

(1992) 11 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5293 of 1992

Sayeed Ansari

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 24-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (1992) 2 WLN 530

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Judgement

Jas Raj Chopra, J.—By this writ petition filed under Article 226 of the Constitution of India, the petitioner Sayeed Ansari has prayed for the following reliefs:

1. that by an appropriate writ, order or direction, Hon''ble Court be pleased to restrain the respondents from allowing allocation of any water from out of the water available in the 4 dams via., Jawai, Hemawas, Sai and Lordia and thus ensure that drinking water is available to serve the city of Jodhpur, Pali and 222 village.
 2. Any other appropriate, direction as may be considered proper in the facts and circumstances of the case may kindly be given.
 3. Costs of the writ petition be awarded to the petitioner.
2. The facts necessary to be noticed for the disposal of this writ petition briefly stated are: that Jodhpur which forms part of the erstwhile State of Jodhpur is prone to drought and suffers drought for long spells of time. There have been periods when Jodhpur has suffered droughts for 3 years more frequently than not. This being the weather situation, water management for the purpose of supply of drinking water to the city of Jodhpur and other 222 connected villages of District Pali and Jalore, which are traditionally supplied drinking water from Jawai Dam, Sai Dam, Hemawas Dem and Lordiya Dam is very essential. As per the report prepared by the Public Health & Engineering Department, this

requirement of water for drinking purpose to the city of Jodhpur and other connected 222 villages is 5100 MCFT per year. This year on account of good rains, the availability of water in jawai Dam is 7300 MCFT, out of which 494.50 MCFT water is in dead storage and the water, loss per day is 2.50 MCFT. The loss of water in Hemawas is 6.4 MCFT per day. The water of Lordiya Dam is reserved for Pali City. In addition to this, there are other losses of water from canals of each Dam. In all the total water losses have been estimated to the tune of 2712.27 MCFT. The total availability of water in all these four dams is 10540.17 MCFT and after deducting the losses of water to the extent of 2712.27 MCFT, there leaves only 7027.90 MCFT water in all these four dams. It was, therefore, contended that looking to the water availability in all these four dams and further looking to the fact that this region frequently suffers from drought, water should be reserved for at least two years in all these four dams for drinking purpose.

3. According to the petitioner, all traditional sources of water availability in 1 Jodhpur City are in dismal position because the catchment areas there of have been I damaged beyond repair on account of extensive mining operations. Even the Canals I and channels known as inlets have also been damaged beyond repair. It was, therefore, I prayed that in order to save the life of people of the residents of Jodhpur and other 222 connected villages, the entire water available in these four dams should be reserved for drinking purpose.

4. It was further contended that in the Godwal area, there are about 10000 wells, out of which, 6000 wells are situated in Sunicrpur Panchayat Samiti and 4000 wells exist in the territory of Afore Panchayat Samiti and therefore, irrigation should be done through these wells.

5. It was submitted that the State Govt. has taken the stand in S.B. Civil Writ Petition No. 614 of 1987 Vijay Mehta v. The State of Rajasthan that the traditional source of water supply to Jodhpur City is 90 MCFT i.e. 81 MCFT. in Kayalana and 9 MCFT in Balsamand. The population of Jodhpur has increased considerably and the scarce supply of water through these sources will dry up, if they are not supplemented, It was also submitted that the yearly supply of 759.20 MCFT of water comes from the surface sources and 293.20 MCFT water is received from the ground water source. Thus, the total water, which is received from the surface and underground sources is 1052.40 MCFT. It was also submitted that even if the water is taken from the local wells, which are supplemented for supply of water from Rampura, Pal Tube wells etc., the entire supply will suffice for 118 days for 1 lakh of people and for 18 days for the 6.5 lakh population of Jodhpur at the rate of 26 gallon per capita per day. Thus, the Public Health and Engineering Department of the Govt. of Rajasthan itself has submitted that even when the rain fall is good, the population of Jodhpur city cannot have sufficient water to sustain itself on its own and therefore, this leaves Jawai Dam as the only source of water supply for drinking purposes to the citizens of Jodhpur and other connected villages. The supply of water for drinking purposes to the City of Jodhpur from Rajasthan Canal is far fetched possibility

and it will take about 10 to 15 years.

