 total Rs. 10,49,73,588.40 were spent. As per the report given by the concerned Executive Engineer (Schedule-Kha, page-30) of the paper book the details of the expenditure incurred from 1977 to 2008 were not fully available and total amount spent for survey, research, drilling etc. is of Rs.

149.254 lakhs.

4. In the year 2007 for finding out feasibility for construction of the Barrage over the same river a committee consisting of 23 persons was constituted which includes the officers of the level of Chief Engineer, Junior Engineers and thereby the officers generated the post for themselves. In the said order of constitution of committee dated 8th June, 2007 it has been ordered that the department will complete the survey etc. by 30th June, 2007 and will submit the complete project report by 31st August, 2007 and forward it to the Central Water Resources Department of the Government of India, New Delhi and it was ordered that for obtaining the sanction for the project the Chairman of the said committee shall remain at Delhi by holding its camp so that the sanction may be obtained by 30th September, 2007 and it was projected that by this way they will be able to not only complete survey etc. but will complete the entire construction of the Barrage within that financial year obviously by 31st March, 2008 only.

5. We are taking the facts of the year 2007 in this order because of the reason that sufficient material is not available with us that what happened from 1974 or at least 1977 till 2007. Whether in that period all the officers remained silent spectators sitting in the office and therefore, in the year 2007 a decision was taken to construct a Barrage in such manner that committee was constituted by order dated 8th June, 2007 and was directed to complete all survey etc. and prepare the entire project report and obtain the sanction of the Central Government by 30th September 2007 and the project was so small that it could have been constructed within a period of about six months only and if that was the position then how the decades were wasted of the public interest.

6. It appears that one public person undertook fast unto death upon which the Hon'ble Chief Minister of the State had to pass an order because of the pressure of the public and pressure generated by Hon'ble the Chief Minister by directing to complete the survey by 31st August, 2007 and there was direction to remain sitting at Delhi for obtaining the sanction of the Central Government, the officers took the decision and constituted the committee which is apparent from Annexure-4 as annexed with the writ petition at page 33. This indicated how to befool the public, decision can be taken with the connivance of all who are on the helms of affairs of the policy and are called bureaucrats and executives and since because there was pressure they decided to do the job of such extent in the period of nine months. Then there is a detailed project report annexed with the writ petition from page 40 to page 73. It appears that a copy of this report has been supplied to the Shri Hemendra Pratap Dehati, former M.L.A. under the Right to Information Act vide communication dated 23rd June, 2009.

7. We perused the detailed report. It appears to be for construction of the Barrage instead of Dam wherein various aspects have been examined in detail. There is one more project report "Kanhar Jalashay Yojna" copy of which has been placed on record starting from page 36. In this report several issues were raised and those were raised on 20th December, 2006. Then there is one more report

starting from page 120 wherein this project has been named as Kanhar Reservoir Project. In this report it was requested that project will be moved to the Government of India and the Planning Commission for obtaining sanction as early as possible and year wise financial burden has also been given out and interestingly it was projected that work can be completed from 1976-1983 with a total cost of Rs. 101 crores and as per the endorsement on this report they are thinking for sending a proposal for sanction from appropriate department of the Government. There is one another document on record dated 24th May, 1988 by which even amount of Rs. 335 lakhs were sanction by the Government. There are many material correspondences which have been placed on record by the Petitioner by making his own efforts which includes another document and communication sent by the Secretary, Water Resources Department, Government of Chhatisgarh, Water Resources Deptt. Raipur, requesting for reducing the reservoir level. We need not give more details of above all things and alleged actions taken by the Government officials in the matter where 36 years which all indicate that the Government was of the view continuously that there is need of construction of a Dam/Barrage/Reservoir.

8. This Court passed a detailed order on 6th May, 2011 indicating some of the facts and specifically observed that none of the parties disputed and everybody agreed that something is required to be done on Kanhar river for providing drinking water to the public at large in the drought stricken area in the State of Jharkhand and refused to give three months time to the State Government for conducting survey etc. which time was sought on the ground of coming monsoon which was likely to hamper the survey work and this Court observed that before coming monsoon in one or two months some survey can be completed in view of the fact that total three months time was sought by the Respondent for completion of the survey. At this juncture, it is relevant to mention here that where the water is in scarcity and it can be because of the poor rainfall yet monsoon was projected as hindrance in the work of survey. That hindrance may be to some extent but that alone will not work in view of the reply of the counters and rejoinders submitted because there is involvement of another State and it was projected that the policy decision will be required, therefore, this Court directed the Secretaries of the State of Jharkhand and the State of Chhatisgarh to convene the meeting which they did not convene inspite of this Court's order.

