
(2014) 01 MAD CK 0236

In the Madras High Court

Case No : Writ Petition (MD) Nos. 20935 and 20939 of 2013 and 111 of 2014 and M.P. (MD) Nos. 1 of 2013 in W.P. (MD) No. 20935 of 2013 and 1 of 2014 in W.P. (MD) No. 111 of 2014

S.M.P. Amalan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 39(b)

Citation : (2014) 3 LW 227

Hon'ble Judges : V.M. Velumani, J;R. Sudhakar, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—These writ petitions filed in public interest and having stood for consideration and after hearing the arguments of the respective learned counsel, are disposed of by the following common and final order, by consent of all the parties. The cause of action for filing W.P. (MD) No. 20935 of 2013 arose consequent on a representation made by the petitioner on 26.12.2013 and the Periyar-Vaigai Single Crop Growing Farmer's Association, Melur, on 09.12.2013. The prayer in this petition is to direct the respondents to release and supply water from the Vaigai Reservoir to the Single Crop area in Madurai District.

2. The prayer in W.P. (MD) No. 20939 of 2013 is for a writ of mandamus, directing the respondents to open-up the Mullai Periyar Dam, immediately, for irrigating 100 thousand acres of lands, within the revenue limits of Melur Taluk.

3. The prayer in W.P. (MD) No. 111/2014 is for a direction to the respondents to release sufficient water from Periyar and Vaigai Dams, forthwith, to save the paddy crops standing in the lands situated in Madurai North Taluk and Melur Taluk, by considering the representation of the petitioner, dated 27.12.2013.

4. Periyar Irrigation Project was completed in the year 1898 and the water stored in the Periyar Dam, besides supplying water for irrigation to the Cumbum Valley Ayacut area and PTR Canal - Single Crop area, is also utilised for irrigation

purposes of Single Crop area of Tirumangalam, Madurai North Taluk, Melur Taluk and also double crop area in Madurai District. Water from Vagai Dam is channelized through Periyar Main Canal and there are two regulators, one at Peranai Regulator and the other at Kallandhiri Regulator, as detailed below in the diagram produced by the respondents.

[VAIGAI DAM TO PULIPATTI REGULATOR Drawing - Omitted.]

5. The Periyar-Vaigai Water Management System is regulated by Rules of Regulations issued in G.O.G.O.(Ms) No. 461, Irrigation Department, dated 21.02.1935 and amended by G.O.(Ms) No. 309, Public Works Department, dated 08.02.1939 and G.O.(Ms) No. 3810, Public Works Department, dated 18.03.1953. Presently, the issue under consideration is covered by the recent amendment issued in G.O.Ms. No. 122, Public Works Department, dated 21.04.2010, whereby the procedure has been defined for calculating Vaigai Credit and Periyar Credit at Vaigai Reservoir, by amending the said rules of regulations.

6. It is not in dispute that water to the Single Crop Area of Melur and Madurai North Taluks is supplied through Kallandhiri Regulator, which is the tail end of the Periyar Main Canal. This area of single crop was supplied water, as per the G.O.Ms. No. 122, dated 21.04.2010, from 25.09.2013 to 06.12.2013 and as against their combined entitlement of 15707 mcft, a reduced quantity of 4478.76 mcft of water was alone let out for irrigation of Nilakottai, Vadipatti, Madurai North, Melur, Thiruppathur, Sivagangai and that water amounts to approximately 28.51% of their entitlement.

7. When the water fell short for harvesting the standing crops, a representation was made by the Periyar-Vagai Single Crop Growing Farmers Association, Melur, on 09.12.2013 to the Hon"ble Chief Minister of Tamil Nadu, the Hon"ble Minister for Public Works Department, the Hon"ble Minister for Agriculture, the Chief Secretary to the Government of Tamil Nadu, Chief Engineer, Public Works Department, Chennai, Chief Engineer, Public Works Department, Madurai. The said request of Periyar-Vaigai Single Crop Growing Farmers Association was forwarded to the District Collector for appropriate action, with recommendation, of which we deal with the in the later part of this order. When there was a delay in consideration of the said representation, the farmers took to road roko agitation on 22.12.2013. The Chief Minister of the Tamil Nadu was kind enough to order the release of water for three days i.e. from 23.12.2013 till morning on 26.12.2013 and a quantity of 415 mcft of water was released. That water did not satisfy the requirement of the farmers of the ayacut.

