

(2011) 09 MAD CK 0122

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 6262 of 2011 and M.P. (MD) No. 1 of 2011

New Kattalai Canal
and Aerie Pasana
Vivasayigal Welfare
Association

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Sept. 29, 2011

Acts Referred:

- Constitution of India, 1950 - Article 136, 226, 32
- National Highways Act, 1956 - Section 3A, 3C(2)

Hon'ble Judges: P. Jyothimani, J; M.M. Sundresh, J

Bench: Division Bench

Advocate: N.R. Murugesan and M. Rajeshwari, for the Appellant; S. Sivasubramanian and P. Wilson, for Arul Vadivel @ Sekar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.

Facts in brief:

1.1. The government of India has undertaken the project of providing a Bye pass to Trichy with a view to improve the infrastructure for agricultural, industrial, educational, health and socio-economic advancement in and around Trichy. The project of Tiruchirappalli - Karaikudi Section of NH-210 from Km. 10/000 to Km. 94/000 including Trichy Bye pass on NH-67 from Km. 110/016 to Km. 135/930 was designed and restructured as two-lane with paved shoulders. For the above said purpose, an alignment is required for Trichy Bye pass which starts near Thuvakudi village at Km. 110/016 of NH-67 and intersects at Panchapur village at Km. 135/930 at NH-45B. The said Bye pass road passes through Thuvakudi, Palanganakudi,

Ilandaipatti, Kandalur, Sooriyur and Kumbakudi -- Velayuthangudi, Olaiyur, K. Sathanur South and K. Sathanur North villages of Tiruchirappalli District. The alignment also passes through Mathur, Signathakurichi and Kumaramangalam villages of Pudukottai District. Apart from the same, the alignment also passes through the Periyakulam and Kanakkankulam tanks of Sathanur village.

1.2. The Bye pass road after completion would facilitate to connect the following important National Highways roads:

- | | | |
|----|---------------------|---------|
| 1. | Thanjavur-Trichy | NH-67. |
| 2. | Trichy - Madurai | NH-45B. |
| 3. | Trichy-Karur | NH-67. |
| 4. | Trichy - Karaikudi; | NH-210. |
| | Karaikudi - | |
| | Ramanathapuram | |
| 5. | Trichy-Dindigul | NH-45. |

1.3. The respondent No. 7, who is the authority to complete the project, has obtained an expert opinion from one R. Sivasamy, who is a former Chief Engineer and Administrator, who retired from the services of the Union Ministry of Surface Transport. This opinion has been obtained for the alignment at Kanakkankulam Tank. Similarly, insofar as Sathanur Periyakulam Tank is concerned, another opinion has been obtained from the said person. Apart from the said opinion, the 7th respondent has obtained one another opinion from Dr. P. Kasinatha Pandian, who has done his Doctorate degree in water resources.

1.4. The report submitted by Shri. R. Sivasamy is as follows:

The proposed alignment across the tank on the southern end of the tank is in the shallow region. The outflow from the tank is through three sluices are on western side of tank. Hence the alignment does not prevent the flow of water to the ayacut. The surplus water is let out at the southern side by the surplus weir. With a view to facilitate free flow of surplus water from northern side to southern side balancing culverts are required. The site plan of the tank sluices inlet flow and outlet flow of tank are enclosed. Further, to take case of the rain water from catchment area, the vent way of the culvert should be designed. Accordingly, it is necessary to provide 3 Nos. of Box Culvert, with a vent way of 3m width and depth of 2m above Full Tank (or) Balancing Bridge of 1 x 9 span with clear vent way.

It is worth to mention that the water from the New Kattalai Canal is let into the tank for four months in a year for irrigation purpose. The tank was dry during remaining 8 months. However, the NHAI is requested to improve the surplus weir so as to have free flow of water to avoid the breach of tank.

The formation of road reduces the storage capacity of tank by 10,000 cubic meter as per Cross Section, the NHAI should deepen the tank in such a way that the full storage capacity is restored.

