

(2017) 07 RAJ CK 0041
In the Rajasthan High Court
Case No : 7782 of 2014

Kisan Sangharsh Vikas Samiti, Sardarsamand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-07-2017

Acts Referred:

Citation : (2017) 07 RAJ CK 0041

Hon'ble Judges : Gopal Krishan Vyas, Manoj Kumar Garg

Bench : DIVISION BENCH

Advocate : G.R. Punia, Rajendra Prasad, Rajesh Panwar, Shyam Paliwal,
Rajendra Kataria, Ankur Mathur, ?Sangeet Purohit

Judgement

1. The instant writ petition has been filed in Public Inteest by the Kisan Sangharsh Vikas Samiti, Sardarsamand, Pali in which following prayers are made, which are as under:

"i. Direct the respondents to remove all obstructions including anicuts constructed in the catchment area of Sardarsamand Dam;

ii. Direct the respondents to stop mining of Bajri from the river bed falling within the catchment area of Sardarsamand;

iii. Direct the respondents therefore close down/block the tubewells constructed in the sub-merged area of Bilawas dam and Banjari dams installed falling within the catchment area of Sardarsamand Dam;

iv. any other appropriate order which is deemed just and proper in the fact and proper in the facts and circumstances of the case and in the larger interest of public may kindly be also passed; and

v. the petitioner may kindly be allowed the cost of writ petition."

2. During pendency of this writ petition, after considering the

pleadings of the parties, an order was passed on 12.10.2015 by the coordinate Bench of this Court whereby the following directions were given to the respondents, which reads as under:-

"D.B. CIVIL WRIT PETITION NO.7782/2014

KISHAN SANGHARSH VIKAS SAMITI VS. STATE & ORS.

DATE OF ORDER : 12.10.2015

HON"BLE MR. JUSTICE GOVIND MATHUR

HON"BLE MISS JUSTICE JAISHREE THAKUR

Mr. G.R. Punia Sr. Advocate with Mr. Rajesh Punia for the petitioner,

Dr. P.S. Bhati Additional Advocate General.

This petition for writ is preferred by Kishan Sangharsh Vikas Samiti, Pali through its President Sri Babu Singh Rajpurohit to have directions for respondent-State to remove all obstructions including Anicuts constructed in the catchment area of the Sardar Samand Dam and further to stop mining of Bajri (Sand) from the river beds of the rivers which are feeding channel for Sardar Samand, to close down the tube-wells constructed in the sub-merged area of Billwas Dam and Banjari Dam situated within the catchment of Sardar Samand Dam.

As per the facts averred in the petition for writ Sardar Samand Dam was constructed in the Year 1899 by erstwhile State of Marwar to provide irrigation for about 61,000 Bighas of land. The catchment area of Sardar Samand is spread in about 2072 Square Kilometer including 1793.11 Square Kilometer in district Pali, 231.24 Square Kilometer in District Ajmer and 47.65 Square Kilometer in District Rajsamand. The dam is receiving water from rivers Sukri, Lilri, Guhiya and Gudiya flowing to west from Aarawali Hills. It is stated that the maximum water level of the dam is 25 fts. With a capacity of 31115.64 million cubic feet. The dam is not receiving adequate water to satisfy its capacity despite reasonable rains due to

illegal mining activities in the catchment area and due to illegal construction of Anicuts at several places.

As per the petitioners due to obstructions created the dam has not receiving water and that is resulting into denial of irrigation facility to the farmers who are having agricultural land in the command area of Sardar Samand Dam.

This Court by the order dated 05.01.2015, issued notices to the respondents to have their response to the writ petition preferred in the public interest.

As per reply to the writ petition filed on behalf of the respondents, the competent officials are making inspection of the catchment area from time to time and if any illegal construction is for Anicut is found, creating any kind of obstruction

then the same deserves to be removed after making necessary communication to the State Government. It is also stated that the State is not having any official information about pits existing in the river bank due to illegal excavation of Bajri (Sand). The respondents also clarified that no objection certificate has been issued to install bore- wells in Billawas Dam or in river beds which are feeding channel for Sardar Samand.

After considering the reply submitted by the respondent this Court by the order dated 20.04.2015 directed the respondents to file a detailed reply providing all necessary details about available Anicuts constructed under the instructions of the competent authority or otherwise the pits existing due to excavation of Bajri and any other obstruction that is causing harm to the catchment area. The direction was also given to provide necessary details about availability of bore-wells in the catchment area and further the steps taken by the respondents to remove the obstruction existing in the catchment area. Such details were required to be submitted before 11.05.2015.

This Court on 11.05.2015, 20.07.2015, 28.08.2015, 03.09.2015 and 16.09.2015 granted time to the respondents to comply with the directions given on 20.05.2015.

Today, Dr. P.S. Bhati learned Additional Advocate General shown us an inspection report prepared by the Office of Mining Engineer, Sojat City in present of the office bearers of the petitioner Kishan Sangharsh Vikas Samiti, Pali.

