

(2016) 02 MAN CK 0004

In the Manipur High Court

Case No : Civil Rule No. 32 of 1994, C.R. No. 1175 of 1994, Civil Rule No. 3 of 1998, Writ Petition (C) Nos. 1005, 1006, 1007 of 2006, Writ Petition (C) No. 1348 of 2000, Writ Petition (C) No. 1697 of 1999, Writ Petition (C) No. 230 of 2007, Writ Petition (C) No. 2

The Loktak Project Affected Area Action Committee and
Others

APPELLANT

Vs

The National Hydro Electric Power Corporation Ltd. and
Others

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Citation : (2016) 02 MAN CK 0004

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J. and Kh. Nobin Singh, J.

Bench : Division Bench

Advocate : Kh. Mani, Sr. Adv., L. Shashibushin, Ph. Sanajaoba, H. Genananda, H. Raghumani, W. Darakeshwar, K. Rabei, S. Jhaljit, I. Nareshkumar, M. Hemchandra, Ch. Momon, T. Rajendro and R. Daniel, Advocates, for the Appellant; H.S. Paonam, N. Ibotombi, Sr. Advocate

Final Decision : Dismissed

Judgement

1. This batch of cases are based on same facts and also involve same issues. On the request of the learned counsel appearing for the parties, all these cases were taken up for hearing together and are disposed of in this common judgment.

2. C.R. No. 32 of 1994, being the first and lead case, submissions were made by the learned counsel appearing for the parties with reference to the said writ petition.

3. Before examining the issues involved in this writ petition, it is necessary to refer to a little background of the cases. The Manipur valley stretches over 900 sq miles of plain country lying at a general altitude of about 2500 ft. above sea level and is enveloped by high mountains rising to heights of the over 8000 ft. It is bisected by the Manipur River, flowing from North to South which is the only

drainage outlet from the whole valley. A series of natural lakes have been formed on either side of the Manipur river towards southern end of the valley. The formation of these lakes has largely been influenced by the existence of a rocky barrier across the Manipur river channel near Sugnu. The State mainly depends on agriculture but irrigation facility was not available. Power generation in the State was also very poor. It is stated in the lead writ petition that in the year, 1948-49 total installed capacity of electric energy in the State of Manipur was only 264 KVA out of which Leimakhong Power Hydro Electric Station generated 156 KVA and remaining energy was generated by Diesel Generating Sets. Generation of electricity by diesel generating sets was not economically viable. There was also demand of more electricity in the State for which the Central Power Commission started examining the feasibility on a Hydro Electric Project with whatever water resources are available in the State. Two schemes were conceived of such as Leimakhong Hydro Electric Scheme with installation capacity of 600 KVA and the Kharam Lok Hydro Electric Scheme with installation capacity of 1600 KW. Both these schemes could not be implemented because of unprecedented rainfall and flood in Leimakhong river in the year 1962. Again, a team of experts was deputed by the Central Govt. to examine feasibility of implementing the two schemes. The team of experts recommended for discontinuance of Kharam Lok Hydro Electric scheme and at the same time recommended continuance of Leimakhong Hydro electric scheme. After abandonment of Kharam Lok Hydro electric scheme, the Central Govt. again started examining the feasibility of Loktak Hydro electric Project. On examination of the water resources such as natural lakes, a decision was taken to go ahead with the Loktak Lake Multipurpose Project.

4. The project, in brief, is as follows:

"(i) Construction of a Barrage across the Manipur River at Ithai in order to maintain the water level at +2525 ft. in the Loktak Lake and the Lamjaokhong-Pumlen Lake (Existing natural lakes on either bank of the Manipur River) to enable retention of a gross volume of 3,53,560 AFT of water in these lakes;

(ii) Diversion of a part of the water thus impounded through a 7 mile-long water conductor system consisting of a System Open Channel, Tunnel and Penstock, into the adjacent basin of the Leimatak River so as to maintain a continuous Power Draft of 640 ousters to drop it through a total fall of 1030 ft. for generating 70,000 KW of Hydro-Power at 60% Load Factor;

(iii) Other ancillary structures such as Power House, Switchyard and Transmission Lines."

Implementation of Loktak Lake Multipurpose Project was started in the year, 1971 after the Project was cleared by the Govt. of India and it started operating from 1983.