6. According to the petitioner, the supply of water for irrigation purposes is utilised mostly by the rich peasantry and they can well afford to sink their wells and can fulfill their requirement of irrigation in this manner. It was submitted that Jodhpur is supplied water from Rampura, Mathania, Tiwari, Balarwa, which form part of Osian Tehsil. The water level of that Tehsil which was earlier 50 feet has gone down upto 300-250 fts. as per the report of the Chief Engineer. Ground Water Department. In addition to this, the water which is supplied through Pipelines from these villages of Tehsil Osian is not sweet and is a health hazard. This source needs recharge because the cultivators of that area are suffering immensely on account of water table having gone down so deep. Thus, it will be unfair and unreasonable to strain the Tinwari Hansi Gaon and Rampura area just to help the cultivators of the Jawai Dam area. and, therefore, it is absolutely essential that the water which is available in all these four dams should be reserved for drinking purposes for the citizens of Jodhpur and 222 other connected villages.

7. It was contended that the condition of the canal bringing water from Jawai Dam to Jodhpur is in bad shape and it cannot bear the burden of bringing water to Jodhpur and therefore, it needs to be repaired immediately. It was further contended that a meeting was also held under the Chairmanship of Collector. Pali, which was attended by the Officers of the Irrigation Department but none represented the citizens of Jodhpur and 222 other connected villages to present their case and, therefore, it is feared that a lot of water will be allocated for irrigation purposes. The petitioner has, therefore, prayed that the entire water presently collected in all these four dams be reserved for drinking purpose for the citizens of Jodhpur and 222 other connected villages.

8. Initially, the State of Rajasthan and the Chief Engineer, PHED, were made parties to this writ petition but later, the Chief Engineer, Irrigation Department, Jaipur; Jawai Command Kishan Union, Sumerpur: Shri Bhanwarlal Son of Kesharimal Ji Jat resident of Ramnagar Tehsil Bali, District Pali, and Shri Mahendrasingh son of late Narendrasinghji resident of Bithiya Tehsil Bali. District Pali, and Shri Mahendrasingh son of late Narendrasinghji resident of Bithiya Tehsil Bali, District Pali were impleaded as respondents No. 3 to 6. An application was also made by one Shri Rewat Dan Charan resident of Village Mathania, Tehsil Osian District Jodhpur on behalf of the Cultivators of the area of Osian Tehsil and he was also allowed to be heard as an Intervenor.

9. A joint reply to the writ petition has been filed on behalf of respondents No. 1 and 2. Reply has also been filed on behalf of respondent No. 3. Respondents No. 4 to 6 have filed a joint reply to the writ petition. An application has also been moved on behalf of Hemawas Bandh Sinchai Krishetra Krishak Sewa Samiti, Pali for being impleaded as a party respondent to this writ petition and has also been ordered to be impleaded as respondent No. 7 and a reply has also been filed on its behalf.

10. The respondents No. 1 and 2 have categorically admitted that the drinking water requirement of Jodhpur, Pali and 222 connected villages is 5100 MCFT per year. According to them, the supply of drinking water of Jodhpur city comes from Jawai, Hemawas and other dams through the Canals. The supply from Tiwari and Salarwa Tube wells comes to 24 lakh galleons per day and the supply of water from Rampura Mania Scheme Tube wells comes to 24 lakh gallons per day. Similarly, the supply of water from Ransigaon Tube well comes to 20 lakh Gallons of water per day to Jodhpur city and the water from Pal Tube well and other local resources of Jodhpur city comes to 25 lakh gallons per day. It was contended that the work of Lift Canal is in steady progress and efforts will be made to bring the water from Rajasthan Canal to Jodhpur at the earliest. According to the respondents, tenders for the first four pumping stations have been invited and the tenders have been received by the PHED and for the another four pumping stations, invitation of tenders is in progress. It was admitted that the water level of Rampura etc. is going down and these tube wells need re-charging of water as reported by the Ground Water Department. There is a lot of hue and cry from the local farmers as regards going down of water level in that area.

