

(1995) 07 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 6207 of 1983

K.S. Radhakrishnan

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 252, 262

Citation : AIR 1999 Mad 100 : (1995) WritLR 490

Hon'ble Judges : Srinivasan, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Mr. R. Gandhi, for Mr. Kandaswami, for the Appellant; Mr. V.T. Gopalan, Senior Central Government Standing Counsel, Mr. P. Sathasivam, Special Govt. Pleader and Mr. S. Sivanandam, Counsel, for the Respondent

Judgement

A.R. Lakshmanan, J.—The petitioner is a Member of the Madras Bar. He filed this public interest litigation for the issue of a Writ of

mandamus under Article 226 of the Constitution of India. The following are his prayers in the writ petition :

(a) To direct the 3rd respondent to release 89 TMC of the surplus water from its west flowing rivers of Kerala State as shown in the Table

Annexure I;

(b) To direct the 2nd respondent to apply to the National Water Resources Council reportedly set up by the 1st respondent to lay down; broad,

technical, economic and financial policy for irrigation and drinking water as between the States of Kerala and Tamil Nadu; suggest priorities for

accelerated development of the water resources of each State, Kerala and Tamil Nadu; priorities for use of water as between irrigation, power

generation, industrial and domestic purposes of each State or region; and to

evolve a policy of transfer of water from surplus to deficit areas

conforming to highest national interest of the Union and the concerned States.

2. The petitioner in his affidavit has furnished a detailed account of the topography, physical features and water resources of each State,

geographical area and the population of the country. According to the petitioner, the present Kerala State came into existence upon reorganisation

of former States of Travancore Cochin, Malabar District and Kasargod Taluk of erstwhile State of Madras in the year 1956. On the eastern side,

western ghats are located which area is densely forested and surrounded by streams and rivers. The central plains, which stretch towards

westwards from the hills to the coastal areas, are fairly cultivated and intersected by a large number of rivers flowing westwards into the Arabian

Sea. Most of these rivers are tidal in nature. Kerala gets fairly heavy rain fall ranging between 162 and 510 CM, average being more than 500

CM. Kerala gets rain both from South-west and North-west monsoons and its rivers hold water throughout the periods from June to December

and January to June.

3. Back to Tamil Nadu, the petitioner states, that the State has exhausted practically all its available surplus water resources and that the State

depend upon supply of water from other sources and neighbouring States. The petitioner has also furnished details in regard to the population of

the City of Madras and the history in regard to the evaluation of the metropolis of State by an English adventurer during the 17th Century,

population of the city and the particulars regarding the rain fall. The petitioner has contended that the Central Government is apathetic in not

assisting in sharing of utilisation of the river waters of the neighbouring States and that even though the Union Government has set up a National

Water Resources Council to resolve inter-State disputes, the Union Minister for Irrigation has paradoxically advised the State Governments to

resolve their river water disputes through mutual negotiations. It is further contended that even though the Central Government have enacted the

River Boards Act, 1956, no River Board has been set up in pursuance of the Act.

4. The petitioner states that as per the Advance Report on water resources of Kerala, there are about 41 West flowing rivers in Kerala with a total

annual yield of 72,520 m.cu.m. and these West flowing rivers rising in the

Western ghats and flowing into the Arabian Sea have an average length of about 60 Kms. All these rivers carry sizeable flows during the heavy South-West monsoon rains. According to the petitioner, out of the total annual yield of 72,520 m.cu.m., as estimated by the Government of Kerala, a surplus of about 40,500 m.cu.m. of water will flow to the sea after meeting the irrigation, power and navigational requirements of the State of Kerala. Therefore, the petitioner suggests that this surplus water if diverted to irrigate the scarcity districts of Madurai, Ramnad and Tirunelveli in the State, it would not in any way affect the irrigation potential of the State of Kerala. The petitioner filed a table showing the contribution of water to the West flowing river from catchments, which lie in the territory of Tamil Nadu, surplus water in the river base, quantity available for diversion, the acreage of land which could be irrigated out of this surplus water and the beneficiary districts of Tamil Nadu. The petitioner has filed along with the writ petition Annexure I in this regard.