5. In the above background, we now proceed to examine the claim of the petitioners. C.R. No. 32 of 1994 has been filed by the Loktak Project Affected

Areas Action Committee as petitioner No. 1 with 9 others and rest of the writ petitions have been filed by individuals who claim to be the owners of the agricultural land located in the periphery of the lake and the river, part of which is in the hills and the rest part in the plain. The grievance of the petitioner is that the Loktak Lake Multipurpose Project was originally taken up in the year, 1966 by a Central Agency known as Loktak Hydro Project Authority but subsequently it was given to a National Hydro Power Corporation (NHPC) for generation, distribution of electricity as well as for irrigation. It is alleged in the writ petition that while preparing the Loktak Hydro Multipurpose scheme, certain factors were not taken into account as a result of which the storage capacity of Loktak lake was shortened. The following are the grounds on which the petitioners claim that every year their agricultural land get inundated with flood water and consequently they sustained huge loss. Para 15 of the writ petition is quoted below:

"15.(a)While preparing the scheme the Respondents did not take into account of the factors which are likely to accelerate the shortening of the storage capacity of the Loktak Lake which will have adverse affects on the economic development of the Members of the petitioners Association and other persons who are similarly situated and the people of Manipur in general.

(b) Failure to prevent the Jhuming cultivation by the Hill people and the unplanned and short sighted human interference in the catchment areas of the Rivers running through the valleys of Manipur falling into the Loktak Lake have caused serious erosion of the soil in the catchment areas of the said rivers coupled with the infestation of the lake by the weeds which was further compounded with the arrival of water hyacinth while the project was under construction have caused heavy siltation to the Loktak Lake before the generation of electric energy and as such the Loktak Lake almost became a badly sick thereby causing reduction in its life storage capacity.

(c) The project Report prepared by the Union of India and taken up by the Respondent No. 2 have not taken into account of the facts that the Loktak Lake has no definite boundary and its expand well into the town and villages located along its periphery and siltation have caused spreading of the water to the Loktak Lake covering the villages located along its periphery as the level is to be maintained at a certain point for the purpose of generation thereby submerging vast areas of lands including the paddy fields of the petitioners which were not submerged before the Project was taken up. As per the Loktak Lake Multipurpose Project Report, the effects which are likely to be caused to the residents of the villages and paddy fields lying in the periphery of the Loktak Lake have not been taken into account though at the time of preparing the Project Report, there was little human interference in the catchment areas of the rivers of Manipur and there were no other factors which resulted in the heavy siltation of the Loktak Lake;

(d) As the heavy siltation have also taken place in the rivers beds of all the rivers

of Manipur and the lakes adjoining the Loktak Lake, the water at the fixed level for generation of electric energy for the Respondent No. 1 have spread more than expected areas;

16. That, as the damage causes to the paddy fields of the petitioners and villages in the periphery of the Loktak Lake remained uncontrollable, some members of the Manipur Legislative Assembly questioned about the extent of the submersion of the paddy fields and other villages, the Govt. of Manipur informed the House that more than 50,000 hectares of paddy fields have been seriously affected by prolonged inundation arising out of the construction of Barrage at Ithai for maintaining a continuous level of water for the purpose of generation of electric energy of the Respondent No. 1 and thus the said paddy fields became unfit for cultivation of crops.

17. That, the respondents are fully aware of the damages caused to the petitioners and their paddy fields and other general public who are residing in the periphery of Loktak Lake and in spite of such colossal damages done to the petitioners, the respondents did not take any action for preventing such a damage or rehabilitating the petitioners and villages who have been seriously affected by the Project since the commissioning of the Project in the year, 1984.

18. That, the Respondent No. 1 is a commercial enterprises and they sold power so generated to the Govt. of Manipur and neighbouring States with huge margin of profit. As on today they have already collected more than the cost of the Project which was estimated about 150 crores and huge profit at the cost of lives and liberty of the petitioners and other persons who are similarly affected with that of the petitioners and deprived of their lawful enjoyment and possession of their respective paddy fields without any due process of law.