8. Presently, the grievance of the petitioners is that the water so released was not sufficient to meet the requirements of the farmers to harvest the single crop. Therefore, they sent a further representation on 26.12.2013 and 27.12.2013 to all the authorities seeking immediate release of water for a further period of 15 days, in a quantity of 2250 mcft. The petitioner in W.P. (MD) No. 111 of 2014

sent a representation on 27.12.2013 to the District Collector, Madurai District, the Superintending Engineer, Madurai and the Executive Engineer, Public Works Department, Melur and that was not considered. Hence the present writ petitions for the above mentioned common prayer for a direction to the respondents to release water in Periyar Main Canal to save the single crop cultivated in Madurai North and Melur Taluks of Madurai District.

9. The main contention of Mr. W. Peter Ramesh Kumar and Mr. K. Mahendran, learned counsel appearing for the petitioners, is that if water is released for three wetting, the farmers will be able to harvest the standing crops and thereby the single crop can be successfully completed. In this regard, the learned counsel referred to 1935 Regulation, as amended by G.O.Ms. No. 122, dated 21.04.2010, and brought to the attention of the Court, the following parameters that should be taken into consideration for release of water in the case of this nature.

Rule No. 1: Introduction:

The Periyar Irrigation Project, completed in the year 1898, has an ayacut of 13,000 acres in the Cumbum Valley and about 1,30,000 acres under the Periyar Main Canal, including the Vadagarai and Thenkarai channels. Water for this area is drawn from the Periyar Lake through a tunnel one mile long, let into the Vairavanar and thence into the Suriliyar and Vaigai rivers and picked up at the Peranai Regulator across the river Vaigai about 90 miles below the Periyar Lake. The area in Cumbum Valley raises two crops and is being irrigated through 17 channels taking off from 15 anicuts constructed across the rivers Vairavanar and Suriliyar. The Periyar Main Canal has a network of 12 branch channels and 64 distributaries. The rules for the issue of water from the Periyar Lake for the entire Periyar ayacut were approved in G.O.(Ms) No. 461, Irrigation, dated 23.02.1935 and were amended in G.O.(Ms) No. 309, Public Works Department, dated 08.02.1939 and G.O.(Ms) No. 3810, Public Works Department, dated 18.09.1953.

Rule No. 2:

As per the Standing Rules, the Executive Engineer, Periyar Vaigai Basin Division, Madurai, is authorised to draw water from the Periyar Lake according to the requirements and demand for irrigation during the single crop and double crop periods. If the Executive Engineer found it essential to draw more than the supply permissible under the rules, especially to prevent loss of seedlings or to save standing crops, he could draw the extra supply and the fact intimated to the Collector of Madurai District and Collector of Theni District. Also, whenever the water level in the Periyar Lake rises above the level of 147.00 feet in the Reservoir, the Executive Engineer, Periyar Vaigai Basin Division, Madurai, is authorised to draw as much water as possible so as to avoid surplus and wastage from the Periyar Lake into the Arabian Sea.

Rule No. 5.

As a result of the lowering of watershed cutting and construction of Vaigai

Reservoir, an additional area of 22,818 acres has been thrown open for irrigation comprising

- (i) 1,000 acres in Cumbum Valley;
- (ii) 10,384 acres under Thirumangalarn Canal excavated from the right side of the Peranai Regulator with 5 branch channels and 7 distributaries;
- (iii) 11,434 acres, including 3000 acres of hard cases under the Periyar Main Canal in 8 blocks in Melur, Thirupathur and Sivagangai taluks. This area is considered as equivalent to 9684 acres because of hard cases; and
- (iv) In addition, a quantity of 2362 Mcft has to be supplied for the water supply to Madurai Corporation and various Municipalities.

Rule No. 14:

During the irrigation season, the Executive Engineer, Periyar Vaigai Basin Division, Madurai, shall draw from the Periyar Lake, quantities required for irrigation taking into consideration the storage available in the Vaigai Reservoir, the supplementation needed to meet the requirements of the Cumbum Valley ayacut, the old and new ayacuts under the Periyar Main Canal, the Thirumangalarn Canal ayacut. the quantity required for the Madurai Corporation and also the power requirements.

