

A

RUSSEL JOY

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 878 of 2017)

B

JANUARY 11, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR
AND DR. D. Y. CHANDRACHUD, JJ.]**

C

Constitution of India – Art. 32 – 121 years old Mullaperiyar dam in the State of Kerala, Chief Engineer of the dam project envisaged the lifetime of the dam for a period of 50 years – Need for assessment of lifespan of Mullaperiyar dam, keeping in view the safety of the citizens especially the persons residing downstream of the river – Writ petition seeking issuance of Writ of Mandamus directing the Government of India to appoint an international agency to study and to adjudge the lifespan of Mullaperiyar Dam and the dam to be de-commissioned within the time period – Held: There has to be a greater degree of disaster management and better preparedness to face any kind of disaster caused by the dam – Issuance of directions to Central Government, State of Kerala as well as State of Tamil Nadu to constitute a separate sub-committee u/s. 9 of the 2005 Act, to exclusively monitor the measures for ensuring a high level of preparedness to face any disaster, occurring from Mullaperiyar Dam – All States to work in harmony with the Central sub-committee – Disaster Management Act, 2005 – ss. 9, 21, 23(4).

D

E

F

State of Tamil Nadu v. State of Kerala and another
[2014] 12 SCR 875 : (2014) 12 SCC 696 – referred to.

Case Law Reference

G

[2014] 12 SCR 875 referred to Para 3

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 878 of 2017.

Under Article 32 of the Constitution of India.

H

Manoj V. George, Ms. Shilpa Liza George, Amit Masih, Kamendra Mishra, Narender Kumar Verma, Advs. for the Petitioner. A

K. K. Venugopal, AG, Ms. Pinky Anand , ASG, Subramonium Prasad, Sr. Adv./AAG, Umavathy, K. V. V. Vijayakumar, Mohan V. Katarke, G. Prakash, Advs. for the Respondents.

The Judgment of the Court was delivered by B

DIPAK MISRA, CJI. 1. This writ petition is preferred by a public spirited person under Article 32 of the Constitution of India praying for issue a Writ of Mandamus directing the Government of India to appoint an international agency with the technical expertise to study and to adjudge the lifespan of Mullaperiyar Dam and ascertain the date/period on which the said dam must be de-commissioned; appoint a High Powered Committee to suggest to this Court to declare a date/time period for de-commissioning of Mullaperiyar Dam; direct the State owning the dam, that is, Tamil Nadu to make financial provisions for damages to life and restoration of environment in the eventuality of a burst of Mullaperiyar Dam before it is de-commissioned, and pass any other order or direction as this Court may deem fit and proper to do so in the facts and circumstances of the case. C D

2. The essential facts which need to be stated for adjudication of this petition are that Mullaperiyar Dam was constructed under a lease agreement executed in the year 1886 between the Maharaja of erstwhile Travancore with the British Secretary of State for Madras Presidency for a duration of 999 years. In pursuance of the said agreement, the dam was constructed across river Periyar in crude lime surky mortar at a time when dam engineering was in its infancy. Periyar river originates from Sivagiri and Western Ghats at an elevation of 2400 meters from the sea level and joins Mullayar river downstream at an elevation of 850 m. It is at this elevated junction, the Mullaperiyar dam was built having a height of 53.6 m (176 ft.) from the foundation and a length of 365.7 m (1,200 ft) for catering to the irrigational needs of the neighbouring State of Tamil Nadu under the said lease agreement. E F G

3. There is an assertion in the petition that the Chief Engineer of the dam project, Mr. John Pennycuick envisaged the lifetime of the dam for a period of 50 years. As 121 years have expired from the date of the construction of the dam, the decommissioning of the said dam has become essential and there is need for assessment of the lifespan of the dam H

A regard being had to the safety of the citizens especially the persons residing downstream of the river. There is reference to the litigations filed between the State of Kerala and State of Tamil Nadu for long period and more recently in CS (OS) No. 3 of 2006 before this Court which was decided on 07.05.2014 in *State of Tamil Nadu v. State of Kerala and another*¹ whereby this Court apart from issuing other directions had appointed a Supervisory Committee to take measures pertaining to the dam in emergent situations.

