

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writs No. 11153/2011

Suo Motu

----Petitioner

Versus

State Of Raj

----Respondent

For Petitioner(s) : Mr.Virendra Dangi, Sr.Adv.]
Mr.Ashok Kumar Bhargava] -
Members of the Monitoring Committee
Mr.Siddharth Bapna & Mrs.Suman
Choudhary for Mr.Saransh Saini
Mr.PN Maindola – present in person

For Respondent(s) : Mr.RP Singh, AAG with
Ms.Sheetal Mirdha, AAG with
Mr.Prateek Singh
Mr.Anil Mehta, AAG
Mr.Ashok Mehta, Sr.Adv. with
Mr.Siddhant Jain
Mr.RD Rastogi, Sr.Adv. with Mr.CS
Sinha & Mr.Akshay Bhardwaj – for the
Rajasthan Pollution Control Board
Mr.Amit Kuri
Mr.Poonam Chand Bhandari
Mr.Lokesh Sharma
Mr.Bipin Gupta
Mr.Mahesh Chand Gupta
Mr.Ajay Gupta
Mr.PK Singh for Mr.HV Nandwana
Mr.Gopal Krishna Sharma
Mr.Raj Kumar Goyal
Mr.Dilip Sharma
Mr.Amit Kumar Soni
Mr.TS Sharma for Mr.SS Hora

Mr.Vishwa Mohan Sharma, Collector,
Ajmer
Mr.Dinesh Chandra Yadav, Collector,
Nagaur
Mr.Vivek Goel, Regional Officer, RPCB,
Jaipur (South) – present in person
Mr.Sanjay Kothari, Regional Officer,
RPCB, Kishangarh, Ajmer – present in
person
Mr.T.Ravikant, JDC – present in person

Mr.Birbal Singh, JDC – 13, JDA –
present in person
Mr.Subhash Maharia – JDC – 11, JDA
– present in person

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI
HON'BLE MR. JUSTICE BANWARI LAL SHARMA

Order

11/03/2019

This suo motu writ petition bearing No.11153/2011 is listed to see compliance of the directions given by this Court from time to time and, for that, directions given on 29th May, 2012 read as under :

"1. The State Government should plan for a drive to remove encroachments in catchment areas of water bodies in the State of Rajasthan. For the aforesaid purpose, they may get survey by remote sensing or through any other appropriate mechanism so that a proper picture may come for its follow up action. If the encroachments in catchment areas are not stopped, other reservoirs would face same situation as of Ramgarh dam. The above direction should be given priority looking to water scarcity in the State of Rajasthan.

2. Instructions be issued restraining allotment of land falling in catchment areas of water reservoirs like Johar, Nala, Tank, river, pond etc. Infringement of instructions should be viewed seriously with follow-up action against the defaulting officers and 28 the beneficiaries so that tendency of illegal allotment of land may be stopped at all levels.

3. Action may be taken for cancellation of allotments made in violation of section 16 of the Act of 1955 and other Rules and Regulations. Presently, details of the

references sent to the Board of Revenue in regard to Ramgarh dam catchment area have been furnished to this court which are more than 400 by now. Similar drive for making reference to the Board of Revenue in regard to catchment areas of other water reservoirs in the State of Rajasthan should be taken up so that with the cancellation of illegal allotments followed by removal of encroachments, water may flow to reservoirs like river, dam, nala, pond, Johar etc without obstruction.

4. The Water Resource Department of the State has already issued directions not to allow construction of anicuts more than 2 meters height. The directions have not been properly executed by other departments. The order issued by the Water Resources Department may be conveyed to all the departments so that in future anicuts may not be constructed with a height of more than 2 meters other than in exceptional cases but in those cases also it should be with the permission of the Water Resources Department.

5. Construction of anicuts should not be permitted unless a proper survey is made to assess rainfall in the area indicating sufficiency of water for the anicuts and overflow thereupon to the catchment area of a dam, pond, Johar, nana, river etc. A survey be conducted to find out duration for which water may remain in the anicut/s. To summarise the aforesaid direction, construction of anicut/s should be only after planned development and proper survey. Presently, majority of anicuts are lying dry resulting in wastage of public money. The accumulation of water in rainy season does not justify construction of anicuts. The State Government is expected to take proper decision for construction of anicuts in future and, till then, they are restrained to construct anicut/s obstructing flow of water to a reservoir.

6. The Forest Department should frame scheme for development of forest, more specifically, nearby catchment areas of water reservoirs if their notified land exist therein. This will attract rain and save environment already damaged to a great extent. The efforts of the department should be to stop cutting of trees in the forest area affecting top soil of the hills resulting in deterioration of environment. The Environment Department should meanintfully co-operate with the Forest Department for proper plantation to take all measures to save environment.