The K. Sathanur tank was dry when I visited the site. The Trichy Bye pass alignment passes across the tank on the north eastern part of the tank. The inflow of the tank is in the order of 55 cusecs and outflow in order of 780 cusecs. The inflow to the tank is from south-eastern side and three sluices are located on the western side and one on the northern side as shown in the sketch enclosed. The surplus water from the tank is let out by the surplus weir located on the north-east corner of the tank. There is no obstruction of flow of water to the three sluices located on the western side of the tank. With regard to the one sluice on northern side, free flow of water is ensured by proposing Balancing Bridges/Culverts. The reach from Ch: 134+400 to Ch: 134+600 is deeper hence Balancing Bridge of 1 x 20m of span shall be provided. The other reaches from Ch: 133+800 to Ch: 134+400 at every 200m interval one Box Culvert of 3m width and 2m depth above the Full Tank Level (FTL) shall be provided.

1.5. The report submitted by Dr. P. Kasinatha Pandian, concerning the above mentioned Tank is as follows:

1. A minor bridge of at least 25m span should be constructed in the chain age between 134.400 to 134.600 m to maintain the free flow of water on both sides.
2. Box culverts with suitable size should be provided at every 200m in the remaining part of the road falls within the tank.
3. Deepening of tank in the shallower parts is a must to ensure the storage capacity to the original level.
4. Side slopes of the proposed bypass road should be provided with revetment with lining to control erosion and to avoid silting.

1.6. The respondent No. 7 has also obtained one another report from the Director, Centre for Water Resources, Anna University, Chennai for the formation of road in Kannakkankulam and Periyakulam Tanks of K. Sathanoor.

1.7. Since for the proposed alignments, lands were to be acquired, as they belong to private persons, a notification was published by the Central Government u/s 3A of the National Highways Act, 1956. After considering the objections, which are two in numbers, that too regarding compensation, orders have been passed u/s 3-C(2) of the National Highways Act, 1956. A declaration u/s 3(D) was also passed on 12.5.2011.

1.8. At that stage, the petitioner has come forward to file this writ petition, seeking a writ of mandamus, to direct the respondents not to put up the ring road (NH-67) in the middle of K. Sathanoor Periakulam and Kannakkan Kulam, including the

agricultural lands and form an alternative alignment.

The grievance of the petitioner is that by the proposed alignment, the small farmers, who are depending upon the agricultural operations would be affected and by laying roads over the two tanks, the water source would be very much affected. When the developmental activities are pitted against the consideration of natural resources, the latter will have to be given primacy. The petitioner has also relied upon the judgments rendered by this Hon"ble Court in *Selvakumar v. Union of India*, 2011 (1) CWC 23 : LNIND 2010 Bmm 1480 : (2011) 2 MLJ 341 and [L. Krishnan Vs. State of Tamil Nadu and Others](#), in support of its case.

2. A counter affidavit and an additional counter affidavit have been filed by the respondent No. 7. It has been stated therein that the writ petition is not maintainable in law and facts as it is nothing but a private interest litigation. The President of the petitioner association is personally affected and without even giving an objection to the acquisition he has formed the association and filed the Writ Petition. The entire procedure contemplated under the National High Ways Act, 1956 has been followed resulting in the acquisition of lands and the lands have become vested with the Government. The respondent No. 7 is an expert body in the construction of roads and the entire project has been conceived after getting opinion of two experts, after conducting the environment impact study. Apart from the opinion of the experts, an opinion has been obtained from the Director of Water Resources, Anna University, Chennai. The subsequent opinion given by the said authority by discussing the opinion given by the Chief Engineer, Public Works Department will also be implemented and hence, the 7th respondent prays that suitable order may be passed considering the huge public interest involved.

