

## Santosh Kumar Soni Vs State Of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 17, 2025

**Acts Referred:** Constitution of India, 1950 " Article 226

**Hon'ble Judges:** M. S. Ramachandra Rao, CJ; Gautam Kumar Choudhary, J

**Bench:** Division Bench

**Advocate:** Shrestha Gautam, Ashok Kumar Yadav, Abhishek Yadav, J.J. Sanga, Anand Prakash, Randhir Kr. Sharma

**Final Decision:** Allowed

### Judgement

M.S. Ramachandra Rao, CJ

1) In this Public Interest Litigation, the petitioner seeks a direction to the respondents to pass orders for resumption of construction of the Kharkai

Dam at a place called Icha.

2) According to the petitioner, the project of construction of Dam at Kharkai at Icha was initiated as per the terms and conditions of the Subarnarekha

Multipurpose Project and that administrative approval for the same was granted on 14.10.2010 by the Water Resources Department of Government

of Jharkhand.

The estimated cost of construction was Rs.926,43,38,677/-. It is also stated that the Government of India had declared the said project as a national

project under Accelerated Irrigation Benefit Program and the entire cost of the project under the program was estimated to be Rs. 6613.73 Crores.

It is stated that the Executive Engineer (respondent 5) invited bids on 5.3.2019 for construction of the Dam with all control gates and its allied works

including civil, mechanical (with design of gates) at Icha; and that of the seven people who participated, the 6th respondent was selected as a

successful bidder on 6.8.2019.

3) Petitioner contends that thereafter even a contract agreement dt. 9.8.2019 was signed by the respondent 5 with respondent 6.

4) According to the petitioner, a notice was also issued by the respondent 5 directing the respondent 6 to proceed with the execution of the project and

it was to be completed in 1095 days.

5) It is contended that thereafter, the Covid-19 pandemic commenced in March 2020 and proceedings were issued on 13.3.2020 stopping the

construction of Kharkai Dam project. Petitioner has also referred to certain information obtained by him under the Right to Information Act by the

Water Resources Department of Government of Jharkhand.

6) Petitioner has highlighted the benefits which would accrue to the citizens of Jharkhand if the said project is executed and completed.

7) The 6th respondent has also filed counter affidavit supporting the petitioner and reiterating the stand taken by the petitioner.

8) Respondents 2 to 5 have filed a counter affidavit contending that the decision to suspend the execution of the work on the project is a policy

decision of the State and does not affect the interest of any individual and does not warrant any interference by this Court in exercise of its power

under Article 226 of the Constitution of India.

It is also pointed out that 100% land acquisition of lands for execution of the project was not yet completed and that was the reason for suspension of

work on the project.

It is contended that the order dt. 13.3.2020 suspending the execution of the work was not arbitrary and that non-completion of the land acquisition

process has resulted in several issues and disputes which require adequate time to channelize and process the project.

9) In a supplementary counter affidavit filed thereafter, the respondents 2 to 5 stated that there were 8 major canal components apart from 4

headworks; it is also stated that Full Reservoir Level of Icha Dam is RL 225 Meters which requires acquisition of 8651 hectares of land affecting 87

villages, and that as of now only 4423 hectares of land has been acquired.

It was also stated that there were wide-spread public protest and discontent among displaced families in the affected areas and the Chief Minister had

issued an order dt. 13.3.2020 to postpone all ongoing works at the Dam until further notice.

It is stated that again in another meeting held on 25.10.2023, the Chief Secretary informed that massive public protests are occurring at the site of the

Dam, that the proposed land acquisition falls in tribal area and no solution appears imminent regarding the resumption of construction of Icha Dam.

10) In another supplementary counter affidavit filed by respondents 2 to 5, it is stated that the head of the village councils of several affected villages

situated within the submergence area of Icha Dam had written to the President of India and the Governor of Jharkhand for immediate cessation of

construction activities at the Dam contending that the inhabitants of the said villages depend solely on agricultural activity as their primary means of

sustenance, and the construction of the Dam poses a significant threat to the traditions and cultural heritage of the affected tribal population.

Reference is again made to the several protests and demonstrations in the construction site at the Dam area by the resident villagers of the affected

areas, and it is stated that in those circumstances, the letter dt. 13.3.2020 suspending all ongoing work at the Dam site until further notice, was issued.

11) The Chief Secretary of the State of Jharkhand has also filed a counter affidavit reiterating the same stand.

He further pointed out that some of the land, which is required, falls in the Dalma Wildlife Sanctuary and that in I.A. No. 35 and 82 the Supreme

Court passed an order on 23.11.2005 and that was also a reason for suspending the construction of the Dam.

It is stated that the State Government is committed to complete the residual work of the project; and that for resumption of construction work,

departmental officials are continuing dialogues with affected people and public representatives and trying their best to resolve the protest.

It is also stated that the department was trying to get clearance from the Tribal Advisory Council as the project lies in the Scheduled Area and making

efforts to arrange funds for timely completion of the project.

It is also stated that request was made to the Jal Shakti Ministry of the Government of India for release of further Central Assistance for completion

of the project.

12) We have noted the submissions of both sides.

13) No doubt, work of construction of the Dam was entrusted to the 6th respondent and after some work has been done, the construction had to be

suspended for the reasons indicated in the counter affidavits and supplementary counter affidavits filed by the respondents.

The reasons assigned by the respondents cannot be simply brushed aside at the instance of the petitioner since the execution of the project involves

the displacement of large number of tribals from a Scheduled Area and is also likely to cause submersion of forest areas included in a Wildlife

Sanctuary.

14) Issues of this nature are very complex and it must be left to the wisdom of the executive to decide when and in what manner they wish to

complete the work of the project in the light of the practical difficulties pointed out by the respondents.

15) We are of the opinion that the decision whether or not to construct the Dam by the respondents is essentially an administrative matter and a

decision in that regard has to be taken by the respondents and it is not a matter for the High Court to determine in the exercise of its writ jurisdiction

under Article 226 of the Constitution of India.

16) The Supreme Court has also deprecated practice of Judges, in exercise of power of judicial review, trying to perform executive functions and the

Courts have been asked to exercise judicial restraint and to refrain from encroaching into the executive or legislative domain.

In Divisional Manager, Aravali Golf Club & Vs Chander Hass & Anr 2008(1) SCC 683, it was observed that under our Constitution, Legislature,

Executive and the Judiciary all have their own broad spheres of operation and ordinarily it is not proper for any of these organs of the State to

encroach upon the domain of another; otherwise the delicate balance in the Constitution will be upset and there will be a reaction. It was stated that

Judges must know their limits and must not try to run the Government and the Doctrine of Separation of Powers needs to be followed. It was

reiterated that the Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of

administration while the Court does not.

17) In view of the above settled legal position and in the facts and circumstances of the case, we are of the opinion that the reliefs sought for in the

Writ petition cannot be granted.

18) Accordingly, the writ petition fails and is dismissed. No costs.

19) Pending Interlocutory Application, if any, stand disposed of.