

**(2000) 04 AP CK 0015**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 4504 of 2000

Pennar Delta Auyacutdars  
Association and others

APPELLANT

Vs

Government of Andhra Pradesh  
and others

RESPONDENT

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**Date of Decision:** April 10, 2000

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 21, 226, 300

**Citation:** (2000) 3 ALD 182 : (2000) 2 ALT 634

**Hon'ble Judges:** B. Sudershan Reddy, J

**Bench:** Single Bench

**Advocate:** Mr. S. Ramachander Rao, for the Appellant; Government Pleader for Irrigation, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

1. "Everybody, irrespective of whether he/she is rich or poor, has equal right over the water given by nature and stored by the efforts of common labour in which he/she has actively participated. Nobody should have special benefits in any way, is my firm belief and conviction."

Pledge of Baliraja Smriti Dam  
water user's cooperative.

The petitioners invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and pray for issuance of an appropriate writ declaring the action of the respondents in not releasing 11.5 TMC of water from Somasila Project for the second crop to the Pennar Delta Ayacutdars as arbitrary, illegal, unjust, apart from being violative of fundamental constitutional guarantees contained in Articles 14,21 and 300A of the Constitution of India. The petitioners also

pray this Court to issue directions to release water for the second crop.

2. The first petitioner claims to be the association representing the interest of agriculturists, more particularly the Ayacudars under Pennar Delta. Petitioner Nos.2 and 3 are agriculturists. They are aggrieved by the decision of the respondents in refusing to release any water whatsoever for the second crop (RABI). It is stated that by the impugned action of the respondents, all the Ayacudars of Pennar delta are deprived of their legitimate right to raise second crop (Rabi) in an extent of Ac. 1.17 lakhs under Somasila project.

3. The Pennar Delta Ayacudars comprise the Nellore ayacut and the Sangam Ayacut. It is the case of the petitioners that the ayacudars have been receiving water from Government sources for the purpose of agriculture for over one hundred and thirty two years. 1.75 Lakh acres are the area of registered ayacut of which 40% is Nellore ayacut and 60% is the Sangam ayacut.

4. The Somasila Reservoir is constructed across river Pennar near Somasila village in Nellore District. The Planning Commission accorded clearance for the project in the year 1973 and the same was sanctioned for Rs.17.20 crores as stage-I for a limited scope to store 16 TMC of water for achieving the benefits of stabilizing 2,84,800 acres of wet land in the existing Pennar Delta and supplementation of tanks in the uplands. The Government of Andhra Pradesh latter clubbed the stages I and II with an objective to increase the storage capacity to that of 78 TMC of water with Full Reservoir Level (FRL) of 100.58 M. There is no dispute whatsoever that stage II is still not completed and as on today the storage capacity of the reservoir is 37 TMC of water.

5. The existing canals under the Somasila Reservoir are (1) North Feeder channel; (2) Kavali Canal (3) South Feeder Channel and (4) Kanpur Canal. The water is distributed from the reservoir through North Feeder Channel (for short "NFC"); South Feeder channel (SRC)I and Somasila - Kandaleru Flood flow canal (SKFF) to Kandaleru Reservoir. In addition water from the reservoir is sent through the river sluices to the sangam Anicut. In turn from sangam anicut water is distributed through Kavali Canal, Kanpur canal, Nellore tank, Kanigiri reservoir and Nellore anicut which is on the down stream of sangam anicut. From Nellore anicut water is supplied through Sarvepalli canal to the Sarvepalli reservoir and through Jafar Sahab canal directly for irrigation to the Pennar delta. The ayacut under the Kanigiri Reservoir, Nellore tank, Sarvepalli reservoir and Jafar Saheb canal constitute the Pennar delta.

6. The total ayacut in Pennar Delta as envisaged under the Somasila project report is of 1,75,000 acres towards Kharif wet and 19,000 acres towards rabi wet. It is the admitted case that unlike the ayacut situated under NFC, SFC, Kavali canal and Kanupur canal, the ayacut located in Pennar delta are supplied water for two crops. The developed ayacut in Pennar delta for Kharif wet is 2.50 Lakh acres land for rabi wet crop and the actual irrigated ayacut varies depending upon the availability of

water during the season. It is the case of the respondents that as per the original project report 1.75 Lakhs acres was localised under the Pennar Delta Ayacut (for short PDL) for first crop (Kharif) and 19,000 acres was localised for second crop (Rabi), both for wet crops. It is an admitted fact that PDL which comprised of sangam and Nellore ayacut with the localised ayacut of 1,75,000 acres, is now irrigating 2,50,000 acres. The water is being supplied for the entire 1,50,000 acres under the PDL for khariff crop.