11. According to respondents No. 1 and 2, if the water is not supplied for irrigation purposes, that will adversely affect the life of farmers and the citizens of dam area and that will be violative of Article 21 of the Constitution. It was submitted that in all 3800 MCFT water has been reserved for drinking purposes for the citizens of Jodhpur, Pali and 222 other connected villages (3200 MCFT water from Jawai and Sai Dams and 600 MCFT water from Hemawas) by the Division Commissioner, Jodhpur and that will certainly suffice the need of water for drinking purposes till the end of September, 1993. It was further contended that the maximum carrying capacity of Jawai Canal is 3300 MCFT per year. It was only in the year 1991-92 that the Jawai Canal could carry about 3100 MCFT water to Jodhpur and it was the maximum one in the last ten years.

12. On behalf of the Chief Engineer, Irrigation Department (respondent No. 3). it was submitted that the scheme of Jawai Dam was mooted in the year 1903 but the project was initiated only in the year 1944 and the actual work was started in the year 1946. Irrigation from Jawai Dam was provided in the year 1951. It was only in the year 1957 that an idea of constructing Jawai Canal was taken up. From Jawai and Hemawas Dams, the lands of forty nine villages of Pali District and twenty two villages of Jalore District are being irrigated. The maximum area under irrigation from Jawai Dam in the year 1990-91 was 63618 acres and the total cultivators families are 15866, which are getting benefit of irrigational facility from Jawai Dam. Out of 15866 families, 4411 families belong to the Schedule Castes and Schedule Tribes and 11238 families are having less than 5 acres of land and, therefore, it is wrong to contend that irrigation from Jawai and Hemawas canals benefits only rich cultivators. The entire life of these cultivators is dependent on this source of irrigation of water supply through Jawai Dam.

13. It was submitted that it is wrong to contend that there are about 10000 wells

in that area. The number of wells in the area are only 969 and water is not supplied from these dams to any cultivators, whose land is irrigated by wells. The total cultivable areas under irrigation from Jawai Ram is 102609 acres. Only 387 families have more than 20 acres. of land and 41 cultivators have got more than 40 acres of land. According to respondent No. 3, water is to be supplied to 80269 acres of land which depends only upon the availability of water in dams. In the year 1990-91, 63618 acres of land was supplied water from Jawai Dam and partial irrigation of land from Jawai Dam was started in the year 1992.

14. It was further submitted that it is true that the water in Lordia Dam is reserved for only Pali City. The total water losses as per them are fluctuating and therefore, the total water losses estimated as 2700 MCFT cannot form any standard average per year. The water losses depend upon various factors. According to respondent No. 3, the requirement of 5100 MCFT water is a projected demand. It includes the requirement of Sojat and Sumerpur. They have not yet been included in the Scheme. The water requirement of Jodhpur and other connected 222 village is 3100 MCFT and not 5100 MCFT and presently, the local resources i.e. Kayalana, Takhat sagar and Umedsagar Tanks contain 40106 and 110 MCFT respectively. It was submitted that keeping water for two years will cause more evaportional losses and will deprive irrigation facility to the entire canal irrigated area, which will be an extreme step. According to respondent No. 3, Rajasthan is a desert area. Here, rainfall, humidity and greenery is not as much available as in other areas. Temperature in Sumerpur area is very high and this may cause high rate of evaporation and if the water is reserved for two years, the exposed area of water will be more and that will cause more evaporation. If the water is kept in the Hemawas Dam, then that will cause more seeoage loss because of the fact that soil under Hemawas Dam is much more porus than that of Jawai Dam. This evaportional and seepage loss can be avoided by supplying water in time to the cultivators and that will certainly improve the agricultural produce. The catchment area of all the four dams are situated in different areas and there is no instance that there was no inflow of water at all in all the dams in any year. It was, therefore, submitted that water should not be kept reserved for two years but water should also be kept reserved for two months extra.

15. It was submitted that the Divisional Commissioner, Jodhpur has already reserved 3800 MCFT water to be supplied from Jawai, Lordia, Hemawas and Sai Dams and much more than that is not at all required. The rest of the water should be released for irrigation purposes.