As per the report given, the rivers which are feeding channel for Sardar Samand Dam have excavation of Bajri. As per the details mentioned below:-

"VERNACULAR MATTER OMITTED"

It is also brought into our knowledge that in entire catchment area, 83 Anicuts are existing. However nothing is stated as to whether these Anicuts have been constructed with the permission of the Government or otherwise no details have been given about the existing bore-wells in the river beds as well as in the Sub-merge areas of Billawas Dam and Banjari Dam. It is also brought into our knowledge that in the recent monsoon, Sardar Samand Dam received only 10.25 fts. Water against its capacity of 25 fts. though the rainfall was little higher than the average rainfall.

The facts noticed above indicates about enormous obstructions existing in the catchment area of Sardar Samand Dam. The objective conditions noticed by us demands querrative measures by the respondents, hence-

While keeping in this petition for writ pending for orders, we deem it appropriate to direct the State of Rajasthan:-

1. To stop excavation of Bajri from all four rivers which are feeding channel for Sardar Samand.
2. To demolish all the Anicuts constructed by any person including Gram Panchayats or any other body without having necessary

sanctioned by the State Government. 3. To examine the need of Anicuts even constructed by proper sanction, if creating obstruction in feeding the Sardar Samand. 4. On arriving at the conclusion that the Anicuts, if any, is causing harm to the Sardar Samand catchment area, then they to demolish that. 5. To seal all the bore-wells existing in the river beds and in the sub-merge area of Billawas Dam and Banjari Dam except the bore-wells, if any, installed by the Public Health Engineering Department for supply of drinking water.

Necessary compliance report is required to be filed by the respondent on or before 07.12.2015.

Put up on 07.12.2015."

The aforesaid order was further modified on 14.12.2015.

the order dated 14.12.2015 reads as under:

"D.B. CIVIL WRIT PETITION (PIL) NO.7782/2014

DATE OF ORDER 14.12.2015

HON"BLE MR. GOPAL KRISHAN VYAS,J

HON"BLE MISS JAISHREE THAKUR, J

Mr. Yashpal Khileree for the petitioner.

Mr. Sajjan Singh assistant to Dr.P.S.Bhati,AAG for the state

Mr. V.K. Mathur for respondents-applicants.

An application has been filed under Article 226(3) of the Constitution of India for vacation of interim order dated 12.10.2015 passed in this writ petition. We have perused the order dated 12.10.2015 as well as the prayer made in the application filed under article 226(3) of the Constitution of India by the respondents-applicants. It is specifically contended in the application that the respondents-applicants are undertaking mining work in accordance with the agreement dated 19.12.2013 and in no manner contribution to the illegal mining, and making compliance of all possible checks and measures as provided in the agreement entered into between the applicants and respondent State, therefore, the order passed by this court on 12.10.2015 may be modified. Learned counsel for the State Government is not disputing the fact that the agreement dated 19.12.2013 is in existence. In view of above, the order dated 12.10.2015 is hereby modified and the applicants are hereby permitted to pursue their mining work in accordance with the agreement dated 19.12.2013 and while doing so, they shall comply with the directions dated 12.10.2015 with regard to checks and bounds. The application for modification of stay order is disposed of accordingly. Put up after three weeks."

3. The coordinate bench after considering all the aspects of the

mater issued further directions on 30.3.2016 whereby the State Government was directed to avail the services of Water and Power Consultancy Service Ltd. B-76, Chaman Villa, Gautam Marg, Shyam Nagar, Jaipur to have a detailed study with regard to the issue in question and issued direction to submit preliminary report within six weeks.

4. In compliance of aforesaid order, a preliminary report given by Water and Power Consultancy Services Ltd. was placed before the court for perusal, therefore, the coordinate Bench while considering all aspects of the matter and preliminary report given by the Water and Power Consultancy Services Ltd., issued direction on 20.9.2016 to ensure complete compliance of the directions given by this Court in this petition on 12.10.2015.

5. On 18.10.2016 the matter was listed in the court and learned AAG submitted a brief note explaining the queries raised by the Court in the order dated 16.9.2016. After considering aforesaid brief note following directions were given again, which reads as under:

"Having considered the brief note submitted today, while keeping in mind the orders earlier given under the order dated 12.10.2015, we deem it appropriate to direct the respondents as under :- 1. The respondents shall immediately bring down the anicut situated near Village Guda Ram Singh to permissible limits and file a detailed report in relation to that before this court on or before 21.10.2016. 2. The respondents shall supply all necessary details about all existing anicuts in the entire catchment of lake Sardar Samand, their need, their size etc., with copies of the documents under which any permission has been granted to construct such anicuts. The respondents shall also provide the details about "Rapats" existing in the catchment area without getting the downflow pipes. 3. The respondents shall also file a complete survey report about Bajari excavation from the feeding rivers to Sardar Samand and also the details about the steps taken against the persons, who are said to be mining illegally or beyond permissible limits. 4. Details shall also be filed about closing of the tubewells existing in the riverbeds and in the submerged

area of Bilawas dam and Banjari dam. Details shall also be given about the persons, who constructed such tubewells, and the steps taken by the district

administration or the authority competent against them for violating the rules/regulations/norms applicable. A report has also been filed by the Water and Power Consultancy Service pertaining to survey and study of catchment area of Sardar Samand dam. Objections, if any, with regard to the report may also be filed by the parties before the next date of hearing. Let this writ petition be listed for orders on 08.11.2016. On the next date of hearing, the officers , except the Superintending Engineer, Department of Water Resources, Pali Circle, Pali and the Mining Engineer, Department of Mines, Sojat City, are not required to remain personally present before the court."