19. That, the Respondents are/were fully aware of the deprivation of the life, liberty and enjoyment of their respective paddy fields and residential Ingkhols of the petitioners and the general public arising directly out of the operation of the Loktak Hydro Electric Project by the Respondent Nos-1, 2 and 3 to this petition and in spite of their full knowledge of such injuries/damages suffered by the petitioners and the general public, no action was taken up the said Respondents for preventing continued deprivation of their rights by taking such measure as is considered necessary in the facts and circumstances of the case."

6. The petitioners, in all the writ petitions, pray for a direction to the respondents to assess the damage caused by improper maintenance of water level and pay compensation to them.

7. The National Hydro Electric Power Corporation Ltd. has filed counter affidavit and the gist of the counter affidavit as indicated in para 2 is quoted below:

"1. The Loktak Hydro Electric Project was a bold plan conceived by the Govt. of Manipur. The Project report was prepared by the Public Works Department (PWD), Manipur by taking into consideration of all aspects, factors and balance of

advantage associated with it. The Loktak is a natural lake. According to the Project Report, the Loktak water should be carried through canal and tunnel upto the low-lying Leimatak area where the power generating machines are to be installed ear the bank of the Leimatak river. The water carried by the cannal and tunnel will feed power-generating Engines through penstocks, and the water discharged by the engines will be emptied into the Leimatak river. The Project involves constant water-supply to the power-generating machines.

2) All major rivers flow into the Loktak Lake. The water collected in the Loktak Lake is drained out through Manipur river down to the Chindwin river in Burma (now Myanmar). But the Manipur river is smaller, and it has no capacity to drain out the corresponding volume of water emptied into the Loktak Lake by the rivers of Manipur specially in the rainy seasons. The result is that during the rainy season the water-level of the Loktak swells up and inundate the surrounding areas whereas during the lean seasons, these area remain dry. The volume of water collected in the Loktak lake varies from year to year depending upon the yearly monsoons. Thus, there is always vicissitude in the fate of the lands, paddy fields situated around this lake depending upon the whims of the monsoons. The owners of these lands succumb, as a matter of course, to such unpredictable natural forces. They keep themselves resigned to their fate. These are normal phenomena prior to and independent of the Loktak Hydro Electric Project;

3) From the Project-Report, it is revealed that for the purpose of the Project an optimum water-level viz 769.82 m. has been adopted for feeding the power generating machines, to be maintained through Ithai barrage by proper regulation. This maintenance of optimum level was meant for maximum utilization for power-generation all the year round without endangering the viability of the lands surrounding Loktak Lake. If at any point of time, because of the rains, the water level rises above this optimum water level, the excess water is only attributable to Vis Major and not to the Loktak Hydro Electric Project for the reason that such excess water is the gift or fury of God and not attributable to the fault or the purpose of the Project and that the same was/is never procured or collected through the efforts of the Loktak Project;

4) The writ petition, in para No. 7 thereof, has stated:

Thus when flood devastation took place in 1966, there was no Loktak Project. The calamity was attributed to Vis Major.

c) When the Loktak Project has been commissioned, the optimum lake-level during rainy season has been maintained at 768.5 metres (MSL) (2460.74 ft) and is regulated by the Ithai barrage. This is less than what had been proposed in the project report i.e. 769.82 metres (MSL). This optimum water-level is also lower than the normal water-level of the Loktak river during rainy season as reflected hereinabove. If the water level of the Loktak lake be contained at the said optimum level, the surrounding paddy fields would not be affected. The

collection of lake water above this optimum level is the handi-work of the God and the same is not intended or caused by the Loktak Project. Thus devastation or caused by this excess is not the responsibility of the Loktak project."

8. On the basis of the pleadings of the parties, the following issues emerge for consideration:--

"(i) Whether the claim of the petitioners that their agricultural lands located in the periphery of the lakes and the river are inundated due to improper maintenance of the water level by the respondent No. 1 or not ?

(ii) Whether the respondent No. 1 is maintaining the water level both minimum and maximum as per the project report or not ?

(iii) Whether the writ petitions should be entertained long after the Project started operating on ground of delay and latches?

(iv) Whether the petitioners are entitled to the reliefs claimed in all the writ petitions when disputed questions of fact are involved in the cases."

