Parambikulam A.P.O.A

Vs

State of Tamil Nadu

Civil Appeal No. 7719 of 1994

(B. N. Kirpal, S. Rajendra Babu JJ)

12.08.1999

JUDGMENT

B.N. Kirpal, J. –

1. The validity of Parambikulam Aliyar Project (Regulation of Water - Supply) Act, 1993 is the subject matter of dispute in this appeal which arises pursuant to a certificate under Article 133 of the Construction of India having been granted by the High Court of Madras.

2. Briefly stated the facts which are relevant for the disposal of the present appeal are that the members of the petitioner society are agriculturists who are carrying on agricultural operations on lands which are covered in what is called the Parambikulam - Aliyar Project'.

3. The said Project was undertaken with a view to supply water for agricultural operations in some Taluks of Coimbatore District. In 1962 a declaration is stated to have been made by the Tamil Nadu Government's Policy to the effect that ayacutdars would be supplied water once a year under this project. In 1967 it was represented that an area of 1,40,000 acres under the Project would be irrigated once a year and balance one lakh acres will be irrigated after the completion of Solaiyar and Nirar dams.

4. In 1967 the Tamil Nadu Government issued a Government Order whereby it decided that water be supplied for irrigating an additional area of 1,15,000 acres. This decision was challenged by the appellants by filing Writ Petition Nos. 575 and 1309 of 1978 in the High Court of Madras on 22nd of December, 1983. As a result of agreement between the parties, the writ petitions were disposed of by the following order:

> "The learned counsel for the petitioners and the learned Additional Government Pleader agree that the following order could be made and imposed on the parties:
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> "The petitioner has no objection to the original Ayacut of 250000 acres covered by Parambikulam Aliyar Project being extended by 1,15,000 acres as envisaged by G.O. No. 126 dated 29.1.1976 or for any further extension :
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> Provided that before applying water to the new ayacutdars in the extended ayacut, the original ayacutdars are first assured of supply of sufficient water, subject to availability once in eighteen months as regularly as possible or practicable."
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> There will be an order accordingly in these writ petitions. There will be no order as

to costs."

5. Nearly a decade after the passing of the said order the State of Tamil Nadu enacted the impugned Act. In the preamble it was, *inter alia,* stated that under Article 48 of the Constitution of India the State is required to endeavour to organise agriculture on modern and scientific lines and at that moment 2,02,152 acres of land were getting water supply from the Project for irrigation on rotational basis by dividing the entire ayacuts into three zones and by supplying water once in 18 months on rotational basis in each year. The preamble also noted by referring to the representation which was received from other proverbial drought prone Taluks who wanted the extention of supply of water under the Project to those Taluks. The impugned Act was enacted with a view to provide irrigation facilities under the said Project by dividing the whole area into four zones, providing irrigation to each zone once in two years as against the existing three zones. Section 3 of the said Act, which is relevant in the present case, reads as under :

> 3(1). Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court, Tribunal or other authority or any custom, agreement or usage or any rule, notification or order made or issued by the Government relating to inclusion of ayacuts in the Parambikulam - Aliyar Project or supply of water to such ayacuts or parts thereof and in force on the date of publication of this Act in the Tamil Nadu Government Gazette, the Government may after consulting the Chief Engineer (Irrigation) or such other officer or authority as they may consider necessary, by notification, regulates on rotational basis in accordance with the rules as may be prescribed, the supply of water for agricultural purposes for a total extent of 3,77,152 acres of land in the Parambikulam - Aliyar Project, comprised in the four zones as specified in the Schedule.
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> (2) The Government shall, before issuing a notification under sub-section (1), take into consideration the following matters :
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> (a) the interest of the general public;
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> (b) the maximum possible advantage which may result in agricultural production in extending the supply of water to more lands;
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> (c) the advantage of bringing prosperity to the backward and drought-prone areas by bringing them within the ayacuts;
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> (d) the availability of water to the existing ayacuts;
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> (e) the optimum utilisation of the available water to a larger extent of ayacuts; and
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> (f) such other matters as may be prescribed."

6. The validity of the said act was challenged by filing writ petition in the Madras High Court. Before the High Court it was sought to be contended that the legislature has no power to overrule and set at naught the order dated 22nd December of 1983 which had been passed in the earlier writ petition which had been filed. In addition thereto it was also submitted that the respondent was estopped from going back on the commitment which had been given on the basis of which the order dated 22nd of December, 1983 was passed.

7. The High Court dismissed the writ petition by holding that the change in the circumstances warranted the passing of the enactment and the principle of promissory estopple was not applicable in that case. It further came to the conclusion that the action of the legislature in seeking to provide water to additional land could under no circumstances be regarded as arbitrary or illegal.

8. It was submitted by Mr. A.K. Ganguli, learned senior counsel that the Tamil Nadu Legislature had no jurisdiction to pass the impugned enactment which according to him, set at naught the judgment dated 22nd of December, 1983. In support of this contention he sought to place reliance on the decision of this Court in *Madan Mohan Pathak and another v. Union of India and others, 1978(2) SCC 50* and *S.R. Bhagwat and others v. Arooran Sugars Ltd.. 1995(6) SCC 16.* In our opinion none of these decisions can be of any assistance to the appellant.

