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N.A.A. Upbhokta Sanrakshan Sansthan v State of Rajasthan, 2010

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S.B. CIVIL WRIT PETITION UNDER
ARTICLE 226 OF CONSTITUTION OF
INDIA

D.B. Civil Writ Petition No. 6250/2006

Nagrik Adhikar Avam Upbhokta Sanrakshan
Sansthan

Vs.

The State of Rajasthan & Ors.

02.12.2010

Hon'ble Chief Justice Shri Arun Kumar Mishra

Hon'ble Justice Shri Kailash Chandra Joshi

Mr. Ravi Bhansali with Shri Sampa Laddha, For the
petitioner.

Mr. Anand Purohit, AAG, for the State.

With Mr. Ashim Markandey, X.En., Irrigation
Department

Mr. Akhilesh Rajpurohit on behalf of Mr. M.S.
Singhvi,

For the intervenors.

This is public interest litigation filed by the petitioner
society.

In the writ petition, following prayers have been
made:-

- (i) The writ petition may kindly be allowed.

- (ii) The respondents be directed to shift the water from Nandsamand and Chikalwas dam through khari Feeder in Rajsamand lake.
- (iii) The respondents be further directed to maintain the minimum pool level of 10% at least of total capacity of Rajsamand lake till next rains takes place.
- (iv) The respondents be directed to stop providing water for agricultural purposes until and unless the sufficient water is being transferred Rajsamand lake from Chikalwas Dam and Nandsamand Dam through Khari Feeder.
- (v) The respondents be further directed that the water being given to M/s. J.K. Industries be stopped unless the sufficient water is received in the lake.
- (vi) While providing water for the other amenities including irrigation, the percentage of the water which evaporates

in a year be also assessed prior to its drainage.

- (vii) The directions given in the case of Abdul Rehman may kindly be followed in its true spirit and all the obstructions and Anicuts beyond the permissible height be removed from the Gomati river and catchment area.
- (viii) The respondents be directed for canalization of water from the marble mines to the Rajsamand Lake.
- (ix) Any other appropriate writ, order or direction which this Hon'ble Court deems fit and proper in the fact and circumstances of the case any kindly be passed.
- (x) Cost may be awarded to the petitioner.

It is also pertinent to mention here that for Nandsamand and Chikalwas dams are built upon Banasa River whereas for Rajasamand Lake the feeder river is Gomati River. It is submitted that

retained. Care be also taken by the respondents with respect to the water, which evaporates and waisted due to seepage while keeping in reservoir the water for the purpose of drinking for two year.

It is submitted on behalf of the respondents that amount of Rs. 7.06 crores had been sanctioned for the purpose of maintenance of Khari Feeder out of that amount, amount of Rs. 4.58 crores have been spent on renovation of Khari Feeder and Rs. 2.19 crores have been spent for maintenance of service road of Khari Feeder Maintenance of service road is also necessary. Thus, it cannot be said that a sum of Rs. 8 crores has been unnecessarily spent or diverted for some other purposes. The respondents are making efforts as assured always to ensure that water supply is maintained and water is maintained for two years. At the same time, effort is being made to properly distribute the water for the purpose of drinking, industry and irrigation purposes.

It is appropriate to mention here that earlier in similar matter of Abdul Rehman Vs. State of Rajasthan & ors. 2004(3) DNJ (Raj.) 1245, a

Committee was appointed and the Committee has made certain suggestions for restoring the catchment area to their original shape and use. Following suggestions were made by the Committee as noted in para no. 15 of the report in Abdul Rehmar Vs. State of Rajasthan (supra):-

“(3) Suggestions for restoring the catchment areas to their original shape and use.-

Looking to the site visit by the State level Expert Committee in September, 2003 and General Survey Reports received from the District collectors and Chairmen, District Expert Committee, following suggestions are made:-

1. All land shown as drainage channels like nalla, rivers, tributaries etc. as on 15.08.1947 should be declared as Government land. Any conversions made after 15.08.1947 should be declared illegal. The relevant act and rules must be amended accordingly

2. Demarcation of catchment areas should be done by construction pillars at suitable spacing depending upon size of the catchment area with the help of GT sheet of scale 1:25000 or 1:50000 and/or "Water Shed Atlas of Rajasthan" prepared by the State Remote Sensing Application Centre Jodhpur.
3. Demarcation of drainage channels:-
 - (i) In uninhabited areas this can be done by installing pillars at suitable spacing or by constructing side wall depending upon size of drainage channel and its importance.
 - (ii) In urban and rural areas, the demarcation of drainage channels must essentially be done by constructing side walls of appropriate height and thickness.
4. In the Government owned lakes and other water bodies, the Khatedari rights of

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private persons in their submergence area should be brought under the ownership of the Government.