Rule No. 24:

The Vaigai Reservoir and its regulation shall be under the control of the Executive Engineer, Periyar Vaigai Basin Division, Madurai.

Rule No. 25:

The water drawn from the Periyar Lake, hereinafter referred to as the "transferred waters" and the natural flows in Vaigai River, viz., the "in basin flows" shall be impounded in the Vaigai Reservoir.

Rule No. 28:

The Storage available in Vaigai Reservoir will hereafter be labelled as Periyar Credit and Vaigai Credit.

Periyar Credit in the Vaigai Reservoir:

28(a). The quantum of water that is released at the Periyar Hydro Power Station through the tail race and the water released from the scour vents, whenever they are operated and the floods passing over the spillway of the Forebay Dam is assessed by the Tamil Nadu Electricity Board. This may be counted as the quantum of water that gets transferred from the Periyar Lake and is available to flow into the Vaigai Valley, to be labelled as "transferred waters" recorded as "A".

28(b): Sum of the abstractions in all the downstream systems that are now in service (including the new 18th canal which takes off even above all the anicuts

across Suruliyar) and the other minor existing irrigation systems and future systems, if any, in the Suruliyar Sub-basin above the Vaigai Dam may be worked out and this may be computed on daily basis and recorded as "B".

28(c): The Periyar Credit stored in the Vaigai Reservoir for the day will be (A)-(B).

Note:- (1) Whenever the Periyar credit as worked out above, on any day is a negative figure, it will be taken as zero.

(2) If the Periyar credit on any day is more than the actual inflow into the Vaigai Reservoir calculated by the rise-and-fall method, it will be limited to the actual inflow of the Vaigai Reservoir.

Vaigai Credit in the Vaigai Reservoir:-

28(d)(i): Out of the total inflow for the day in the Vaigai Reservoir calculated by the rise and fall method, deducting the Periyar Credit as mentioned under rule 28(c) above, the balance flow, which represents the "in-basin" waters, will be taken as the Vaigai Credit available in the Reservoir on the day.

(ii)The daily evaporation loss due to the storage in the Vaigai Reservoir will be debited to the Periyar and Vaigai Credits, in proportion to their respective storage accounts.

(iii)The Vaigai waters so impounded to the Vaigai Credit shall be let down for the benefit of the old ayacut under the Vaigai River at such rates as decided by the Executive Engineer, Periyar Vaigai Basin Division, Madurai, as and when demand arises.

Rule No. 30:

The total Vaigai Credit/Periyar Credit shall be limited with reference to the present capacity of the Vaigai Reservoir, until the Reservoir surpluses. All surplus quantity shall be debited only to the Vaigai Credit.

Rule No. 33:

Issues.-- The issue to be allowed from the Vaigai Reservoir shall be as advised by the Executive Engineer, Periyar Vaigai Basin Division, Madurai, to meet the requirements of the Periyar ayacut old and new and the Tirumangalam Canal ayacut as enumerated in Annexure-II.

Rule No. 34:

In addition, water required for the Madurai Corporation and various Municipalities shall be issued from the Vaigai Reservoir at such quantities and at such times as the Corporation and various Municipalities may demand. Such issues shall not exceed 2362 Mcft in any year. Out of this, 1912 Mcft shall be debited to the Periyar Credit and the rest up to 450 Mcft to the Vaigai Credit.

Rule No. 35:

35. At time of need, the Vaigai Credit available in the Vaigai Reservoir could be utilised for the Periyar ayacut at the discretion of the Chief Engineer, Madurai Region, Madurai, subject to the condition that the quantity so drawn is restored to the Vaigai Credit as early as practicable and positively within the same water year.

Rule 42:

Periyar Main Canal:- The supply to be given under the Periyar Main Canal shall normally be as given in Annexure II.

Note: (i) The discharges prescribed in the above rules are the quantities to be ensured at Drop No. 1 of the Periyar Main Canal. As such, they do not include the requirements of the Vadagarai and Thenkari channels. If quantities more than those prescribed in the Rules are found necessary, the Executive Engineer, Periyar Vaigai Basin Division, Madurai, may draw them subject to the approval of the Superintending Engineer, Periyar Vaigai Basin Circle, Madurai.

ii) Whenever there is demand for irrigation beyond the irrigation period and if supply is needed for crops which might otherwise die and if such supply could be spared without affecting other legitimate interests, the Executive Engineer, Periyar-Vaigai Basin Division, Madurai, may allow such supplies and intimate the fact to the Collector, the Superintending Engineer, Periyar Vaigai Basin Circle and the Chief Engineer, Madurai Region, Madurai. The fact of allowing such issues shall also be reported to the Government immediately and their ratification obtained in each case.