9. In Madan Mohan Pathak's case the question was whether the *mandamus* issued by the Calcutta High Court directing the Life Insurance Corporation to pay cash bonus to its Class III and Class IV employees in terms of settlement dated 24th of July, 1974, which had become final under the terms of the Industrial Disputes Act, could be disturbed by the Parliament by enacting the Life Insurance Corporation (Modification of Settlement) Act. The Court, construing the provisions of the said Act, came to the conclusion that the said Act could operate only prospectively. In Madan Mohan Pathak's case this Court took note of the fact that against the decision of the Single Judge Letters Patent Appeal had been filed. Union of India withdrew the said appeals and allowed the Single Judge's judgment to become final. In view of this Court had come to the conclusion that the judgment of the Single Judge could have been upturned if the appeal had been perused but instead of adopting that way the impugned Act had been enacted. Explaining the decision in Madan Mohan Pathak's case this Court in *State of Tamil Nadu v. Arooran Sugars Ltd., 1997(1) SCC 326* at page 334-345 observed that because the factual position in Madan Mohan Pathak's case the principle which was enunciated by this Court in *Prithvi Cotton Mills Ltd. v. Broach Borough Municipality and others, 1969(2) SCC 283* could not be applied. This decision in Madan Mohan Pathak's case is clearly not applicable in the instant case.

10. Similarly S.R. Bhagwat's case (supra) can be of no assistance to the appellant in the present case because this Court held that the order of *mandamus* was sought to be nullified by the enactment of the new statute which had sought to disentitle the deemed promotees to arrears of pay for the period prior to actual allotment which had a retrospective effect and had sought to take away the right to arrears of salary which had become final as a result of the decision of the Court which had not been challenged in the appeal. In the present case the impugned Act has no retrospective operation.

11. The order of the High Court dated 22nd December, 1983, when read carefully, cannot be construed to mean that a vested right had been created that the appellant would get water once in 18 months. The said order recorded that the appellant would have no objection to additional area of 1,15,000 being covered by the Project or for any further extension provided that existing ayacuts were assured of a supply of water once in 18 months. There was no *mandamus* issued to the State not to increase the area to be covered by the Project. If there were any increase which resulted in supply of water being given not once in 18 months but at a greater interval then the appellant would have a right to challenge the same. Factually, therefore, there is no similarly between the present situation and that with which this Court was dealing in Madan Mohan Pathak's (supra) case and S.R. Bhagwat's (supra) case.

12. We may view the matter from a different angle. On the facts as existed in 1983 the order dated 22nd December, 1983 was passed, as a result of which an area of 3,65,000 acres was covered by the

Project. Considering the change in the circumstances over a period of ten years, and as a matter of agrarian reform, a new procedure was enacted for more equitable distribution of water. In this connection, on the basis of the material placed before the High Court it had observed as follows:

> "36......The materials placed before us by the respondents are sufficient to prove that the four zone pattern which is being introduced by the Act for the purpose of irrigation is certainly beneficial to large number of agriculturists. The records show that more area of dry lands in the drought-prone zones will be brought under cultivation. By the new pattern there will be continuous flow in all the canals throughout the year which will result in the increase in ground-water potentials. All the wells in the ayacut areas and adjacent areas will get indirect benefit of ground-water recharge, which will help the people to utilise the well water during the non-irrigation period also for domestic as well as irrigation purposes. The present pattern is such that the flow of water in the canals is to their full length throughout the year.
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> 37. We find that under the four zone pattern of irrigation, the entire extent of 2,03,299 acres in the old ayacut has been disturbed over all the four zones in the following manner:

Zone	Old Ayacut	New Extension
Zone I	70,308	28,250
Zone II	43,851	54,567
Zone III	54,537	39,487
Zone IV	34,603	51,549

A look at the plans filed by the Government will show that the area is divided into four zones in such a manner that the water shall flow from the head to the tail and every time. That will undoubtedly result in keeping high percentage of humidity in the atmosphere. In short, no one can take any exception to the irrigation of 3,77,000 acres as against 2,03,000 acres on the ground that the original ayacutdars have a vested right to get a particular quantum of water. Even if they had such a right, it can be restricted to a reasonable extent by an appropriate legislation. It is quite obvious, however, that the Act is only regulating the distribution of water in an equitable manner. It is a measure of agrarian reform to bring more lands under cultivation and increase the agricultural production."

13. It is quite evident from what is stated hereinabove that there was a valid basis for the enactment of the impugned Act. We no not see any impediment in the legislature in view of change in circumstances and with the passage of time or otherwise, introducing an Act with a view to provide benefit to larger number of people. Any such enactment cannot be regarded as arbitrary or in any case bad in law. Before concluding we would like to observe that the High Court has also took note of the fact that the appellants have not established any pre-existing right and in any case, even if,

that right had been established the State legislature could certainly have altered the same with a view to provide benefit to a larger area and more people.

14. For the aforesaid reasons, we do not find any merit in this appeal. The same is dismissed. There will be, however, no order as to costs.