7. It is the case of the respondents that the storage water availability of the extent left over, after meeting the requirements of NFC, SFC and the Kavali canal for developed ayacut, and for the Kandaleru (Reservoir) would be utilised for the second crop in PDL. This is due to non development of entire contemplated ayacut under the Somasila project.

8. The petitioners contend that the rights of the ayacutdars of PDL has been quantified in the scheme of the project. It cannot be altered to the detriment of ayacutdars unilaterally in any manner whatsoever by the respondents. The ryots under the delta are entitled for supply of water for the second crop as a matter of right. It is submitted that the authorities are seeking to keep the water level at the reservoir at 17 TMC only to justify supply of water to Chennai. But for the same, there is no requirement of water whatsoever nor there is any justification to maintain the water levels in the reservoir. The ryots are deprived of their legitimate right for supply of water to the second crop by the respondents and at their cost, water is being supplied to Chennai for drinking purposes. It is also contended that when the storage at the reservoir was only 12 TMC or 8.8 TMC the water for the second crop was released on earlier occasions. In the past one and half decades, there was never an occasion, where water was not supplied for the second crop, except in the year 1993, because of drought and due to repairs to drains in the year 1996.

9. In nutshell, it is the case of the petitioners that there is water in abundance available for supplying to the second crop and the supply is being deliberately withheld by the respondents. The decision according to the petitioners is arbitrary.

10. It is submitted that there is plenty of water available in Nellore and Kavali tanks and the same can be used for supply of drinking water.

11. The petitioners made available their own statistics and according to them the net quantity of water available for second crop in the reservoir is 13.75 TMC and as per the norms ten thousand acres per one TMC of water can be brought under irrigation and the total extent that may be irrigated during the second crop would be 1.75 Lakh acres.

12. It is also contended that the PDL ryots are being deprived of their legitimate right by the respondents by making provision for supply of water to the other Ayacutdars of North Feeder and South Feeder channel and Kavali in supersession of

the Delta Ayacutdars, contrary to the statutory and vested rights of the Delta ayacutdars.

13. Some vague allegations are levelled against some sitting MLAs, but the same are not seriously pursued by the petitioners during the course of hearing. In the circumstances, there is no need to make any reference to those averments.

14. It is the case of the respondents that the decision not to supply water for the second crop is in accordance with the ground realities and the said action has been taken in the interests of the ryots in the PDL. It is stated that during the Rabi year, 1999 i.e., from April, 1999 to August, 1999, second crop under Pennar Delta has been permitted by the Government in an extent of 1,23,505 acres with utilisation of 15.43 TMC water, because of adequate availability of water in the Somasila reservoir in that year.

15. In the counter affidavit filed by the respondents it is stated that during the year 1999-2000, kharif operations under Somasila project were started in October, 1999. It is pertinent to note that due to the failure of both South-West and North-East monsoons, the somasila reservoir has not received enough inflows, which necessitated restricting water supply even for the ayacut for the 1999-2000 Kharif season. The irrigation Advisory Board of Nellore district proposed the Kharif ayacut as 1,34,457 acres only under Somasila project, as against the developed ayacut of 3,04,100 acres.

16. However, the ryots taking advantage of rains, which occurred during the last week of November, 1999, have transplanted additional extents also. After transplanting over the additional extents, the ryots requested for additional supply of water over and above the extent determined by the Irrigation Advisory Board. It is only with a view to save the crops transplanted, the additional water was supplied for an extent of 2,94,706 acres. The quantum of water released from 6-10-1999 to 12-3-2000 to the said Kharif ayacut was 25.009 TMC; whereas the inflows received into the reservoir during the said period was only 22.149 TMC. The inflows of 22.149 TMC, include 14.42 TMC of Krishna water released from the Srisailam Reservoir and let into Somasila reservoir from 6-10-1999 onwards.

17. According to the respondents, as on 12-3-2000, only 12.640 TMC of water is available in Somasila reservoir. Of course as on 29-3-2000 the water level was at 11.19 TMC only. These facts are seriously disputed by the petitioners. The petitioners have their own assessment and suggest as to how the available water may have to be utilised and managed by the respondents. The following details are provided by the petitioners.

