

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS OF ALL THE PROCEEDINGS FROM THE GOVERNMENTAL AUTHORITIES - RESPONDENTS HEREIN. DIRECT THE R1 TO R12, HEREIN TO CONSIDER AND TAKE NOTE OF SEVERAL REPRESENTATIONS OF THE PETITIONERS HEREIN, AS PER ANN-C, DT.22.11.06, VIDE ANN-G DT.28.4.2007, VIDE ANN-N, DT.16.6.2007, AND ANN-R, DT.16.6.2007, RESPECTIVELY AND TAKE SUITABLE ACTIONS THEREON. DIRECT THE R3, HEREIN, TO FORTHWITH RECALL/WITHDRAW THE ORDER/INTER DEPARTMENTAL COMMUNICATION NO.CI.9007 ID.2006 DT.15TH MAY 2007, VIDE ANN-K, DIRECTING TO TAKE IMMEDIATE ACTIONS TO IMPLEMENT THE MENTIONED DECISION OF THE GOVERNMENT. DIRECT AND DECLARE THAT IT IS IMPERMISSIBLE AND IN COMPETENT FOR THE STATE GOVT. TO PERMIT OR DIVERT WATER FROM RIVER KALI, DOWNSTREAM OF DANDELI, FOR PURPOSES OTHER THAN POWER GENERATION IN TERMS OF GOVT. OF INDIA AND PLANNING COMMISSIONS, PERMISSIONS AND CLEARANCES, TO FACILITATE OR BENEFIT ANY PRIVATE PARTIES & ETC.

THIS W.P. HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.08.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **ACTING CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

Petitioner No.1 claims to be an Association of Members of medical, educational, legal, business fraternity, NGOs and retired Government servants who are local residents of Dandeli City and the

surrounding areas. The Petitioner No.2 is a registered Trust, formed by residents of the area with an object to take up the matters of public importance affecting the city and its residents. One of the objects of petitioner No.2 Trust is to sustain and protect the environment and to balance the Dandeli City's ecosystem. In this petition, which is filed as public interest litigation, the petitioners have questioned the action of the State Government to part with water resources of Kali river for commercial use by respondent No.13 M/s. Bharath Sugar Mills (hereinafter referred to as 'the Company' for short).

2. As per averments made in the petition, Western Ghats are home to several endangered and listed plant species. Kali river flows through the thick and dense rain forest of western ghats. The State High Level Clearance Committee (SHLCC) is constituted under the Karnataka Industries

Facilitation Act, 2002, which is enacted with an object to facilitate industrial development in the State of Karnataka. Section 5 of the Act provides that approvals granted by the SHLCC shall be binding on all the authorities.

3. The Company intended to establish a Sugar Mill at Haliyal Taluk. It therefore, approached the SHLCC for approval of the project. The SHLCC after conducting a detailed study and after consultation with various organs of the State, granted permission on 10.10.2005 to the Company to set up a Sugar Mill comprising 5000 ECD of sugar unit and 28 MW Power Generation Plant as well as a 45 KLPD Distillery unit. The SHLCC also permitted the Company to draw 4545 KLD water from Kali river .

4. The State Government by a Notification allocated sugarcane area to the Company and fixed

the crushing capacity of the Company at 2500 TCD and the requirement of sugarcane was fixed at 4.525 Lakh Metric tones. Thereafter on 14.03.2006, a Corrigendum was issued modifying the crushing capacity to 3,500 TCD and sugarcane requirement of the Company was fixed to 6 to 7 Lakhs per metric tonne. The State Government, thereafter, by an order dated 15.04.2006 permitted the Company to set up 3,500 TCD sugar unit and 28 MW generation plant and 45 KLPD Distillery unit.

5. The consent was granted on 05.07.2006 for establishment of Sugar Mill by Karnataka State Pollution Control Board, in pursuance of which, an agreement was executed between the Company and Public Works Department of Government of Karnataka for laying the pipeline for supply of water from Kali River. The Public Works Department by a communication dated 22.11.2006 authorized the

Company to lay down the pipeline from Kali River to its Factory.