5. The petitioner further states that a Technical Committee was formed by the Convener of the Central Water Committee during December, 1975 to find out the possibilities of diverting the flow of some of these West flowing rivers towards east. Both the Governments of Kerala and Tamil Nadu met about 11 times from 2-8-1978 to 23-8-1981 in this behalf at various places like Madras, Trivandrum and New Delhi. However, the fruits of the discussions have gone in vain owing to the unrealistic stand taken by the State of Kerala. In fact, the State of Kerala came out with a white paper that it has no surplus water from the West. Since the deliberations of the States of Kerala and Tamil Nadu have failed in coming to an amicable settlement, the petitioner has approached this Court to invoke the extraordinary writ jurisdiction of this Court for the reliefs prayed for in the writ petition.

6. According to the petitioner, the question involved in this case is not of a reasonable and equitable share in the beneficial uses of the waters of the drainage basin but that of diverting only a part of the surplus water of coriporian State. This, according to the petitioner, requires a formal approval and good gesture by the State of Kerala towards its neighbouring State. The petitioner has also referred to the provisions of Article 252 of the Constitution which deal with the power vested in Parliament. He further states

that the Central Government is empowered to enact laws under Item 55 of the First List to the Seventh Schedule for regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. He would further say that subject to the provisions of Entry 56 of List I, a State Government is also empowered to legislate on water supplies, irrigation and canals, drainage and embankment, water storage and water power as enjoined by Entry 17, List II, Schedule VII of the Constitution.

7. The petitioner would submit that the River Boards Act, 1956, which was enacted by the Parliament, authorises, the Union Government to establish a River Board for advising the Governments interested in relation to such matters concerning the regulation or development of an inter-State river or river valley or any specific part thereof and for performing such functions as may be specified in the notification, in consultation with the State Government interested. The Union Government instead of diverting its attention in this regard have now set up a National Water Resources Council to help to develop a national outlook in relation to water resources, to infuse a spirit of mutual accommodation in inter-State relationships and create a favourable atmosphere for settlement of inter-State water disputes. The petitioner, therefore, states that the Union Government is under constitutional obligation to accept the role of a mediator and create a machinery to bring about a settlement on the ticklish issues involved in the dispute of river waters from one State to the other. The approach of the State Government is also not praiseworthy and if for any reason no agreement could be reached in spite of the earnest efforts of either State, the dispute should be referred to a Tribunal by the Union Government on a request from the State of Tamil Nadu.

8. According to the petitioner, the fact that the Union Government has not so far set up any such Tribunal bears the testimony that no such attempt worth its name has been made by the State of Tamil Nadu to reach a well considered settlement in this behalf. In conclusion, the petitioner states that there are also a multitude of variable and imponderable factors including political idiosyncrasy of individual State which has culminated into the stalemate and that in a matter of vital national interest, adjudication is a poor

substitute for negotiation but if negotiation between the States does not prove fruitful, the last resort is judicial intervention by this Court to find out or rather invent a just and equitable solution for the typical problems faced by the citizens of the country in the State of Tamil Nadu on legal as well as humanitarian grounds within the frame work of the Constitutional provisions and other principles of international law on the subject.

9. The Union of India filed its statement of objections. The Union of India have also clarified the position of the centre in relation to the States in the realm of water resource development. According to the Indian Constitution, the primary responsibility for the development of the water resources in the States falls on the State Governments. The present constitutional provisions in regard to "water" are as under:

Entry 17, List II (State List)

"Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of the List I."

Entry 56, List I (Union List)

Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by the Parliament by law to be expedient in the public interest.

Article 262(1) of the Constitution :

Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Under the provisions of Entry 56 of Union List, the River Boards Act, 1956, was enacted for advising the Governments interested in relation to such matter concerning the regulation or development of an inter-State river or river valley or any specified part thereof and for performing such other functions as may be specified on the notification and is not applicable for diversion of water from one basin to the other.