Rule No. 49:

Whenever there is demand for the ayacut under the Thirumangalam Canal even after closure, for crops which might otherwise die and if such supply could be spared without affecting other legitimate interests, the Executive Engineer shall send proposal to the Chief Engineer, Madurai Region, Madurai and get the orders of the Government under intimation to the Collector.

Rule No. 50:

Whenever there is demand even after the closure for crops which might otherwise die and if such supply could be spared without affecting other legitimate interests, the Executive Engineer shall send proposal to the Chief Engineer, Madurai Region, Madurai, and get the orders of the Government under intimation to the Collector.

(emphasis supplied.)

10. It was further contended by the petitioners that the Cumbum extension ayacutdars are being benefited by supply of water for their double crop; whereas the petitioners herein are not getting their MI entitlement of water for harvesting the first and single crop and therefore there is arbitrariness in the action of the respondents. It is further contended that PTR Channel, which is an extension

area, is getting water supply in full i.e. 94% for single crop, whereas the Madurai North Taluk and Melur Taluk are getting only 28.5% of their entitlement and this would clearly show that there is arbitrariness and discrimination between ayacutdars.

11. The learned counsel for the petitioners would further submit that G.O.Ms. No. 122, dated 21.04.2010, provides for drawing and disbursement of water from the Periyar Credit available in Vagai Dam for irrigation purpose and that could be replenished and therefore the authority can very well exercise their right under the Government Order referred above and release water for saving the standing crop and to complete the harvesting.

12. The learned counsel for the petitioners further contended that the distribution of water to various ayacutdars is not in consonance with the above said Government Order and it is irrational.

13. Mr. M. Ajmal Khan, the learned Senior Counsel appearing for the newly impleaded respondents, namely respondents 6 to 8, in W.P. (MD) No. 20939 of 2013, i.e. Cumbum Valley Ayacutdars, would point out Rule 14, which provides that the requirement of the Cumbum Valley Ayacutdars should not be compromised.

14. The learned Additional Advocate General appearing for the official respondents, filed the report of the Secretary to Government, Public Works Department, dated 06.01.2014, pursuant to the interim direction of this Court, directing the Chief Secretary to convene a Meeting and to furnish a Report. The gist of the Report is found at paragraph 12 onwards, and they are extracted here under:

12. Even if the water is drawn from Periyar Dam, to meet the request of the Melur farmers for 3 days, the average release from the Periyar Dam is to be in the order of about 38.88 Mcft per day. The water so released will fall into Suruliar River and after crossing anicuts and travelling a distance of 62 Km will reach the Vaigai Dam. The realization at Vaigai Dam will be only 20 Mcft. per day. So, the realization of 20 Mcft. per day at Vaigai Dam will not be sufficient to meet the requirement of the Melur farmers which require a quantity of about 139 Mcft per day for 3 days (415 Mcft).

13. As per the order of this Hon^{ble} Madurai Bench of Madras High Court, the following aspects are considered to decide about whether water can be released for irrigation to Melur farmers:

(i) As on date (06.01.2014) the water storage position in Periyar dam is 1627 Mcft.

(ii) The water storage position in Vaigai dam is 1029 Mcft. Out of this, Periyar Credit is only 291 Mcft.

(iii) For Vaigai Old Ayacutars, i.e. from the Vaigai credit in Vaigai Dam, so far no

water has been released this year for irrigation purpose. The north east monsoon has failed in the entire Tamil Nadu and the deficit is about 33% as per the data of the Indian Meteorological Department.

(iv) If water has to be further released from Vaigai Dam to Melur area through Periyar Main Canal, the quantum of water that would be required for 3 days is 415 Mcft, which is higher than the available Periyar Credit in Vaigai Dam.

(v) Total requirement for drinking water purpose for Madurai Corporation Limit and Andipatty & Sedapatty areas under the combined water supply scheme upto the month of May 2014 is 762 Mcft from Periyar Credit in Vaigai Dam.

