KACHCHH JAL SANKAT NIVARAN SAMITI & ORS. A

v.

STATE OF GUJARAT & ANR.

(Civil Appeal No. 2957 of 2013)

JULY 15, 2013 B

[CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ.]

Judicial Review – Of policy decision – Scope of – Held: Court has very limited jurisdiction to interfere with policy decision – It can interfere with the policy only if it is inconsistent with the constitutional provisions or is arbitrary or irrational – The Court does not have expertise to lay down policy for distribution of water within State – There being no judicially manageable standards for allocation of water, it shall be appropriate to leave it to be decided by the experts of the irrigation management system and water resources management. C D

Constitution of India, 1950 – Articles – 38(2) and 39(b) – Decision of allocation of water within the State – Challenged as having been taken in disregard to Arts.38(2) and 39(b) – Held: The challenge is misconceived. E

Narmada Water Disputes Tribunal was constituted to decide the Inter-State dispute for sharing of water of river Narmada. The Tribunal after hearing the references of Union of India and States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan, by its final award allocated Narmada water at Sardar Sarovar Dam site, to the different States. It allocated 9.00 Million Acre Feet (MAF) water to the State of Gujarat, against its claim for 20.73 MAF of water, which included 6.57 MAF of water required for the District of Kutch. The State of Gujarat, out of the 9.00 MAF water, allocated 0.15 MAF of water. F G

 H

A **The appellants aggrieved by the amount of water allocated to the Kutch district, filed Writ Petition (PIL), which was dismissed by the High Court.**

In appeal to this Court, the appellants *inter alia* contended that allocation of amount of water to the District of Kutch was in disregard to the constitutional provisions u/Arts. 39(b) and 38(2).

B

Dismissing the appeal, the Court

C **HELD: 1. There is wide separation of powers between the different limbs of the State and, therefore, it is expected of this Court to exercise judicial restraint and not encroach upon the executive or legislative domain. What the appellants in substance are asking this Court to do is to conduct a comparative study and hold that the policy of distribution of water is bad. The Court does not have the expertise or wisdom to analyse the same. It entails intricate economic choices and though this Court tends to believe that it is expert of experts but this principle has inherent limitation. True it is that the court is entitled to analyse the legal validity of the different means of distribution, but it cannot and will not term a particular policy as fairer than the other. The matters affecting the policy and requiring technical expertise be better left to the decision of those who are entrusted and qualified to address the same. This Court shall step in only when it finds that the policy is inconsistent with the Constitutional laws or arbitrary or irrational. [Para 9] [592-F-H; 593-A]**

D

E

F

G **2. The Court does not have the expertise to lay down policy for distribution of water within the State. It involves collection of various data which is variable and many a times policy formulated will have political overtones. It may require a political decision with which the Court has no concern so long it is within the Constitutional limits.**

H

Even if it is assumed that this Court has the expertise, it will not encroach upon the field earmarked for the executive. If the policy of the Government, in the opinion of the sovereign, is unreasonable, the remedy is to disapprove the same during election. In respect of policy, the Court has very limited jurisdiction. A dispute shall not be appropriate for adjudication by this Court when it involves multiple variable and interlocking factors, decision on each of which has bearing on others. [Para 10] [593-B-D]

3. The State of Gujarat had emphasized the need of more water for the District of Kutch before the Narmada Water Disputes Tribunal and projected all those pleas which have been projected before this Court by the appellants, but the same did not find favour with the Tribunal and the Tribunal allocated only 9.00 MAF water instead of 22.02 MAF water claimed before the Tribunal. Therefore, they were left with little amount of water. In the face of it, less amount of water than what has been claimed by the appellants was allocated for the District of Kutch. The allocation of water is a matter of policy and how much water is to be released from the canal and for that matter a particular area or how much water is to be left with other regions are matters which require delicate balancing and consideration of complex social and economic consideration. There being no judicially manageable standards, it shall be appropriate to leave it to be decided by the experts of the irrigation management system and water resources management. [Para 12] [593-G-H; 594-A-C]

4. The State Government projected the need of Kutch area before the Tribunal but the same did not appeal to it. In fact, the award of the Tribunal has got the seal of approval of this Court and the State Government having accepted the decision of the Tribunal, its action cannot

A be termed as arbitrary only on the ground that all those factors were not considered while making allocation to the district. [Para 13] [594-D-E]