4. It is contended in the petition that because of the efflux of time and the safety of the dam being doubtful, fear remains embedded among the people who reside downstream of the Mullaperiyar dam. That apart, the residents of the area in proximity do not feel safe. In such a situation, as set forth, precautionary steps are required to be taken to protect the life without waiting for a disaster to happen in the form of a dam burst which can be triggered due to multiple reasons. According to the petitioner, due to the differences between State of Kerala and State of Tamil Nadu over the contractual rights over the 1886 lease agreement, they have not taken any steps to mitigate the fear or dispel the threat to life of many citizens who live in the zone of immediate catastrophe. The petition has highlighted a serious concern about the lifespan of the dam. It is contended that if it is treated to be 999, it is a speculation in the realm of impossibility which law does not accept, and is completely averse to it.

5. It is urged that safety and security of the people and that of the nation are of paramount importance and, therefore, the respondents are obligated in law to have concrete safeguards so that there is no irreversible environmental consequences and the fear that affects the bones and brains of the citizens gets vaporised. By no stretch of imagination the lifespan of the dam can be conceived to be 999 years which is the term of the lease deed and there has to be decommissioning of the dam to save the human life. Any kind of hazard that affects the life cannot be allowed to remain. The existence of the dam without necessary assessment is a peril to the people residing in the affected locality and it is also a continuous threat to the environment.

6. As the grievance raised by the petitioner pertains to apprehended cataclysm and unforeseen calamity to human life, it was directed that a copy of the petition to be served on the Union of India.

¹ (2014) 12 SCC 696

7. We have heard Mr. Manoj V. George, learned counsel for the petitioner, Mr. K.K. Venugopal, learned Attorney General for India alongwith Ms. Pinky Anand, learned Additional Solicitor General, for the Union of India, Mr. Subramonium Prasad, learned senior counsel/AAG assisted by Mr. Umavathy, learned counsel for the State of Tamil Nadu and Mr. Mohan V. Katarke alongwith Mr. G. Prakash, learned counsel for the State of Kerala.

A

B

8. Mr. George, learned counsel for the petitioner has raised the following submissions in the course of his argument:-

(i) Non-recording of the findings with regard to lifespan of the Mullaperiyar dam would invite a great man made disaster to the people of the locality and bring in ruination to the atmosphere.

C

(ii) It is the duty of the States as well as the Union of India to dispel and eliminate the fears from the marrows of the persons residing in the downstream areas of the dam.

(iii) It is imperative to have a separate disaster management plan for the said dam keeping in view the special features of the obtaining situation.

D

(iv) If the persons who remain in proximity of the dam or downstream are compelled to live in a state of constant fear, there is flagrant violation of Article 21 of the Constitution of India.

E

9. Mr. K.K. Venugopal, learned Attorney General for India has emphasised on paragraphs 229 and 230 of the judgment rendered by a five-Judge Bench in *State of Tamil Nadu (supra)*. Relying on the same, it is submitted by him that a Committee has been constituted to keep a close watch on the safety and recommend measures which are necessary to be carried out by the State of Tamil Nadu and further, the Committee has been given the liberty to take appropriate steps and issue necessary directions to the two States, namely, Tamil Nadu and Kerala or any one of them, if so required, for the safety of the people residing in downstream areas in an emergent situation. He would submit that the command given in the last sentence of the paragraph 230(iii) is binding on all.

F

G

10. Keeping in view the rival submissions, we think it appropriate to reproduce paragraphs 229 and 230 from the *State of Tamil Nadu (supra)*. They read thus:-

H

A “229. However, to allay the apprehensions of Kerala- though none exists - about the safety of the Mullaperiyar dam on restoration of the FRL to 142 ft., a 3-Member Supervisory Committee is constituted. The Committee shall have one representative from the Central Water Commission and one representative each from the two States – Tamil Nadu and Kerala. The representative of B the Central Water Commission shall be the Chairman of the Committee. The Committee will select the place for its office, which shall be provided by Kerala. Tamil Nadu shall bear the entire expenditure of the Committee.”

C 230. The powers and functions of the Supervisory Committee shall be as follows:

(i) The Committee shall supervise the restoration of FRL in the Mullaperiyar dam to the elevation of 142 ft.

D (ii) The Committee shall inspect the dam periodically, more particularly, immediately before the monsoon and during the monsoon and keep close watch on its safety and recommend measures which are necessary. Such measures shall be carried out by Tamil Nadu.

E (iii) The Committee shall be free to take appropriate steps and issue necessary directions to the two States - Tamil Nadu and Kerala – or any of them if so required for the safety of the Mullaperiyar dam in an emergent situation. Such directions shall be obeyed by all concerned.