A.	Water available in Somasila Reservoir as on 2-4-2000	10.853
	Add anticipated inflows	0.160

Total	10.995
Or say	11.000

B Demand as on 2-4-2000

(1)	Demand as on Somasila Project fat the standing Khariff crop	NIL
(i)	North Feeder channel	
(ii)	Kavali Canal	
(iii)	South Feeder Channel	
(2)	Demand for balance Khariff under Pennar Delta System. Kanupur canal an open Head channel of Pennar River	NIL
(3)	Drinking water to Nellore town	1.00
(4)	Evaporation losses in Somasila reservoir	0.70

(5)	Dead storage	0.50
		2.20
		_____

18. According to the respondents, the requirements are as follows:

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- (1) For standing kharif crop under Somasila project under BFC, SFC and Kavali canal 1.00 TMC
- (2) For standing kharif crop in Direct ayacut in Pennar delta 0.50 TMC
- (3) For ID crop under Somasila Project canals 1.50 TMC
- (4) For seed beds for Kharif-2000-2001 (Commencing from September, 2000 2.50 TMC

(5)	For drinking water for Nellore and Kavali lawns and villages under Command area of Somasila project	3.00 TMC
(6)	Evaporation losses (determined in accordance with the formula prescribed in the irrigation Manual by ELLIS, uniformly applicable through out the country	2.00 TMC
	Total:	10.50 TMC

19. It is stated in the counter-affidavit that the water available in the Somasila reservoir is not sufficient and as such the decision was taken not to permit second crop in Pcnar Delta ayacut in the year 2000.

20. It is the specific case of the respondents that it is essential to maintain 7.5 TMC of dead storage i.e., minimum drawn down level (MDDL) as decided under the Somasila Reservoir Project report itself. The Committee constituted in G.O. Ms. No.99, dated 8-2-1990, in their earlier meeting held on 23-1-1996 to review the position of water available in the Somasila reservoir and to examine the possibility of granting the second crop for the year 1996, had examined various aspects and recommended that the minimum storage of 7.5 TMC is to be maintained at MDDL. It is stated that 1996 onwards MDDL at 7.5 TMC is being maintained in the Somasila

reservoir.

21. It is the specific case of the respondents that the water available in Nellore and Kavali tanks is not sufficient to provide water to Kharif crop and also drinking water till the next monsoon. It is the case of the respondents that in the circumstances 3 TMC of water from the available water in Somasila Project is set apart to meet the drinking water requirements of Nellore and Kavali towns.

22. It is specifically stated that the present storage level of the Somasila reservoir is +277.51 as on 23-2-2000 with the capacity of 11.58 TMC. The question of releasing of water to Chennai would arise only when water from Srisailam Reservoir-flood flows in Pennar are received and consequently when the Somasila reservoir level reaches 290.0 feet i.e., 20.187 TMC.

23. This is the factual matrix reflecting an acute and intense controversy regarding the availability of water in the reservoir. The problem is a complex one.

24. In the facts and circumstances of the case -- Can it be said that the action of the respondents in deciding not to release water to the Pennar Delta is arbitrary and unreasonable one? What are the parameters upon which this Court could arrive at such a conclusion? Can this Court make a roving enquiry and find out the facts for itself? Is it permissible in law? Even if it is permissible, is there any mechanism to arrive at an appropriate conclusion? And, Can this Court interfere, at all, in complex matters of this nature?

25. Sri S. Ramachandra Rao, learned senior Counsel appearing on behalf of the petitioners submits that the decision of the respondents in refusing to supply water is arbitrary. It is contended that even on the admitted facts, the petitioners are entitled for supply of water to raise the second crop. Non-supply water would amount to infringement of not only the statutory rights; but also the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India.

26. Sri Ramesh Ranganadhan, learned Government Pleader appearing on behalf of the learned Additional Advocate General contends that the decision taken by the respondents is in the interest of the farming community and ayacutdars. The decision making process as such is not vitiated for any reason whatsoever. The decision cannot be characterised as an arbitrary one. The decision has been taken after thorough analysis of the facts by the technical experts as to the availability of water. It is not a decision taken by any individual officer as such; but a collective decision.

27. The whole controversy revolves around the water level required to be maintained as a dead storage i.e., to say the minimum draw down level (MDDL).