5. It is not correct to say that while making B distribution, the State Government did not take into account the policy underlying Article 39(b) of the Constitution. The distribution of material resources is to be effected in the manner to subserve the "common good" and this expression is not to be confined for the C Kutch District only but to the other regions of the State also. [Para 13] [594-E-F]

6. The complaint of the appellants of non-adherence to the mandate of Article 38(2) of the Constitution is also misconceived. The State is to strive to minimize the D inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst group of people residing in different parts or engaged in different vocations. But this does not mean that for achieving that, E the State Government has to apply it on the basis of the number of people residing in different parts only. Other factors just cannot be forgotten. [Para 14] [594-G-H; 595-A]

F 7. There being no judicially manageable standards for allocation of water, any interference by this Court would mean interference with the day-to-day functioning of the State Government. In view of separation of powers, this Court cannot charter the said path. [Para 15]

G *Tata Cellular vs. Union of India* (1994) 6 SCC 651: 1994 (2) Suppl. SCR 122 – referred to.

Case Law Reference:

1994 (2) Suppl. SCR 122 referred to Para 7

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2957 of 2013.

From the Judgment and Order dated 04.10.2005 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 3358 of 1999.

Altaf Ahmed, R. S. Suri, Deepayan Mandal, Pallavi Tayal Chadela, Chanchal Kumar Ganguli for the Appellants.

Shyam Diwan, Hemantika Wahi for the Respondents.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD,J. 1. Appellant no. 1, Kachchh Jal Sankat Nivaran Samiti, claims to be a non-political organization established with the object amongst others to work to alleviate the District of Kutch of its perennial water scarcity and to mitigate the resultant problems faced by the inhabitants and the residents. Other appellants have also interest in the cause espoused by appellant no. 1. Aggrieved by the meager allocation of water from Sardar Sarovar Project to the District of Kutch they approached the Gujarat High Court in a public interest litigation inter alia praying for issuance of a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent, the State of Gujarat and its functionaries to allocate more water from Sardar Sarovar Project to the District of Kutch. By the impugned order the prayer made by the appellants has been rejected and against the dismissal of the writ petition they are before us with the leave of the Court.

2. Water is essential for survival of universe. It is not available for human use in plenty and hence disputes existed between various States for its sharing. In the year 1969, the Government of India in exercise of its power under Section 4 of the Inter-State Water Disputes Act, 1956 constituted Narmada Water Disputes Tribunal (hereinafter referred to as "the Tribunal"), to decide the Inter-State dispute of sharing of

A water of river Narmada. The Tribunal handed over its award on 16th of August, 1978. As provided under Section 5(3) of the Inter-State Water Disputes Act, (hereinafter referred to as "the Act"), the Union of India and the States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan made references. Those
B references were heard by the Tribunal which gave its final award on 7th of December, 1979. It was published on 12th of December, 1979 in the Extraordinary Gazette of the Government of India. While giving the award, the Tribunal considered the issue pertaining to allocation of water, height
C of the dam, hydrology and other related issues. As regards the issue of allocation of Narmada water at Sardar Sarovar Dam site, the Tribunal allocated 9.00 Million Acre Feet (for short "MAF") to the State of Gujarat whereas 18.25 MAF, 0.50 MAF and 0.25 MAF were allocated to the States of Madhya
D Pradesh, Rajasthan and Maharashtra respectively. It is relevant here to state that the State of Gujarat laid claim for 20.73 MAF of water out of the total demand of 22.02 MAF of water before the Tribunal, which included 6.57 MAF water for reclaiming and/ or irrigating 12.17 lakh acres of land of the District of Kutch under Zone XI-C, Banni and Ranns. However, the claim of the
E State of Gujarat was turned down by the Tribunal on its finding that these areas are barren and sparsely populated. Its soil is highly saline having very low permeability and vertical permeability of nearly nil. It has high ground water table and impervious layer near the ground water surface, high
F evaporation and low rainfall. In this way the Tribunal rejected the claim of State of Gujarat for irrigating 11 lakh acres of land in Banni and Ranns areas and as stated, allocated 9.00 MAF of water. How the water allocated to each of the States shall be utilised was left to the choice of the State Government. As
G it was not a case of plenty, the State Government of Gujarat out of 9.00 MAF water, allocated 7.94 MAF water for irrigation and 1.06 MAF water for domestic and industrial use and because of the limited water allocation, the proportionate water requirement for Kutch region was worked out as 0.15 MAF.