6. The Karnataka Industrial Area Development Board allotted land measuring 226 acres and 17 guntas in favour of the Company for setting up of a Sugar Mill and the possession of the same was handed over to the Company. A lease-cum-sale agreement in respect of land was executed on 08.01.2007. The Department of Labour, Government of Karnataka issued a Certificate of Registration under Contract Labour (Regulation and Abolition) Act, 1970. The Secretary, Water Resources Department by an order dated 23.03.2007 permitted the Company to lift water from Kali River subject to conditions mentioned therein.

7. In compliance of the permissions granted to the Company, it has set up a Sugar Mill with crushing

capacity of 6000 MT per day at Hullatti Village and the same became operational in October, 2007. The Company has also set up a distillery unit and a power generation plant, which is generating 31.5 Mega Watts of power.

8. A suit seeking the relief of permanent injunction was filed by the members of the petitioner - Association restraining the Company from withdrawing water from Kali River. In the aforesaid civil suit, an ex parte order of injunction was granted which was vacated after hearing the Company on 16.06.2007.

9. The Ministry of Environment and Forest, Government of India by an order dated 02.08.2007 accorded permission to the Company for laying of the pipeline. The State Government by an order passed under Section 2 of the Forest Conservation Act, 1980

dated 09.08.2007 accorded approval for diversion for 1.28 hectares of forest land for laying water supply pipeline and construction of pump house. On 18.08.2007, an environmental clearance was issued by the Forest, Ecology and Environment Department for setting up of the Factory. The Ministry of Environment and Forest also issued a environmental clearance on 18.10.2007 for setting up the distillery.

10. On or about 15.10.2007, the writ petitioners filed challenging permission granted for use of Kali River.

11. Learned Senior Counsel for the petitioner at the outset submitted that the petitioners have confined their grievance only in respect of prayers viz., prayers Nos.1, 2, 3 and 6 and prayer Nos.4 and 5 do not survive on account of efflux of time. It is further submitted that under Secretary of the Government in

the communication dated 15.05.2007 addressed to the Principal Secretaries of various Government Departments has referred to a decision taken by the State Government, which does not exist. It is also submitted that resources of the State cannot be bartered for commercial purpose and making the water available to the Company is in contravention of public trust doctrine. It is contended that water policy framed by the Government of Karnataka is subject to public trust doctrine and the scope of the suit seeking the relief of permanent injunction was confined to cutting the trees and laying of pipelines for withdrawal of water from Kali River. It is further contended that order dated 22.02.2007 is not an order passed by the Government of Karnataka and the petitioners in response to the query made by them under the Right to Information Act, 2005 have been informed that no decision has been taken to provide water to the Company from Kali River. In support of aforesaid

submissions, reliance has been placed on decisions of Hon'ble Supreme Court in ***M.C.MEHTA VS. KAMALNATH AND ORS.***¹ and ***ASSOCIATION OF ENVIRONMENT PROTECTION VS. STATE OF KERALA AND ORS***².

12. On the other hand, learned Additional Government Advocate has submitted that the decision to provide water from Kali River has been taken in accordance with law. It is further submitted that the contention of the petitioners that the decision of the State Government to provide water to the Company from Kali River does not exist is factually incorrect. Learned Additional Government Advocate has produced the records for our perusal. It has been pointed out that the records which are available with the State Government have been produced before this

¹ (1997) 1 SCC 388

² AIR 2013 SC 2500

Court and an affidavit has been filed that the remaining records have been destroyed, as per order of Chief Secretary dated 14.09.2018 and Circular dated 14.09.2018.

13. Learned Senior Counsel for the Company has invited the attention of this Court to the Karnataka Water Policy, 2002 and has submitted that the water is used by the Company only for cooling the turbines and the same is not consumed by the Company. It is pointed out that the water goes back to the river. It is further submitted that the President of the petitioner No.1 Association had filed a suit, in which an order of injunction was vacated by an order dated 16.06.2007. However, the aforesaid relevant fact has been suppressed by the petitioners. It is also submitted that apart from the Company, several other industries are consuming the water viz., Dandeli Fero Alloys, West Coast Paper Mills, Haliyal Water Supply

Jack Well and Shreyas Paper Mills. However, no objection has been made by the petitioners to use of the water by the aforesaid industries.