28. Even according to the petitioners, the water available as on 2-4-2000 is 10.835 TMC and the water level in delta tanks as on 2-4-2000 is 4.85 TMC. There is any amount of dispute about the availability of that much water in delta tanks. The Court

cannot go into that question. According to the petitioners, it would be enough if the dead storage of water is maintained at 0.50 TMC. It is urged that on more than one occasion the dead storage to be maintained has gone down to as low as 0.50 TMC.

29. There is no much controversy as to the availability of water in Somasila project at 11.19 TMC as on 29-3-2000. Even the figure given by the petitioners would tally with what is stated by the respondents in their counter affidavit. The whole question revolves round the requirement of minimum storage of 7.5 TMC to be maintained at MDDL. It is the case of the respondents that in order to release water from Somasila project simultaneously for the seed beds in the ensuing Kharif season of Pennar Delta ayacut and SFC and NFC, the minimum storage level of 7.5 TMC has to be maintained. It is the case of the respondents that if water for raising second crop are drawn below MDDL and early inflows are not received in the reservoir it will be difficult for timely release of water to South Feeder Canal and North Feeder Canal because their skill levels are at higher level when compared to the river sluice supplying water to the Pennar delta ayacut.

30. The decision, as rightly pointed out by the learned Government Pleader is not taken at any individual's level. The District Irrigation Advisory Board in its meeting held on 12-3-2000 resolved to close the irrigation canals in Pennar delta region by 31-3-2000 and not to permit any second crop in Pennar Delta region for the year 2000. Such a decision appears to have been taken by the Advisory Board taking into consideration the water available as on 12-3-2000. The District Collector is the Chairman of the Board and the Board includes all the members of the Legislative Assembly, Members of the Parliament coming from the District and the Distributary committee Presidents. The officials of the Irrigation department also participate in the meeting to aid and assist the Board in arriving at a proper and reasonable conclusion. It is clear from the nature and constitution of the Board that it consists of elected members of the people, as well as the officers, including technical experts and it is that body which had considered the issue relating to the release of water. It is clear from the records that the District Irrigation Advisory Board at its meeting held on 12-3-2000 made provision for 3 TMC of water for drinking water supply to Nellore and Kavali towns and the villages under the command area of Somasila project. The committee is of the opinion that if the water level fell below MDDL drinking water for the village under the South feeder channel and North feeder channel cannot be supplied. It is for that reason, the District Irrigation Advisory Board came to the conclusion that the water level at 7.5 is to be maintained as dead storage.

31. This issue has been further examined by the Committee Constituted by the Government in G.O. Ms. No. dated 8-2-1990 to monitor the release of water from Somasila project. The Committee met on 30-3-2000 under the Chairmanship of the Engineer-in-Chief and critically examined the storage's available as on 29-3-2000 in Somasila reservoir and reservoirs and tanks under the Pennar delta and inevitable

demands to be met with till fresh inflows are received into Somasila Reservoir. The Committee consists of Chief Engineer (Major Irrigation); Chief Engineer (Medium irrigation); Chief Engineer (Minor Irrigation), Chief Engineer (Telugu Ganga Project) and the Superintending Engineer, Irrigation Circle, Nellore. The committee recorded the following findings.

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(1)	Storage of Samasila reservoir As on 29-3-2000	11.19 TMC
(2)	Anticipated inflows	NIL
(3)	Storage at MDDL (+ 270.00FT)	757 TMC
(4)	Net Live storage available (11-19-7.57)	3.62 TMC
(5)	Demands:	
	(i) Far standing Kharif crop under Somasila project canals (MFC, SFC and Kavali Canal)	0.10 TMC
	(ii) Far standing Karif crop in Direct ayacut in Pennar delta	0.15 TMC

(iii)	For Rain 10 under Somasila Project canals (Kavali, SFC and NFC)	1.50 TMC
(iv)	For seed beds for Kharif 2000 in Pennar Delta and Somasila Project and canals	2.50 TMC

(v)	For drinking water needs of Nellore and Kavli towns and for villages under the Command area of Somasila Project	3.00TMC
(vi)	For evaporation losses in Somasila Reservoir	1.80 TMC
	Total demands	9.05 TMC
		_____
		_____

32. Considering the material available on record the Committee came to the conclusion that the demand of 9.05 TMC is more than the net storage of 6.02 TMC available in Somasila project as on 29-3-2000. As such there will be no water available in Somasila project for permitting second crop this year under Pennar delta ayacut.