F (iv) The Committee shall permit Tamil Nadu to carry out further precautionary measures that may become necessary upon its periodic inspection of the dam in accordance with the guidelines of the Central Water Commission and Dam Safety Organisation.”

G 11. According to the learned Attorney General appropriate steps have been taken. He has produced the Statement dated 11.1.2018 made by Mr. Gulshan Raj, the Chairman of the Supervisory Committee/Chief Engineer, Dam Safety Organisation, Central Water Commission, Ministry of Water Resources, River Development and Ganga Rejuvenation, Government of India. The Statement reads as follows:-

H “As per the summary conclusion of the Empowered Committee, contained in the Hon’ble Supreme Court’s judgement of 2014 on

Mulla Periyar Dam (MPD), the MPD is hydrologically, structurally and seismically safe. No new development has taken place and reported upon since 2014 after the judgement of Hon'ble Supreme Court in the case. The Supervisory Committee has not noticed any distress in the MPD.” A

12. The heart of the matter is whether adequate measures have been taken with regard to safety of the dam. As we perceive from the aforesaid paragraphs from the reported decision, appropriate steps have already been provided by the larger Bench while dealing with the suit filed under Article 131 of the Constitution of India. We have also studiedly perused the statement of the Chairman of the Supervisory Committee. At this stage, Mr. George, learned counsel for the petitioner reiterating the stand with regard to the disaster management, has commended us to Section 2(e) of the Disaster Management Act, 2005 (for brevity, “the 2005 Act”). Learned counsel would highlight that it is obligatory that safety of the dam or the life span of the dam is different than the disaster management to meet unforeseen, sudden and emergent situation. In this regard, he has assiduously emphasised on the concept of corrosion of mental state due to constant fear in the minds of the people who reside downstream area or areas in proximity of the dam. B C D

13. To appreciate the said submission, we may refer to Section 2(d) of the 2005 Act. It is as follows:- E

“2(d) “disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;” F

14. Section 2(e), which is the dictionary clause defines “Disaster Management”. The same is as follows:-

“2(e) “disaster management” means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for— G

- (i) prevention of danger or threat of any disaster;
- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;

H

- A (iii) capacity-building;
(iv) preparedness to deal with any disaster;
(v) prompt response to any threatening disaster situation or disaster;
- B (vi) assessing the severity or magnitude of effects of any disaster;
(vii) evacuation, rescue and relief;
(viii) rehabilitation and reconstruction;”
- C 15. We may also note with profit the language employed in Section 11 that deals with “National Plan”. It is useful to reproduce sub-section (3) of the said Section, which is as follows:-
“11. National Plan.-
(3) The National Plan shall include—
- D (a) measures to be taken for the prevention of disasters, or the mitigation of their effects;
(b) measures to be taken for the integration of mitigation measures in the development plans;
- E (c) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster situations or disaster;
(d) roles and responsibilities of different Ministries or Departments of the Government of India in respect of measures specified in clauses (a), (b) and (c).”
- F 16. Section 23 deals with “State Plan” and sub-section (4) of the same is as under:-
“23. State Plan.-
(4) The State Plan shall include,—
- G (a) the vulnerability of different parts of the State to different forms of disasters;
(b) the measures to be adopted for prevention and mitigation of disasters;
- H (c) the manner in which the mitigation measures shall be integrated with the development plans and projects;

(d) the capacity-building and preparedness measures to be taken; A

(e) the roles and responsibilities of each Department of the Government of the State in relation to the measures specified in clauses (b), (c) and (d) above;

(f) the roles and responsibilities of different Departments of the Government of the State in responding to any threatening disaster situation or disaster.” B

17. Similarly, Section 31 deals with “District Plan” and sub-section (3) of the same is as under:-

“(3) The District Plan shall include- C

(a) the areas in the district vulnerable to different forms of disasters;

(b) the measures to be taken, for prevention and mitigation of disaster, by the Departments of the Government at the district level and local authorities in the district;

(c) the capacity-building and preparedness measures required to be taken by the Departments of the Government at the district level and the local authorities in the district to respond to any threatening disaster situation or disaster; D

(d) the response plans and procedures, in the event of a disaster, providing for- E

(i) allocation of responsibilities to the Departments of the Government at the district level and the local authorities in the district;

(ii) prompt response to disaster and relief thereof; F

(iii) procurement of essential resources;

(iv) establishment of communication links; and

(v) the dissemination of information to the public;

(e) such other matters as may be required by the State Authority.” G

18. On a perusal of the scheme of the 2005 Act, we find that there has to be an appropriate disaster management plan at different levels.