From the above, a total of 1177 Mcft is required whereas available Periyar credit water is only 291 Mcft. Even to meet the drinking water requirement up to May 2014, water is to be drawn from Periyar Dam.

14. The technical considerations are as follows:

(a) If the water level in Periyar Dam is at 112 ft. the storage will be 1231 Mcft. And the release could be 350 cusecs.

(b) If the level is at 108 ft. the storage will be 599 Mcft. The release of water can be 75 cusecs.

(c) There is no possibility of release of water from Periyar Dam if the storage level is below 108 ft.

(d) The storage of Periyar Dam as on 6.1.2014 is 1627 Mcft. At the level of 114.40 ft. There possibility of building up the storage can only be after the on set of the south west monsoon.

(e) Turn system has been adopted to cumbum Valley and P.T. Rajan ayacuts because of the poor availability of water.

(f) The total requirement of water for drinking water supply with the water of Periyar Dam and Vaigai Dam for Theni, Madurai, Dindigul, Sivagangai and Ramanathapuram Districts up to the month of June 2014 is about 1810 Mcft.

Therefore, the available storage would not even be sufficient for the drinking water requirements of the above districts upto June, 2014.

15. If water is released from the current storage of Periyar Dam, the drinking water supplies in Theni District; Madurai Corporation limit and Sedapatty & Adnipatty combined water supply schemes, will be severely affected.

16. The view points of the District Collectors, Corporation of Madurai, Chief Engineer, T.W.A.D. Board, Madurai and the representatives of the farmers from Theni and Madurai Districts were extensively heard.

17. After hearing the views, all options for effecting further release of water to Melur farmers have been considered and the position is as below:

(i) Due to poor storage both in Periyar and Vaigai Dams and also in view of the fact that water is to be preserved for drinking water purpose to the Districts of Theni, Madurai, Dindigul, Sivagangai and Ramanathapuram till the on-set of the south west monsoon, it may not be possible to release further water to Melur farmers for irrigation from Periyar and Vaigai Dams.

(2) Water cannot be released from Vaigai Dam from the Periyar credit to farmers for irrigation due to insufficient water availability in Vaigai Dam.

18. The above report may kindly be brought to the notice of the Hon'ble Court.

15. The Secretary to Government, Public Works Department, in his report has stated that water cannot be released from Vaigai Dam or from the Periyar Credit to the Farmers for irrigation due to insufficient water availability in both the Dams.

16. The Chief Engineer and the Executive Engineer are present in Court and they have given a statement of Water Drawl during 2013-2014, as on 04.01.2014, which is as under:

17. The learned Additional Advocate General, referring to the Report of the Secretary to Government, Public Works Department, points out that the quantity of water now available in the Vaigai Dam towards Periyar Credit is only 291 mcft. He further submitted that for the purpose of irrigating the Single Crop Area in Madurai North and Melur Taluks, a quantity of 496 mcft of water is to be released from Periyar Lake and it will reach Vaigai Dam and from there it will be released for irrigation through Periyar Main Canal. According to him, if the said quantity of water is discharged from Periyar Lake, before it could reach Vaigai Dam atleast 50% of the water will be absorbed by abstractions and drinking water pumping stations and some will evaporate, thereby only 240 mcft water alone will reach Vaigai Dam. Thereafter if water is let out from the Vaigai Dam after reduction as above, water that will be made available to Madurai North Taluk and Melur taluk would only be 120 mcft. This will not be sufficient for the farmers to harvest their crop. He would further submit that there is also great demand for drinking water in Madurai Municipal Corporation, Andipatti-Sedapatti Combined Water Scheme, Sivagangai and Ramanathapuram District and therefore if any water is released as requested. It will lead to acute water shortage for drinking purpose in the above areas and therefore no water could be released as sought for by the petitioners.