3. Locus Standi:

Even though the respondent No. 7 has filed a counter affidavit stating that there is no public interest involved, as the President of the petitioner association is a person affected by the acquisition, we are not willing to go into the said issue. Even assuming that there is a private interest, when the issue involved is of public importance, this Court will have to look into the same and decide it on its own merits. Merely because the President of the petitioner association has got some private interest, the same cannot be applied to the petitioner, particularly in view of the public interest involved in preserving the water bodies. Hence, we reject the contentions of the respondent No. 7 on the locus standi of the petitioner to file this Writ Petition.

4. Reports of the Experts:

Considering the issues involved, particularly with regards to the possible impact on the water sources, namely K. Sathanoor Periakulam and Kannakkan Kulam tanks, this Court by order dated 8.8.2011, directed the Chief Engineer of Public Works Department, Water Resources Organisation, Trichy to appear before this Court on

16.8.2011. On his appearance, the said authority was directed to file a report. A report was filed by the Chief Engineer, Public Works Department on 25.8.2011. The said report is extracted hereunder:

1. The highway should not pass through the tank.
2. The new alignment should at best be aligned along the boundaries of the tanks without affecting the inflow and outflow from the tanks.
3. If it is inevitable to align the Highway in the tank, then the Highway should be constructed over the bridges after proper hydraulic and hydrologic analysis so that there is no obstruction to the inflow and outflow from the tanks.
4. The flow in the Kannakkankulam supply channel (Distributory No. 14 of NKHLC) is affected by the proposed NH67 alignment in Kanakkankulam tank. Hence, it is recommended that the Highway alignment may be realigned to safeguard the Existing supply channel. (OPTION A)

(or)

It is inevitable to align the Highway in supply channel, then the Highway should be constructed over the bridges after proper Hydraulic and Hydrologic analysis so that there is no obstruction to the inflow and outflow to the supply channel. (Option B as per enclosed sketch).

5. In order to get more clarification, we permitted the respondent No. 6 to refer the said report to the Director, Centre for Water Resources, Anna University, Chennai. Accordingly, the said authority has also filed a report dated 18.9.2011, which is also extracted hereunder:

3. Conclusions and Recommendations

Based on the Hydraulic and Hydrologic analysis, it is concluded that both the options proposed by the Chief Engineer, PWD (Option A and Option B are technically feasible propositions.

However, if Option A (i.e., realignment of the highway) is opted, it affects the storage capacity of Kanakkankulam Tank, and it will not disturb the existing alignment of the supply channel.

If Option B (i.e., providing bridge over the supply channel for a length of 166 m) is exercised, then both the existing alignment of the proposed highway and supply channel are not affected.

6. This Court is concerned with the proposed laying of road over the two tanks, namely K. Sathanoor Periakulam and Kannakkan Kulam tanks. While dealing with the same, this Court is also concerned with the alignment over the said channel. In other words, the primary concern of this Court is regarding the maintenance of the water supply to the existing tanks while permitting the respondent No. 7 to

complete the project.

7. Concept of Development:

This Court is quite conscious of the role to be played by a Court of law while dealing with the question of preservation of ecology vis-a-vis the development. A Court of law will have to strike a balance between the developmental activities by following the principle of sustainable development as against maintaining the environmental balance. A mere economic criteria or commercial venture by itself cannot be termed as a sustainable development. A development will have to satisfy the whole spectrum of civil, cultural, economic, political and social process for the overall improvement of the general public. Considering the above definition, we have no doubt in mind that the project envisaged by the respondent No. 7 would certainly amount to a developmental activity involving sustainable development.

8. Considering the very same issue, it has been held in [N.D. Jayal and Another Vs. Union of India \(UOI\) and Others](#), by the Hon"ble Apex Court in the following manner:

Aspects Related to Conditional Clearance

22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In [Vellore Citizens Welfare Forum Vs. Union of India and others](#), and in M.C. Mehta v. Union of India, (2002) 4 SCC 356, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of "sustainable development". This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environment-related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by strict adherence to sustainable development without which life of the coming generations will be in jeopardy.

