

THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition No. 2404 of 2020

ORDER:

This writ petition is filed to declare the inaction of the respondents in considering the representations/recommendations dated 14.08.2019, 19.08.2019, 26.08.2019 and 13.01.2010, for construction of new protection wall with latest scientific technology of arresting the leakage/seepage of backwaters of Pulichintala reservoir on Krishna river, by replacing the existing wall constructed around Sri Lakshmi Narasimha Swami Temple, Mattapalli Village, Matampalli Mandal, Suryapet District, either from out of the funds earmarked in Pulichintala Project or otherwise, as illegal, arbitrary and unconstitutional, and consequently to direct the respondents to construct a new protection wall with the latest scientific technology around the said temple immediately and to ensure that the reservoir water levels at Pulichintala project do not increase beyond 43.34 meters until the new protection wall is constructed.

2. The case of the petitioners is that they are the Founder Family members of Sri Laxminarasimha Swamy Vari Devasthanam, Mattapalli Village. Sri Laxminarasimha Swamy Vari Devasthanam, Mattapalli Village, Matampalli Mandal, Suryapet District, State of Telangana (hereinafter referred to as "the Temple") is the ancient temple and has got

historical significance. The deity of Sri Lakshmi Narasimha Swamy Varu is 'Swayamboo' (Naturally formed deity). As per the history of temple referred in the register maintained under Section 43 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, the temple is one among five Pancha Narasimha Kshetrams and one of the most devotionally and historically significant temple in the State of Telangana. A number of devotees visit the temple throughout the year. The temple is under administrative control of the Endowments Department, Government of Telangana. The Government of Andhra Pradesh (combined State of Andhra Pradesh) had taken a decision to construct Dr.K.L.Rao Sagar Pulichintala Project, which is a balancing reservoir across river Krishna near Pulichintala Village, Bellamkonda Mandal in Guntur District. The Government of Andhra Pradesh accorded administrative approval for Rs.565.86 crores for construction of Pulichintala Project. The project works were commenced on 22.10.2004. The dam was designed and constructed to store water upto a maximum level of +53.34 mts. to store 45.77 TMC and to generate 120 MW of power through Power house. The Government of Andhra Pradesh in the revised administrative approval, Rs.681.604 crores was accorded vide G.O.Ms.No.208 dated 18.11.2005, wherein a provision of Rs.67.83 crores was allotted for protection of all bunds to provide protective measures to the religious temples/structures which are going

to be affected due to construction of the project. To protect the temple from being inundated by backwaters of Pulichintala project, during the year 2009-2010, a protection wall for a length of 140 mts. with a height of 18 mts. was constructed around the temple. Further, during the year 2013, 400 mts. length of wall constructed with a height of 14 mts. during the combined State of Andhra Pradesh and completed during the year 2018. In order to protect the temple from inundation by constructing a wall around the temple, tenders were called for construction of RCC protection wall to protect the temple. The work was entrusted to M/s.Harsha Construction, Hyderabad vide Agreement No.3SE/2008-09 dated 17.03.2009 for Rs.2.06 crores. The work was commenced from 23.05.2009 and completed on 29.11.2010. The wall was constructed as per the approved drawing of the Central Designs Organization. Further, during the year 2013, 400 mts. length of wall was constructed with 14 mts. height. The wall length of 102 mts. with height of 14 mts. was completed during the year 2018 as per the project budget. In spite of protection wall, in the year 2019, the flood water entered into the temple and the temple was inundated in 6 ft. depth of water and due to stagnation of water, daily pujas could not be performed and the Utsav Murthys had to be taken from the temple to the nearby Madras Choultry for performing nitya pujas. On 26.08.2019, the 3rd respondent inspected the temple premises. The 1st petitioner-trustee

submitted a representation to the authorities bringing to their notice about the leakages of water from the protection wall and inundation of the temple. The Commissioner of Endowments, Hyderabad also addressed a letter dated 27.08.2019 to the respondents requesting them to remove the existing protection wall which is in poor condition and to reconstruct a new protection wall in its place. The petitioners also submitted a representation dated 13.01.2020 claiming compensation for the damage caused to the temple land admeasuring Ac.3.28 guntas because the land was completely submerged due to the backwaters of Pulichintala reservoir, but no action has been taken. Being aggrieved by the inaction of the respondents in preventing inundation of the temple premises by arresting the leakages and seepage of backwaters of Pulichintala reservoir project from the protection wall, which is illegal, arbitrary and contrary to the designs and execution of the project, the present writ petition is filed.

