

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Monday, the Twenty First day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and
The Hon`ble Mr.Justice M.V.MURALIDARAN

WMP (MD) No.14722 of 2016
IN
WP (MD) No.20558 of 2016

DR.D.A.PRABAKAR

... PETITIONER/PETITIONER

Vs

1 THE STATE OF TAMIL NADU,
REP. BY ITS PRINCIPAL SECRETARY,
PUBLIC WORKS DEPARTMENT,
FORT.ST.GEORGE, CHENNAI 600 009.

2 THE STATE WATER RESOURCES MANAGEMENT AGENCY,
REP. BY ITS DIRECTOR / MEMBER SECRETARY,
SWARMA, PUBLIC WORKS DEPARTMENT,
GOVERNMENT OF TAMILNADU,
TARAMANI, CHENNAI 600 113.

3 THE DISTRICT COLLECTOR,
TIRUNELVELI DISTRICT, TIRUNELVELI 627 009.

4 THE MANAGING DIRECTOR,
STATE INDUSTRIES PROMOTION CORPORATION OF
TAMILNADU, 19A, RUKMANI LAKSHMIPATHY ROAD,
POST BOX 7223 EGMORE, CHENNAI 600 008.

5 THE COMMISSIONER,
MAANUR PANCHAYAT UNION, MAANUR,
TIRUNELVELI DISTRICT.

6 THE CHAIRMAN / MANAGING DIRECTOR,
PRATHISHTA BUSINESS SOLUTION PVT. LTD.,
CO-PACKERS FOR PEPSI COLA COMPANY,
SIPCOT INDUSTRIAL GROWTH CENTRE,
GANGAIKONDAN VILLAGE,
MAANUR TALUK, TIRUNELVELI.

7 THE MANAGING DIRECTOR,
SOUTH INDIA BOTTLING CO(P)LTD.,
CO-PACKERS FOR COCA COLA COMPANY,
SIPCOT INDUSTRIAL GROWTH CENTRE,
GANGAIKONDAN VILLAGE, MAANUR TALUK,
TIRUNELVELI DISTRICT.

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of interim injunction restraining the Respondent No.4 from supplying the river water to the Respondents 6 and 7 for manufacturing beverages or value added products of drinking water or drinking water under name and style of mineral water or soft drinks, and consequently forbear the respondent the Respondent No.5 from renewing the license issued to the Respondent No.6 and 7, pending disposal of the WP(MD) No.20558 of 2016.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.ASWIN RAJA SIMMAN, Senior Counsel for M/S.T.LAJAPATHI ROY, Advocate for the petitioner and of MR.AAYIRAM K.SELVAKUMAR, Government Advocate for R1 to R3 and R5 and of MR.N.ADITHYA VIJAYALAYAN, Advocate for R4 and the Court made the following order:-

(Order of the Court was made by **S. NAGAMUTHU, J**)

The petitioner claims to be the Secretary of the Tirunelveli District Consumer Protection Association and also a practising Advocate. The 4th respondent is an undertaking of the Government of Tamil Nadu and it is a public limited company, registered under the Companies Act, 1956, wholly owned by the Government of Tamil Nadu. This Court is informed that the specific objective of the 4th respondent is to play a catalytic role in the promotion and development of micro and small industries and hastening the industrial dispersal throughout the State of Tamil Nadu.

2.The respondents 6 and 7 have entered into agreements with the 4th respondent and established their industries in the SIPCOT Industrial Growth Centre, Gangaikondan Village, Maanur Taluk, Tirunelveli District and they are manufacturing soft drinks known as "COCA COLA" and "PEPSI COLA" and when they established their manufacturing Units in the said industries for manufacturing COCA COLA and PEPSI COLA soft drinks, the 4th respondent has assured to supply them water from Tamirabarani River. According to the said arrangement, the 4th respondent takes water from Tamirabarani River and supplies 9,00,000 Litres of water to the 6th respondent industry and 15,00,000 litres of water to the 7th respondent industry, per day, at the cost of 37.5 paise per litre.

3.The petitioner, in a larger public interest of the people of Tirunelveli and Thoothukudi Districts, who are the beneficiaries of Tamirabarani River and its tributaries, has come up with this writ petition to forbear the respondents 1 to 5 from supplying Tamirabarani River Water to respondents 6 and 7, either for the preparation of soft drinks or drinking water, under the name of mineral water or soft drinks. The petitioner has also come with a

miscellaneous petition in WMP(MD)NO.14722 of 2016, seeking for an interim injunction to restrain the 4th respondent from supplying Tamirabarai River water to respondents 6 and 7 for manufacturing the above drinks, pending disposal of the writ petition.

4. When the writ petition and the miscellaneous petition came up for hearing on 25.10.2016, learned Government Advocate took notice on behalf of respondents 1 to 5 and this Court ordered notice to respondents 6 and 7, for the hearing on 10.11.2016. But, it is reported by the Registry that notice could not be served on the respondents 6 and 7 for the hearing on 10.11.2016. The matter is listed today. Respondents 1 to 5 have not filed any counter, so far. The learned Government Advocate sought for time to file counter, both in the main writ petition as well as in the miscellaneous petition. But, the learned counsel for the petitioner submitted that if interim order is not granted, as prayed for, the livelihood of the people of Tirunelveli and Thoothukudi Districts, more particularly the farmers of these districts, whose lands are irrigated by Tamirabarani River, would be worst affected, more particularly because of the existing severe drought in both the districts. Considering the said submission, we heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 5.