18. The Court, while scrutinizing all the documents and materials produced by the Chief Engineer and the Executive Engineer, relating to the discharge of water from time to time so as to ensure that there is no discrimination or arbitrariness in the water supply to the ayacutdars, was shown the letter No. 168 R/Va.1/ko.5(1)/2013, dated 12.12.2013, of the Executive Engineer, Public Works Department, Water Resources Organization, Periyar-Vaigai Basin Division, Madurai, addressed to the District Collector, Madurai District. This letter written by the Executive Engineer to the District Collector is in response to the first

request made by the Periyar-Vaigai Irrigation Planning Committee, dated 11.12.2013 and the letter of the Executive Engineer, reads as follows:

The letter in effect recommends the release of water to the Madurai North, Melur Ayacut from out of Vaigai Dam credit to be replenished from Periyar Dam. This is the recommendation of the Public Works Department in exercise of the power under the Rules of Regulation of the year 1935 as amended.

19. In the above factual scenario, the learned senior counsel appearing for the newly impleaded respondents, namely Cumbum Valley Ayacutdars, took much pain to impress upon this Court not to direct the respondents to release water, placing reliance on the judgment of the Hon''ble Supreme Court in *Kachchh Jal Sankat Nivaran Samiti and Others Vs. State of Gujarat and Another*, , more particularly paragraph 9 and 10 of the said judgment In that case, the facts are as follows:

Appellant No. 1, *Kachchh Jal Sankat Nivaran Samiti*, claims to be a non-political organization established with the object amongst others to work to alleviate the District of Kutch of its perennial water scarcity and to mitigate the resultant problems faced by the inhabitants and the residents. Other appellants have also interest in the cause espoused by appellant No. 1. Aggrieved by the meager allocation of water from Sardar Sarovar Project to the District of Kutch they approached the Gujarat High Court in a public interest litigation inter alia praying for issuance of a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent, the State of Gujarat and its functionaries to allocate more water from Sardar Sarovar Project to the District of Kutch. By the impugned order the prayer made by the appellants has been rejected and against the dismissal of the writ petition they are before us with the leave of the Court.

20. The plea of the appellant in that case was that meager allocation of water by the State Government was contrary to the Directive Principles of State Policy enshrined in Article 39(b) of the Constitution of India and that material resources were not properly distributed to sub-serve the common good and that the meager allocation of water to one segment has caused inequality as against others who had the benefit of better treatment in terms of water supply. But, the State Government took the plea that water that was available was put to best use. The State Government also took the stand that allocation of water will not be static and it will vary from time to time and the quantity of water allocated for one District may increase or decrease, according to the situation. The Hon''ble Supreme Court, in paragraph 4 of its judgment extracted the observation made by the High Court of Gujarat, wherein it is stated that the Court will not weigh the pros and cons of the policy or scrutinize it and test the degree of its benefit to one or other person or equitable disposition, unless it is found to be arbitrary or violative of any constitutional, statutory or any other provision of law. The High Court clearly held that the decision of the authorities was not challenged on the ground of arbitrariness or unconstitutional or violative of any statutory or

other provisions of law. The Hon'ble Apex Court, after considering the rival contentions, came to the conclusion that the Court should exercise judicial restraint and not encroach upon the executive or legislature domain. It did not accept the plea of the appellant and held that the Court will not conduct a comparative study and hold that the policy of distribution of water is bad and that the Court does not have the expertise or wisdom to analyse the same. The Apex Court clearly held that matters affecting the policy and requiring technical expertise should be left to the authorities entrusted to do so. Paragraphs 9 and 10 of the judgment of the Hon'ble Supreme Court is extracted hereunder:

9. We have given our most anxious consideration to the rival submissions and we find substance in the submission of Mr. Diwan. We are conscious of the fact that there is wide separation of powers between the different limbs of the State and, therefore, it is expected of this Court to exercise judicial restraint and not encroach upon the executive or legislative domain. What the appellants in substance are asking this Court to do is to conduct a comparative study and hold that the policy of distribution of water is bad. We are afraid, we do not have the expertise or wisdom to analyse the same. It entails intricate economic choices and though this Court tends to believe that it is expert of experts but this principle has inherent limitation. True it is that the court is entitled to analyse the legal validity of the different means of distribution but it cannot and will not term a particular policy as fairer than the other. We are of the opinion that the matters affecting the policy and requiring technical expertise be better left to the decision of those who are entrusted and qualified to address the same. This Court shall step in only when it finds that the policy is inconsistent with the Constitutional laws or arbitrary or irrational.