9. So far as the first issue is concerned, from the pleadings of the parties, it appears that all the major rivers of the State flow into the Loktak lake. The water collected in the Loktak lake is drained out through Manipur River down to Chindwin river in Burma. Since Manipur river is smaller and does not have the capacity to drain out corresponding the volume of water flowing into the Loktak lake from other rivers of the Manipur State, specially in rainy season, the water level of the Loktak lake swells up and inundates the surrounding areas whereas during the lean season these areas remain dry. The volume of water flow into the Loktak lake varies from year to year depending on the yearly monsoon. It also appears that part of the land claimed to be owned by some of the petitioners are located in the hills on the bank of the rivers flowing into Loktak lake and rest part of the lands are located in the periphery of the lake, i.e. in plain.

10. Under the direction of this Court, four reports were prepared and submitted before the Court at different times.

The first report was submitted by the SDO, Nungba dated 23.3.1998 in pursuance of the order passed by the High Court on 4.2.1998 in C.R. No. 1175/94. The relevant part of the report is quoted here:

"(3) At least 187.6 acres of land have been seen as damaged thereby affecting 169 families of the 9 villages in the area within a distance of about 3 kilometres and extending upto the Leimatak and Ejei river meeting point from the said water outlet. The Team could discern that the said lands lying on the banks of the Leimatak River had been either submerged or damaged causing the destruction of the then standing crops and plants due to the water level rising and eroding the river banks."

11. Objections were raised to the above report and the High Court, not being satisfied with the above report, directed another enquiry to be conducted. This

report was submitted after a joint enquiry was conducted by Committee consisting of SDO/Nungba, Executive Engineer (Civil Division) Electric Department, D.O. Horti. & Soil Conservation, Tamenglong and D.M.(Civil), NHPC Loktak. The following were the conclusions of the Committee:

"CONCLUSION:

1. The actual area affected assessed by the team is 100.80 acres approximately.
2. In view of the observation mentioned above, the team is of the opinion that no damages have been caused to the horticultural crops.
3. Out of the total assessed area (affected), 60% i.e. 60.48 acres approximately can still be regenerated for cultivation purpose. The team in fact found five Nos. of such sites measuring 12.00 acres, which have been already regenerated.
4. In view of the fact that, the damages caused occurred once during 1989 only and discharged water released from the Power House remain more or less constant during both seasons, the damages caused was mainly due to natural flood water. Moreover such damages are not occurred each and every year.

Hence, Loktak H.E. Project cannot be blamed for such damages."

12. Again objections were filed to the above report and the 3rd report was submitted before the Court. The Committee, which submitted the 3rd Report, consisted of 5 members, i.e. Commissioner (Revenue). Govt. of Manipur as Chairman of the Committee. Following is the conclusion arrived at by the Committee in its report:

".....
....It is not disputed that the Loktak Project has been functioning since 1983-84 and that there had been no claim/report of the lands or fields of the petitioners having been submerged or rendered water logged by the water released/discharged by the said machine, till date except that a complaint was made by the petitioners in the year 1990-91 in which year the volume of water in the Leimatak River was observed high due to heavy rainfall in the area. So the damage caused to the paddy field, agricultural standing crops/properties etc. could be only due to natural flood in the Leimatak river.

Considering the above position, it is therefore, doubtful if the flood was caused by NHPC."

13. The fourth report has been submitted before the Court by a Committee of experts constituted by the State Government in pursuance of the order of the High Court dated 12.11.1999 in CR No. 32 of 1994. The findings of the Committee which submitted the report are as follows:

"FINDINGS

After examination of the information/reports furnished by the Deputy Commissioners and the Sub-Divisional Officers concerned, the Committee was

convinced that the people of Imphal West, Thoubal and Bishnupur districts, especially those who live on farming or cultivation of lands at the periphery of Loktak Lake but submerged by Loktak water, have suffered substantial losses over the years and, therefore, they deserve relief/compensation. But the question is who will pay such compensation and how it would be determined.