5. The drainage channels in the catchment areas should be got inspected by engineering professionals and Patwaris, Wherever there are obstructions in nalla, it should be suitably removed by constructing culverts, deepening and widening of nallas etc.
6. Wherever there are any construction activities, which may interfere with the flow of water in drainage channels, no objection certificate must be obtained from the irrigation department.
7. The Anicuts more than 2m height above deepest nalla bed should be identified. The height more than 2m should be dismantled.
8. Wherever residential colonies have been constructed obstructing follow in drainage

channels, the obstruction must be removed and nallas may be depended/constructed.

9. On the periphery of lakes, ponds, water bodies in urban and rural areas, a pucca drain should be constructed on periphery of the water body to prevent entry of domestic, industrial and other water in the water body.
10. For soil conservation work, suitable guidelines must be issued by the "Watershed & Soil conservation Department" so that these works made minimum possible interference with the flow of water.
11. The district administration should specify places for dumping various types of waste material. If any body is found to dump the waste material in other places, particularly drainage channels, then suitable punishment should be provided in the law.

12. The Government should use television, radio and newspapers to create awareness in this matter.

13. Possibility should be explored to use marble slurry as construction material, for filling depressions etc. as has been done for disposal of fly ash from Thermal Power houses.

14. The water quality of water bodies should regularly be monitored.

15. Wherever over-burden or waste materials generated from mines and processing units have been dumped obstructing flow of water in drainage channels; diversion drains and check walls must be constructed. For that purpose special condition should be incorporated in the lease/license agreement."

This Court has directed in Abdul Rehman Vs. State of Rajasthan & ors. (supra) to consider the recommendations of the Committee referred to above

and chalk out a plan to take the effective steps for restoring the catchment areas to their original shape. The Stat authorities were left at liberty for drawing up or taking further steps more effective to fulfill the objects of the directions issued by this Court.

After hearing the learned counsel of the parities, we find that this writ petition be disposed of in terms of the following order:-

- (A) The State Government shall take measures to clean the khari Feeder, which has also been assured on behalf of the State by Shri Purohit and Shri Ashim Markandey, X.En., PWD.
- (B) With respect to Anicuts, the respondents shall examined whether it is necessary and appropriate to remove any Anicut of Gomati River and in case it is found that nay of the Anicuts are to be removed, in that case the Anicuts above 2m height, shall be remove.
- (C) Due to mining activity, inflow of water has been obstructed. The flow of water shall be

canalized. Efforts will be made to canalize the flow of water by constructing proper canals to take it to the Rajsamand lake as agreed between the parties.

(D) With respect to Khari Feeder, the efforts will be made whether any further repair or maintenance is necessary and in case it is found that further maintenance is necessary, it will be done as early as possible and it shall be kept in a proper shape so as to ensure the free flow of the water.

(E) The State will ensure to keep the water level in Rajsamand Lake as far as possible, at least 600 mcft. As agreed to and it will further undertake study whether it can retain the water as suggested in the resolution dated 26.10.2006.

As agreed-to, the following Committee is formed to oversee implementation of directions:-

- (1) Chief Engineer, P.H.E.D.
- (2) Chief Engineer, Irrigation Department.

- (3) The District Collector.
- (4) The Divisional Commissioner of the area.
- (5) The director of Mines.

The said Committee shall examine the matter in the light of the directions issued by this Court and take steps to implement the directions issued by this Court. Let necessary steps be taken within a period of four months.

The writ petition stands disposed of in terms of the aforesaid directions.

(Kailash Chandra Joshi) J.

(Arun Mishra), CJ.

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