H

3. The appellants are aggrieved by aforesaid meager allocation of water and, according to them, the State Government has not distributed the water keeping in mind the Directive Principles of the State Policy as enshrined under Article 39(b) of the Constitution of India which inter alia obliges the State to make the policy in such a way that the material resources of the community are so distributed as best to subserve the common good. Appellant further contended that by meager allocation of water, the State Government also did not carry out its obligation as mandated under Article 38(2) of the Constitution which casts a duty on it to strive to minimise the inequalities in income and make an endeavour to eliminate inequalities in the status, facilities and opportunity amongst individuals and groups of people residing in different areas of the State. The plea of the State Government is that out of the limited water allocated to it by the Tribunal, it had made the best use of that. It has also been pointed out that the allocation complained of is not static and shall vary from time to time and the quantity of water allocated for Kutch District may increase. It has also been averred that while making allocation to Kutch District, the State Government has kept in view the interest of all concerned and also the factors relevant for the purpose. According to the respondent-State Government, it laid a claim for 20.73 MAF of water out of the total demand of 22.02 MAF water before the Tribunal which included 6.57 MAF for Kutch, but only 9.00 MAF water was allocated and the award of the Tribunal having been approved by the Supreme Court, the State Government has to distribute the limited water allocated to it. It has also been pointed out that the allocation made for the District of Kutch has been increased in later years.

4. The High Court has analysed in detail the pleas raised by the parties and declined to interfere with the same, inter alia, on the grounds that the decision involved balance of competing claims of the natural resources and there is no judicially manageable standard for adjudication for allocation of water

A in favour of any region within the State. While doing so, the High Court observed as follows:

> "In our opinion, the above observations would answer the submissions advanced by the learned counsel of the petitioners. We are not here to weigh the pros and cons
B of the policy or scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, unless it is arbitrary or violative of any constitutional, statutory or any other provision of law. Needless to say that the petitioners have
C not challenged these decisions on the ground that as they are arbitrary nor have they pointed out that they are unconstitutional or violative of statutory or any other provisions of law. The Government, in the instant case, decided to accept the award of the NWDT which is based
D on the expert opinion and now we are asked to test the utility, beneficial effect etc. of the policy on the basis of the affidavit filed before us....."

5. The High Court further observed that the issue raised
E requires determination of the choice of priorities and it is not subject to judicial review. The High Court, in this connection, observed as follows:

> "29. Apart from that, determining the choice of priorities and formulating perspective thereof is a matter of policy
F and it is not within our domain to interfere with the sole question of efficacy or otherwise of such policy unless the same is "vitiated" of in violation of any provisions or the statute or Constitution of India."

G 6. Mr. Altaf Ahmed, Senior Counsel appears on behalf of the appellants and takes a stand that the appellants do not seek determination of appropriate quantity of water for the District of Kutch but the plea is that the policy of distribution is based on irrelevant consideration and, therefore, subject to judicial
H review. According to him, it lacks transparency and exhibits

extreme prejudice and discrimination against Kutch District. According to him, while making the policy, the relevant factors were ignored and irrelevant and extraneous factors have been taken into account. He points out that the State of Gujarat while claiming large share of water from river Narmada before the Tribunal relied heavily upon the need of Kutch District to get more water but after the award, did not stick to its stand after the allocation was made by the Tribunal. He has brought to our notice the comparative data regarding allocation of water to the various districts and points out that the same indicates discriminatory allocation of water to the Kutch area. Mr. Ahmed draws our attention to Article 39(b) of the Constitution of India and submits that the State while dealing with the distribution of water did not respect the constitutional philosophy that the State shall distribute the material resources as best to subserve "common good". It has also been contended that the natural resources are held by the Government as trustee for the benefit of the citizens and, therefore, the State Government is required to manage and utilize them in the best interest of the society. While making distribution, according to Mr. Ahmed, the State Government totally lost sight of Article 38(2) of the Constitution which stipulates that the State shall endeavor to minimize inequalities in the facilities and opportunities amongst people.

7. On account of all these infirmities, the impugned policy deserves to be looked into by this Court in exercise of its power of judicial review, contends Mr.Ahmed. Reliance has been placed in support of aforementioned contention to a decision of this Court in the case of *Tata Cellular vs. Union of India* (1994)6 SCC 651. Our attention has been drawn to the following passage from the said judgment:

> **"70.** It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial

review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down"

8. Mr. Shyam Diwan, Senior Counsel representing the State of Gujarat states that the issue regarding allocation of water to the districts of Gujarat is a matter of policy and the scope of judicial review in this regard is narrow. According to him, the policy has been framed after consulting technical experts in the best interest of the people and, therefore, does not call for any interference by this Court in exercise of its power of judicial review.

