

Basheer Vs. State of Kerala

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Court : Kerala

Decided On : Jan-01-2013

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Basheer

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR TUESDAY, THE 1ST DAY OF JANUARY 2013 11TH POUSHA 193 WP(C).No. 24555 of 2012 (T) ----- PETITIONER(S): ----- BASHEER, AGED 4 YEARS, S/O. LATE ALIKUNJU, SECRETARY, PARAPPANANGADI ARAYANKADAPURAM THEERADESA VALLA COMMITTEE, P.O. PARAPPANANGADI, MALAPPURAM DISTRICT, PIN-676303, RESIDING AT KARANAMAN HOUSE, SADDAM BEACH, NEDUVA, PARAPPANANGADI. BY ADVS.SRI.K.T.SHYAMKUMAR SRI.HARISH R. MENON SMT.M.S.KIRAN SRI.K.JAYAKUMAR (SR.) RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF FISHERIES & PORTS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.

2. CHIEF ENGINEER, HARBOUR ENGINEERING DEPARTMENT, MANACAUD P.O., THIRUVANANTHAPURAM, PIN-695009.

3. UNION OF INDIA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, MINISTRY OF WATER RESOURCES, 626, SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI-110001.

4. CENTRAL WATER AND POWER RESEARCH STATION, MATHEMATICAL MODELLING CENTRE, PUNE, MAHARASHTRA, PIN-411024, REPRESENTED BY ITS DIRECTOR. WP(C).No. 24555 of 2012 (T) * ADDL. R5 TO R7 WERE IMPEADED 5 P.SAIDALAVI, AGED 6 YEARS, S/O. ASSAMU, PULIKKALAKATHU HOUSE, CHETTIPPADI P.O., PIN-676319, PARAPPANANGADI, MALAPPURAM DISTRICT.

6. C.BALAGOPALAN, AGED 6 YEARS, S/O. KUNJUTTY, CHAKYATTU, CHETTIPPADI P.O., PIN-676 319, PARAPPANANGADI, MALAPPURAM DISTRICT.

7. MOIDEEN KOYA, AGED 3 YEARS, S/O. MOIDEENKUTTY, KORAYANTEPURAKKAL, AALUNGAL, CHETTIPPADI P.O., PIN-676 319, PARAPPANANGADI, MALAPPURAM DISTRICT. * ADDL. R5 TO R7 WERE IMPEADED AS PER ORDER DATED 17 12.2012 IN I.A.NO.16775/2012. R1 BY SR.GOVERNMENT PLEADER SRI.C.S.MANILAL ADDL.R5 TO R7 BY ADV. SRI.K.N.VINODKUMAR BY ADV. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/12/2012, THE COURT ON 01.01.2013 DELIVERED THE FOLLOWING: DSV/- WP(C).No. 24555 of 2012 (T) APPENDIX PETITIONER(S) EXHIBITS : EXHIBIT P1- COPY OF THE TECHNICAL REPORT SUBMITTED BY THE 4TH RESPONDENT. EXHIBIT P2- COPY OF THE REPORT SUBMITTED BY THE 4TH RESPONDENT IN DECEMBER 2010 EXHIBIT P3- COPY OF THE LETTER DATED 10 06-2011 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P4- COPY OF THE JUDGMENT DATED 23 05-2012 IN WPC NO. 3984/2012. EXHIBIT P5- COPY OF THE GO(RT)NO. 693/2012/F&PD DATED 3 8-2012 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P6- COPY OF THE REPLY DATED 19 08-2011 ISSUED BY THE EXECUTIVE ENGINEER, HARBOUR ENGINEERING DIVISION, KOZHIKODE. EXHIBIT P7- COPY OF THE SATELLITE IMAGE OBTAINED FROM THE WEBSITE 'GOOGLE MAPS'. RESPONDENTS'

EXHIBITS : NIL // TRUE COPY // P.A. TO JUDGE DSV/- T.R.RAMACHANDRAN
NAIR, J.

----- W.P.(C).No. 24555 of 2012 -----

----- DATED THIS THE 1st DAY OF JANUARY, 2013 JUDGMENT

The petitioner seeks to challenge Ext.P5 order passed by the Government concerning the location of a fishing harbour at Parappanangadi. Mainly it is pointed out that the finalisation of the location goes against the findings in the reports, Exts.P1 and P2 by the fourth respondent herein.

2. Heard learned Senior Counsel for the petitioner Shri K. Jayakumar, learned Asst. Solicitor General and learned Senior Government Pleader, Shri C.S. Manilal

3. The petitioner's case, as argued by the learned Senior Counsel, is that the fourth respondent had conducted a model study for the purpose of development of the fishing harbour. It can be seen from Ext.P1 that the site at Alungal which is the one among the two suggested sites, was not considered suitable as it is near submerged rocks. In Ext.P1 technical report, the said site is shown as Fig. 2(A). The other site is at Chappappadi which is shown as Fig.2(B). It is submitted that due to political pressure, a further report has been called for as per Ext.P2 and suggestions have W.P.(C).No.24555/12 -2- been made to locate the fishing harbour towards northward by about 900 metres from the layout suggested in Ext.P1, which is one of the options and the other option is to shift the Harbour northward by about 400 metres from the layout suggested in Ext.P1 and to divert a drain towards south of the southern breakwater to meet the sea at about 300 m from the southern breakwater.

