

SUPREME COURT OF INDIA

M.K. Balakrishnan

Vs.

Union of India

Writ Petition (C) No(s). 230 of 2001

(Markandey Katju and B.Sudershan Reddy JJ.)

26.03.2009

ORDER

1. Heard learned counsel for the parties.
2. Pursuant to this Court's order dated 26th February, 2009, the Chief Secretaries, State of Haryana and Uttar Pradesh are personally present in the Court. Their personal presence is dispensed with unless directed in future.
3. The present Writ Petition under Article 32 of the Constitution of India relates to conservation of wet lands which in our opinion would include ponds, tanks, canals, creeks, water channels, reservoirs, rivers, streams and lakes.
4. Although, the writ petition as framed related to protection of wetlands in the country for preservation of the environment and maintaining the ecology, we have suo motu expanded its scope as mentioned below.
5. There is acute shortage of water in our country and one of the main reasons for that is that most of the water conservation bodies in our country such as ponds, tanks, small lakes etc. have been filled up in recent times by some greedy persons and such persons have constructed buildings, shops etc. on the same.
6. Our ancestors were wise people who realised that because of droughts or some other reasons there may be shortage of water in future and hence they made the provision of a pond near every village, tanks in or near temples, etc.. The whole idea behind this was that whenever there is a shortage of water due to drought etc., people may not suffer and they may use the water available in ponds, tanks etc.
7. Unfortunately, people have forgotten the wisdom of our ancestors and that is why some greedy people for their personal interest and to make money have filled up most of these ponds, tanks etc. and have constructed buildings thereon with the result that in most parts of

India, there is a terrible water shortage and people are suffering terribly, particularly, in the summer season both in rural and urban areas.

8. When water is not available, people come to the streets and there are chakka jams (road blocks), riots etc. to awaken the government authorities to take some measures to make available the necessity of life to the general public called water.

9. In many cities, in many colonies, people get water for half an hour in a day and sometimes not even that e.g. in Delhi, Tamil Nadu, Rajasthan, U.P., Northeast etc. In large parts of rural areas there is a shortage of water for irrigation and drinking purpose. Rivers in India are drying up, ground water is being rapidly depleted and canals are polluted. The Yamuna in Delhi looks like a black drain. Several perennial rivers like the Ganga and Bahamputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting over-pumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels. Farmers are having a hard time finding ground water for their crops e.g. in Punjab. In many places there are serpentine queues of exhausted housewives waiting for hours to fill their buckets of water. In this connection, John Briscoe has authored a detailed World Bank report, in which he has mentioned that despite this alarming situation there is widespread complacency on the part of the authorities in India.

10. This Court in *State of Orissa vs. Government of India & Another*¹, in which one of us [Hon'ble Mr. Justice Markandey Katju] was a member, while agreeing fully with the reasoning and directions of the other Hon'ble Judge on the Bench Hon'ble Altamas Kabir, J., has recommended to the Central Government to immediately constitute a body of eminent scientists in the field who should be requested to do scientific research in this area on a war footing to find out scientific ways and means of solving the water shortage problem in the country. It was also recommended that the said body shall be given all the financial, technical and administrative help by the Central and State Governments for this purpose. The help and advice of foreign scientific experts and/or Indian scientists settled abroad who are specialized in this field may also be taken, since the solution to the problem will not only help India but also foreign countries which are facing the same problem, some of which may already have progressed significantly in this area. The present known methods e.g. distillation or reverse osmosis are very expensive. We have to find out cheaper methods and this is possible only by scientific research on a war footing. The said body of scientists was requested to, inter alia, perform the following tasks:

“(i) to find out an inexpensive method or methods of converting saline water into fresh water.

(ii) to find out an inexpensive and practical method of utilizing the water, which is in the form of ice, in the Himalayas.

(iii) to find out a viable method of utilizing rain water.

(iv)to utilize the flood water by harnessing the rivers so that the excess water in the floods, may instead of causing damage, be -5- utilized for the people who are short of water, or be stored in reservoirs for use when there is drought.”

11. In the said decision the Court also observed:

“42. It is indeed sad that a country like India which solved the problem of town planning 6000 years ago in the Indus Valley Civilization and which discovered the decimal system in Mathematics and Plastic Surgery in Medicine in ancient times, and is largely managing Silicon Valley in U.S.A. today has been unable to solve the problem of water shortage till now. In my opinion there is no dearth of eminent scientists in the field who can solve this problem, but they have not been organized and brought together and not been requested by the Central and State Governments to solve this problem, nor given the facilities for this.

43. In my opinion the right to get water is a part of right to life guaranteed by Article 21 of the Constitution. In this connection, it has been observed in *Delhi Water Supply & Sewage Disposal Undertaking and Anr. vs. State of Haryana and Ors.*²:

"Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which water is put being drinking, it would be mocking nature to force the people who live on the bank of a river to remain thirsty"

44. Similarly in *Chameli Singh & Ors. v. State of U.P. & Ors.*³ this Court observed:

".....Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society.

All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights"

In *Hinch Lal Tiwari vs. Kamala Devi*⁴, this Court observed (vide paragraphs 13 and 14):

"13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the

benefit of public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated February 25, 1999 confirmed by the Commissioner on March 12, 1999. Consequently, respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. they will, however, be permitted to take away the material of the houses which they have constructed on the said land. If respondents 1 to 10 do not vacate the land within the -7- said period the official respondents i.e. respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting environment in regard to which this Court has repeatedly expressed its concern. Such measures must begun at the grass-root level if they were to become the nation's pride.”

12. Let notice be issued to the Secretary, Ministry of Science and Technology, Union of India which will file its counter affidavit within four weeks stating what measures are being taken to solve the water shortage problem in the country and for implementing the recommendation of Hon'ble Markandey Katju, J. in the aforesaid decision in *State of Orissa vs. Government of India & Another*⁵.

13. The application for impleadment is allowed. Let notice issue to the newly added States.

14. List this matter on 28th April, 2009.

¹*JT 2009 (2) SC 233*,

²[*JT 1996 (6) SC 107; 1996 (2) SCC 572*]

³[*JT 1995 (9) SC 380; 1996 (2) SCC 549*]

⁴*AIR 2001 SC 3215*

⁵*JT 2009 (2) SC 233*