16. In the reply to the writ petition, that has been filed on behalf of respondents No. 4 to 6, it was submitted that the availability of water in the local tanks is 256 MCFT i.e. 40 MCFT in Kayalana Tank, 106 MCFT in Takhatsagar and 110 MCFT in Umedsagar and about 543 MCFT water is received from Ramoura Mathania, Tiwari Balarwa, Ransigaon and Pal Boli Tube wells (i.e. 24 lakh gallon per day from Rampura mathania 2 Lakh gallon from Tinwari Balarwas 25 lakh gallon per

day from Ransigaon and 20 lakh gallon perday from pal Doli Tube Wells, the total of which comes to 93 lakh gallons per day, which is equivalent to 543 MCFT per year.

17. According to respondents No. 4 to 6, the present water requirement of Jodhpur city is 220 lakh gallons per day, which is equivalent to 2284 MCFT per year. It was submitted that as stated above, 256 MCFT water per year is received from the local tanks i.e. Kaylana, Takhatsagar and Umedsagar and 543 MCFT water per year is received from Rampura Mathania, Tiwari Balarwa, Ransigaon and Pal Boli Tube Wells, the total of which comes o 799 MCFT and therefore, there remains only the storage of 485 MCFT water. According to them, the water requirement for Jodhpur City upto 1.10.1993 would work out to only 1000 MCFT but the Divisional Commissioner has already agreed to reserve 2800 MCFT water in Jawai Dam, which is more than enough and the remaining water should be released for irrigation purposes so that the crop sown in the command area may not be damaged. It was submitted that in the matter regarding allocation of water for drinking purposes as also for irrigational purposes, the Court should take into consideration the reasonable necessity of drinking water for Jodhpur Pali and 222 other connected villages as also the availability of water in these four dams and the water carrying capacity of the canals and water storing capacity of these Dams for a long period.

18. A reply has also been filed on behalf of respondent No. 7, in which, it was submitted that that if the water is allowed to be retained in Hemawas Dam for a long time, it will result in horrible consequences. According to respondent No. 7. if the water requirement of Jodhpur city is devised for two years, it will leave the rest of the Rajasthan to civil and evil consequences of drought and that will be highly discriminatory and this shows manifest selfishness on the part of. the petitioners. The figures regarding availability of water and water losses were not disputed but the reservation of water for two years was disputed. Rather, it was suggested that drinking water for Jodhpur, Pali and other 222 connected villages should be reserved for only 4 months and not for two years.

19. It was submitted that the land irrigated by the water from wells is called "Chahi" land and it does not fall in command area of the dams. The Hemawas dam was constructed for irrigation purposes and not for supply of drinking water to Jodhpur city. The canal from Jawai to Hemawas dam was damaged due to heave rains and now, it is under repair and the Govt. is under heavy obligation to repair it on war footing. Hemawas is an irrigation dam and it was constructed for Irrigation purposes only. While taking shelter under Article 21 of the Constitution, the petitioner forgets that the petitioner and the like persons belonging to elite class waste half of the valuable drinking water for the purpose other than to quench their thirst i.e. latrine, garden and room coolers etc. It was, therefore, prayed that the stay order that has been granted in favour of the petitioner should be modified and water should be released for irrigational purposes also.

20. A rejoinder has also been filed, in which, it was contended that the State

Govt. itself has admitted that the water requirement for Jodhpur, Pali and 222 other connected villages is 5100 MCFT per year, It was submitted that the drinking water being the first priority, water for two years should be stored in these four dams. Certain documents have also been filed to show how much water has been supplied each year through the canals and what is the water requirement etc.

21. I have heard Mr. M. Mridul, Senior Advocate assisted by Mr. R.S. Saluja for the petitioner, Mr. K.L. Jasmatiya. the learned Additional Advocate General cum Government Advocate, Mr. P.C. Tatia, the learned Counsel for respondent No. 3, Mr. L.R. Mehta, the learned Counsel appearing rer respondents No. 4 to 6 Mr. P.C. Sharma, the learned Counsel for respondent No. 7 and Mr. M.S. Singhvi, the learned Counsel appearing for Intervenor Shri Rewat Dan Charan as also Shri Rewatdan Charan personally, who also submitted a written note. I have also carefully gone through the record of the case.