7. The State Government had agreed to constitute district level committees to monitor compliance of the directions issued in the judgment with a centralised body at the State level for taking policy decision on the issue or for any action for implementation of the directions given. The centralised body should consist of senior officers of concerned departments apart from legal experts, which may be Mr RP Singh, Additional Advocate General, members of the Monitoring Committee etc to see proper implementation of the directions herein.

8. Measures should be taken to demarcate catchment area of a water reservoir so as to stop encroachments thereon. The demarcation may be done by an appropriate manner for which State Government may take a proper decision. It is not necessary to construct wall or pillar but it may be by any other method but should indicate boundaries. It may be with plantation in a row.

9. Appropriate directions may be issued to stop construction in catchment areas of water reservoirs, more specifically under NREGA scheme as it has been seen that even roads were constructed dividing the river in two parts and obstructing flow of water. The State Government has removed

those roads from catchment area of Ramgarh dam, however, such unplanned constructions result in wastage of public money. Thus, necessary 31 orders may be issued to avoid such construction in future, rather, proper directions may be issued not to raise construction obstructing flow of water in catchment areas.

10. The State Government shall issue directions to all the local bodies namely; Municipal Corporations, Municipal Councils, Municipalities, Panchayat Samities, Gram Panchayats etc not to allow development of residential colonies in the catchment area of any water reservoirs in the State. This will not only save catchment areas of water reservoirs but also save those colonies from damage in case of natural calamity. It may occur due to chocking of water flow. It will also save lives of persons who developed colonies in catchment area unknowingly that some day nature may take its own course to restore the position resulting in serious damage to life and property.

11. The Revenue Department should maintain the position of the land belonging to water reservoirs nala, pond, river, Johar, dam etc and other tributaries as was obtaining in the year 1955 with the commencement of the Rajasthan Tenancy Act, 1955. The excuse regarding non-availability of revenue record was taken by the government but it is found to be without substance as they themselves have taken action for cancellation of allotments in Ramgarh dam based on old revenue record, hence, excuse above 32 would be viewed seriously, more so when government is under an obligation to maintain revenue record since inception.

12. The Water Resources Department is directed to work as a Nodal Agency for taking action for removal of encroachments and for stoppage of illegal construction and

other related areas in the catchment areas of water reservoirs in the State.

13. The two-members Monitoring Committee is directed to submit report to this from time to time with follow up action and compliance of directions issued above on periodical basis so that direction given in this judgment may not remain on papers but are given effect to. The directions earlier issued in regard to the Monitoring Committee by interim orders will continue.

14. All the interim orders passed by this court from time to time would be treated as part and parcel of this judgment and would be implemented by the State Government.

15. The State is directed to chalk out initial plan to show as to how this order is intended to be executed and place before this court in the second week of July, 2012. The case would then be listed before this court initially in the first week of every month to see compliance of the directions given above. It would be open to 33 seek modification/ alteration of the directions if need be by the government or at the instance of the Monitoring Committee and person concerned to the issue."

The respondent State Government prepared a programme to implement the order dated 29th May, 2012, which reads as under :

"3. Pursuant to the directions of this Hon'ble Court dated 29.5.2012 the State had prepared an initial action plan in the month of July, 2012, addressing the issues as under:-

(a) Encroachments in catchment area choking flow of water into the water bodies.

(b) Illegal allotment of land in catchment area which includes land belonging to tanks, nalas, johars, rivers, ponds, etc.

(c) Illegal mining and unmanaged placement of overburden in the catchment area, obstructing flow of water.

(d) Excessive construction of anicuts without proper survey of rainfall, pattern in the catchment area and justification for anicut depending upon the proposed use.

(e) Lack of demarcation of catchment area, giving room to encroachments.

(f) Development of colonies in the catchment area due to inaction and indifferent attitude on the part of the concerning State authorities.

(g) Lack of plantation nearby catchment area or removal of trees from forest area with or without collusion of the authorities with the law breakers.

(h) Lack of planned development of forest areas.

(i) Unplanned construction under Mahatma Gandhi National Rural Employment Guarantee Act (NREGA) like construction of roads in river obstructing flow of water.

(j) Inaction on the part of the Government against those officers engaged in making illegal allotment of land in violation of Section 16 of the Rajasthan Tenancy Act, 1955."

