
(2014) 06 MAD CK 0217

In the Madras High Court

Case No : W.P. Nos. 4833 and 21335 of 2010

Parambikulam Aliyar Project Thirumoorthi Reservoir Project
Committee

APPELLANT

Vs

The Principal Secretary, Public Works Department

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0217

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—Since the issues involved in both the writ petitions are one and the same, they are disposed of by this common order.

2. Learned counsel appearing for the petitioner in W.P. No. 4833 of 2010 submitted that when the Thirumoorthi Dam was constructed on the Palar River in the year 1967, the Old Ayacutdars made demand for getting irrigation benefit uninterrupted, since their entire irrigation benefit were curtailed by the construction of the above said dam. Accordingly, the Government of Tamil Nadu took a decision that the irrigation water should be released to the above said Old Ayacutdars by let out water to the seven tanks (Dhali system). Thereafter, the respondents let out the water to the above said seven tanks and 135 days of water, once in two years, was released from the said dam to the new Ayacutdars. Subsequently, the said 135 days reduced to 90 days, which again reduced to 60 days, and finally, it was again reduced to 48 days for every two years. It is further contended that the source of water for Thirumoorthy Reservoir is not only from the Palar River, but also from other catchments water and from Contour Canal. Moreover, the overflow water from the catchment area was stored at Parambikulam and it was let out to the Thirumoorthy Dam through Contour canal. It is further stated that 99% of the water storage in Thirumoorthy Reservoir are receiving water through Contour Canal and only 1% of water alone is received from old Palar River. Moreover, when the seven tanks agricultural

association filed writ petition before this Court in W.P. No. 5089/1987 seeking for a direction to let out water to the seven tanks, this Court, while disposing of the writ petition on 07.01.2013, did not discuss about the 8th tank, namely, Poosarinaicken Aeri, therefore, the impugned order giving a direction for release of water to the 8th tank from Thirumoorthy Reservoir is unlawful and unjustified.

3. By bringing to the notice of this Court Parambikulam Aliyar Project (Regulation of Water Supply) Rules 1994, he has stated that the respondents, at the time of passing G.O., failed to consider that there is no provision in the above said Rule to let out water to the Poosarinaicken Aeri, when it is specifically mentioned that only seven tanks are included under Dhali Channel, therefore, the respondents cannot include the Poosarinaicken Aeri in Dhalin channel unless bringing amendment in the said Act through Legislature, therefore, issuance of G.O. without making Law on the floor of the house is unlawful and the same is liable to be set aside.

4. Again, it is further contended that the respondents failed to consider that the Poosarinaicken Aeri is situated in the upper level of Palar River, hence, it cannot get water from the Palar River, for, in between the Palar River and Poosarinaicken Aeri, there is 15 kms. distance. Moreover, the revenue records also depict that the Poosarinaicken Aeri receiving water from Alampalayam Anaicut Channel and not from Dhali Channel, hence, the respondents cannot include the Poosarinaicken Aeri in the Dhali Channel, which is having only seven tanks, therefore, addition of one more tank i.e. Poosarinaicken Aeri, as 8th tank, without making any law, is not permissible by issuing a mere G.O.

5. It is further contended that when Rule 6 of Parambikulam-Aliyar Project (Regulation of Water-Supply) Rules, 1994, clearly says that from Palar credit stored in the Thirumoorthy Reservoir, periodical release may be made through held sluice located at Mile 0.0.404 of Dhali Channel for the ayacut directly fed by Palar River Channel and tanks below the Thirumoorthy Reservoir, a direction issued by the Government for further release of water by issuing a mere G.O. without making any amendment in the Rule by Legislature, is highly objectionable, as it is unlawful. With these submissions, he prayed for allowing the writ petition, by quashing the impugned G.O. Ms. No. 326, dated 06.11.2008.

6. Per contra, learned Additional Government Pleader appearing for the respondents 1 to 6, by filing a detailed counter affidavit, took a preliminarily stand on the maintainability of writ petition, inasmuch as it is well settled law that it is the sovereign duty of the State to preserve, store and supply water to the Ayacutdars, who solely depend on the dam water. In a similar circumstances, when an identical issue was raised in W.P. No. 34539 of 2012, challenging G.O. Ms. No. 506, Public Works (Q1) Department, dated 01.06.1994, to release water from Parambikulam Aliyar Project, especially from Thirumoorthy Dam, to Upper Dam, once in a year, this Court, by order dated 07.01.2013, dismissed the said writ petition holding that it is the sovereign duty of the State to preserve, store and supply water to the Ayacutdars, who solely depend on the dam water.

