

RAJASTHAN HIGH COURT

D. M. Singhvi

Vs.

Union of India

Civil Writ Petn. No. 3955 of 2004
(Shiv Kumar Sharma and K. S. Rathore, JJ.)

02.05.2005

JUDGEMENT

Shiv Kumar Sharma, J.

1. The petitioner, a former Chief Engineer and now an agriculturist, in the instant public interest petition, prays that the share of water of inhabitants of Rajasthan should be safeguarded by ensuring the compliance of the provisions of Punjab Re-organization Act, 1966 (in short '1966 Act') and the Bhakhra Beas Management Board be directed to take over the administration, maintenance and operation of the irrigation work and Head Work as per Section 79 of the said Act from the State of Punjab.

2. Brief resume of the facts is that on the recommendations of the Irrigation Commission 1903 efforts for diversion of water from Sutlaj river in Punjab to the Arid area in Bikaner was made on January 29, 1955. An agreement was entered into between the partner States and the Minister of Works and Power Government of India whereby 15.85 MAF of surplus water of the Ravi and the Beas came to be allocated between the concerned States. In the year, 1953 the Canal water and Power Commission prepared a preliminary project for the utilization of the Sutlej water to serve the desert area of Rajasthan. After surveying the area the Government of Rajasthan finalized the project in 1956 and commenced the work some time in 1958. In 1966 the State of Punjab was bifurcated into two separate States viz. Punjab and Haryana vide Reorganization Act. On October 1, 1967 a Board was constituted and Bhakhra Management Board was renamed as Bhakhra Beas Management Board. In 1974 Ministry of Energy Department of Power framed Bhakhra Beas Management Board Rules in exercise of powers conferred by Section 79 of the 1966 Act. The

Bhakhra Beas Management Board vides notification dated April 11, 1974 constituted a technical Committee and a Water Account Reconciliation Committee by a further notification dated December 12, 1974. A further Irrigation Technical Sub Committee was constituted on December 17, 1974. The Central Government noted in the notification dated March 24, 1976 that in 1955 the allocation of water in the states was as follows:-

Punjab	7.20 MAF
Rajasthan	8.00 MAF
Jammu and Kashmir	0.65 MAF
Total :	15.85 MAF

3. Aggrieved by the notification dated March 24, 1976 the State of Punjab issued a notice under Section 80, C. P. C. and filed a Civil suit before the Supreme Court under Article 131 of the Constitution challenging the validity of Section 78 of the 1966 Act on the ground that it entranced upon the field reserved for the State Legislature and the order passed by the Government of India. During the pendency of the civil suit discussions were held at highest level for amicable solution to the problem and ultimately a Tripartite agreement was entered into in the presence of Prime Minister of India on December 31, 1981 on the basis of flow of 1951 to 1960 and it was estimated at 20.56 MAF and after deducting transit loss of 3.13 the net surplus of Ravi Beas water was estimated as 17.17 as against the figure of 15.85. The MAF of 17.17 was allocated as under :-

Share of Punjab	4.22 MAF
Share of Haryana	3.50 MAF
Share of Rajasthan	8.60 MAF
Quantity earmarked for Delhi	0.20 MAF
Share of J. and K.	0.65 MAF
Total :	17.17

As per this agreement the suits filed by the Government of Haryana and Punjab were withdrawn and the provisions of sections 78, 79 and 80 of 1966 Act attained finality. As per the provisions of 1966 Act the functions of the Bhakhra Beas Management Board (for short 'BBMB') includes the regulation of supply of water from Bhakhra Nangal Project and Beas Projects to the States of Haryana, Punjab and Rajasthan. In spite of agreement share of each states the Technical Sub Committee of the BBMB the

State of Punjab created problem in releasing water to other states particularly the State of Rajasthan. The State of Punjab has also threatened by passing a unanimous resolution on the floor of the house for stoppage of supply of water to other states including Rajasthan. The State of Rajasthan is getting water from Punjab to Gang Canal, Bhakhra Canal and Indira Gandhi Canal since long. The water to these canals is supplied through the Headworks at Ferozpur, Ropper and Harike. The crops in Rajasthan mainly depend on the supply of water from these Head works.