The Committee was of the view that since maintaining Loktak at certain predetermined level and/or in a manner controlled by the NHPC in order to enhance retention of water in the reservoir for generation of hydro electric power largely factored in the submersion of agricultural and other classes of lands around the lake, the Corporation, among others, has the onus to find ways and means to redress the grievances of the affected people on the one hand and to conserve the Loktak Wetland on the other. The Committee also felt that degradation of the catchment areas resulting in deposit of silt in Loktak over the years is another factor that has contributed to submersion of lands at the periphery of the lake and loss to a large number of land owners/farmers. But the question is why the stake holders, especially the NHPC, which has been exploiting the Loktak (reservoir) to generate hydro electric power for more than 2(two) decades at minimum cost, did not invest the resources at their command, e.g. certain proportion of the revenue/profit earned from generation of power in respect of NHPC, for the purpose of conservation/sustainable development of (the catchment areas of) Loktak or for assessment of the adverse impacts of the hydro-electric project(activities) on Loktak Wetland- its ecology, its bio-diversity, its form and character. To put things in a slightly different but positive perspective, if the beneficiaries /authorities of the Loktak Hydro-electric Project set aside and ploughed back some amount of the revenue/profit earned over the years for management/conservation of the lake and its catchment areas, the adverse conditions and losses caused by inundation could have been minimized to a considerable extent, the viability of the project enhanced and more profit/revenue from power generation accrued, thereby creating a "win win situation" for all stakeholders."

14. So far as the first report is concerned, it appears that the two Member Committee conducted a spot enquiry on 23.3.1998 and submitted the report. They did not examine the villagers nor did they make any assessment with regard to the damages with reference to evidence collected from the villagers. The High Court was, therefore, justified in directing another report to be submitted by the Committee consisting of larger number of Members.

15. The 2nd report was submitted by a Committee consisting of 4(four) Members who made survey and assessment all along the river bank at relevant spots during the period from 17th to 20th Oct.2000 and again from 15th to 20th Nov.2000. It appears from the report that the Committee Members followed the river course on each bank along the foot-path and they were joined on the spot by the villagers from Nungsai area onwards till the end of survey and assessment works. Under the heading "General Observation," it is mentioned in the enquiry

report that during the course of survey, almost all the villagers stated that the damages occurred once in the year 1989 during which State of Manipur experienced one of the worst flood in the history. In conclusion, the Committee stated that the actual area affected assessed by the Committee is 100.80 acres approximately and it was of the opinion that no damage has been caused to the horticultural crops. It also observed that out of the total assessed area (affected) 60% can be regenerated for cultivation purpose and as a matter of fact it was found that around 12 acres had been regenerated. The Committee also came to the conclusion that damages caused was once only in the year 1989 due to flood and during other seasons whatever damage was caused is due to natural flood and such damages had been occurring every year. They specifically found that Loktak Hydro Electric Project cannot be blamed for such damages.

16. Since objections were raised to the above reports by the petitioners on different grounds, the Court by order dated 12.7.2000 and on 29.4.2000 in CR No. 1175/94 constituted another Committee consisting of 5 Members to conduct an investigation and submit a report. The Committee held meetings on 4.6.03, 11.3.2003, 28.6.2003, 9.7.2003, 8.12.2003, 19.2.2004 and 26.2.2004. The petitioners and their lawyers also participated in the meetings. The Committee concluded, after investigation, that Loktak Project has been functioning since 1983-84 and there had been no claim/report of loss or fields of the petitioners having been submerged or rendered water-logged by the water released/discharged by the Project. Only one complaint was made by the petitioner in the year 1981 and in the said year the volume of water in Leimatak river became high due to heavy rainfall in the area. Therefore, the damages caused to the paddy fields or standing crops or properties could only be due to natural flood in the Leimatak river. The Committee also concluded that it is doubtful if the said flood was caused by the respondent No. 1. This report was also objected to by the petitioners on the ground that one of the Committee Members was an employee of the respondent No. 1.

17. The 4th Committee of experts was constituted by the Govt. of Manipur in pursuance of an order of the High Court dt. 12.11.1999 in CR No. 32 of 1994 to examine the loss and damages caused by Loktak Hydro Electric Project. The committee consisted of 11 officers from different departments. The said Committee found that people of Imphal West, Thoubal, Bishnupur district specially those who live on farming or cultivation of lands at the periphery of Loktak Lake but submerged by Loktak water have suffered substantial loss over the years and therefore they deserve compensation. They also concluded that to put things in slightly different but positive perspective if the beneficiaries/authorities of the Loktak Hydro Electric Project set aside and plough back some amount of revenue/profit earned over the years for management/conservation of the lake and its catchment areas, the adverse conditions and losses caused by inundation could have been minimized to a considerable extent. While concluding, the Committee observed that the respondents may consider desirability of making prayer to the High Court for orders that will enable them to

extend equal treatment and adopt similar approach to the claims of all the similarly situated persons.