14. It is urged that Company has incurred an expenditure to the tune of Rs.600 Crores for setting up of the Sugar Mill and the industry provides assistance to 50,000 farmers in a backward area of the State who sell the sugarcane crops to the Company. It is further contended that there is a delay in filing the public interest litigation and therefore, no relief can be granted to the petitioners. It is also contended that a policy decision to set up the sugar mill has been taken by experts after detailed deliberations and therefore, no interference is called for in exercise of powers of judicial review as this Court cannot act as Court of appeal. It is also argued that the Courts do not have expertise to lay down the policy of distribution of water. It is pointed out that

the Company is not only rendering assistance to 50,000 farmers, but is also generating electricity to the extent of 19.5 mega watts per hour. It is submitted that decision to set up Sugar Mill in a backward area of the State in fact, is in public interest. In support of aforesaid submissions, reliance has been placed on decisions in ***R.D. SHETTY v. INTERNATIONAL AIRPORT AUTHORITY***³, ***TATA CELLULAR v. UNION OF INDIA***⁴, ***CHAIRMAN & MD, BPL LTD. v. S.P.GURURAJA & ORS.***⁵, ***N.D. JAYAL & ANR. v. UNION OF INDIA & ORS.***⁶, ***NATURAL RESOURCES ALLOCATION, IN RE, SPECIAL REFERENCE No.1 OF 2012***⁷, ***KUCHCHH JAL SANKAT NIVARAN SAMITI & ORS. v. STATE OF***

³ AIR 1979 SC 1628

⁴ 1994 (6) SCC 651

⁵ 2003 (8) SCC 567

⁶ 2004 (9) SCC 362

⁷ 2012 (10) SCC 1

**GUJARAT & ANR.⁸ and JAL MAHAL RESORTS PVT.
LTD. v. K.P. SHARMA & ORS.⁹**

15. We have considered the rival submissions made on both sides and have perused the record. The Company decided to set up a sugar factory of 500 tonne sugarcane grinding per day, sub-electric scheme of 28 mega watt capacity and also a spirit unit with capacity of 45 litres every day, with a total project cost of Rs.232.60 crores. Accordingly, a proposal was submitted to the State Government. The proposal was discussed in the meeting of SHLCC on 10.10.2005 and it was decided to grant approval to the Company. In pursuance of aforesaid approval, a Government Order dated 15.04.2006 was issued, by which the Company was permitted to establish sugar factory with capacity of 3500 tonne sugarcane grinding everyday, sub-electric scheme with capacity

⁸ 2013 (12) SCC 226

⁹ 2014 (8) SCC 804

of 28 mega watt and also spirit unit with capacity of 45 kilo litres at Hullatti Village, Haliyal Taluk, Uttara Kannada District, along with capital investment of Rs.232.60 crores. The Company was also permitted to lay a separate pipeline between Kali River to its Sugar factory.

16. The Ministry of Environment and Forests, Government of India by an order dated 04.06.2007 permitted diversion of 1.28 hectares of forest land for laying down water supply pipeline and construction of pump house in favour of the Company. The Government of Karnataka by an order dated 09.08.2007 permitted diversion of 1.28 hectares of forest land subject to the condition of compensatory afforestation as well as other conditions mentioned therein.

17. In view of protests by residents of Village Kesroalli and Dandeli Town, the State Government appointed Secretary to the Government, Industries and Commerce Department to visit the places namely Dandeli, Kesroalli and Hullatti and to submit a report with regard to establishment of sugar factory in Haliyal Taluk. The Secretary visited the aforesaid places on 01.03.2007 along with other Officers and held extensive deliberations with various stake holders. The Secretary to the Government, Industries and Commerce Department, took note of the grievances of the stake holders and inter alia made following observations / recommendations:

- i) Sizeable quantity of sugarcane crop is sown in the area which is transported at huge cost and inconvenience is caused to the farmers. Therefore, there is a need to set up sugar factory.