4. The petitioner in the writ petition averred that about 785000 cultivators situated in the command area shall suffer if the water supply as threatened by the State of Punjab on the floor of the house is stopped. In these circumstances the petitioner stated that the control of BBMB should be entrusted to Central Government and not to any particular party state. The main grievance of the petitioner is that the administration, maintenance and operation of the Head works as envisaged in Reorganization Act should be with the Central Government for distribution of water, since the State of Punjab is utilizing more water than earmarked for them because the control of Head Works at Ferozpur, Ropar and Harike is with the Sub Committee of BBMB.

5. The respondent No. 4 State of Punjab filed counter affidavit raising preliminary objection regarding maintainability of writ petition. It is stated that the adjudication of the disputes raised in the writ petition are constitutionally barred and thus the objections impinges on the jurisdiction of the court. The water disputes barred under section 11 of the Inter State River Water Disputes Act, 1956 (for short 'Act of 1956') read with Article 263 of the Constitution. The petitioner seeks an order direction to the effect that the share of water should be safeguarded and thus the writ petition is liable to be dismissed. It is further averred that the prayer in the writ petition require an adjudication into the respective shares of the riparian states. The rights of the State of Rajasthan is not a riparian states in the interstate water and the justification for maintaining the share of water requires taking into account various equities and this is precisely the role of a Tribunal constituted under the Act of 1956. Therefore the dispute is barred to be raised in any court. The petitioner has attempted to accuse State of Punjab of short delivery and breach of the rule of priority in sharing the waters distributed from the Harike Head Works, as a remedial measure the petitioner has asked for transfer of management of Headworks from the State of Punjab to the BBMB. These issues are water disputes and are matters appearing to be connected with or relevant to water dispute within the meaning of Section 2(c), 3 and 5(1) of the

Act, 1956, as the same relate to use distribution and control of the waters or implementation of the agreement. Adjudication of these issues is barred by section 11 of the Act of 1956. If Rajasthan were to raise such issues by filing a complaint under Section 3 of the Act 1956 the State of Punjab would deal with the allegations before the appropriate Authority. The correctness or otherwise of these allegations cannot be decided in writ jurisdiction as it involves production of both documentary and oral evidence to substantiate the pleas. Section 79 of the 1966 Act in so far as it relates to the Administration, Management and operation of Head Works lying within the territory of Punjab is *ultra virus* of the constitution as the Parliament wholly lacked competence to enact said provision. The Ravi and Beas Rivers are not inter State river in relation to Haryana and Rajasthan. As per the Constitutional scheme sharing of interstate waters is either by agreement of states or in the event of disputes by resolution through the mechanism provided in the Act. The Parliament cannot by Legislation fix shares in respect of the water to be shared by the states cannot a fortiori allocate shares to non riparian states. The Parliament cannot exercise any legislative control with regard to the regulation and developments of these rivers under Entry 56 of the Union List in the Seventh Schedule. The Parliament assumes competence to legislate in respect of interstate rivers. In the first instance it has to make a declaration as contained in entry 56 and established the Board etc. for the purpose. Admittedly no such declaration has been made, therefore Section 79 clearly *ultra virus* the legislative competence of Parliament. As a protem measure on the division of the undivided State of Punjab in to the States of Punjab (as presently constituted) Haryana and Himachal the distribution had to be confined to the riparian states. Any allocation in favor of a non riparian state is *per se* unconstitutional. The Apex Court in Re : Cauvery Water Disputes Tribunal (1993 Suppl. (1) SCC 96 : (AIR 1992 Supreme Court 522) has rightly observed that "enactment must declared" that regulation under the control of the Union is expedient in the public interest. The BBMB constituted by the notification dated October 1, 1967 has not exercised any administrative or operational control over the Head Works in Punjab and therefore there is no reason for transferring the Head Works as the State of Punjab is effectively and properly managing these work and has been doing so since the very beginning. The petitioner has no *locus standi* since only the State can raise the water dispute. In the Affidavit it is also stated that on July 13, 2004 the Punjab Legislature under Articles 245 and 246 of the Constitution has enacted the Punjab Termination of Agreements Act 2004 terminating Section 3 and discharging the Government of Punjab from all obligations arising from the agreement under the changed circumstances which include declining

