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IN THE SUPREME COURT OF INDIA

R220/06

CIVIL ORIGINAL JURISDICTION

I.A. Nos.1486-87 in Writ Petition (C) No.202 of 1995

T. N. Godavarman Thirumalpad ...Petitioner

Versus

Union of India & Ors. ...Respondents

With

(I.A. No.1492 in WP(C) No.202/95, I.A. No.1508 in WP(C) No.202/95, WP(C) No.95/2006, WP(C) No.111/2006, I.A. No 1497-1498 in WP(C) No.202/95, I.A. No.1509-1511 in WP(C) No.202/95, I.A. No.1514 in WP (C) No.202/95, I.A. No.1515 in WP (C) No.202/95, I.A. No.1523 in WP(C) No.202/95, I.A. No.1524 in WP(C) No.202/95, I.A. No.1525 in WP(C) No.202/95, I.A. No.1531 in WP(C) No.202/1995, WP(C) No.155/2006)

JUDGMENT

KAPADIA, J.

Development needs of the present without compromising the ability of the future generations to meet their own needs is called 'sustainable development', a concept based on the principle of inter-generational equity.

In this batch of cases the common issue that arises for consideration is the validity of the recommendations made by Central Empowered Committee (for short, 'CEC') in its Report dated 20th March 2006 which concerns implementation of the notification issued by State of Andhra Pradesh dated 04.10.1999 under section 26A of the Wild Life (Protection) Act, 1972 whose validity has been upheld by the decision of the Andhra Pradesh High Court dated 30th July, 2001 in the case of **Dr. T. Patanjali Sastry, President, Environment Cell** vs. **Chairman, Andhra Pradesh Pollution Control Board and ors.** reported in 2001 (5) ALT 315. By the impugned recommendations CEC has issued directions for demolition of all fish tanks constructed inside the Kolleru Wild Life Sanctuary in a time

issued directions prohibiting use or transportation of inputs for pisciculture in the said sanctuary. The details of the inputs are given in the report.

NATURE OF KOLLERU LAKE

Kolleru Lake is one of the largest shallow fresh water lake in Asia located between the delta of Krishna and Godavari rivers in the State of Andhra Pradesh. It serves as a natural flood balancing reservoir for the two rivers. It receives water from 67 inflowing drains and channels. It sustains flora and fauna and people living around it. The area of the lake at various contour levels is as under:

Contour level at Mean Sea Level (MSL)	Area
At + 10 MSL	901 sq. km. (2.25 lakh acres)
At + 7 feet MSL	675 sq. km. (1.69 lakh acres)
At + 5 feet MSL	308 sq. km. (0.77 lakh acres)

It is found between the alluvial planes of river Godavari and river Krishna due to natural geological formation covering 2 mandals in West Godavari district and 7 mandals in Krishna district. Ecologically it is a wet land ecosystem. In its mean season, the lake has mean water level of 3 feet above the mean sea level, popularly known as plus 3 contour. The water surface area in the contours of the lake vary, depending upon the seasonal flow of water into the lake. In the normal monsoon, the lake extends from plus 7 contour to plus 10 contour. At plus 3 contour level the lake spreads over 70 sq. miles. At plus 7 contour the capacity of the lake is 30 tmc. At plus 10 contour the capacity of the lake is 54 tmc, covering an area of 348 sq. miles. The peak level inflow into the lake is of the order of 1,10,000 cusecs. 4 rivers, 18 drains and 22 irrigation channels

only outlet to the sea. There are 122 villages in the lake area out of which 46 are bed villages and 76 are belt villages. In the belt villages, above plus 5 contour, cultivation is being done both in the patta lands as well as in the government lands on payment of cist. The lake supports bio-diversity and high biomass of fish plankton which constitute the source of food for birds.

Kolleru Lake extends over 901 sq. kms. at plus 10 contour. However, only 308 sq. kms. out of 901 sq. kms. have been declared as wild life sanctuary. This has been done in order to strike a balance between the rights of the people living in and around the lake on one hand and to protect the ecosystem on the other hand.

Government of India is the signatory to 1971 Convention of Ramsar (Iran) where it is declared that Kolleru is a wet land ecosystem of international importance. In the said convention it is decided that encroachments in the lake would not be tolerated. The said convention is also known as Wet Land Convention.