10. The statement of objections of the Union of India also deals with the other aspects of the matter viz., formation of a Standing Committee of the National Water Resources Council with Union Minister of Water Resources as Chairman and Union Ministers of Agriculture, Energy, Urban

Development, Environments, Forest and Science and Technology as Members and the Chief Ministers of the concerned States as special invitees

for the meetings of the Committee, apart from the Secretary, Ministry of Water Resources as the Member Secretary of the Committee. It also

deals with the recommendation of the Irrigation Commission regarding the West flowing rivers in India and the constitution of a Technical

Committee and the report submitted by the said committee in 1981, the constitution of two separate Co-ordination Committees pursuant to its

recommendation, and the constitution of National Water Development Agency to study and formulate proposals for national perspective for water

resources development. It also deals with a Committee set up in 1978 by the Planning Commission under the Chairmanship of Member, Central

Water Commission for assessment of the water resources of the rivers flowing into the Arabian sea and their utilisation, etc.

11. The Union of India in its statement of objections have, however, made their stand clear in regard to the issues raised by the writ petitioner in

this writ petition. It is worthwhile to reproduce the said passage, which runs as follows:

This respondent wishes to make it clear that the issue involved here is not of sharing of waters of an inter-State river as implied by the petitioner

but of diverting the waters from rivers in one State with its consent to the neighbouring States. The Government of Kerala are contending that there

are no surplus water in the West flowing rivers and hence they cannot agree to the diversion of water to east from these rivers. The centre is

pursuing this issue with the concerned State Governments but it must be made clear that the Centre cannot act unilaterally in this issue without the

co-operation of the States involved .

12. In the concluding paragraph of the statement of objections, the Union of India have also questioned the locus standi of the petitioner to file the

present writ petition since the very issue is being actively pursued by the Central Government.

13. The State of Tamil Nadu filed a separate counter affidavit through its Joint Secretary, Public Works Department. According to the State of

Tamil Nadu, the matter has already been taken up by them with the Government of Kerala and the Government of India and since the proposals

made by the petitioner involve inter-State cooperation, any investigation can be taken up only with the concurrence of the other State concerned. It

also refers to the stand taken by the Kerala State that there is no surplus water available in the rivers and therefore, suggests that the differences

are to be sorted out only by discussions and negotiations. The counter affidavit also refers to the discussion which took place on 7-6-1986

between the Chief Secretaries of Tamil Nadu and Kerala at Trivandrum for obtaining drinking water from the West flowing rivers to meet the

needs of southern districts like Tirunelveli, Ramanathapuram, Pasumpon Mulhurama-lingam, Kamarajar and Madurai lying on the leeward side of

the western ghats.

14. Regarding the steps taken by the Government of Tamil Nadu to solve the acute water scarcity conditions in the city, it is stated that a joint

project both in Andhra Pradesh and Tamil Nadu for conveyance of 15 TMC of Krishna Water from Srisailem Reservoir of Andhra Pradesh to

Tamil Nadu border and providing irrigation facilities for certain areas in Andhra Pradesh is under execution. A bilateral agreement for the

implementation of the project was entered into between the two States in April, 1983 and the project work in both the States is in progress with an

aim of attaining partial benefits by 1993. In regard to water supply to other habitations in the districts of Tamil Nadu, it is stated that the Tamil

Nadu Water Supply and Drainage Board is vested with the responsibility and that the Government of Tamil Nadu is taking every step for getting

diversion of excess water from the State of Kerala by mutual discussions by all possible means.

15. The Government of Kerala have not filed any separate counter affidavit. Even though an opposite stand is taken by the Government of Kerala,

they requested the Government Pleader of Tamil Nadu to appear on their behalf also in this writ petition.

16. At the time of hearing, the learned Special Govt. Pleader has also placed before us the letter written by the Chief Minister of Tamil Nadu on

24-8-1993 to the Prime Minister, the reply dated 1-9-1993 by the Prime Minister to the Chief Minister of Tamil Nadu, the letter dated 28-6-

1994 by the Chief Secretary to Govt. of Tamil Nadu to the Chief Secretary to Govt. of Kerala and the letter dated 28-7-1994 by the Chief

Secretary to Govt. of Kerala to the Chief Secretary, Govt. of Tamil Nadu. We have carefully perused the papers placed before us and all the letters concerned.

17. The first prayer is directed against the 3rd respondent/State of Kerala. The writ petition as against the 3rd respondent is not maintainable in this

Court as no part of the cause of action has arisen within the jurisdiction of this Court as against the 3rd respondent -- see Bhagat Ram Sharma Vs.