quantity of water in the Ravi and Beas Rivers subject to the non obstante provisions of Section 5 the aforesaid provisions are subject to Section 5 of the Act 2004 which protects all existing and actual utilization through the existing systems in the State of Haryana and Rajasthan including National Capital Territory of Delhi. The State of Rajasthan cannot rely upon any of the agreement relating to Ravi and Beas waters. In the counter affidavit the respondent No. 4 also stated that Hon'ble the President of India on July 27, 2004 has referred the Act, 2004 to the Supreme Court for its opinion under Article 143 of the Constitution. The Hon'ble Supreme Court issued notice to Union of India, States of Punjab, Rajasthan, Haryana, Himachal Pradesh, Jammu and Kashmir, Government of NCT Delhi. On August 2, 2004 and the State of Punjab filed its statements of facts and law on September 13, 2004. The said reference is pending adjudication before the Hon'ble Supreme Court. The State of Rajasthan is contesting the constitutional validity of the legislation in the aforesaid presidential reference. It was further stated that State of Rajasthan was perfectly aware that the one of the important response to the petition would be that the agreement under which this petition is founded has been nullified by the aforementioned legislation. Since the State of Rajasthan is contesting the legality of that Legislation dispute which is pending in Presidential reference cannot be raised before this High Court.

6. The State of Punjab (respondent No. 4) moved an application under Article 226 of the Constitution read with Order 7 Rule 11 Civil Procedure Code seeking dismissal of the writ petition on the following grounds :-

- (i) Writ petition raises Water Disputes - barred under Section 11 of the Act of 1956 read with Article 262 of the Constitution.
- (ii) The disputes raised in the writ petition fall within the ambit of Article 131 of the Constitution.
- (iii) Petitioner has no *locus standi* since only the State can raise Water disputes.
- (iv) The 1966 Act does not contemplate vesting of the Headworks.
- (v) This Court does not have territorial jurisdiction to entertain the writ petition.

7. Mr. A. K. Ganguli, learned Senior Advocate canvassed that the petitioner seeks to raise 'Water Disputes' of the kind that are barred under Section 11 of the Act of 1956 read with Article 262 (2) of the Constitution. In prayer (i) the petition the petitioner seeks share of waters should be safeguarded and in prayer (ii) it is prayed that BBMB should be directed to take over the administration, maintenance and operation of the

irrigation works and Headworks. His prayer would necessarily require adjudication into the shares of the States having regard to inter alia, the legal right of a non riparian State like Rajasthan to receive water, equitable consideration in the apportionment of water priority of 'in basin needs' and also the effect of the Punjab Termination of Agreements Act, 2004 on sharing of waters of the inter states rivers Ravi, Beas and Sutlaj. It would precisely be the role of a Water Tribunal constituted under the Act of 1956, if the State of Rajasthan raises these disputes by following the procedure laid down under the said Act. It is further contended that in substance by filing the present writ petition the petitioner seeks to enforce the rights, if any of the State of Rajasthan and allegedly corresponding duties of the State of Punjab, Government of India and its constituent BBMB. Adjudication of these disputes would therefore fall within the exclusive jurisdiction of the Supreme Court of India under Article 131 of the Constitution. The petitioner could not be permitted to circumvent the said provision by approaching this Court. Recently the petitioner cannot maintain the proceedings under Article 131 of the Constitution. More over BBMB is a constituent of the Central Government and not a juristic person. If the State of Rajasthan had any grievance it was open to the State to take appropriate measures. The petitioner cannot serve the purpose of the State. It is also contended that the Headworks of Harike, Ferozpur and Ropar are indisputably located within the State of Punjab and are vested in the State of Punjab. The property so vested in the State of Punjab cannot be handed over to the BBMB except by a transfer under the agreement between the Government of Punjab and the Government of India under Article 298 of the Constitution. The provisions of Section 79 (1) of the 1966 Act do not provide for acquisition of property in the Headworks of Harike, Ferozpur and Ropar. The said Headworks are located in the State of Punjab, this Hon'ble Court does not have the territorial jurisdiction to entertain the writ petition.