33. Sri S. Ramachandra Rao, learned senior Counsel would place heavy reliance upon a letter dated 2-7-1999 purported to have been written by the Superintending Engineer, Irrigation Circle, Nellore to the District Collector, Nellore, in which, it is, inter alia observed:

"As the storage as available in Somasila Reservoir as on 1-7-1999 is only 8.32 TMC i.e., 0.021 TMC over MDDL. Water has to be drawn from the storage available below the MDDL due to the above compelling factors. I, therefore, request the District Collector please address the Government suitably for permission to utilise the water available at Somasila reservoir below the MDDL +270.00."

34. It is submitted that the Government accepted the proposal and accorded permission to utilise the water available at Somasila project below MDDL. This letter is pressed into service by the learned senior Counsel to show that in case of emergency, water can be drawn below MDDL. May be so. It would depend upon variety of circumstances. The extraordinary circumstances under which the Superintending Engineer made such a recommendation are spelt out in the letter itself. Obviously water was allowed to be drawn below MDDL from 18-7-1999 to 6-8-1999 in order to save the standing Rabi crop. Consequently the MDDL as on 6-8-1999 went below the required level of 7.50 TMC to that of 5.50 TMC. But a perusal of the records would disclose that at least from 1995-1996 the minimum water level is maintained in the following manner :

Year	Level	Capacity
1995-96	275.80	10.563
-----	feet	TMC
(18-7-1995)	-----	
	84.06	
	Meters	
1996-97	271.07	8.105
-----	feet	TMC
(8-6-1996)1.	-----	
	82.62	
	Meters	
1997-98	280.82	13.504
-----	feet	TMC
(12-8-1997)	-----	
	85.59	
	Meters	
1998-99	272.82	8.984
-----	feet	TMC
(29-7-1998)	-----	
	83.15	
	Meters	

1999-2000	264.38	5.501
-----	Feet	TMC
(6-8-1999)1.	-----	
	80.58	
	Meters	

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35. It is thus clear that only on 6-8-1999 the water level below the MDDL of 7.57 TMC was drawn in order to save the standing rabi crop. The water level was at 5.501 TMC. From the records, it does not appear that it went down even below 5.501 TMC at any point of time.

36. In the circumstances, the Government might have thought it fit to act upon the letter of the Superintending Engineer, in view of the compelling and extraordinary situation that had arisen and with a view to protect the standing crop. The Court cannot find fault with the decision of the Government taken as an emergency measure and with a laudable object to protect the standing crops. Obviously, it was an extraordinary situation. It cannot be treated as a precedent.

37. It cannot be denied that to provide drinking water to the people is as important as providing water for raising crops. But, it is not as if unlimited quantity of water is available in the reservoir. The question that would immediately arise for consideration is as to how best the existing water is to be utilised by the State. In my considered opinion, it is for the State to decide as to how the existing available water may have to be utilised and managed. It requires expertise. Undoubtedly, it would be a matter of choice by way of policy decision. Such a policy decision, if taken by the State cannot be interfered with by this Court merely because there is a possibility of an alternative policy choice. Such a course is not permissible.

38. This Court cannot embark on unchartered ocean of public policy, unless such a policy violates the constitutional mandate or statutory provision or is otherwise actuated by mala fides. Here is a decision taken after careful scrutiny at various stages involving both representatives of the people and the technical experts.

39. The Supreme Court in State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, observed:

"The Government has the right to change its policy from time to time, according to the demands of the time and situation and in the public interest."

40. The Supreme Court in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., observed:

"It is not normally within the domain of any Court to weigh the pros and cons of the policy or scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and

good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When the Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set on affidavits. The Court would realm which belong to the executive." (emphasis is of mine).

41. Sri S. Ramachandra Rao, learned senior Counsel, appearing for the petitioners placed reliance upon the well known decisions in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, and Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, .

42. In Olga Tellis's case (supra), the Supreme Court observed:

"The sweep of the right of the life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to the procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living that is, the means of livelihood."

43. I fail to appreciate as to how the said judgment would support the case of the petitioners. The action of the respondents in no way amounts to infringement of fundamental right guaranteed under Article 21 of the Constitution of India. It may be a different story altogether had the respondents refused to supply water inspite of plenty being available in the reservoir. Such is not the case of hand. The question relates to the best utilisation of available water and the pragmatic assessment of the situation in the public interest. The decision of the respondents is stated to have been taken in public interest. The question of infringement of fundamental rights guaranteed by Article 21 does not arise in such a situation.