5. Learned counsel for the petitioner highlighted that during the current year, due to failure of monsoons, there is no sufficient water storage in any of the dams in the State of Tamil Nadu. He further submitted that so far as Papanasam Dam, through which Tamirabarani River gets water, is concerned, there is no sufficient water storage in it. So far as the other tributaries are concerned, according to the learned counsel, in those tributaries also there is no sufficient flow of water. As a result, according to the learned counsel, there is severe drinking water scarcity and people are suffering a lot in both the districts and the agricultural operations have almost come to a standstill.

6. On the legal issues involved, the learned counsel submitted that in the SIPCOT Complex at Gangaigondan village, there are about 27 industries established, for which the 4th respondent is drawing 18,40,871 litres of water, per day, from Tamirabarani River and supplying the same to these industries. There is yet another SIPCOT Complex in Thoothukudi, wherein there are 73 industries, for which 15,89,769 litres are being drawn from Tamirabarani River and supplied to those industries, per day. The learned counsel would submit that there was no study conducted by the 4th respondent before agreeing to supply such a huge quantity of water drawn from Tamirabarani River to these industries, including the rights of the farmers, who are depending upon agriculture and the people of these two districts, whose drinking water needs are satisfied only from Tamirabarani River water.

7.The learned counsel further submitted that the tributaries of Tamirabarani River, namely, Peyar, Kallar, Karaiyar, Pambar and Servalar also do not have sufficient water flow due to failure of monsoons and this has also not been taken into account by the 4th respondent. The learned counsel would further point out that 'National Sanctuary - Spotted Deer Park Protected Area' is located near the SPICOT Industrial Complex in Tirunelveli, as per G.O.Ms.No.150 Department of Environment and Forest, dated 01.10.2013. He would further submit that the spotted deer in the above park would also be worst affected due to scarcity of water, because considerable portion of water is sucked from Tamirabarani River and supplied to respondents 6 and 7. The learned counsel further submitted that the Hon'ble Supreme Court had been taking, consistently, the view that rivers, forests and minerals and such other resources, which constitute a nation's natural wealth, are not be frittered away and exhausted by any one generation and every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way and it is in the interest of mankind and in the interest of nation. The Hon'ble Supreme Court in **M.C.Mehta v. Kamal Nath - (1997) 1 SCC 388**, has reiterated the 'Public Trust Doctrine' and has held that such doctrine primarily rests on the principle that certain resources like air, sea, water and forests have such a great importance to the people as a whole and that it would be wholly unjustified to make them a subject of private ownership. (The expression 'private ownership' needs to be emphasized). The Supreme Court has further held that the said sources being a gift of nature, they should be made freely available to everyone, irrespective of the status in life and the doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. (The expression 'commercial purposes' also needs to be emphasized).

8.Referring to these judgments, the learned counsel for the petitioner submitted that in the instant case, because huge quantity of water is sucked by the 4th respondent to supply to respondents 6 and 7 for commercial purposes, the general public at large, living in these two districts and the farmers of these districts, are worst affected. The learned counsel further submitted that atleast considering the severe drought now prevailing in these districts, interim order of injunction, restraining the 4th respondent from supplying water, drawn from Tamirabarani River, to respondents 6 and 7 for the purpose of manufacturing soft drinks and mineral water should be granted.

9.Learned Government Advocate submitted that he needs time to get further instruction from the respondents 1 to 5 to file counter affidavits. Though the learned Government Advocate made a fervent request for time to file counter, considering the urgency in the matter and considering the sufferings which the people in these

two districts are going to experience due to severe drought, we are unable to adjourn the case without granting interim injunction.

10. We find *prima facie* justification in the submissions made by the learned counsel for the petitioner. We have gone through the affidavit filed by the petitioner in support of the writ petition and also other documents filed thereof. Undoubtedly, it is crystal clear that now the whole of State of Tamil Nadu is under severe drought, due to failure of the monsoons and it is an accepted fact that almost all the reservoirs in the State of Tamil Nadu are the victims of failure of monsoons and there is no sufficient water. As a matter of fact, agricultural operations in many districts in the State have come to a halt. So far as the Districts of Tirunelveli and Thoothukudi are concerned, the river Tamirabarani and its tributaries are the only source of irrigation for several hectares of agricultural lands in these two districts. River Tamirabarani and its tributaries mainly depend upon the two monsoons, known as south-west monsoon and north-east monsoon. Because of the total failure of these two monsoons till today, there is likelihood of severe drought in these two districts. As has been held by the Hon'ble Supreme Court, it is the duty of the State as well as this Court to ensure the livelihood and the welfare of the general public, by making these natural resources available to them, instead of diverting the same for commercial purpose. We are also of the view that stopping supply of water by the 4th respondent to respondents 6 and 7, drawing from Tamirabarani River, for the purpose of manufacturing soft drinks and mineral waters, at least for a limited period, would be in the interest of general public. We find that there is urgent and impelling need to grant interim injunction for a limited period of eight weeks.

11. Having regard to all the above, we grant interim injunction, as prayed for, for a period of eight weeks. Notice.

Registry is directed to list the matter 18.01.2017.

sd/-
21/11/2016

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Sub-Assistant Registrar (C.S.)

TO

- 1 THE PRINCIPAL SECRETARY, STATE OF TAMIL NADU,
PUBLIC WORKS DEPARTMENT, FORT.ST.GEORGE, CHENNAI 600 009.
- 2 THE STATE WATER RESOURCES MANAGEMENT AGENCY,
REP. BY ITS DIRECTOR / MEMBER SECRETARY,
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IN WP(MD) No.20558 of 2016
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mms/skn/sar3/23.11.16/p6/8c