7. Secondly, it was contended that the Parambikulam Aliyar Project was started functioning from 1967 with the total Ayacut of 2,03,299 acres, which divided into 3 zones under Parambikulam Main Canal. From 1967 to 1994, the same extent of ayacut was maintained and during that time, 135 days of supply for each zone was maintained, however, during the year 1994, an additional extent of 1,75,000 acres was attached with the Parambikulam Aliyar Project, through an Act passed exclusively in Legislative Council by the Government of Tamil Nadu, thereby, extending total extent as 3,77,152 acres under Parambikulam Main Canal. It is further stated that the Palar River has its own inflow for the entire year except three to four months in the hot summer season. Therefore, considering the inflows realised in Palar River in the past years, the quantity of about 600 to 800 mcft of water is being released from Thirumoorthi Reservoir every year, and the total annual inflow being obtained from Contour canal is 18,500 mcft for supplying water for irrigation under Thirumoorthy Dam. Therefore, the water released to old Ayacut works out to 4% of the total inflow realized at Thirumoorthy Dam, hence, the written statement of the petitioner that only 1% of the inflow of Thirumoorthi Reservoir is being realized from Palar River is incorrect.

8. Adding further, it is stated that when a writ petition No. 5089 of 1987 was filed by the Udumalpet Taluk Agriculturist Association, this Court, while disposing of the writ petition on 28.07.1987, did not mention anything about the 8th tank, namely, Poosarinaicken Aeri, and on that basis, learned counsel for the respondents 1 to 6 submitted that the said writ petition was filed without impleading the Ayacutdars. Moreover, the Agricultural Association of seven tanks were not aware about the then existing Palar River feeding water to Poosarinaicken Aeri. This is how the Poosarinaicken Aeri has failed to take part in the discussion as well as there was no mention made in the order passed by this Court in W.P. No. 5089 of 1987, dated 28.07.1987, but, that does not mean that the Poosarinaicken Aeri was not getting water from Dhali Channel, before issuing the impugned G.O.

9. While agreeing with the petitioner that an assurance was made during the hearing of writ petition Nos. 12581 and 19922 of 1993 before this Court that there would not be any more inclusion of ayacut under Parambikulam Aliyar Project, he has stated that the Ayacutdars of Poosarinaicken Aeri had approached the department during the year 2002, with a grievance that the Poosarinaicken Aeri, which is formed about 100 years back during British regime by receiving water from Palar River, was omitted to be considered by the then authorities while formulating Parambikulam Aliyar Project. Based on the above said request, the department officials carried out detailed study based on the revenue records. In this connection, the Tahsildar, Udumalpet, had sent a letter dated 19.11.2005 stating that the Poosarinaicken Aeri was found to be receiving water form Palar River through Alampalayam Anicut Channel, even 80 years back, that is prior to the construction of Thirumoorthi Reservoir and therefore, only after proper consideration and verification of records, it was found that the Poosarinaicken

Aeri was omitted to be included in the Parambikulam Aliyar Project and accordingly, corrective measures were taken by forwarding a proposal to let out water to Poosarinaicken Aeri from Parambikulam Aliyar Project and that the Government was also addressed to issue necessary orders in this regard. Accepting the revenue records that the Poosarinaicken Aeri was originally getting water from the Parambikulam Aliyar Project, the Government issued present G.O. directing the concerned officials to release water, therefore, the stand taken by the petitioner, that by issuing present impugned G.O., number of Ayacut have been increased to 3,77,152 acres without making proper amendment in the Rule, is unacceptable, he pleaded.

10. Mr.S.Silambanan, learned Senior counsel appearing for the petitioner in W.P. No. 21335/2010 and for the seventh respondent in W.P. No. 4833/2010 prayed for no interference with the impugned G.O., since the same has been issued by the Government after perusing all the old revenue records and by pleading so, it is further submitted that the Poosarinaicken Aeri was receiving water from the Palar River through Alampalayam Anicut Channel, even 80 years prior to the construction of Thirumoorthy Reservoir.

11. At the very outset, this Court, finding highly disputed and complex issues are involved between the petitioner and respondents on sharing of water from Dhali Channel to Poosarinaicken Aeri, is not inclined to entertain the writ petition. As rightly contended by the learned Additional Government Pleader for respondents 1 to 6, keeping in mind that this Court, on an earlier occasion, while dealing with a similar issue in W.P. No. 34539 of 2012, by an order dated 07.01.2013, had dismissed the said writ petition holding that it is the settled legal position that it is the sovereign duty of the State to preserve, store and supply water to the Ayacutdars, who solely depend on the dam water, by following the above said judgment, I am not inclined to entertain the writ petition, involving several disputed questions of fact as stated above. Accordingly, writ petition No. 4833 of 2010 stands dismissed. However, it is left open to the parties to work out their remedy in accordance with law before appropriate forum, if so advised. In view of dismissal of writ petition No. 4833 of 2010, another writ petition No. 21335 of 2010 filed by the Alambalayam Poosarinayakkan Aeri Pasana Vivasayikal Sangam seeking to implement G.O. Ms. No. 326, dated 06.11.2008, stands disposed of with a direction to the respondents to consider the said G.O. and do the needful on merits as expeditiously as possible. No Costs. Consequently, connected miscellaneous are closed.