8. Refuting the contentions it is urged on behalf of the petitioner that the petition does not involve any matter connected with the sharing of water or the rights in the water interstate rivers or matter pertaining to any agreement between the State or any other matter which can fall into the category of water disputes. The petitioner has not raised any question which pertains to the delivery of water to the State. The petitioner has only prayed that the provisions made in the law enacted by the Parliament at the time of reorganization of the then State of Punjab into two states should be given effect to. As per section 79 of the 1966 Act the administration. Maintenance and operation of the Headworks should be under the control of the BBMB. But the State of Punjab

continue to keep control of the Headworks. It is further urged that Section 79 of the 1966 Act has never been declared *ultra vires* of the Constitution. The State of Punjab had instituted a civil suit before the Hon'ble Supreme Court in the year 1979 under Article 131 of the Constitution of India challenging the validity of Section 78 of 1966 Act on the ground that it entrenched upon the field reserved for the state Legislature and order passed by the Government of India dated March 24, 1976. In the said suit no prayer was made to declare the provisions of Section 79 of the 1966 Act *ultra vires*. The State of Punjab subsequently withdrawn the suit and therefore Sections 78 and 79 of the 1966 Act attained finality. It has been further contended that the petitioner had not raised the question of right of share of the water nor it claimed additional water for the State of Rajasthan or for anyone else. Nevertheless the contentions raised vis-a-vis riparian states and law governing the rights of riparian states are not in conformity with the factual condition and the legal position on the subject. It is also argued that BBMB was constituted by notification dated October 1, 1966 and has been exercising its function allocated to it by Section 79. The BBMB is deprived of discharging the responsibility on account of stubborn attitude of Punjab in not handing over the control of the Headworks to BBMB in spite of the provisions in the law. The writ petition relates to the welfare of the cultivators of Rajasthan. The petitioner being the resident of Rajasthan is entitled to invoke the jurisdiction of this Court seeking direction for implementation of the provisions of 1966 Act. It is next urged that the petitioner is a cultivator under the command area of Indira Gandhi Nahar Pariyojna and suffering from the uncertainty and reduction in the quantity of water on account of control on the operation etc. on Headwork's being retained by the State of Punjab against the law. The Parliament had conceived such situation and in order to avoid such partisan action it has provided for creation of impartial Central agency by the name BBMB which is vested in the administration and control on the Headwork's to ensure delivery of Water to the concerned beneficiary without fear and favor. The petitioner has *locus standi* to file the instant petition and to seek redressal of its sufferings. What the petitioner apprehends or has been suffering is that on account of the Headwork's being under the control of the State of Punjab the delivery of water to the concerned users is effected which is against the theme of modalities envisaged in the 1966 Act.

9. We have pondered over the submissions and carefully scanned the material on record.

10. There can be no subject more vital for mankind than water. It is key to survival of

life on earth. A well-managed society is one that knows how to treat its water with care, with prudence and with respect. Above all, with a sense of its being a universal asset. But this universal asset, once considered as a bounty of the nature, is being fast depleted. Leading experts on water resources have been warning that the world is heading towards 'a water shock' Scarcity in recent years has turned water from an abundant resource into an expensive commodity. Water is now being referred to as 'BLUE GOLD'. Rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources being a gift of nature should be made freely available to everyone. The rural women in Rajasthan still require to trudge several miles to fetch water of progressively diminishing purity and in smaller quantities to meet the family's need. Their Lordships of the Supreme Court in *State of Karnataka v. State of*¹ indicated in para 178 that under the constitutional scheme in our country right to water is a right to life and thus a fundamental right.

11. Having closely scrutinized the writ petition we notice that it does not involve any matter that can fall into the category of 'water dispute' as defined in Section 2 (c) of Act of 1956. Section 2 (c) provides thus:-

"Water dispute" means any dispute or difference between two or more State Governments with subject to-

(i) the use, distribution or control of the waters of or in any inter state river or river valley, or

(ii) the interpretation of the terms of any agreement relating to the use, distribution or control of such waters or the implementation of such agreement, or

(iii) the levy of any water rate in contravention of the prohibition contained in Section 7.