10. Candidly speaking, we do not have the expertise to lay down policy for distribution of water within the State. It involves collection of various data which is variable and many a times policy formulated will have political overtones. It may require a political decision with which the court has no concern so long it is within the Constitutional limits. Even if we assume that this Court has the expertise, it will not encroach upon the field earmarked for the executive. If the policy of the Government, in the opinion of the sovereign, is unreasonable, the remedy is to disapprove the same during election. In respect of policy, the Court has very limited jurisdiction. A dispute, in our opinion, shall not be appropriate for adjudication by this Court when it involves multiple variable and interlocking factors, decision on each of which has bearing on others. While disposing of an interlocutory application in this very appeal by order dated 22nd of July, 2011, this Court observed as follows:

We are of the opinion that the prayer for allocation of adequate water in Kutch district is not one which can be a matter of judicial review. It is for the executive authorities to look into this matter. As held by this Court in Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another, , there must be judicial restraint in such matters.

21. Placing reliance on the above judgment, it is contended that distribution of water in the case on hand should not be interfered with and the authorities should be allowed to take a decision on allocation of water for various ayacutdars. No Mandamus could be issued.

22. We have considered the rival contentions.

23. In the light of the judgment of the Hon'ble Apex Court cited supra, there can be no doubt on the settled legal proposition that the Court will not step into and impose its views on the expertise or wisdom of the authorities, who control and regulate water supply. The respondent authorities are competent enough to do the same in terms of the Rules of Regulations of the year 1935, as amended. It is only when these Rules of Regulations are not scrupulously followed or given a go-bye, the Court will step in and act in favour of one or other parties, who plead that there is violation of the said rules of regulations or if the action of the authority is arbitrary or discriminatory. We find that the decision of the Hon'ble Apex Court cited does not in any way impede this Court to consider the plea of the petitioners. We are conscious of the fact that we are not entering into any water sharing dispute or the like.

24. In the present case, the whole issue has been crystallized by the proceedings of the Executive Engineer, dated 12.12.2013, in response to the request made by the Periyar-Vaigai Irrigation Planning Committee, dated 11.12.2013. The Executive Engineer, in his proceedings, which has been extracted above, has opined to the District Collector that the water storage level of Vagai Dam, as on 12.12.2013, is 1257 mcft, of which Periyar Credit is 522 mcft and the Vaigai Credit is 735 mcft and therefore a quantity of 700 mcft of water from the Vaigai Credit can be released on credit basis for irrigation supply through Periyar Main Canal and whatever water is used from the Vaigai Credit could be replenished from the Periyar Lake. The proceedings of the Executive Engineer also states that in order to save the standing crops in the Periyar Lake Irrigation Area by releasing water from Vaigai Credit, necessary consent from the District Collectors of Sivagangai and Ramanathapuram Districts may be obtained. Therefore, there is no difficulty in accepting the recommendations of the Executive Engineer, as the water supplied during 23.12.2013 till 26.12.2013 (morning) was only 415 mcft and the balance 285 mcft water is yet to be released, which could be taken from the Vaigai Credit for supply through Periyar Main Canal to save the standing crops in Melur Taluk and Madurai North Taluk and the same can be replenished from the Periyar Lake. The recommendation of the Executive Engineer has been given effect to and water has been released partially. There is no justification for not releasing the balance quantity of water.

25. In such a situation, the Court is aware of the fact that insofar as the Cumbum Valley is concerned, water for the first crop has already been released and the farmers have harvested the first crop and now they are in the second crop. Insofar as Melur and Madurai North taluks are concerned, they are only in the first crop and therefore their needs should also be considered and that has

been duly considered by the authority concerned, namely, the Executive Engineer, Public Works Department. At this juncture, it will be relevant to point out the powers of the Executive Officer. As per Rule 2 of the Rules of Regulations for Periyar-Vaigai System, the Executive Engineer, Periyar Vaigai Basin Division, Madurai, is authorised to draw water from the Periyar Lake according to the requirements and demand for irrigation during the single crop and double crop periods. Further, if the Executive Engineer finds it essential to draw more than the supply permissible under the rules, especially to prevent loss of seedlings or to save standing crops, he could draw the extra supply and that fact be intimated to the Collector of Madurai District and Collector of Theni District. The said power has been exercised by the Executive Engineer through his letter dated 12.12.2013 along with his recommendation. We also notice that Rule 35 provides that at time of need, the Vaigai Credit available in the Vaigai Reservoir could be utilised for the periyar ayacut at the discretion of the Chief Engineer, Madurai Region, Madurai, subject to the condition that the quantity so drawn is restored to the Vaigai Credit as early as practicable and positively within the same water year. This provision has been properly implemented by the Executive Engineer in his recommendation, where he has clearly stated that the water from Vaigai Credit could be utilized and the same could be replenished from Periyar Lake, in the later point of time. The said rule has been given effect by partial release of water as stated above. Rule 42 further provides that even beyond the irrigation period, if supply is needed for crops which might otherwise die and if such supply could be spared without affecting other legitimate interests, the Executive Engineer, Periyar Vaigai Basin Division, Madurai, may allow such supplies. Therefore, the Executive Engineer, Public Works Department, has recommended release of water after considering all parameters and that decision has been given effect to.