Despite the action plan prepared by the State Government in July, 2012, much was not done, therefore, this Court passed further directions from time to time to see that reservoir/water bodies may revive with effective action of the State Government. It was also seen that while actions have been taken to save reservoir, the Rajasthan Pollution Control Board failed to take effective action against those, who are discharging polluted water in the reservoir. It may be in a pond, nala, river or any water body. In view of the above, this Court gave further directions for it so that while catchment areas are saved, polluted water is not discharged in those reservoirs. An order for it was passed on 08th October, 2012 directing the respondents to ensure that polluted water is not discharged in any lake, pond or river. The Pollution Control Board was given specific direction for compliance of the provisions of the water pollution law and if anyone failed to comply the same, to lodge prosecution.

Despite the directions, no major action was taken. The reservoirs were polluted due to drain of either trade effluent or due to sewerage water. They were directed to see that untreated water is not drained in the river, pond and nala etc.

This Court found involvement of many departments for implementation of the order and there is a lack of coordination amongst them. Accordingly, this Court gave direction to nominate an officer so as to see coordination amongst the departments involved for effective implementation of the order passed by this Court.

Mr. Rohit Kumar Singh, IAS, was nominated as Nodal Officer/Coordinator by the Chief Secretary, State of Rajasthan and, immediately on his nomination, he has taken effective steps to find

out existing position of Ramgarh Dam, Jaipur and Anasagar Lake, Ajmer. A satellite image was taken and produced before this Court.

This Court further realised that in the small villages governed by the Gram Panchayats, reservoirs have been vanished due to encroachment in the catchment areas and even on the pasture land. Thus, the government was directed to remove those encroachments, if exist and it would further be monitored by the Coordinator and Members of the Monitoring Committee.

The compliance report in regard to removal of encroachments from two villages taken for pilot project would be furnished within a period of three weeks.

Those villages were selected in the district Ajmer and Nagaur. It is essential for the reason that in few villages, water supply is made by the government one or two days in a week. The pasture land has been used to develop the colonies unmindfully and despite restrain order by the Apex Court in the case of **Jagpal Singh & Ors. Vs. State of Punjab & Ors, (2011) 11 SCC 396**. Therein, the Apex Court held that pasture land needs to be saved and even the Government had issued circular not to make allotment in pasture area but, again, it has not been given effect properly.

The State of Rajasthan is geographically biggest State in India and, it seems, manually, the things may not be taken up effectively so as to implement the order for betterment of citizens, thus a further direction was given to involve the Department of Information Technology & Communication apart from the Department of Science and Technology so as to prepare a programme and satellite image specially of the reservoir with

catchment, forest and mining areas. The illegal activities in forest has also damaged flow of water.

All the leading newspapers have given pictures of illegal mining in "Aravali hills", which is not only destroying the forest area but environment affecting the rain thus, now, with the involvement of the Department of Information Technology & Communication apart from the Science and Technology Department, all those aspects relevant to the issues would be taken up with proper programming. It would be with futuristic programme so that the State of Rajasthan may be saved from scarcity of drinking water. Accordingly, for implementation of all the directions given by this Court from time to time, a proper scheme would be prepared by Mr.Rohit Kumar Singh, Nodal Officer/Coordinator with effective assistance of Members of the Monitoring Committee and learned Additional Advocate General Mr.RP Singh and Ms.Sheetal Mirdha.

After framing the scheme, not only implementation of the order would be taken up but whoever defaulted in making allotment of land in the catchment area should be subjected to proper action so that such event may not be repeated, which otherwise, remains at the cost of ecology, destroying the environment.

It is further directed that whoever has encroached on the government land, the Government should evolve a system not only to remove it but to recover the mesne profit from them so that tendency of encroachment on the government land may be minimised.

Since the Members of the Monitoring Committee are making efforts for implementation of the order of this Court, they

would be governed by the directions already given by this Court for providing all the facilities including secretarial facilities like space, vehicle, Nodal Officer from Water Resources Development (WRD), etc. to see proper implementation of the order.

It is further necessary to monitor the action even at the district level and, for it, a direction was given to constitute District Level Committees. The District Level Committees would be constituted by the State Government and to report to Mr. Rohit Kumar Singh, Nodal Officer/Coordinator and the Monitoring Committee for effective implementation of the order.

Since there are many issues, which are governed by the Uis and Jaipur Municipal Corporation apart from other Development Authorities, thus those authorities would also take actions for implementation of the directions given by this Court. For illustration, Jaipur Development Authority, Municipal Corporation, Jaipur, Ajmer Development Authority, etc.

The Department of Science and Technology, with the help of the Rajasthan State Remote Sensing Application Centre, would develop a programme so as to avoid any threat to the ecology of the State and, for that, to save the forest area and specially from illegal activities in forest affecting the ecology so as the environment. A direction was also given to the Forest Department for plantation near the catchment areas apart from the forest so that it may attract rain.

