



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 795 of 2023

Reserved on: 14.03.2023

Decided on: 21.03.2023

Rajesh Kumar & Ors.

...Petitioners

Versus

State of H. P. & Ors.

...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner : Mr. Ajay Sharma, Sr. Advocate with Mr. Ajay Thakur, Advocate.

For the Respondents : Mr. Anup Rattan, A.G. with Mr. Y. W. Chauhan, Sr. Addl. A.G., Mr. Ramakant Sharma, Addl. A.G., Mr. J. S. Guleria, Dy. A.G. and Mr. Rajat Chauhan, Law Officer.

Tarlok Singh Chauhan, Judge

The instant petition has been filed for the grant of following substantive reliefs:-

- (a) That impugned acts of the respondents in the shape of raising construction of proposed dam (bandh) on Bagna nalla somewhere in between villages Balaog and Bawana may very kindly be quashed and set aside and directions may very kindly be issued to the respondents not to raise/construct dam at the said place, to secure the ends of law and justice;

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

(b) That the respondents may very kindly be restrained from raising/constructing any bandh (dam) at Bagna nalla somewhere in between villages Balaog and Bawana having been proposed by the respondents by issuing a writ of mandamus to the respondents;

2. The petitioners are aggrieved by the action of the respondents whereby a bandh (dam) has been proposed to be built/constructed on Bagna nalla in Gram Panchayat, Bagi, Tehsil Shimla (Gramin).

3. According to the petitioners, almost 90 to 95% inhabitants of Gram Panchayat Dhamoon, Shilru and Panti Up-Mohal of Gram Panchayat Bagi will be affected by the construction of such dam to the extent that the very source of livelihood would be snatched. The residents of these panchayats are not only dependent upon the water sources for agriculture purpose and also for running their water mills, catering to the needs of cattle and other ancillary purposes. Majority of the inhabitants of these panchayats are unemployed and are, thus, dependent on agriculture. It was further averred that there is already a IPH Scheme, namely, Jhakri Water Supply i.e. under construction, which could cater to the needs of the adjoining inhabitants of the villagers. In case, water from Bagna nalla is

diverted to the dam, then there will be no water in the bagna nalla for the inhabitants of the panchayats referred to above.

4. It is also averred that as per the *naksha Riwayat Abpshi* (irrigation by custom), the water flowing from Jadeni kuhl is only source of irrigation available to the land of the petitioners and other inhabitants, that too, of a specific khasra numbers as given therein. Further, as per *Wazib-ul-Arj* of the above three villages, it has been specifically provided in Clause-6 that the water of Jadeni Kuhl is available to the villagers for irrigation purpose and also for the use of cattle.

5. Even though the respondents have not filed the reply, however, they have placed on record instructions dated 06.03.2023, the relevant portion whereof read as under:-

On the above cited subject, I have honour to say that the respondent department has framed the detailed project report for construction of rain water harvesting structures over Kuni Khad in G.P Dhamoon Tehsil and district Shimla for strengthening of various water supply scheme and irrigation schemes under Gram Panchayat Dhamoon, Baggi and Chanog.

The A/A & E/S of this project was accorded in the year 2018-19 amounting to Rs. 749.76 Lakhs for construction of 3 Nos. Rain water harvesting structures at Bagna Nala in G.P Baggi, Jhakri nala in G.P. Dhamoon and at kuni khad in G.P. Chanog in the same stream. The project was approval under MLA priority. It is humbly submitted that on completion of this

project approximately 4500 people of above three Panchayats will be benefited and further 152.33 Hect. Command culturable area will be irrigated properly after completion of this Project. The project has been approved with a view that strengthen the existing schemes as it becomes very difficult to meet out the existing demand of water supply in the vicinity. The overflowing water during rainy season is proposed to be stored and further using in summer season for drinking and irrigation purpose. Moreover, it is pertinent to submit here that these structures will also recharge the existing water sources in surrounding area, which will increase the water retaining capacity of soil and will further help in increasing the agricultural yield of farmers. It is submitted that the feasibility of the project has been ascertain by the Geological survey of India regarding geological survey, investigation and structural design approximately 10 lacs of Rupees has been incurred and geological survey report has been submitted by the Geological Survey of India. The works have already been awarded to the contractors for amounting to Rs. 635.71 lacs The respondent department has already incurred about 176.47 lacs on the project.

It is humbly submitted that the said work is being constructed for the benefit of the public at large and large population of the area will be benefited after completion of this work. The concerned Gram Panchayat Dhamoon vide resolution No. 11 dated 30.05.2015 issued No Objection Certificate for construction of the project. It is also submitted that the necessary flow water in the Khad on downstream side will be maintained for running of Gharat, irrigation channel and fauna and flora, hence there is no adverse effect on the

interest of the petitioners as such the present petition being devoid of any merits deserves dismissal at this initial stage in the public interest as this is the need base project in the present scenario.

We have heard learned counsel for the parties and have gone through the record of the case.

6. At the outset, we may clear the air regarding the ownership of water sources. It is a misconception that water belongs to the villagers who use the same, whereas it is more than settled that water is the property of the State and no individual(s), whosoever has any right to claim this property even though situated within his personal property.