22. The learned Counsel appearing for the parties frankly condeded that drinking water is the first priority but it is not the sole priority and hence they have prayed that the Court should take a balanced view as regards the requirement of drinking water for Jodhpur Pali and 222 other connected villages, keeping in view the availability of water in these four dams, water carrying capacity of Jawal canal, other traditional water sources available to the city of Jodhpur as also the sources regarding supply of water through the Tube wells to the city of Jodhpur, which have been made available for drinking purposes and then order for the reservation of water in all these four dams for drining purposes. Agricultural production is an important part of our national economy and development and, therefore, its requirements should not be ignored altogether. A reasonable balance be struck between these two contending demands.

23. It was contended on behalf of the respondents that water should not be kept reserved for two years in any case because that will result in huge water losses, evaporation and seepage loss etc. and that will result it total denial of irrigational facilities to the number of poor cultivators, who depend solely on the agriculture and that will be against the spirit of Article 14 of the Constitution. it was further contended that the water carrying capacity of Jawai Canal is only 10 MCFT per day and so, it cannot carry more than 3600 MCFT water through the year. On behalf of respondent No. 3, it was submitted that the maximum water carrying capacity of Jawai Canal is 3300 MCFT because Jawai Canal cannot carry water for all the 365 days because some day, Jawai Canal needs its repairs and, therefore, maximum water carrying capacity of Jawai Canal is 3300 MCFT per year and not more than that.

24. It was further contended on behalf of the respondents, that looking to the water availability in Kaylana. Takhatsagar and Umed Sagar, 256 MCFT water can be supplied through these tanks and presently, 543 MCFT water per day is being supplied from Rampura Mathania, Tiwari Balarwa, Ransigaon and Pal Doli Tube wells. Thus, according to the respondents, the water requirement of about 799

MCFT can be met through these local resources. It was further submitted that the water requirement of 5100 MCFT per year is a projected demand and it includes water requirement of Sojat and Sumerpur towns.

25. If we take it to be correct that the water requirement of 5100 MCFT per year is a projected demand and it includes the water requirements of Sojat and Sumerpur towns then too, we can safely come to the conclusion that the water requirement of Jodhpur, Pali and 222 other connected villages is 5000 MCFT per year and after taking into consideration the water losses in the local resources of water we can come to the conclusion that the water requirement of 700 MCFT can be met from the local resources i.e. Rampur Mathania, Tiwari Balarwa, Ransigaon and Pal Doli Tubewells as also Kaylana, Takhasagar and Umedsagar Tanks and thus, there will be a gap of 4300 MCFT water per year.

26. It was strenuously contended by Mr. M.S. Singhvi, the learned Counsel appearing for the Intervenor Shri Rewatdan Charan that the water level in Osian Tehsil has gone down to the extent of 300-350 fts. and the water, which is supplied through the Tube wells, which are situated in Osian Tehsil, is a health hazard and, therefore, lifting of water through these tube wells should not be allowed. This argument cannot be given much credence at this stage because we are concerned with the supply of drinking water to the citizens of Jodhpur, Pali and other connected 222 villages. The drinking water being the first priority, we think it proper that as the citizens of Jodhpur, Pali and other 222 connected villages are in short supply of drinking water, this source of water supply should not be abandoned because that will further complicate the entire situation. Mere supply of water to the citizens of Jodhpur, Pali and other 222 connected villages is not the sole factor responsible for going down of the water level. Lot of wells have been dug in number of villages of Osian Tehsil and that may also be one of the factors which is responsible for going down of the water to the extent of 300-350 fts. in Osian Tehsil. The interest of the cultivators of Osian Tehsil cannot be protected at the cost of jeopardising the interest of the cultivators of sodwal area. A balanced view has to be taken in the matter and all sources of water supply have to be harnessed. It should not be lost sight of that the agriculture is also an essential ingredient of our national development because 80.70 our population lives in villages and is dependent on agriculture. The Godwad area which produces Grain and Oil seeds cannot be deprived of irrigational facilities totally. The total stoppage of irrigation facility to the cultivators of the Godwad areas will result in depriving them of their means of livelihood because they are totally dependent on agriculture.