H

A 19. Mr. K.K. Venugopal, learned Attorney General for India would submit that the Central Government is determined to ensure the safety of the dams across the country including the subject dam and also implement the provisions of the 2005 Act with utmost despatch in letter and spirit.

B 20. Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu has drawn our attention to paragraph 205 of *State of Tamil Nadu* (supra). The said paragraph reads thus:-

C “205. Moreover, this Court appointed EC to assure itself about the safety of the Mullaperiyar dam. The EC, we must say, has completed its task admirably by thoroughly going into each and every aspect of the safety of Mullaperiyar dam. We do not find any merit in the objections of Kerala challenging the findings and conclusions of the EC on hydrologic safety, structural safety and seismic safety of the dam. The findings of EC with elaborate analysis of reports of investigations, tests and studies lead to one and only one conclusion that there is no change in the circumstances necessitating departure from the earlier finding on the safety of Mullaperiyar dam given by this Court in 2006 judgment. As a matter of fact, there is no change in circumstances at all much less any drastic change in circumstances or emergent situation justifying the reopening of safety aspect of Mullaperiyar dam which has been determined by this Court in the earlier judgment.”

D 21. Mr. Mohan V. Katarke, learned counsel for the State of Kerala would contend that in the said suit, the Court was only concerned with the increasing of water level of the Mullaperiyar Dam.

F 22. As far as the safety measures of the Mullaperiyar Dam are concerned, the directions given in *State of Tamil Nadu* (supra) shall be binding on all. However, there has to be a greater degree of disaster management and better preparedness to face any kind of disaster caused by the dam. Therefore, the concern that has been pronouncedly propounded by Mr. George, learned counsel appearing for the petitioner, cannot be brushed aside. It is to be borne in mind that life without basic needs of life and liberty replete with fear, is like a concept without structure, a house without a plinth, a metaphor not conveying an idea, a sea without waves or, for that matter, an idea constantly remaining in the realm of speculation. Life and liberty are to be understood, projected

H

and protected in concrete terms. It is because fear brings numbness to A
passion of purpose and converts an active individual a quitter who resigns
himself to fate. History records with sorrow and agony how civilisations
have perished mostly due to fear. Citizenry growth stands still, for culture
and creativity take the back seat when fear reigns. Some may say that
there is no fear but the man who is so told, may appear to be consoled B
though his heart or mind may not be convinced. Therefore, it is the duty
of the States involved to create a sense of confidence in the real sense
of the term and ensure that adequate measures have been taken so that
in any event safety of the individuals shall not be affected and well
preserved and their life and liberty remain protected. To speak differently,
steps taken should reflect convincing and concrete perceptibility and not C
merely a consolatory shadow.

23. In view of the aforesaid, we think it appropriate to issue the
following directions:-

- (i) The Central Government shall constitute a separate Sub- D
Committee under Section 9 of the 2005 Act, to exclusively
monitor the measures for ensuring a high level of preparedness
to face any disaster, which is unpredictable in relation to
Mullaperiyar Dam.
- (ii) The State of Kerala as well as the State of Tamil Nadu shall E
also constitute separate Sub-Committees under Section 21 of
the 2005 Act, to exclusively monitor the measures for ensuring
a high level of preparedness to face any disaster occurring
from Mullaperiyar Dam. They must provide for a separate
dispensation under the State plan as envisaged under Section F
23(4) of the 2005 Act.
- (iii) The State of Tamil Nadu, which has been directed to cooperate
as per the decision in *State of Tamil Nadu* (supra), shall also
have a Sub-Committee for disaster management and with a
specific plan.
- (iv) Constitution of all sub-committees shall be in addition to the G
existing Committees. All the States shall work in harmony
with the Central Sub-Committee and ensure high level
preparedness to face any disaster occurring due to Mullaperiyar
Dam, so that life and property are not damaged.

H

A 24. Our directions for constitution of exclusive Sub-Committees for the disaster management for the Mullaperiyar Dam does not anyway remotely suggest that there is any doubt about the safety or life span of the dam, as is alleged in the writ petition. We have said so only keeping in view the consequences of unpredictable disaster, which have astutely been canvassed before us.

B 25. With the aforesaid directions and observations, the writ petition is disposed of. There shall be no order as to costs.

Nidhi Jain

Writ Petition disposed of.