- ii) As far as drawal of water for sugarcane factory is concerned, KPC has confirmed that there will be no dearth of water for Dandeli Town if water is provided for sugar factory.
- iii) Technically, a solution can be found by drawing the water for sugar factory from a place downstream of Dandeli Water-supply jack well, so that there is no apprehension about any adverse impact on water supply for Dandeli Town.

The Secretary to the Government, Industries and Commerce Department, therefore, recommended that permission be granted to the Company to set up the sugar factory expeditiously in the location of its choice namely Hullatti. Announcement of special package for industry regrowth, town development, tourism development was recommended for Dandeli Town. It was also recommended that technical solutions be

identified for drawal of water and laying down the pipelines so that water supply to Dandeli and Haliyal is not adversely affected.

18. The Water Resources Department, Government of Karnataka, by an order dated 22.02.2007 permitted lifting of 3500 cusecs of water per day to the Company subject to the condition that sufficient water is available, without interruption to drinking water and water for irrigation purposes and other legitimate purposes in downstream. The company was also directed to pay water rate.

19. By a communication dated 15.05.2007 sent by the Principal Secretary to Government, Commerce and Industries Department, a copy of which is available in the original record, informed the concerned that the Company has been permitted to set up a factory at Village Hullatti and has also been

permitted to draw water from Kali River from downstream in a manner so as to ensure that water supply to Dandeli and Haliyal is not affected adversely and damages to roads and environment is minimized or is adequately compensated by the industry.

20. Thus, the decision to set up sugar factory has been taken in view of the fact that setting up of the sugar factory is essential in the area as sizeable quantity of sugarcane crop is grown in the area which was being transported by incurring huge expenditure and was causing inconvenience to the farmers. It is also evident that residents of Village Hullatti where the factory has been located, has supported the decision of setting up of the factory. The Company has been permitted to draw water from Kali River subject to the condition that water supply to Dandeli and Haliyal is not affected adversely. The aforesaid

decision appears to have been taken bonafide in the interest of residents of the locality.

21. The utilization of natural resources has to be in a way which is consistent with principles of sustainable development. A balance has to be struck between development and ecology. In case, a commercial venture brings in results which are more beneficial for the people, the benefit to a larger section of the people has to get primacy over comparatively lesser hardship. It is trite law that parameters of judicial review are limited to malafide, bias and arbitrariness.

22. In the instant case, the decision has been taken in larger public interest. The sugar factory which has been already set up and functional provides assistance to 50,000 farmers in the backward area of the State who sell sugarcane crops

to the factory. The water supply needs of Dandeli Town and Haliyal Taluk have also been taken into consideration and the company has been permitted to use water from the river subject to conditions. It does not have unfettered right to draw water from the River. It is also pertinent to note that during pendency of the writ petition, several other industries namely Dandeli Fero Alloys, West Coast Paper Mills, Haliyal Water Supply Jack Well and Shreyas Paper Mills, have been permitted to draw water from the River. No material has been brought before us that on account of drawal of water by the sugar factory, there is any shortage of water supply to residents of Dandeli and Haliyal Taluk. This Court does not have the expertise to correct an administrative decision and cannot substitute its decision. This Court does not have any expertise to lay down the policy of distribution of water. The decision taken by the State Government is neither shown to be malafide or

arbitrary. Therefore, in exercise of powers of judicial review, no interference with the decision of the Government in permitting the Company to set up the industry and to draw water from Kali River is called for.

23. It is settled in law that the doctrine of delay and laches applies to a public interest litigation. In the instant case, the State Government granted approval to establish sugar factory by a Government Order dated 15.04.2006. Thereafter, the grievance of the stake holders was taken into account by Secretary, Commerce and Industries Department, who inspected the Hullatti, Haliyal, Kersoalli and Dandeli on 01.03.2007 and held extensive deliberations with various stake holders and submitted a report in March 2007. The Company thereafter has made an investment of approximately more than Rs.300 crores and the plant is operational since October 2007. The

petition was filed on 15.10.2007. Thus, on the facts of the case, on account of delay and latches on the part of the petitioners, they are not entitled to any relief.

For the aforementioned reasons, we do not find any merit in the petition, the same fails and is hereby dismissed.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**

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