

(2003) 07 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 3804-3817 of 2001

Aralikotrappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957 —
Section 10 A, 11

Karnataka Irrigation (Levy of Water Rates) Rules, 1965 — Rule 3

Citation : (2003) ILR (Kar) 3906 : (2004) 2 KarLJ 147 : (2003) 4 KCCR 2924

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : G.A. Srikante Gowda and M. Murali Babu, for the Appellant; M.N. Ramanjaneya Gowda, GA, for the Respondent

Final Decision : Allowed

Judgement

Shylendra Kumar, J.—Petitioners are all agriculturists who make use of water, supplied by the Tungabhadra Canal for which petitioners were to pay water rates at the rate of Rs.150/- per acre in respect of sugarcane Crop. This rate had been fixed as per Rates 3 of the Karnataka Irrigation (Levy of Water Rates) Rules, 1965 (referred to as Rules hereinafter) as amended from time to time and as per the said Rule in force with effect from 24-11-1987.

2. The grievance of the petitioners is that while they were paying water rates as per this rate i.e. Rs. 150/- per acre which is not dispute and that they have been asked to pay water rates at Rs. 400/- per acre in respect of sugarcane as per the Government Order dated 13.7.2000, under which it is proposed to levy and collect water rate @ Rs. 400/- per acre in respect of sugarcane.

3. The submission of Sri Srikante Gowda, learned Counsel appearing for the petitioner is that the levy of water rate in respect of irrigation is as provided u/s 10A of the Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957 (Act for short). Pursuant to the power conferred on the State

Government u/s 11 of the Act to frame Rules, the Karnataka Government has framed Karnataka Irrigation Rules 1965 and that Water rate can only be levied as per Rule 3 of these Rules and when once water rates have been fixed under Rule 3, the Government can collect water rate only at this rate and assuming that there can be enhancement in the water rate, it should be done in accordance with statutory requirement and by making suitable amendments to Rule 3 of these Rules. The proposed levy and collections as per the impugned Notification at Annexure- H dated 13.7.2000 is one, without valid authority of law and it cannot be a substitute for levy of water rate as per Rule 3 of these rules and the demand on the petitioners to pay water rates as envisaged in this Notification is without authority of law and the same is liable to be quashed.

4. Sri Ramanjaneya Gowda, learned Government Advocate appearing for the respondents seeks to support the impugned Notification though no statement of objections have been filed on behalf of the respondents. However, he submits that the Government has the power to frame Rules and the very Government has issued fresh Notification providing for enhancement and the learned Government Advocate had placed before this Court the amended Rule bringing about amendments in the table indicating the rates for different crops formulated under Rule 3 of these Rules, wherein the water rate for sugarcane is sought to be fixed at Rs. 400/- per acre and by giving retrospective effect to the same from 13.7.2000 onwards. The amended rule itself is brought into effect as per notification dated 9.10.2002 and has been published in the Karnataka Gazette dated 7.11.2002. Further, the Government Advocate seeks to submit that in view of these rules which are now framed providing for levy of water rates at Rs. 400/- per acre for sugarcane the demand in Annexure-H is justified.

5. The amendment to the Karnataka Irrigation (Levy of Water Rates) Rules, 1965 has been brought about much later in point of time than issue of notification by the Government as per Annexure-H enhancing the water rates payable in respect of different crops. When this Notification had been issued, the Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957 has not been amended. As per that rule, the water rate was Rs. 150/-per acre and until and unless the rate as indicated in Rule 3 of these Rules are altered by way of amendment to the very rule, it is not possible to vary the rate by any other Notification issued by the Government. Any levy of tax has to be in strict conformity with the requirements of law. Annexure-H is definitely not sustainable being not in accordance with the provisions of the rules and Act. Infact, Annexure-H cannot stand independently. It is only under the rules such enactment can be achieved by any Notification. In the circumstances, the Government Notification dated 13.7.2000, Annexure-H cannot be sustained and it is accordingly quashed by issue of a Writ of certiorari. The collection of water charges over and above what is provided for under Rule 3, at the relevant point of time, cannot be sustained.

6. However, the learned Government Advocate points out that as per the

amended Rules which has been given retrospective effect from 13.7.2000, such rates become payable from that day and as such the petitioners liability does not cease even if the Notification under Annexure-H is quashed and as such liability continues on the petitioners under the very rules.

7. In the circumstances, though as a matter of practice, mandamus would have been issued to the respondents to refund the amount collected in excess of water rate as provided for under the rule itself at the relevant point of time, as the amendment in the present case has been issued and having regard to the subsequent developments, it is observed that it is open to the petitioners to work out such remedies including a claim for the refund of the amount independently.

8. It is also open to the Government to defend and retain the amount collected in such action if they are so allowed in law and it is also open to the petitioners to question the validity of the amended rules. Reserving such liberty, these Writ Petitions are allowed to the extent of quashing of Annexure-H.

Rule made absolute.