7. In ***M. C. Mehta vs. Kamal Nath & Ors. (1997) 1 SCC 388***, the Hon'ble Supreme Court has laid down that the river is a public property. It cannot be given for private use. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. The public trust doctrine is a part of law at present. Even in absence of legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. Large area of the bank of River Beas which is

part of protected forest has been given on a lease purely for commercial purposes to the Motels. The area being ecologically fragile full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. The Hon'ble Supreme Court held that the Government of Himachal Pradesh has committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. The lease transactions are in patent breach of the trust held by the State Government. Therefore, the Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area.

8. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature. They should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit then-use for private ownership or commercial purposes.

9. In ***Tirupathi vs. State of A.P. & Ors. AIR 2006 SC 1352***, the Hon'ble Supreme Court has laid down that the

government is bound to protect historical tanks qua concept of 'sustainable development' and 'public trust doctrine'. Destruction of local ecological resources is not permissible. Property subject to trust must not only be used for a public purpose, but it must be held available for use by general public. Property must be maintained for particular types of use (I) either traditional uses, or (ii) some uses particular to that form of resources. Principle of 'Inter-Generational Equity' also to be applied for protecting natural resources has also been taken into consideration by their Lordships of the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that the tank is a communal property and State authorities are trustees to hold and manage such properties for benefits of community. State cannot be allowed to commit any act or omission which will infringe right of community and alienate property to any other person or body. Fact that the party has spent money on developing land is immaterial.

10. In **Susetha vs. State of T.N. & Ors (2006) 6 SCC 543**, the Hon'ble Supreme Court observed that natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse. The Hon'ble Supreme Court has also observed that the same principle cannot be applied in relation to artificial tanks.

11. In **Centre for Public Interest Litigation and Ors. vs. Union of India & Ors (JT 2012 (2) SC 154)**, the Hon'ble Supreme Court observed that there is no universally accepted definition of natural resources, they are generally understood as elements having intrinsic utility to mankind. Natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the State benefits immensely from their value. The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. The government is bound to protect environment, forest, air, water, coastal zones etc. the State Government is bound to act as guardian and trustee in relation to catchment area of the pond, lake or river. People are owner of the natural resources.

12. The Hon'ble Supreme Court in the case of **Centre for Public Interest Litigation (supra)** referred to the decision in **Fomento Resorts and Hotels Limited vs. Minguel Martins (2009) 3 SCC 571** and has laid down that the public trust doctrine enjoins upon the Government to protect the

resources for enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. It has also observed that public has special interest in public land water etc. It is the duty of the State not to impair such resources. The Hon'ble Supreme Court emphasized that there is obligation to use such resources in such a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resources, including down slope lands, waters and resources.

13. In **Fomento Resorts and Hotels Limited vs. Minguel Martins (supra)**, the Hon'ble Supreme Court has laid down thus:-

53. The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest

(i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention" (1970), indicates that the Public Trust Doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The Public Trust Doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today, every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long term interest in that property or resource, including down-slope lands, waters and resources.

14. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48A of the Constitution requires that the State shall endeavour to protect and improve the environment

and safeguard the forests and wildlife of the country. Similarly, Article 51A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for all the living creatures. In view of the constitutional provisions, the doctrine of public trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, water and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.

15. The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks poramboke lands, and water charged lands.

16. Now, as regards the rights of the petitioners to use water, we find that the respondents have already taken adequate steps to safeguard their interests, because the project in question is being undertaken for the benefit of public at large by maintaining the necessary flow of water in the khud down stream for running of gharat and irrigation channels. That apart, the Gram Panchayat Dhamoon has already passed a resolution

No. 11, dated 30.05.2015 and issued no objection certificate in consequences thereof for the construction of the project.

17. Noticeably, only four people, that two residents from village Bawana, one each from village Shilru and Panti have filed the instant petition, therefore, the same cannot be termed to be the voice of the people, as the voice of the people would be best reflected if the local rural elected bodies like gram panchayat or gram sabha would come up before the Court.

18. Nonetheless, even if the allegations, as set out in the petition, are taken on the face value even then, as observed above, we find that the interests of the villagers represented by the petitioners have already been adequately safeguarded, as the over flowing water during rainy season is proposed to be stored and further used in summer season for drinking and irrigation purposes. The stored water would recharge the existing water sources in the surrounding areas, which will increase the water retaining capacity of soil and further held in increasing the agricultural yield of farmers. After all the respondents have obtained a feasibility report of the project, that too, from the prestigious institution of Geological Survey of India by spending Rs. 10 lacs. Moreover, the work has already been awarded to the contractors amounting to Rs. 635.71 lacs and the respondent

department has already incurred an amount of Rs. 176.47 lacs on the project so far.

19. From the aforesaid discussion, it is evidently clear that the instant petition is more in the nature of speculation as the interests of the petitioners have been adequately safeguarded and protected while formulating and implementing the scheme for raising construction of bandh (dam).

19. Accordingly, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

21st March, 2023
(sanjeev)