REASONS FOR ISSUANCE OF THE NOTIFICATION DATED 4.10.1999

The above notification came to be issued under following circumstances. Submersion of delta facility in the upstream area on account of blockage of free flow of water into the lake caused by encroachers. Further, thousands of land stood converted into fish tanks resulting in the blockage of the drain system of Krishna and West Godavari districts which chooses the said lake as a natural route to sea. Lakes were

30 to 400 acres by raising bunds upto the height of 20 to 25 feet above the ground levels and thereby diminishing the retention capacity of the lake. Consequently, it has resulted in submergence of upstream mandals causing huge crop losses.

The notification above-mentioned seeks to preserve the lake both for the benefit of the migratory birds and to avoid floods. The total lake area in terms of hectares is one lac hectares out of which an area admeasuring 30,855.20 hectares is constituted as wild life sanctuary.

ARGUMENTS

The basic argument advanced on behalf of the objectors is that acquisition is the basis for issuance of notification/official declaration under section 26A of the said 1972 Act. It is submitted that although final notification has been upheld, the terms and

conditions of the notification indicate that demolition of bunds can only take place after acquisition by the government of private lands. In this connection, it is urged that apart from government lands the sanctuary also covers private lands; that, the owners of these private lands are entitled to construct bunds in their own lands till the government acquires such lands. It is submitted that from 1976 upto 4th October, 1999 permissions to construct bunds have been given; that huge investments have been made in the business of pisciculture and that thousands of employees are working to earn their livelihood from these activities. It is submitted that the notification covers an entire package and acquisition is a part of that package. Consequently, the government should first acquire the rights of the objectors before ordering demolition of the fish tanks/bunds.

FINDINGS

In order to answer the above arguments we may briefly state the relevant provisions of Wild Life (Protection) Act, 1972 which has been enacted to provide for the protection of wild animals, birds, plants and for matters connected therewith. This Act is enacted by Parliament in exercise of its powers under Articles 249 and 250 of the Constitution, pursuant to resolutions passed by Houses of Legislatures of all States including Andhra Pradesh. The Act came into force in the State with effect from 1.3.1973. It may be useful to note the Statement of Objects and Reasons of the said Act:

> "The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be

> improved. The Wild Birds and Animals Protection Act, 1912 (Act 8 of 1912), has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further, such laws mainly relate to control of hunting and do not emphasize the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom."

Section 2(26) defines "sanctuary" to mean an area declared, whether under section 26A or under section 36, or deemed under sub-section (3) of section 66, as a wild life sanctuary. Section 2(37) defines 'wild life" to include any animal, butterflies, fish and aquatic or land vegetation which forms part of any habitat. Chapter IV deals with sanctuaries and national parks. Section 18 deals with 'declaration of sanctuary' by a preliminary

government intends to constitute any area as a sanctuary, provided it is satisfied that such area is of adequate ecological significance for protecting or developing wild life or its environment. Under section 19 the collector is required to inquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the sanctuary. Section 21 deals with proclamation by the collector and under section 22 the collector has to make inquiry after service of the prescribed notices upon the claimants. Sections 24 and 25 deal with acquisition. Under section 26A the State government shall make declaration of an area as a sanctuary. After such declaration, any alteration of the boundaries of sanctuary can be made only by a resolution passed by the State legislature. Section 29 specifically prohibits carrying out of commercial activity as well as diversion,

stopping or enhancement of the flow of water into or outside the sanctuary. Section 29 reads as follows:

> '29. **Destruction, etc., in a sanctuary prohibited without a permit.** – No person shall destroy, exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by Chief Wild Life Warden and no such permit shall be granted unless the State Government being satisfied that such destruction, exploitation, or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit....."

The government under section 18 issued preliminary notification on 25th September, 1995 declaring the areas specified in the schedule as 'wild life sanctuary' and by reason thereof the collector of West Godavari and the collector of Krishna districts took steps in implementation thereof to hear and decide claims and to demarcate the boundary of the

lake and the sanctuary. The preliminary notification issued under section 18 and the consequential action taken by the district collectors came up for consideration before a learned single judge of the Andhra Pradesh High Court in the case of **Kunapuraju Rangaraju vs. Government of Andhra Pradesh and others** reported in 1998 (3) ALT 215. By order dated 5.3.1998, the learned single judge held that no interference with the rights of the petitioners could take place without a notification under section 26A. Accordingly, directions were given to the State government to take steps for issuance of such notification. Pursuant to the said directions, proclamation under section 21 of the said Act was issued by the respective district collectors of the above-mentioned two districts calling for objections. After conducting an inquiry under section 22 and after considering all the objections, final

notification as required under section 26A of the Act was issued on 4.10.1999 which was published in government gazette on 5.10.1999 determining the rights of the parties in terms of section 24 in the following terms:

> "The existence, nature and extent of rights as determined by District Collector, Krishna vide proceedings No. E6/1236/97, Dated: 01-09-1998 and by the District Collector, West Godavari, Eluru in Rc.No. D6/11717/96, Dated: 08-08-1999 are as follows:
>
> (1) Right to do fishing with traditional methods using mavus, nets of size (which does not cause damage to seed but catches only fish of harvestable size) which will be specified separately by the Chief Wild Life Warden of Andhra Pradesh.
>
> (2) No person shall form any tank for Aquaculture or for any other purposes.
>
> (3) Wherever Pisciculture was existing in private lands, as on the date of notification, fishing in traditional methods shall be permitted, without causing environmental hazard, till the Government acquires such private lands.
>
> (4) Right to do traditional Agriculture

(5) Right to use the ordinary boats, without motor for the movement of fishing people.

(6) Right of way with existing Roads connecting main habitations and their maintenances by providing sufficient number of vents for the roads existing at the time of Notification of Kolleru Wild Life Sanctuary U/s. 18 of Wild Life (Protection) Act, 1972 without permitting new roads and culverts.

(7) Right to maintain existing water courses and drains necessary to avert submersion of agricultural lands surrounding Kolleru lake.

(8) Other rights and conditions as specified U/s. 27 to 34 and other provisions of the Wild Life (Protection) Act, 1972.

(9) Electricity connection shall be given for domestic use only and not for Aquaculture or any activity connected therewith.

(10) The 'D' form pattas granted or lease of land allowed in the area in favour of any assignee or lessee as the case may be including three societies viz., Gangaraju Fishermen Co-operative Society, Srungavarappadu; Sringavarappadu Fishermen Cooperative Society; Sanjaya Gandhi Fishermen Co-operative Society, Srungavarappadu of Krishna District will be cancelled. The claimants are not entitled to any compensation under Wild Life (Protection) Act, 1972 as they were assigned

the lands by the Government on free of land value.

(11) D-Farm pattas to the extent of Ac. 2882.00 cts issued to the individuals as per G.O.Ms.No. 118 Revenue (Q) Dept., Dated: 24-01-1976 in West Godavari District wherein they were permitted to construct fish tanks on the said lands are liable to be cancelled and these lands will be resumed under the provisions of Wild Life (Protection) Act, 1972. These D-Farm patta holders are not entitled for any compensation except ex gratia as provided by the Government.

(12) The annual Licences which are being issued by the Fisheries Department for Fishery purpose indicating the areas allotted are to be discontinued.

(13) Encroachments in conditional patta lands of Siddapuram village of Akiveedu Mandal are to be evicted,

(14) The village site Poramboke of Siddapuram village of Akiveedu Mandal measuring Ac. 16.67 cts is hereby excluded from the jurisdiction of the Sanctuary.

(15) Any other encroachments activities, which are not permitted specifically are liable to be removed/stopped forthwith."

From the above, it is clear that the right of the local fishermen to do fishing by traditional methods is not taken away, but aquaculture in the form of any tank is prohibited. Further, wherever pisciculture existed in private land, as on the date of the notification, fishing in traditional method is permitted without causing environmental hazard, till the government acquires such private lands under the said 1972 Act. The right to do traditional agriculture without using pesticides and chemicals is also permitted under the notification. Lastly the encroachment activities are directed to be stopped, forthwith. The final notification, therefore, seeks to regulate, in public interest and in the interest of ecology, activities, such as aquaculture, pisciculture, prawn culture and shrimp culture, basically to preserve the identity of the lake which otherwise is likely to become extinct within 12 years.

We, therefore, are of the opinion that having regard to the larger public interest and in view of the fact that the Notification under section 26A has been issued pursuant to the orders of the High Court in the case of **Kunapuraju Rangaraju** (supra), the Notification issued under section 26A needs to be enforced immediately. We are informed that in the previous year on account of these bunds/fish tanks free flow of water into the sea was blocked for 40 days. In any event, the rights of those fishermen surviving on a traditional method of fishing have not been taken away, they have been duly protected. Only those who had illegally constructed bunds and who were using harmful manures have been prevented from doing so by reason of the said Notification. The State government has fulfilled its obligation by issuing such Notification. When the

rights of the fishermen to do fishing by traditional methods have not been taken away, and when the material placed on record before us shows that there is obstruction to the free flow of water in the lake bed area due to raising of bunds whereby the retention capacity of the lake is diminished, the government is right in regulating the rights under the said Notification. If such encroachments are not removed immediately the right of the farmers in the upstream mandals to do cultivation would be in jeopardy, consequently, it is their right to live guaranteed under Article 21 of the Constitution which is violated.