9. Now the present committee meetings minutes dated 12.05.2011 has been placed before this Court and the first page contains nothing as it contains the names of the participants in the meeting and only the part of the order relevant for them wherein they were directed to hold a meeting and submit a report on or before 19th May, 2011 and then the minutes says that report on feasibility on Kanhar Dam prepared by Water and Power Consultancy Services (India) Ltd. (WAPCOS) was discussed and deliberated upon. The final report on submergence area study of the proposed Kanhar Jalasaya Yojana was prepared by Jharkhand Space Application Center, Jharkhand was also deliberated upon. Then they

indicated the issues which are as under:

- i) Height of the Dam,
- ii) Survey to ascertain the extent of submergence of Human habitations and forest land and other assets etc.
- iii) Implications under Forests Rights Act 2006.
- iv) Environment Impact Assessment.
- v) Submergence of Coal bearing Area.
- vi) Other options available as alternative to this project.

10. Then principal Secretary WRD, Chhattisgarh expressed his view that they need to ascertain the exact extent of damage to life and property of the people on the assumed height of 408.30 mts of the Dam before committing anything on this issue. It is interesting to note that the Respondents sought the time of three months to complete the survey in their earlier counter and this prayer was rejected by this Court vide order dated 6th May, 2011 and in pursuance to which this meeting was called and in this meeting it was requested again that there will be need of at least three months time to analyze the data made available from Jharkhand which will be verified by WRD, Government of Chhattisgarh by field survey to arrive at any definite conclusion meaning thereby the prayer which was not granted by this Court to the State of Jharkhand of allowing three months time for survey has been projected to be demanded by the Government of Chhattisgarh.

11. It appears that in the meeting dated 12th May, 2011 there were no material before the committee and therefore, there is no reference of issues which were already taken note of and projected as hindrance which may come in the implementation of the project. Then the intention of the Government came up in para which is as under:

Apprehensions were expressed about the feasibility of a project with such human and ecological dimensions. Principal Secretary, Jharkhand mentioned that he would be requiring a policy decision in this regard from the State Government, Principal Secretary, WRD Chhattisgarh echoed similar views.

12. This paragraph clearly indicate that both the Principal Secretaries; Principal Secretary, Water Resources Department, Government of Jharkhand and Principal Secretary, Chhattisgarh, Water Resources Department, Raipur, clearly indicated that they have not only doubt about the feasibility of the project as it involves huge human and ecological dimensions and both the Principal Secretaries rightly used the words "echoed similar views". Then they agreed that the State of Jharkhand may in the meanwhile explore other options to impound the waters of Kanhar for Irrigation purpose which will cause nominal no hazard to human habitations and the eco-system as suggested by WAPCOS in their report as alternative-II. Therefore, in view of this clear indication by the Principal

Secretaries of the two States the Petitioner should not have more hope from the Government with respect to construction of a Dam/Barrage/Reservoir. Both the Secretaries agreed for providing the water of Kanhar for irrigation purpose.

13. We are not supposed to be technical experts but at least we can see that this entire problem if Dam/Barrage/Reservoir is not constructed over Kanhar Dam than it is because of problem created by only bureaucrats and the persons who were engaged in this project.

14. In the year 1974 and within a reasonable time for construction of the Dam which could have been three to five years then there would not have been any problem of displacement of any person because of the construction of the Dam and this is a way in which the problems are created.

15. Be it as it may, if a public interest has been got defeated by the total inaction of the bureaucrats and another public interest has been build up against the original public interest by projecting the what harm can be because of displacement of large number of people from area may frustrate the cause of the Petitioner but shall remain as example for public in future and this may treated to be an example how public interest which was genuine from the day one in the opinion of the public can be frustrated by the lack of governance.

16. Be it as it may, the ultimate power vests in the government though public is under illusion it vest in them, let the Government take a decision whether there is yet any possibility of construction of Dam/Barrage/Reservoir by taking into all the issues which are relevant today and in the present situation which have come up because of the total inaction of the Government since last 36 years.

17. The Principal Secretary, Water Resources Department, Government of Jharkhand, shall remain physically present in Court on 27th June, 2011 to explain and to give the Government's decision whether they want to construct Dam/Barrage/Reservoir or they are not intending to do all the above things and indicate that now the project is required to be dropped so as to avoid further unnecessary public exchequer, if Court approves, their decision to drop the project.

18. A copy of this order be sent to the Chief Secretary, Government of Jharkhand and to the Principal Secretary, Water Resources Department, Government of Jharkhand and a copy of this order be also given to the learned Counsel for the Petitioner, learned Counsel for the Respondent and learned Counsel for the Water Resources Department.

19. Put up this matter on 27th June, 2011.