3. The 1st respondent filed counter stating that the Pulichintala reservoir was designed and constructed to store water upto a minimum level of +53.34 Mts. to store 45.77 TMC and to generate 120 MW of power through Power house. The minimum water level required for generation of power through power house is +42.67 Mts. The 1st respondent-Government approved the project cost in its first revised approval from Rs.565.86 crores to Rs.681.604 crores vide

G.O.Ms.No.208 dated 18.11.2005, wherein a provision of Rs.67.83 crore was allocated for protection of all bunds and to provide protective measures to the religious temples/structures which are affected due to construction of project. In order to provide protection to “Swayambhoo Sri Lakshmi Narasimha Swamy temple”, the tenders were called for construction of RCC protection wall to protect the temple. The work was entrusted to M/s.Harsha Construction, Hyderabad vide Agreement No.3SE/2008-09 dated 17.03.2009 for Rs.2.06 crores through tender process. The work was commenced on 23.05.2009 and completed on 29.11.2010 and construction of wall was taken up as per the approved drawing of Central Designs Organization. During the year 2009-2010, the protection wall for a length of 140 mts. with a height of 18 mts. was constructed around the temple. Further, during the year 2013, 400 mts. length of wall was constructed with 14 mts. height. During the year 2018, 102 mts. length of wall was constructed with a height of 14 mts. During 2019 floods, the said walls withstood the flood waters and there was no damage to these walls. The 3rd respondent inspected the temple premises on 26.08.2019 when the temple was inundated due to 2019 floods and observed that the temple premises was under water and the temple authorities made arrangements to bail out the water. The submersion of temple premises may be due to seepage of water from sub-soil as the strata at temple location is of

limestone formation with flaky nature and are pervious in nature and seepage of water is mainly from sub-soil and not from walls constructed around the temple. It was informed to the temple authorities that the reasons for seepage shall only be assessed when water level recedes below the foundation levels of walls. The wall from which seepage is said to be coming was constructed during the year 2009 i.e., during the regime of combined State of Andhra Pradesh. During bifurcation of State, the Pulichintala dam with spillway portion, Non-overflow dam portions and Earth dam were allotted to the State of Andhra Pradesh and the Power house with 120 MW power generating capacity was allotted to the State of Telangana. Since bifurcation of State, the State of Telangana is generating power and realizing benefits of power generation with Pulichintala water storage. The State of Andhra Pradesh is utilizing the water for supplementing Krishna Delta ayacut. Now, the temple premises has fallen within the territory of State of Telangana and the Government of Telanaga is utilizing the Pulichintala reservoir for power generation and realizing benefits, and hence, it is appropriate that any remedial measures to be taken to minimize seepage of water into temple premises shall be taken up with the funds allotted by the Government of Telangana, but not by the Government of Andhra Pradesh. The petitioners request not to increase the water level beyond +50.72M against full reservoir level of +53.34M is not tenable in view of public

interest and the other request of the petitioners for construction of new wall is not in the purview of Government of Andhra Pradesh.

4. Sri P.Raja Sekhar, learned counsel for the petitioners, while reiterating the averments of writ affidavit, would contend that the flood water is entering into temple from the protection wall and the protection wall around the temple is not properly constructed to prevent leakage of water from the wall. In spite of granting sufficient budget, the wall is not properly designed to arrest the water seepage during the floods, when the project reaches its full capacity. No scientific steps are taken to prevent seepage of water from sub-soil and leakage of water from the wall. During the inundation of the temple, daily pujas could not be conducted, thereby it affects the faith of the devotees. The respondents are under constitutional obligation to protect the faith of the people and prevent the inundation of the temple premises by taking appropriate measures to maintain the water level in the reservoir at +50.72 meters, and by construction of new wall around the temple by using latest technology, as that of the wall constructed around Sri Jogulamba Temple, Alampur in the State of Telangana. The action of the respondents in not taking any preventive measures to protect the temple from inundation, in spite of submission of the petitioners' representation, is arbitrary and illegal. Hence, prays for a direction by allowing the writ petition.