26. A conjoint reading of these Rules, which has come into force vide G.O.Ms. No. 122, dated 21.04.2010, would make it clear that the discretion exercised by the Public Works Department for release of water in the letter dated 12.12.2013 is in favour of Periyar Main Canal Single Crop Growing Farmers. Therefore, the question of the Court interfering and directing equitable distribution of water does not arise in the present case, as the authorities have already considered the issue of shortage of water and have given a specific recommendation as to how the water should be utilized. Despite these proceedings, since the water has not been released and the petitioners are, now, before this Court seeking to enforce the legal right to get water for irrigation, this Court has to step in and issue a Mandamus to enforce the legal right which has been extended to the petitioners by the proceedings of the Public Works Department. In this regard, it will be helpful to refer to the decision of the Hon'ble Apex Court in *The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another*, are extracted hereunder:

21. It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a

writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justitiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the Court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the application must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

(emphasis added)

27. There are, however, some difficulties expressed in the report of the Secretary to Government, Public Works Department, dated 06.01.2014. That Report, we are afraid, does not support the case of the respondents for the simple reason that the proceedings of the Public Works Department, dated 12.12.2013, forwarding the request of the Periyar-Vaigai Irrigation Planning Committee, dated 11.12.2013, with recommendation, to the District Collector, Madurai District, has not been brought to the attention of the Government at the time of the Meeting and taking a decision on 06.01.2014. Nevertheless, on going through the details contained in that Report, quantity of water supplied for one or other ayacuts has been referred, but details of reduced supply to Madurai North and Melur Taluk has to be considered in comparison to other areas. It primarily states that if water is released for irrigation to the single crop in Madurai North and Melur

Taluks, drinking water supply to various areas would be affected. If that is so, they should have stopped water to Cumbum valley or other areas like PTR Canal. In fact, water is being let out even now for the second crop and that is not disputed. From the water drawn particulars given by the respondents, as on 04.01.2014, as extracted above, we find that water that has been supplied to Single Crop Area in Periya Main Canal was only 28.5% and there is huge shortfall in their entitlement and that is sought to be implemented by the proceedings of the Executive Engineer, dated 12.12.2013, to save the standing crop for the purpose of harvesting. We find no error in the proceedings of the Executive Engineer, dated 12.12.2013; whereas the report of the Secretary to Government, Public Works Department, did not take into consideration the said recommendation. All other materials stated in the Report are factual in nature of which nobody is disputing. The report does not discuss the provisions of G.O.Ms. No. 122, dated 21.04.2010 and the Rules as set out above. The said G.O., is binding on the Government and the authorities.

28. The Court is conscious of the fact that when the Public Works Department has clearly stated as to how water should be utilised after discharge of water on 23.12.2013, 24.12.2013, 25.12.2013 and 26.12.2013 (morning), there could be no impediment for the release of balance water, as per the said recommendation letter, dated 12.12.2013. There is no objection to the above said proceedings by the higher authorities or the District authorities. In such view of the matter, we are of the clear view that the decision of the Hon"ble Supreme Court does not stand in the way of this Court in directing the release of balance water, as recommended by the Executive Engineer, Public Works Department, W.R.O., Periyar-Vaigai Basin Division, Madurai, in his letter dated 12.12.2013. Accordingly, these writ petitions are allowed and a direction is issued to the Public Works Department to release water in Periyar Main Canal for irrigation from Vaigai Reservoir, in terms of letter dated 12.12.2013, forthwith. No costs. Connected miscellaneous petitions are closed.