4. Learned Senior Government Pleader submitted that it is entirely within the purview of the Government to take a final decision regarding the location of the fishing harbour. In terms of the reports alone a decision has been taken and it is not illegal or mala fide. It is submitted that the acceptance of the technical report cannot be said to be arbitrary and illegal warranting interference under Article 226 of the Constitution of India. It is a policy decision taken by the Government, especially in the light of an earlier judgment of this Court produced as Ext.P4 in this writ petition itself, leaving open the liberty of the Government to take a

decision in such matters.

5. Ext.P5 decision regarding the location of fishing harbour, is seen taken after referring to a letter by the Chief Engineer, as item 3 therein and the contents of the reports submitted by the 4th respondent. In para 4 of Ext.P5, it is stated that the agency who had conducted the studies, had not W.P.(C).No.24555/12 -3- recommended the second option since the diversion of the 'murithodu' is practically not possible. Accordingly, the location was fixed.

6. Learned Senior Counsel appearing for the petitioner emphasised that in Ext.P1 there is clear mention that Alternative 1 of the layout is near the submerged rocks and the layout plan shown as Fig.2(A). A reading of Ext.P1 shows that in para 1.1, under the heading "Tentative layout of fisheries harbour", it is stated that as the alternative 1 of the layout shown in Fig.2(A) is near the submerged rock, it is not considered suitable. In the later report Ext.P2 which is also by the fourth respondent, para 8.1 is under the heading "Wave tranquility and shoreline changes due to the modified layout" and para 9 gives the conclusions. Based on the same, the Chief Engineer, by Ext.P3, informed the Government about the options in the matter. Referring to the two options, viz. one at Alungal and the next one at Chappappadi, it is stated that, the first option is near the submerged rocks and the second option is also not possible as a thodu namely 'Murithodu' is joining the sea there and to locate the harbour there is not feasible. If a breakwater is constructed near Murithodu, its outlet will be covered by mud (slit). It is stated in Ext.P3 that if the harbour is constructed as per option one in the final report, it will be between Chappappadi and Alungal. It is clear from Ext.P3 that as far as Alungal is concerned, the fourth respondent W.P.(C).No.24555/12 -4- was of the view that there are submerged rocks, whereas at Chappappadi there is a 'murithodu' which joins the sea therein and that place is also not suitable. It is in this context the location has been fixed by shifting it to the middle of Chappadi and Alungal which fact is explained in Ext.P3. It is also recorded in Ext.P3 that for considering option two, additional works will be required as well as acquisition of 2.50 acres of land also will be necessary.

7. The Government in Ext.P5, has now fixed the location of the proposed fishing harbour at Parappanangadi as the southern breakwater towards 300m north of drain 'murithodu' and northern breakwater 600m towards north of southern breakwater.

8. It cannot be said that the said decision is one bad for non consideration of any relevant aspects and so unreasonable as argued by the learned Senior Counsel for the petitioner. The court exercising jurisdiction under Article 226 of the Constitution of India, cannot act as an appellate authority and re-evaluate the facts. The allegation of malafides and political considerations have also not been sustainable, since the Government has relied on the final report of the fourth respondent as well as the recommendation by the Chief Engineer.

9. The statement filed by the Government explains that it is after W.P.(C).No.24555/12 -5- examining all matters in detail and based on the report of the Central Water Power Research Station and the Chief Engineer of the Harbour Engineering Department, that the Government has issued Ext.P5 order. The Government is free to take a decision as it concerns with the location of a fishing harbour, after weighing various aspects. 10 The Court cannot substitute the views of the Government in such matters. This Court in Ext.P4 judgment, was of the view that in a matter like this, where a policy decision is involved, at this stage, this Court cannot issue any directions to the Government or to any authority as regards the location of the fishing harbour. It is entirely for the Government to take an appropriate decision, which will be duly taken expeditiously.

11. In the light of the above, the vehement contention raised by the learned Senior Counsel for the petitioner that political considerations alone have gone into in fixing the site, cannot be accepted. The report Ext.P1 had taken the view that the layout near the submerged rocks is not suitable and the final report has suggested two options considering various aspects. The location now fixed is evidently by shifting the same, which is also as suggested by the fourth respondent. Learned Senior Counsel had also relied upon a decision of the Apex Court in APM Terminals B.V. v. Union of India {(2011) 6 SCC 756.to contend for the position that the W.P.(C).No.24555/12 -6- court can interfere if the decision is arbitrary. In fact,

in para 66 the Apex Court held as follows: "Normally, the courts do not interfere with policy decisions of the Government unless they are arbitrary or offend any of the provisions of the Constitution. In the present cases, the adoption of a course of non-interference would be apposite." In the light of the factual scenario reflected above, this Court will not be justified in interfering with the location of the harbour as it cannot be termed as arbitrary. Hence, the writ petition is dismissed. No costs. (T.R.RAMACHANDRAN NAIR, JUDGE) kav/

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