Union of India (UOI) and Others, . Moreover, the petitioner has no right whatever to seek the relief prayed for against the 3rd respondent. Hence, the prayer is rejected.

18. As regard the second prayer, it is found from the counter affidavit that appropriate steps have already been taken by the Tamil Nadu State

Government viz., the 2nd respondent, in that regard. In paragraphs 4 to 7 of the counter affidavit the relevant details are set out. The State

Government has been in constant correspondence with the Union of India as well as the Government of Kerala.

19. The learned Special Govt. Pleader has produced before us copies of the letter written by the Chief Minister of Tamil Nadu on 24-8-1993 to

the Prime Minister and the reply of the Prime Minister dated 1-9-1993 and also the copies of the letter from the Chief Secretary to Government of

Tamil Nadu dated 28-6-1994 to the Chief Secretary to the Government of Kerala and his reply thereto dated 28-7-1994. A perusal of the said

letters shows that the State Government of Tamil Nadu is taking all the necessary steps to improve the water resources of the State as much as

possible. The State Government has sought expeditious action in respect of Pamba-Achankoil-Vaigai Link and for diversion of surplus water of

Pamba Achankoil rivers towards east besides raising the storage level of Mulla Periyar Dam. The Government of Kerala referred to the direction

given by it to the Centre for water Resources Development and Management, Kozhicode, to take up a detailed scientific study of all the rivers

flowing into the Vembanad lake and it is awaiting the report of the said Centre.

20. In the statement of objections filed by the Union of India it is stated that the issue is being actively pursued and endeavour is being made to

consider the possibility of diverting the surplus waters in the West flowing rivers from Kerala to Tamil Nadu. It is stated that a Sub Committee of

the National Water Board has been constituted to suggest appropriate modalities for setting up a River Basin Authority and to lay down a policy in

that regard. It is also stated that in order to enable the Natural Water Resources Council to perform its functions expeditiously and efficiently, a

Standing Committee comprising of Union Minister for Water Resources as a Chairman and Union Ministers of Agriculture, Energy, Urban

Development, Environment and Forests and Science and Technology as Members was constituted in April, 1990, and that the Chief Ministers of

the concerned States will be the special invitees for the meetings of the Committee.

21. Thus, we find that steps have been taken by the Governments of the two States and the Central Government for solving the problem. We can

only express hope that this problem, which has been burning for more than two decades, will be solved at an early date, say within the next six

months. Among the records, we find a copy of the letter written by Dr. M. G. Ramachandran, the then Chief Minister of Tamil Nadu on 26-4-

1982 to the Central Government in which he had suggested that the Government of India may declare all rivers including inter-State rivers as

National rivers and bring forward such legislation as necessary to ensure proper utilisation of rivers subject to a condition that the entitlement of the

States for water as decided upon by the Tribunal shall on no account be disturbed by such legislation. In our opinion, the suggestion is worth

consideration by the Central Government, particularly in view of the fact that the problem remains unsettled for over two decades and the methods

adopted till now have proved unsuccessful.

22. In so far as, the third prayer is concerned, it is directed against the 2nd respondent, the State of Tamil Nadu. The counter affidavit filed by the

2nd respondent in this writ petition can itself be treated as a report as regards the steps taken by it. Besides, the Special Government Pleader has

placed before us the latest correspondence on the subject as stated earlier. Hence, there is absolutely no necessity to give any direction to the

State Government as prayed for by the petitioner.

23. Learned counsel for respondents 4 and 5, who got themselves impleaded as parties on their own applications, argued that the rivers in Kerala

are inter-State rivers and a direction should be given to the Central Government

to constitute a Tribunal under Article 262 of the Constitution of

India. It is argued that some of the catchment areas are in Tamil Nadu and the rivers are, therefore, inter-State rivers. We are unable to accept the

contentions. No materials have been placed before us to hold that the West flowing rivers in the State of Kerala are inter-State rivers.

24. For the foregoing reasons, the writ petition is dismissed with the above observations. However, there will be no order as to costs.

25. Petition dismissed.