An analysis of the averments in the petition shows that petitioner has not raised any question which pertains to the delivery of water to the State. The petitioner has only prayed that the share of water of inhabitants of Rajasthan should be safeguarded by ensuring the compliance of the provisions contained in 1966 Act and the BBMB be directed to take over from the State of Punjab, the administration, maintenance and operation of the irrigation work and Head Works as per Section 79 of 1966 Act.

12. The BBMB was constituted by notification dated October 1, 1966 and under Section 79 of 1966 Act the administration, maintenance and operation of the Head

Works ought to have been under the control of BBMB, but it is the State of Punjab and not the BBMB that presently controls the Head Works.

13. At this juncture it will be useful to refer to Section 79 of 1966 Act which reads as under:-

"79. (1) The Central Government shall constitute a Board to be called the Bhakra Management Board for the administration, maintenance and operation of the following works, namely:-

- (a) Bhakra Dam and Reservoir and works appurtenant thereto,
- (b) Nangal Dam and Nangal-Hydel Channel up to Kotla Power House;
- (c) the irrigation headworks at Rupur, Harike and Ferozepur;
- (d) Bhakra Power Houses:

Provided that the administration, maintenance and operation by the said Board of the generating units of the Right Bank Power House as have not been commissioned shall commence as and when any such unit has been commissioned;

- (e) Ganguwal and Kotla Power Houses;
- (f) Sub-stations at Ganguwal, Ambala, Panipat, Delhi, Ludhiana, Sangrur and Hissar and the main 220 KV transmission lines connecting the said sub-stations with the power stations specified in clauses (d) and (e); and
- (g) such other works as the Central Government may, by notification in the Official Gazette, specify.

(2) The Bhakra Management Board shall consist of-

- (a) a whole-time Chairman and two whole-time members to be appointed by the Central Government;
- (b) a representative each of the Governments of the States of Punjab, Haryana and Rajasthan and the Union territory of Himachal Pradesh to be nominated by the respective Governments or Administrator, as the case may be;
- (c) two representatives of the Central Government to be nominated by that Government.

(3) The functions of the Bhakra Management Board shall include-

- (a) the regulation of the supply of water from the Bhakra Nangal Project to the States of Haryana. Punjab and Rajasthan having regard to-
 - (i) Any agreement entered into or arrangement made between the Governments of the existing State of Punjab and the State of Rajasthan, and

(ii) The agreement or the order referred to in sub-section (1) of Section 78;
(b) the regulation of the supply of power generated at the power houses referred to in sub-section (1) to any Electricity Board or other authority in charge of the distribution of power having regard to-

(i) Any agreement entered into or arrangement made between the Governments of the existing State of Punjab and the State of Rajasthan ,

(ii) The agreement or the order referred to in sub-section (1) of Section 78, and

(iii) any agreement entered into or arrangement made by the existing State of Punjab or the Punjab electricity Board or the State of Rajasthan or the Rajasthan Electricity Board with any other Electricity Board or authority in charge of distribution of power before the appointed day in relation to the supply of power generated at the power houses specified in sub-section (1);

(c) The construction of such of the remaining works connected with the Right Bank Power House as the Central Government may specify;

(d) Such other functions as the Central Government may after consultation with the Governments of the States of Haryana, Punjab and Rajasthan, entrusted to it.

(4) The Bhakra Management may employ such staff as it may consider necessary for the efficient discharge of its functions under this Act;

Provided that every person who immediately before the constitution of the said Board was engaged in the construction, maintenance or operation of the works in sub-section (1) shall continue to be so employed under the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise :

Provided further that the said Board may at any time in consultation with State Government or the Electricity Board concerned and with the previous approval of the Central Government return any such person for service under that Government or Board.

(5) The Governments of the successor States and of Rajasthan shall at all times provide the necessary funds to the Bhakra Management Board to meet all expenses (including the salaries and allowances of the staff) required for the discharge of its functions and such amounts shall be apportioned among the successor States, the State of Rajasthan and Electricity Boards of the said States in such proportion as the Central Government may, having regard to the benefits to each of the said States or Boards, specify.