23. In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. Maybe, in a different context, the right to development is also declared as a component of Article 21 in cases [Samatha Vs. State of A.P. and Others](#), and in [Madhu Kishwar and others Vs. State of Bihar and others](#),

24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The

"development" is not related only to the growth of GNP. In the classic work, Development As Freedom, the Nobel prize winner Amartya Sen pointed out that "the issue of development cannot be separated from the conceptual framework of human right". This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.

25. Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. Weighty concepts like intergenerational equity [State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., M.C. Mehta Vs. Kamal Nath and Others](#), and precautionary principle (Vellore Citizens' Welfare Forum v. Union of India (supra)), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

Hence, we are of the considered view that the project undertaken by the respondent No. 7 would satisfy the definition of development.

9. Preservation of environment vis-a-vis development:

It is rather settled proposition of law that when a development activity is pitted against the preservation of environment, the latter would get primacy. However, efforts should be taken to synchronize both the factors including the question as to whether the same is likely to have adverse effects on ecology or not. While doing so, the Courts are duty bound to take into consideration the relevant materials including the view of the experts. It has been held in [Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others](#), as follows:

Reduction in green areas vis-a-vis environmental impact assessment

277. While considering the environmental aspect, we must not forget that before constructions are allowed to be commenced and completed, the exercise for environmental impact assessment is mandatorily required to be done by the competent authority. An expert body, albeit within the four corners of the regulatory provisions, would be entitled to consider the entire question from the environmental aspect of the matter which would undoubtedly take into consideration all relevant factors including the question as to whether the same is likely to have adverse effects on ecology or not. Consideration of ecological aspects

from the Court's point of view cannot be one-sided. It depends on the fact situation in each case. Whereas the Court would take a very strict view as regards setting up of an industry which is of a hazardous nature but such a strict construction may not be resorted to in the case of town planning. The counsel before us referred to the decision in [Padma Vs. Hiralal Motilal Desarda and Others](#), wherein it was stated:

32. The significance of a development planning cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs of large-scale urbanisation and individual building. It is the science and aesthetics of urbanisation as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards.

Therefore, the project undertaken by the respondent No. 7 being a developmental project to be implemented by taking note of the environment aspect it cannot be said that it is totally detrimental to ecology, more so, when an affidavit has been filed by it accepting to follow the guidelines and opinion provided by the experts.

10. The effect of Expert Opinion:

In the present case on hand, apart from the opinions relied upon by the respondent No. 7, other opinions have been given by the Chief Engineer, Public Works Department and the Director, Centre for Water Resource, Anna University, Chennai. This Court cannot act like an appellate authority to go beyond the said opinions given by the experts. Further, there is nothing on record to establish that the said opinion given by the experts are demonstratively wrong. In this connection, it is apposite to refer to the judgment of the Hon'ble Apex Court in [Akhil Bharat Gosewa Sangh Vs. State of A.P. and Others](#), , which is extracted hereunder:

59. The appellant sought to challenge the veracity and correctness of the figures given in the report of the Central Government as well as in the quinquennial census. In our view, this submission is devoid of merit. It is now well settled by various decisions of this Court that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by the Courts in exercise of their power under Article 226 of the Constitution or by this Court under Article 136 or 32 of the Constitution. For this proposition, reliance can be placed on the decision of this Court in [Systopic Laboratories \(Pvt.\) Ltd. Vs. Dr. Prem Gupta and others](#), of this decision clearly give the answer on the question whether the Findings of the expert body in technical and scientific matters can be interfered with by the Court either under Article 226 or by this Court under Article 32 or 136 of the Constitution."

Hence, in view of the said pronouncements of the Hon'ble Apex Court, while exercising the power under Article 226 of the Constitution of India, this Court cannot ignore or substitute the opinion given by the experts based upon relevant materials placed before them.