27. It was contended on behalf of respondent No. 3 that only 969 wells exist in the command area and not 10000 wells and irrigation facility through canal is not provided to the land which is irrigated by wells. Under these circumstances, the existence of wells has no concern whatsoever with the irrigation facility which is provided through canals.

28. As stated above, this much is admitted that water carrying capacity of Jawai

Canal, which brings water to Jodhpur is 10 MCFT per day and, therefore, this Canal cannot carry more than 3650 MCFT water per year. Water cannot be supplied through this canal for all the 365 days because through this canal for all the 365 days because some time, the canal needs repairs and sometime, on account of heavy rains, the water cannot be lifted through this canal and, therefore, the submissions of respondent No. 3 that the Jawai Cannal can carry only 3300 MCFT water per year appears to be correct.

29. So far as Hemawas Dam is concerned, if the water is allowed to be retained in it for two years, it will go waste because after January 1993, it cannot contain water on account of heavy seepage of water or evaporation and, therefore, taking into consideration all these facts and circumstances of this case, I am firmly of the view that presently, 4550 MCFT water should be reserved in Jawai, Sai and Hemawas Dams for supply of drinking water to the citizens of Jodhpur, Pali and other 222 connected villages. This order has been made effective from 24.10.1992, keeping in view the water carrying capacity of Jawai Canal and reservation of water for another six month for the citizens of Jodhpur, Pali and other 222 connected villages i.e. upto July 31, 1993. Taking into consideration this reservation of six months for the next year, at least 3600 MCFT water per year should be reserved in these dams excluding the reservations which have been made for the present year vide this order.

30. It was contended by Mr. Mridual, the learned Counsel appearing for the petitioner that the total water requirement of Jodhpur, Pali and other 222 connected villages is 5100 MCFT per year and when this much of water is available, daily water supply should be maintained. It was contended by Mr. Jasmatiya, the learned Add. Advocate General cum Govt. Advocate that the filtration facility that is available to Jodhpur compels not to supply water daily. I find no force in this argument. When daily water supply was made to the citizens of Jodhpur through out all these years except the last two year the respondents No. 1 and 2. cannot be heard to say that for want of filtration facility, water supply cannot be maintained daily. It is the duty of the State Govt. to improve the filtration facility, if it is not there but a city having population of more than 10 lakhs people cannot be deprived of water supply daily, when adequate water is being reserved for supply of water to the citizens of Jodhpur, Pali and other 222 connected villages.

31. Since the citizens of jodhpur, Pali and other 222 connected villages are in dire need of drinking water, the work of Lift Canal through Rajasthan Canal should be taken on a war footing and efforts should be made to lift the water through Lift Canal as early as possible so that the relief may also be granted to the cultivators of Osian and Jodhpur Tehsils and Godwal area and that will go a long way in meeting the water requirements of Jodhpur, Pali and other 222 connected villages People will not be forced to drink brackish water which presently they are drinking under compulsion.

32. In the result, I allow this writ petition and direct the respondents No. 1 to 3

that for this year i.e. till 31.7.1993, water to the extent of 4550 MCFT be reserved in Jawai, Sai, Hemawas dams for supply of drinking water to the citizens of Jodhpur, Pali and other 222 connected villages. This includes the reservation of water for another six months. For the subsequent years starting from 1.8.1993 and so on and so forth, at least 3600 MCFT water should be reserved in Jawai, Sai and Hemawas Dams for the supply of drinking water to the citizens of Jodhpur, Pali and other 222 connected villages, exclusive of the reservation of six months, which has been made this year. For all subsequent years, till the water is brought for supply through Lift Canal of Rajasthan Canal to the city of Jodhpur, at least this reservation should be maintained. If more water is available then water distribution should be done accordingly but in no case, less than 3600 MCFT water should be reserved for each subsequent year starting from 1.8.1993 for drinking purposes for the citizens of Jodhpur, Pali and other 222 connected villages through Jawai, Sai and Hemawas Dams exclusive of the reservation for six months made this year.

33. However, the respondents No. 1 to 3 shall be free to utilise the excess water available in these three dams for irrigation purposes. The respondents No. 1 and 2 are further directed to start daily water supply to the citizens of Jodhpur within a month from today.

34. In the facts and circumstances of this case, the parties are left to bear their own costs of this writ petition.