(6) The Bhakra Management Board shall be under the control of the Central Government and shall comply with such directions, as may from time to time, be given to it by that Government.

(7) The Bhakra Management Board may with the approval of the Central Government delegate such of its powers, functions and duties as it may deem fit to the Chairman of the said Board or to any officer subordinate to the Board.

(8) The Central Government may, for the purpose of enabling the Bhakra Management Board to function effectively, issue such directions to the State Governments of Haryana, Punjab and Rajasthan and the Administrator of the Union territory of Himachal Pradesh or any other authority, and the State Governments, Administrator or authority shall comply with such directions.

(9) The Bhakra Management Board may, with the previous approval of the Central Government and by notification in the Official Gazette, make regulations consistent with this Act and the rules made there under, to provide for-

(a) Regulating the time and place of meetings of the Board and the procedure to be followed for the transaction of business at such meetings;

(b) Delegation of powers and duties to the Chairman or any officer of the Board;

(c) The appointment, and the regulation of the conditions of service, of the officers and other staff of the Board;

(d) Any other matter for which regulations are considered necessary by the Board."

14. A bare perusal of Section 79 demonstrates that BBMB is an impartial Central agency created under the scheme of 1966 Act. Administration and control on the Head Works vested in BBMB to ensure delivery of water to the concerned beneficiary without fear and favor. The petitioner, being an agriculturist is an aggrieved party and entitled to ventilate the grievance of the farmers of Rajasthan. The State of Punjab does not have any right to keep control of Head Works and to flout the mandate of Section 79 of 1966 Act. It is only the BBMB which is entitled to keep Administration and Control of Head Works in order to safeguard the fundamental rights to water of the petitioner and other farmers of the State of Rajasthan and this Court has jurisdiction to protect the fundamental rights of the inhabitants of Rajasthan under Article 226 of the Constitution. In our considered opinion subject matter of the instant writ petition is not barred under Section 11 of Act of 1956 read with Article 262 of the Constitution. The reliefs sought in the writ petition do not fall within the ambit of

Article 131 of the Constitution. We thus do not see any merit in the application of State of Punjab moved under Article 226 of the Constitution read with order VII Rule 11 Civil Procedure Code and it stands accordingly dismissed.

15. Ratio indicated in *Gandhi Sahitya Sangh Trust v. Union of India*,² is not applicable to the facts of the instant case. In that case the appellant trust had concealed the fact of dismissal of earlier writ petition filed in connection with the functioning of the Cauvery Water Disputes Tribunal and the State of Karnataka whose cause was said to be espoused by the appellant did not itself choose to challenge any of the orders of the Tribunal. Under these circumstances it was held that the appellant Trust did not have *locus standi* to object to the proceedings before the Tribunal. Whereas in the instant case orders of any Tribunal are not under challenge. What the petitioner requires is to issue direction to implement provisions of Section 79 of 1966 Act. Since the petitioner and other similarly situated farmers of the State of Rajasthan have fundamental right to water, this Court has to address the issue from humanitarian point of view. Water is the property of the people of India and is dedicated to their use. Whenever and wherever this fundamental right is infringed, the Court is duty bound to intervene. Looking to the facts that entire areas and population in Jodhpur and in districts Churu, Sri Ganganagar, Hanumangarh, Bikaner, Jaisalmer and part of Barmer are famine stricken and depend upon their supply of drinking water for human and animal population on the waters of Indira Gandhi Nahar, therefore, Control of regulation structures should be under BBMB.

16. For these reasons we in order to safeguard the interest of the inhabitants of Rajasthan for their share of water, direct the Bhakhra Beas Management Board (respondent No. 2) to take over from the State of Punjab (respondent No. 4) the administration, maintenance and operation of the irrigation Works and Head Works as per Section 79 of the Punjab Re-organization Act 1966. The Union of India (respondent No. 1) and BBMB (respondent No. 2) shall ensure compliance of this order within thirty days. There shall be no order as to costs.

Order accordingly.

Cases Referred.

1. A. P. (2000) 9 SCC 572 : (AIR 2001 SC 1560)
2. 2004 (9) SCALE 20 : (AIR 2005 SC 80)