5. The learned Government Pleader appearing for the respondents, while reiterating the averments of the counter, would contend that the construction of Pulichintala project was taken up by the combined State of Andhra Pradesh. The protection wall around the temple was constructed to prevent the inundation of the temple from the backwaters of the project, is properly maintained. During the year 2019, due to the heavy floods, when the water reaches to its full level in the project to generate power by the State of Telangana, due to seepage of water from the sub-soil, the temple premises was inundated but not due to leakage of water from the wall constructed around the temple. The inundation of the temple premises was due to seepage of water from the sub-soil as the strata at temple location is of limestone formation with flaky and pervious in nature. The protection wall had withstood from the flood waters of Krishna river. There are no leakages from the wall. However, the temple is located in the State of Telanagana and the State of Telangana being the beneficiary of power generation through power house, to generate power, the minimum water level required for generation through power house, of power through power house is 42.67 Mts. The request of the petitioners that the water level in the reservoir should be maintained at +50.72 Mts. against the full reservoir level of +53.34 Mts. is not tenable in the interest of public and the construction of new wall is not within the

purview of Andhra Pradesh. Hence, the writ petition is misconceived and is liable to be dismissed.

6. In the facts and circumstances of the case and considering the submissions of both the learned counsel, and on perusal of the record, it is not in dispute that the combined State of Andhra Pradesh constructed the Pulichintala reservoir across river Krishna near Pulichintala Village, Bellamkonda Mandal in Guntur District. The dam was designed and constructed to store water upto a level of +53.34 Mts. to store 45.77 TMC water and to generate 120 MW of power through Power house. The minimum water required for generation of power through power house is +42.67 Mts. Sri Laxminarasimha Swamy temple is an ancient temple. The 1st respondent-Government has taken a decision as a part of the project to construct the protection wall around the temple to prevent the inundation of the temple from backwaters of Pulichintala project. Accordingly, the respondents constructed protection wall during the year 2009-2010 for a length of 140 mts. with a height of 18 mts. Further, during the year 2013, 400 mts. length of wall was constructed with 14 mts. height. During the year 2018, 102 mts. length of wall with a height of 14 mts. was constructed, by spending Rs.2.06 crores. During 2019 floods, the Pulichintala project backwaters entered into the temple premises due to leakage and seepage of water from the protection wall and 6 ft. water was stagnated. The temple

authorities made arrangement to bail out the water from the temple to perform regular puja and Utsav Murths were taken from the temple premises to the nearby Madras Choultry for performing nitya pujas.

7. The petitioners alleged that the wall constructed around the temple is not having required strength to prevent the flood waters and the wall was not constructed by not fully utilizing the budget allocated for construction of wall. As seen from the counter of the 1st respondent, Rs.67.83 crores budget was allocated for construction of protection of bunds to provide protective measures to the religious temples/structures which are affected by the construction of the project and out of it, only Rs.2.06 crore was spent for construction of protection wall around the temple by entrusting the work to M/s.Harsha Constructions, Hyderabad through tender process. The construction of wall was completed on 29.11.2010. During the 2019 floods, the flood water entered into the temple premises, the 3rd respondent personally visited the temple premises on 26.08.2019 and observed that water entered into the temple and also found the submersion of temple premises due to seepage of water from sub-soil not from protection wall. Hence, it could easily be concluded that the respondent authorities are not taken proper scientific steps to construct protection wall around the temple premises to prevent inundation of temple from the backwaters of Pulichintala project.

8. Though a decision to construct the protection wall around the temple to prevent inundation of the temple and also huge budgetary allocation of Rs.67.83 crores was earmarked, they spent a meager amount of Rs.2.06 crore only. Hence, there are lapses on the part of authorities concerned in designing and constructing wall to prevent the entry of flood water/backwaters into the temple premises. When water is reached to the required level of +53.34 mts., by visualizing the entry of flood waters, it could have constructed protection wall with the required strength and depth by using the technology available. By cement grouting of temple premises also, they can prevent the seepage of water into the temple. Though having taken a decision at the highest level by the Government and allotted the substantial funds for construction of protection of bunds and construction of walls, due to lapses on the part of the authorities concerned and for not constructing the required strength of wall and not taking effective preventive measures from seepage of water, the temple is being inundated forcing the closure of the temple without performing daily rituals, which will certainly affect the faith of the devotees and they apprehend ill-feeling of ominous. It is the constitutional duty of the State to protect the faith of the devotees, to prevent ill-feelings among them for non-performing daily pujas and Nitya nivedyam as that of the project construction in the public interest.

9. For the reasons stated above, it is the bounden duty of the respondent authorities to see that the temple premises should not be inundated due to leakage and seepage of water from the protection wall constructed around the temple and seepage of water from sub-soil of the temple and to take necessary required steps to prevent the inundation of the temple.

10. Accordingly, the Writ Petition is allowed and the respondent authorities are directed to take appropriate preventive steps to prevent inundation of the temple premises, including scientific remedial measures in order to see that the water leakage and seepage shall be arrested to prevent the inundation of the temple. No order as to costs.

11. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

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30-06-2021
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