44. In Sri Sachidananda Pandey case (supra), the Supreme Court observed:

"When the Court is called upon to give effect to the doctrine of Directive Principle and the fundamental duty, the Court is not shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do so is to examine whether appropriate considerations are borne in mind and irrelevances excluded. In appropriate cases, the Court go further, but how much further must depend on the circumstances of the case. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority."

45. This decision supports the case of the respondents and not that of the petitioners.

46. The Court in the instant case cannot indulge in an act of nice balancing. This is not a case where this Court is called upon to give effect to any directive principles of state policy and fundamental duties. It is not a case of Court shrugging its shoulders. The entire material available on record is taken into consideration and upon such consideration, the Court is of the opinion that the situation on hand is not a judicially manageable one. This Court cannot decide as to what quantity of water should be made available for drinking water purpose and what quantity of water should be made available for irrigation. The Court cannot compel the respondents to utilise the water from the dead storage. Any such direction from this Court is fraught with serious consequences. Such a direction from this Court may result in unmanageable situation leading to unimaginable consequences. The Court in exercise of its judicial review jurisdiction cannot interfere in a matter of this nature, purely based on the self-serving averments made in the affidavit filed by the interested parties. Such a course is not permissible in law.

47. It is not possible for this Court to interfere in the collective decision made by the representatives of the people and technical experts together. The decision is processed at various levels involving more than one individual. Such decisions cannot be characterised as arbitrary and mala fide one.

48. Sri S. Ratnachandra Rao, learned senior Counsel appearing for the petitioners, during the course of his submissions stated that politics and water are inextricably intertwined. It is submitted that during the year 1999, water was released for the second crop though no sufficient water was available, in view of the impending general elections at that relevant time. This Court cannot express any opinion on that aspect of the matter. The Court is aware as to what the Frankfurt School of Philosophers have argued that "the domination of nature leads inescapably to the domination of some people by others". Donald Worster elegantly summarize their arguments, D. Worster, "Water and the Flow of Power", The Ecologist Vol.13 No.5, 1983. (Source: Silenced Rivers by Patrick McCully, 1998 Edition).

"The domination of rivers is one of the clearest illustrations of the link between the control of nature and the control of people. Large dams are not built and operated by all of society but by an elite with bureaucratic, political or economic power. The dams give this elite the ability to direct water for their own benefit, depriving the previous users of some or all of their access to riverine resources.

49. Thayer Scudder, a renowned consultant on a number of dam schemes around the world observed:

"....what is becoming distressingly clear is the systematic way governing elites may use river basin development projects not just to transfer resources to themselves and their supporters but also to pursue self-serving political goals at the expense of

riverine populations, and of ethnic and religious minorities" and opposition groups of regional and national levels, T. Scudder, "Victims of Development Revisited" The Political costs of River Basin Development," Development Anthropology Net work, Vol.8 No.1, 1990.)

50. Suffice it to observe that the debate on such questions is beyond the pale of judicial scrutiny.

51. Small is beautiful.

52. But the Planners and Rulers of this country ever since India attained freedom, in their wisdom thought it that great multipurpose dams and Reservoirs would completely alter the economic and social equations and promote equality. Prime Minister, Jawaharlal Nehru often thought of, as the father of India's programme of giant multipurpose dams, seems to have had second thought about the ideas, as is evident from an observation made by him "I have been beginning to think that we are suffering from what we may call "disease of giganticism". We want to show that we can build big dams and do big things..... but the idea of having big undertakings and doing big tasks for the sake of showing that we can do big things is not a good out look at all. Irrigation and Power, Vol.XVI No.1, January, 1959.)

53. These are all the issues that may require a fresh look by the all concerned. People have to think for themselves and consider as to whether there is any need for a total change in the policy structure in this regard.

54. It is heartening to notice that the people with vision have already started thinking of alternative small-scale technologies and policies as alternative to the giganticism. Numerous additional methods of what is termed "water harvesting" have been developed and revived as alternative technology. Such revival of traditional technologies and building modern structures on the principle of "small is beautiful" may immensely help towards resolving perennial water problems. Empowerment of people with rights to local communities in the matter of utilisation of local water sources by allowing them to find solution based on how they themselves perceive their needs may certainly be an alternative technology, which may go a long way in resolving the crisis.

55. But, the debate, discussion and evolvement of such alternative policies may have to go on elsewhere. These are not the matters for judicial adjudication.

56. For all the aforesaid reasons, this Court is unable to grant any relief to the petitioners.

57. The writ petition fails and the same shall accordingly stand dismissed. No costs.