It was informed by Mr. PN Maindola, present in person, that even in the catchment area of Bisalpur dam, there is serious destruction to the plantation resulting in deficiency of rain. It has been endorsed by Members of the Monitoring Committee

Mr.Virendra Dangi, Sr. Advocate and Mr.Ashok Kumar Bhargava, Advocate thus care would also be taken for it.

The directions given by this Court would now be monitored by Mr.Rohit Kumar Singh, Nodal Officer/Coordinator and if he also needs any help, the Chief Secretary, State of Rajasthan would ensure that the Secretary and the Commissioner of all the Departments and agencies support Mr.Rohit Kumar Singh for the purpose of implementation of the directions given by this Court from time to time. He should be provided with all the facilities including hiring of experts and consultants and, for that, to provide adequate budget.

This Court is of the opinion that in the State of Rajasthan, there exists scarcity of water and need to save it from illegal activities in forest. The forest areas are to be saved to maintain ecology. Due to illegal activities in forest, the Government's huge revenue is suffered, therefore, the Chief Minister, State of Rajasthan would instruct to take it as a project for betterment of the State of Rajasthan. It would not only address the issue of drinking water for the mankind but for cattle in the remote villages and would save the forest by stopping illegal activities in it.

The discharge of polluted water either by the industries or the sewerage is again a problem and it is more in those cities where the industries exist or there is discharge of sewerage water without proper treatment. We have given illustration of such areas. The Kanota dam has been destroyed due to discharge of sewerage water without proper treatment, that too, for years together.

In view of the above, we have tried to seek compliance of the order passed by this Court from time to time and, now, the Government may take effective steps to implement the directions of this Court after framing a proper scheme and to be monitored by Mr.Rohit Kumar Singh, Nodal Officer/Coordinator apart from Members of the Monitoring Committee and learned Additional Advocate Generals Mr.RP Singh and Ms.Sheetal Mirdha.

The catchment area would also be demarcated so as to maintain it properly. Also, the revenue lands falling under submergence area as identified by the Water Resources Department should be kept as "no construction zone" as was earlier directed irrespective of the fact that such lands are khatedari lands allotted for cultivation. It is to be made free from encroachment so that flow of water may not be obstructed. For revival of "Bawdi" in the villages, the Government would make a plan with adequate budget.

Since the composite directions have been given earlier and have to be implemented, any citizen finding violation of the directions given therein for any area of reservoir with its catchment and forest, would be at liberty to make complaint to Mr.Rohit Kumar Singh, Nodal Officer/Coordinator with a copy of it to the Members of the Monitoring Committee and learned Additional Advocate Generals Mr.RP Singh and Ms.Sheetal Mirdha. Immediately on receipt of complaint, steps would be taken so that, onwards, no reservoir and, for that, even catchment and submergence and, forest area are not damaged further. In case, effective action is not taken despite aforesaid, individual would be free to make an application before the Court for its implementation.

The Government would positively take all necessary actions for implementation of the directions given by this Court and if anyone remains aggrieved by it, would be at liberty to approach this Court by making appropriate application but, for that, he would not be at liberty to approach any other Court as it would again proper implementation of the order of this Court without understanding the importance of the issues as well as the measures required to be taken by the State for its implementation. If anyone remains aggrieved, may approach this Court.

In regard to discharge of untreated water, biggest difficulty is under capacity Effluent Treatment Plants (ETP). The greatest illustration for it is Pali city where capacity of ETP for treatment of polluted water is less than required. The capacity of treatment plant is not increased despite knowing that the aforesaid is affecting not only the industries but due to the aforesaid even untreated water is discharged in "Badi" river. The Pollution Control Board would take steps for the aforesaid and, for that, even the State Government and the trust at Pali managing the ETP, will see that its capacity is increased appropriately keeping in mind future needs. Similar exercise would be taken up even for Sanganer and Balotara where similar problem exists and then to replicate it for other similar areas.

A copy of this order be sent to the Chief Secretary and all ACS/Principal Secretaries of all concerned Departments and State Authorities for compliance.

A copy of this order be supplied to the Members of the Monitoring Committee, learned Additional Advocate Generals

The letters issued by the Chief Secretary bearing क्रमांक प.10(1) प्र0सु00/अनु-1/2012 dated 30th March, 2012 and क्रमांक प. 10(1)प्र.सु./अनु-1/2012 dated 24th May, 2013 in regard to mentioning name of the officer with date while signing any note sheet/order/circular would be complied in strict terms. failure if any, would attract disciplinary action.

List this case on 27th March, 2019 in regard to the applications related to Bharatpur and otherwise after two months to see compliance of the order passed today.

(M.N. BHANDARI),J

Preeti/1