18. This report is objected to by the respondent No. 1 on several grounds.

19. On examination of the 4th report, we find that the 1st and 4th report are in favour of the petitioners whereas the 2nd and 3rd are against the petitioners. However, the learned counsel appearing for the parties did not put too much stress on the 1st, 2nd and 3rd reports and made submission in respect of the 4th report. It was contended by the learned counsel appearing for the petitioners with reference to 4th report that the Committee having found that the people of Imphal West, Thoubal and Bishnupur specially who live on farming or cultivation on lands at the periphery of Loktak lake have suffered substantial losses over the years, compensation should be directed to be paid by the respondent No. 1, who is regulating flow of water in Loktak lake for the purpose of generation of electricity.

Shri HS Paonam, learned Sr. counsel appearing for the NHPC, respondent No. 1, objected to the report on the ground that issues raised by NHPC were not considered properly by the Committee and no investigation was made by the Committee to come to such conclusion.

20. From the 4th report dated 18.4.2006, we find that NHPC had raised the following issues before the Committee:

"i) That, the Experts Committee should have visited the affected areas to verify the claims of the petitioners.

ii) That, in maintaining the Loktak water at certain level in order to sustain the Loktak Hydro-electric Project, the NHPC has not violated the Detailed Project Report(DPR) prepared by the Government of Manipur, and if any damage/loss has been caused to the errors in the DPR, the Government of Manipur should be held responsible.

iii) That, since siltation due to soil erosion is another factor in submersion of the lands around Loktak lake, it is not the NHPC but the State Government/Loktak Development Authority to deal with the matter (of payment of relief to affected persons).

iv) That the Committee should have asked the petitioners in the above mentioned case(s) to file representations afresh in support of their claims and made copies of such representations available to NHPC so the latter could respond/react to the petitioners' claims."

21. So far as the first issue is concerned, the Committee has answered to the effect that the Dy. Commissioners of Imphal West, Thoubal and Bishnupur districts who were associated with the Committee as special invitees and their subordinate officers and staff have submitted report after detailed enquiry and verification of the losses caused because of submersion of agricultural or farm

lands by Loktak water. So far as the 2nd issue raised by NHPC is concerned, the Committee observed that the issue raised by NHPC would have little relevance and that it may provide food for thought or for academic consumption. As a matter of fact, this issue raised by NHPC was not answered by the Committee. So far as the 3rd issue raised by the NHPC is concerned, the Committee observed that view of NHPC that State Government should deal with the problems of siltation is untenable. It is neither just nor fair for the Corporation which has been exploiting Loktak Lake to generate Hydro-electric power for commercial purpose to shift its responsibility of maintaining the lake and conservation of its catchment area. The 4th issue raised by NHPC is not very relevant for the purpose of this case.

22. On reading of the 4th report, we find that the Deputy Commissioners of Imphal West, Thoubal and Bishnupur districts with their subordinate officers and staff had visited the affected areas and submitted report before the Committee. Therefore, it cannot be said that no investigation was made at all by the Committee. Even if we accept the observation made in the report that an investigation was made by the above officers the report submitted by them clearly shows the losses caused due to submersion of agricultural/farm lands by Loktak water. But the reasons for which such submersion took place, are not indicated in the report. It further appears from the report that rise of water level in Loktak area is mainly because of siltation due to soil erosion in and around the Loktak lake and therefore NHPC is responsible for removing the silt. There is nothing on record to show that it is the responsibility of NHPC to remove the silt from the lake which has been taking place due to soil erosion from the areas in an around the lake. The only ground on which the responsibility has been put on NHPC in the 4th report is that the Corporation has been using water of the lake for making profit and therefore has an obligation to take all necessary steps to maintain the water level in the lake by removing the silt. We are unable to accept such a conclusion arrived at by the Members of the 4th Committee considering the fact that there is nothing on record to show that NHPC under any contract or agreement is duty bound to remove the silt from the lake and maintain water level. Therefore, we reject this part of the observation made by the Committee in its 4th report. However, we accept the report of the Committee to the extent that damages are caused to agricultural fields and standing crops of the villagers living in the periphery of the lake every year which may be due to seasonal flood and may not have got anything to do with maintaining of water level by the NHPC. This view of ours also gets support from a document attached to the additional affidavit filed by the NHPC in WP(C) No. 819 of 2004 as annexure-X/1. "Table-A" to the said document is a chart indicating the water level prior to coming into existence of the Loktak Multipurpose Project and after it came into existence. The chart shows that in the years-1957, 1958, 1964, 1965 and 1966 the maximum water level was 2532.51 ft. above sea level whereas the minimum was 2517.26 ft. above sea level. After Loktak Multipurpose Project started operating in between 1983 and 1992 the maximum water level has been