6. In pursuance of aforesaid order on 10.2.2017 the learned AAG placed on record guidelines for preparation of proposals for construction of anicuts, water harvesting structure (WHS) in different area. The coordinate bench after considering the guidelines and progress report submitted before the court passed the following order on 10.2.2017, which reads as under:

"Learned Additional Advocate General has placed on record guidelines for preparation of proposals for construction of Anicuts/Water Harvesting Structure (WHS) in different areas. As already stated in the Progress Report earlier submitted, there are 127 Anicuts/WHS in the area in- question. The respondents are directed to satisfy the Court as to whether the 127 Anicuts existing in the area were constructed by adhering the guidelines for preparation of proposal for construction of Anicuts/WHS in different area and if any Anicut/WHS is constructed prior to coming into force of the guidelines referred above, then the respondents are required to satisfy as to what were the norms and guidelines applicable at the relevant time and whether those were adhered or not? For the purpose learned Additional Advocate General wants some time. Time prayed for is allowed. Put up on 02.3.2017."

7. In compliance of aforesaid order, the learned AAG submitted a following progress report on 1.3.2017, which reads as under:

"The humble Answering Respondents in furtherance to previous progress reports, submit as follows:-

1- That it is humbly submitted that prior to the year 2012, no guidelines had been issued looking to the fact that there was sufficient water inflow in the dams located within the State. 2- That it is very pertinent to submit it here that the State Government in order to provide relief to the farmers and to provide employment to the unemployed, got the small Anicuts/Water Harvesting Structures (WHS) constructed through various schemes. 3- That in the forest area, the Forest Department in order to check the soil erosion and for providing water to the wild animals, small Anicuts/Water Harvesting Structures (WHS)

were constructed. Not only this, the water is required in the forest as a Crisis Management Plan in order to check the fire in the forest area. 4- That the Water Shed Department also constructed small Anicuts/Water Harvesting Structures (WHS) for checking the soil erosion, enhancement of ground water level and to improve water holding capacity of soil. 5- That the Government from time to time launched various schemes for the purpose of water conservation like 'Jal Chetna Yatra', WHS Scheme, 'Khet ka Pani Khet me' and water shed etc. and got the Water Harvesting Structures constructed. 6- That most of the Anicuts/Water Harvesting Structures (WHS) have been constructed under the Mahatma Gandhi National Rural Employment Guarantee Scheme for water conservation and to give employment to the rural public. 7- That the State Government looking to the scarcity of water has formulated a State Water Policy in the

year 2010 for water conservation and utilization of water for water related matters. For the purpose of enhancement of ground water level, the WHS are very helpful and thereby the water requirements of the villagers for drinking water, irrigation etc. may be fulfilled. 8- That now the State Government has issued the guidelines in the year 2012, and now the construction of WHS will be made as per the recommendations of the Technical Advisory Committee while following the aforementioned guidelines. A copy of the guidelines issued by the State Government in the year 2012 is submitted herewith and marked as Annexure-A/1. 9- That in the sum and substance, it is humbly submitted that from Sardar Samand Dam, irrigation facilities to 14 villages is provided. On the other hand, by construction of WHS, the water requirement of 400 villages is met with by use of approximately 1% rainy water. It is also relevant to mention here that in the year 1975-76, 1983-84 and 1993-94 the Sardar Samand Dam was overflowed and in the year 2007-08 it was about to overflow. Thus, once in a decade, the dam was overflowed, and it is continuing to be overflowed once in a decade even after construction of WHS. Therefore, the larger interest of people of 400 villages cannot be usurped for the people of 14 villages.

It is, therefore, humbly prayed that the progress report may kindly be taken on record."

8. After considering the progress report dated 1.3.2017 and guidelines of the State Government, we are of the opinion that State Government is required to follow the guidelines for removing the obstructions in the catchment area of Sardarsamand dam, if any. The respondents are also under obligation to comply the directions issued by this court for the said purpose from time to time in this petition.

9. It is made it clear that if petitioner Samiti is still having any

grievance with regard to the prayer made in the writ petition, they may file representation before the respondent no.1 Principal Secretary, Department of Water Resources, Government of Rajasthan, Jaipur within a period of one month from the date of receiving the certified copy of this order and in the event of receiving such representation, it is expected from the respondent no.1 that grievance raised by the petitioner Samiti will be decided within a period of three months after providing an opportunity of hearing strictly in accordance with law and guidelines issued in this regard.

10. Consequently, this public interest litigation is hereby disposed of with above observations.