9. We have given our most anxious consideration to the rival submissions and we find substance in the submission of Mr. Diwan. We are conscious of the fact that there is wide separation of powers between the different limbs of the State and, therefore, it is expected of this Court to exercise judicial restraint and not encroach upon the executive or legislative domain. What the appellants in substance are asking this Court to do is to conduct a comparative study and hold that the policy of distribution of water is bad. We are afraid, we do not have the expertise or wisdom to analyse the same. It entails intricate economic choices and though this Court tends to believe that it is expert of experts but this principle has inherent limitation. True it is that the court is entitled to analyse the legal validity of the different means of distribution but it cannot and will not term a particular policy as fairer than the other. We are of the opinion that the matters affecting the policy and requiring technical

expertise be better left to the decision of those who are entrusted and qualified to address the same. This Court shall step in only when it finds that the policy is inconsistent with the Constitutional laws or arbitrary or irrational. A

10. Candidly speaking, we do not have the expertise to lay down policy for distribution of water within the State. It involves collection of various data which is variable and many a times policy formulated will have political overtones. It may require a political decision with which the Court has no concern so long it is within the Constitutional limits. Even if we assume that this Court has the expertise, it will not encroach upon the field earmarked for the executive. If the policy of the Government, in the opinion of the sovereign, is unreasonable, the remedy is to disapprove the same during election. In respect of policy, the Court has very limited jurisdiction. A dispute, in our opinion, shall not be appropriate for adjudication by this Court when it involves multiple variable and interlocking factors, decision on each of which has bearing on others. While disposing of an interlocutory application in this very appeal by order dated 22nd of July, 2011, this Court observed as follows: B C D E

> "We are of the opinion that the prayer for allocation of adequate water in Kuchchh district is not one which can be a matter of judicial review. It is for the executive authorities to look into this matter. As held by this Court in *Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr.* (2008) 1 SCC 683, there must be judicial restraint in such matters." F

11. We are in respectful agreement with the view aforesaid.

12. The State of Gujarat emphasized the need of more water for the District of Kutch before the Tribunal and projected all those pleas which have been projected before us by the appellants but the same did not find favour with the Tribunal and the Tribunal allocated 9.00 MAF water instead of 22.02 MAF water claimed before the Tribunal. Therefore, they were left with G H

A little amount of water. In the face of it, less amount of water than what has been claimed by the appellants was allocated for the District of Kutch. The allocation of water is a matter of policy and how much water is to be released from the canal and for that matter a particular area or how much water is to be left
B with other regions, in our opinion, are matters which require delicate balancing and consideration of complex social and economic consideration. In our view, there being no judicially manageable standards, it shall be appropriate to leave it to be decided by the experts of the irrigation management system
C and water resources management.

13. The plea of the appellants that those factors which were projected by the State Government itself before the Tribunal are not being adhered to and its action is arbitrary, does not appeal to us. The State Government also projected the need of Kutch
D area before the Tribunal but the same did not appeal to it. In fact, the award of the Tribunal has got the seal of approval of this Court and the State Government having accepted the decision of the Tribunal, its action cannot be termed as arbitrary only on the ground that all those factors were not considered
E while making allocation to the district. As regards the complaint of the appellants that while making distribution, the State Government did not take into account the policy underlying Article 39(b) of the Constitution, we must observe that the distribution of material resources is to be effected in the
F manner to subserve the "common good" and this expression is not to be confined for the Kutch District only but to the other regions of the State also.

14. The complaint of the appellants of non-adherence to
G the mandate of Article 38(2) of the Constitution is also misconceived. The State, in our opinion, is to strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst group of people residing in different parts or engaged in different vocations. But this
H

does not mean that for achieving that the State Government has to apply it on the basis of the number of people residing in different parts only. Other factors just cannot be forgotten. A

15. We are in total agreement with the conclusion and reasoning given by the High Court and we reiterate that there being no judicially manageable standards for allocation of water, any interference by this Court would mean interference with the day-to-day functioning of the State Government. In view of separation of powers, this Court cannot charter the said path. B

16. In the result, we do not find any merit in this appeal which is dismissed accordingly but without any order as to costs. C

Kalpana K. Tripathy Appeal dismissed.