maintained at 2524.34 ft. above sea level and minimum of 2512.86 ft. above sea level. Another chart shows that the water level from 1997 till 2006 and on examination of the said chart it appears that water level has been maintained by the NHPC as per the Project Report. On consideration of this evidence, we are of the view that there is no material on record to support the claim of the petitioners that it is the NHPC which is responsible for submersion of agricultural fields located in an around the Loktak lake. NHPC is also not responsible for removing the silt from the lake and no document has been placed before us to support such a finding of the Committee which submitted the 4th report. The only fact that emerges out from the 4th report is that agricultural lands located in the periphery of Loktak lake get submerged every year and it may be because of siltation in the lake or because of yearly flood.

23. The findings arrived at by us above also answers the 2nd issue raised in the batch of cases.

24. So far as the 3rd issue is concerned, it was contended by the learned counsel appearing for the NHPC and State authorities that the Project started operating since 1983-84 and first writ petition was filed in 1994 almost 10 years after the Project started and therefore all the writ petitions should be dismissed on ground of delay and laches. It is true that the writ petitions could be filed in 1984-85 immediately after the petitioners suffered loss as alleged and there was no reason for them to wait for 10 years to file writ petition, but at the same time these writ petitions have been pending before this Court since 1994 onwards and Court has not only considered the claim of the petitioners but also at different times called for report from different Committees to examine the issues. Therefore, it will not be appropriate to dismiss the writ petitions on ground of delay and laches. We, therefore, do not refer to the decisions cited on behalf of the respondents on this issue of delay.

25. So far as the 4th issue is concerned, we have already found that as per the 4th report the petitioners have suffered loss due to inundation of agricultural lands located in the periphery of the Loktak lake and they are suffering such loss almost every year. The question for determination is- who is responsible for this inundation?. If siltation and creation of biomass (phumdi) are the main reasons for rising of water level in Loktak lake, it is whose responsibility to clear the silt and remove the "phumdi". Second question that arises for consideration is whether the petitioners are actual owners of the lands as claimed and to what extent they have been sustaining loss every year as claimed by them. These questions can only be decided by collecting evidence and such an exercise can only be done in a properly constituted Civil Court.

26. In this connection, reference may be made to two decisions of the Apex Court. In the case of *State of M.P. and Ors v. M.V. Vyavsaaya & Co.* reported in , (1997) 1 SCC 156 the apex Court held that wherever disputed question of facts are involved in a writ petition, such writ petition should be dismissed at the threshold. In the case of *Visakhapatnam Port Trust & Anr v. Ram Bahadur Thakur*

Pvt. Ltd. reported in , (1997) 4 SCC 582 the Supreme Court took similar view and held that where highly disputed question of fact arises for decision, Civil suit instead of writ petition would be the appropriate action. We have already held that in order to adjudicate the claim of the petitioners, it is necessary to examine so many factors which involve disputed question of fact and would require evidence. Therefore, in exercise of writ jurisdiction, we cannot allow claim of the petitioners which involve so many disputed question of facts.

27. For the reasons stated above, we are not inclined to grant the relief claimed by the petitioners and dismiss all the writ petitions. However, dismissal of the writ petitions will not take away the right of the petitioners to approach the Civil Courts for establishing their claim.

Connected Misc. applications shall stand disposed of.