

(1981) 02 KAR CK 0016
In the Karnataka High Court
Case No : WP. 699/75

Basavangoud B. L. and Another

APPELLANT

Vs

Deputy Commissioner, Bellary and Others

RESPONDENT

Date of Decision : 02-02-1981

Acts Referred:

Karnataka Irrigation Act, 1965 — Section 28
Karnataka Irrigation Rules, 1965 — Rule 4(2)

Citation : (1981) 1 KarLJ 454

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The petitioners are the owners of agricultural land bearing S. No. 159/C/1 and 159/C/2 of Bagewadi village Siruguppa Taluk, Bellary District. They claim to be the joint owners of the lands being father and son. It is stated by them that S. No. 426/B measuring 8 acres and 30 cents situated in the same village had been included in the Ayacut (Command area) of Thungabhadra Project (right bank). However, the land in S. No. 426/B could not be irrigated as no water was supplied to the same even though water rate was being levied. On the other hand, S. Nos. 159/C/1 and 159/C/2 which were not in the command area got affected by seepage of water and therefore being unfit for cultivating any other crop, paddy was cultivated in an area of 4 acres in those survey numbers. In that circumstance they applied to the concerned authorities of the Government to de-localise survey No. 426/B and include in the command area correspondingly 8 acres of land in S. No. 159/C/1 and 159/C/2. From the number of Exhibits produced by the petitioners, it is clear that the Government ordered such shift in the supply of irrigation water and directed the Chief Engineer, Irrigation Project, South Bangalore, to take immediate steps to exclude S. No. 426/B from localised area and include S. No. 159 of the petitioners and localise the same. However, in spite of the best efforts of the petitioners, the localisation did not take place in respect of the two survey numbers aforementioned. On 24-10-1970 the Superintending Engineer, Thungabhadra Project, Circle Munirabad granted permission to the petitioners to irrigate S. No. 159 of Bagewadi village to an

extent of 8 acres for the year 1970-71. But even on that date localisation of the area in S. No. 159 had not been done. The petitioners continued to make representations and finally on 26th September 1974 S. No. 426/B was delocalised and S. No. 159 to the extent of 8 acres and 30 cents was localised. While the matter stood thus, the petitioners found that some demand notices had been affixed on their house and had been torn away and in that circumstance when they applied for true copies of the said demand notices, the Tahsildar, Siruguppa, issued them copies as per Ex. R and S. Presuming that to be penalty imposed under the Karnataka Irrigation Act (hereinafter referred to as the Act) and aggrieved by the same, the petitioners have approached this Court for redressal of their grievance under Art. 226 of the Constitution inter alia contending that the said demand notices are illegal, without jurisdiction, without the authority of law and without the petitioners being afforded an opportunity of being heard before any kind of penalty is imposed.

2. Though the writ petition is of the year 1975 and the respondents have been served long back, as on the date of hearing, the respondents have not filed their statement of objections. However, the learned Government Pleader appearing for the respondents has submitted that the demand notices impugned in the writ petition are issued under sub-section (5) of S. 28 of the Act, in as much as the petitioners had used the water of Thungabhadra Project without prior permission and therefore had unauthorisedly used the water of the project attracting the penal provisions of that sub-section. That sub section reads as follows:

"28(5) If any person uses water from on irrigation work without obtaining the permission required under this section, he shall in addition to any penalty he incurs under this Act for such unauthorised use of water be liable to pay water rate at such rate as may be determined by the prescribed officer not being less than ten times and not exceeding thirty times the rate he would otherwise have been required to pay, had he applied for and obtained the permission."

3. It is very clear from the language of the sub-section that the penalty imposed is in respect of an offence committed against the provisions of the Act and therefore penal in character. While the authority to impose the fine is not specified in that sub-section, sub-sec. (1) of S. 28 of the Act provides for the application being made to the Irrigation Officer. Therefore, it is reasonable to presume that he the Irrigation Officer has to impose the penalty. S. 64 of the Act in some measure provides for the mode of levying penalty when the water has been unauthorisedly used from an irrigation project. It provides for notice to persons charged with that offence whether they be holders or occupiers of the lands benefited thereby after an opportunity to be heard is given to them at an enquiry and thereafter the Irrigation Officer may make an order for recovery of such charges and penalty.

4. No material is placed before the Court by the respondents that the petitioners were served with notices under S. 64 of the Act, nor is there any material placed that an enquiry was held. Even the perusal of Exs. R and S, the demand notices

impugned, clearly indicates that the demand notices are served pursuant to the directions of the Deputy Commissioner. They are signed by the Tahsildar. But reference to R. 4(2) of the Karnataka Irrigation Rules (hereinafter referred to as the Rules) has nothing to do with the demand notices. It is silent as to the nature of the demand. It is perhaps possible to reasonably infer that it is by way of penalty as the water charges are multiplied by 20. Otherwise the demand notices are totally vague and cannot be said to satisfy the requirements of a valid demand notice in law particularly if it is for the purpose of levying a fine in the nature of a penalty for an offence under the Act. It is also reasonable to assume that the Tahsildar has issued the demand notices as if he was recovering arrears of land revenue though he has not stated as to in respect of what the amount is being realised as arrears of land revenue. It is no doubt true that S. 64 of the Act provides for such fine or charges as is imposed by the Irrigation officer to be recovered as if it were arrears of land revenue. That is possible only if there is an order by the Irrigation Officer imposing the charges and the fine and not otherwise. The learned Government Pleader has not placed any such order before this Court whether made with or without notice to the petitioners.

5. This court in numerous earlier cases relating to the same irrigation work, has held in relation to sub-sec. (4) of S. 32 of the Act that the levy of penalty being penal in character, the rules of natural justice demand that the person who is imposed that penalty must be heard before such imposition. In the instant case, admittedly no hearing has been given though express provision is made for such hearing.

6. For all the above reasons, the impugned notices of demand are without the authority of law, without jurisdiction and are illegal and therefore liable to be quashed as prayed for by the petitioners.

7. Rule is made absolute and the demand notices at Ex. R and S are quashed. But liberty is reserved to the respondents to proceed against the petitioners for any unauthorised use of water from the irrigation work belonging to the Government without prior permission in accordance with law for any given period. The petitioners are entitled to their costs Advocate's fee is Rs. 250.