Before us it has been repeatedly urged that the objectors have made huge investments over the years, that they were permitted to put up bunds under permissions given by the collector and that equity demands that a balance be struck between

preservation of the lake and the livelihood of persons surviving on aquaculture and pisciculture. It is further argued that mud bunds constituted a part of traditional fishing practice and consequently this Court should not direct demolition of these bunds.

We do not find any merit in the above arguments for the following reasons. Firstly, section 29 specifically prohibits commercial activity inside the Sanctuary. It prohibits commercial activity which diverts, stops or increases the flow of water into or outside the Sanctuary. With the issuance of the final Notification formation of fish tanks for aquaculture or for any other purpose is prohibited as they obstruct free flow of water both into or outside the Sanctuary. Secondly, the Notification dated 4.10.1999 provides a limited right to carry on fishing inasmuch as it

and nets. It expressly, however, prohibits the objectors from forming any fish tank(s) for aquaculture or for any other purpose. It also expressly provides that wherever pisciculture was existing on the date of the notification in private lands, fishing in traditional methods shall be permitted, without causing environmental hazard, till the government acquires such private lands. It also cancels the pattas granted in the past. In our view, therefore, the Notification regulates aquaculture, pisciculture, prawn culture, shrimp culture etc. Thirdly, the argument advanced on behalf of the objectors that mud bunds formation is compatible with traditional fishing practice and, therefore, should be allowed to continue to exist, has no merit. When a bund is formed in a sanctuary or a lake it seeks to encapsulate an area which in turn obstructs free flow of water in the lake bed area. As stated

above, formation of bund reduces the retention capacity of the lake. These formations, if allowed, would destroy the lake. In view of the provisions of section 26A read with section 29 all commercial activities which seek to destroy the ecology, stands prohibited. Compatibility of mud bunds with the traditional fishing practice in a lake is a concept different from formation of mud bunds inside the Sanctuary. Notification dated 4.10.1999 does not cover the entire area of the lake. Out of 901 sq. kms. of Kolleru lake, an area of 308 sq. kms. alone is notified as Sanctuary. This indicates that the government has balanced the needs of sustainable development with the livelihood of persons surviving on the resources of this lake. Lastly, the preliminary notification was issued as far back as in 1995 under section 18 of the Act. Therefore, the objectors were put to notice about the future course of action.

Therefore, it is not open to the objectors now to say that they have made huge investments which would be lost if the report of the CEC is implemented. As stated hereinabove, in the preceding year free flow of water into the sea was blocked for 40 days. Such blocking of water also affects the livelihood of farmers cultivating lands in the upstream mandals. The oil cakes used as manure also pollute the Sanctuary. It is true that there are other effluents which also pollute the lake. By issuance of the Notification the government has taken a step in the right direction and it is not open to this Court to tell the government as to which of the three effluents in terms of their discharge should be regulated first in point of time. In the present case, as stated above, the blockage is due to discharge of effluents from three sources, namely, fish tanks in and around the lake containing high concentration of nutrients, effluents from

municipal drainage and effluents emerging from the industries located in an around the above two districts. Destruction of the fish tanks is one of the steps taken by issuance of the Notification. That has to be done at the earliest point of time, particularly, before the onset of the monsoon.

For the above reasons, we direct the State government and its officers to implement the directions of CEC vide para 54 of its report dated 20th March, 2006. We make it clear that the use or transportation of inputs for pisciculture shall be stopped immediately. We, further, clarify that the demolition of all fish tanks in a time-bound manner shall commence with effect from April 20, 2006, as indicated vide para 54(ii). Accordingly, the interim order granted by this Court in I.A. Nos.1486-1487 in

Accordingly, all I.As,/writ petitions/objections filed by various objectors, shall stand disposed of.

.....J.
(ARIJIT PASAYAT)

.....J.
(S.H. KAPADIA)

New Delhi,
April 10, 2006.