11. Exclusion of lands:

The learned counsel for the petitioner would also contend that inasmuch as the proposed alignment crosses through the agricultural lands, the same shall not be permitted and therefore, suitable direction will have to be given to respondent No. 7 for realignment.

12. We are afraid that the said contention of the learned counsel for the petitioner cannot be countenanced for more than one reason. The Government of India while acquiring the lands followed the procedure contemplated under the National Highways Act, 1956 by calling for objections. Except two objections, which are pertaining to compensation, no other objections have been raised inclusive of the objection of the President of the petitioner association. The lands have been acquired by respondent No. 7 and the project has become final. The petitioner cannot espouse the cause of the individual farmers in a public interest litigation. Admittedly, the farmers whose lands have been acquired have not challenged the proceedings. Further, the question of realignment shall not be ordered by this Court as it is for the 7th respondent to make arrangement after taking note of the various factors placed before it. The viability and feasibility of the project done in larger public interest does not warrant any interference. While considering the issue of public interest and public importance, the Court will have to give preference to it a lesser interest or a private interest.

13. We have also perused the judgment of the Division Bench of this Court in *Selvakumar v. Union of India* (supra). The facts involved therein are totally different. The Hon'ble Division Bench did not have the reports of the experts as we have before us. Further, a judgment cannot be read like a statute as it has to be applied to the facts of the case. Moreover, the issue involved therein was the preservation of tank, which have been adequately addressed in the case by the reports furnished by the experts. Therefore, the relief sought for by the petitioner insofar as realignment over the lands belonged to the private persons are concerned is liable to be rejected and is accordingly, rejected.

14. Analysis of the opinions of the Expert:

An affidavit has been filed by the respondent No. 7 that the opinion given by the Chief Engineer, Public Works Department together with the opinion given by the Director of Centre for Water Resources, Anna University, Chennai would be applied in letter and spirit. In the opinion given by the Chief Engineer, Public Works Department, insofar as the alignment of the highway in the tank is concerned, it has been stated that the said highway should be constructed over the bridges after providing hydraulic and hydrologic analysis so as to prevent any obstruction to the inflow and outflow of the tank. Similarly, insofar as the flow in the supply channel to Kannakkankulam tank is concerned, two options have been given by the Chief Engineer, Public Works Department. Option "B" provides for construction of bridges

over the channel after Hydraulic and Hydrologic analysis to enable the free flow of water. Considering the same, the Director, Centre for Water Resources, Anna University has also stated that Option "B" is a technically feasible proposition. As the respondent No. 7 has stated that they are ready and willing to follow Option "B" as suggested by the experts and they would also follow the design of culvert protection provided by the Centre for Water Resources, Anna University, Chennai, we find no reason to reject the said statement.

15. Conclusion:

Accordingly, the following directions are issued:

- (i) The respondent No. 7 is directed to align the highway in the tanks, namely K. Sathanoor Periakulam and Kannakkankulam by constructing over bridges after providing appropriate Hydraulic and Hydrologic analysis, so as to prevent any obstruction to the inflow and outflow of the tanks.
- (ii) The respondent No. 7 is permitted to follow Option "B" as suggested by the Chief Engineer, Public Works Department and the Director, Centre for Water Resources, Anna University, Chennai by aligning the highway in the supply channel of Kannakkankulam tank by constructing over bridges after following appropriate Hydraulic and Hydrologic analysis so as to prevent the obstruction of inflow and outflow of water.
- (iii) The 7th respondent shall comply with the suggestions made by the Director, Centre for Water Resources, Anna University, Chennai, insofar as the construction of the over bridges by undertaking appropriate Hydraulic and Hydrologic analysis.
- (iv) The 7th respondent shall not at any cost involve in any activity that would obstruct the inflow and outflow of water supply in the supply channel or in the tanks, namely K. Sathanoor Periakulam and Kannakkan Kulam Tanks.

16. With the above directions, the writ petition is disposed of. No costs. Consequently, connected M.P. (MD) No. 1 of 2011 is closed.