

(1998) 06 MAD CK 0072
In the Madras High Court

Canute P. Rayan

APPELLANT

Vs

Additional Block Development Officer and Others

RESPONDENT

Date of Decision : 29-06-1998

Acts Referred:

Citation : (1998) 3 MLJ 257

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Judgement

S.S. Subramani, J.—Petitioner is the owner of a residential house at Veerapandian Pattinam in the Tuticorin District and the construction was over on 28.12.1989. He applied for water connection to the second respondent after paying necessary fees.

2. Veerapandian Pattinam is a coastal village and there is scarcity of water and there is no other protected water supply except the water supply by the second respondent. The second respondent constructed an overhead tank for supply of water for the fishermen in the coastal area since enough water did not reach the said houses. He put up fresh water tanks nearby and started giving water supply connections from the new water tank. In the result, there was a vacancy for 13 water supply connections in the hold tank available with the second respondent.

3. The petitioner therefore, applied on 28.12.1989 with payment of registration fees, the second defendant, after collecting the amount from the petitioner and following the procedure, gave water connection to the petitioner's house from May, 1997 and all the dues were paid to the second respondent.

4. It is stated that the petitioner was in the waiting list and it is only in due course (since there was a vacancy of 13 connections) the petitioner was given priority. There was also no objection from any member of the public regarding water supply connection given to the petitioner by the second respondent.

5. It is further stated that during February, 1997 to October, 1997 many individuals were given separate water supply who were included in the waiting

list. It is further sworn to in the affidavit that the second respondent has passed a resolution in Panchayat under Sections 1(10) and 1(11) of the Panchayats Act, regarding the supply of water resources to the members of the public. Being a public utility service and in view of the new Panchayat Rules framed, the Panchayat alone is competent to take a decision regarding the supply of water for drinking purposes.

6. While the petitioner was getting water from the connection given to him, the first respondent without any jurisdiction, arbitrarily passed an order on 8.11.1997 directing the Extension Officer, Panchayat to cut the water supply connections. The petitioner's connection also was disconnected. It is said that the order of the first respondent is based on the orders of the third respondent under the proceedings dated 6.11.1997 which according to the petitioner is one without jurisdiction. Before passing any order, the petitioner must be heard and the District Collector who was the Inspector of Panchayats has also no jurisdiction to cancel the resolution unless it comes within the scope of Section 202 of the Panchayats Act. The provision of drinking water which comes within the power of panchayat, and it cannot be said that excess power has been exercised by the Panchayats and therefore, the District Collector has no power to cancel the same.

7. It is further stated that the amount paid by the petitioner is now retained by the panchayat. When the water supply connection was given after payment, the respondents are not entitled to have the same disconnected, that too, without notice to the petitioner.

8. Under the above circumstances, the petitioner has come to this Court for the issuance of writ of certiorari calling for the records the third respondent in its proceedings A5/5582/97, dated 6.11.1997 and the consequential order of the first respondent in A1/3669/97, dated 8.11.1997 and quash the same and pass such further orders.

9. A counter-affidavit has been filed on behalf of the first respondent wherein it is stated that the area of Veerapandian Pattinam is a place having scarcity of water and the water supply is made only by Public Water Distribution System. The village president has passed a resolution No. 49 dated 19.2.1997 through the panchayat for offering water supply connection to the private house on collection of Rs. 20,000 for the connection. It was said that there was a ban of giving water connection to houses as this would divert little water available to the Panchayat. The Government has banned the same as per the communication dated 7.12.1982 of the Rural Development and Local Administrative Department. It is stated that the Government Order still stands. Under no circumstances, separate house connection could be offered to any coastal village wherein water is a scarce commodity.

10. It is further stated that the president of the second respondent Panchayat has collected a sum of Rs. 2,60,000 for giving connection for 13 houses and also

issued receipts for Rs. 1,20,000 and Rs. 1,40,000 has not been accounted. The District Collector who is the Inspector of Panchayats exercised his powers u/s 202 of the Act and has cancelled the resolution No. 49 as per proceedings No. A5/5582/97, dated 8.11.1997. The Inspector of Panchayats has also issued a show cause notice u/s 205 of the Act for removal of the President on the above charges. It is further alleged that the water resources of the panchayat has not been judicially applied and it is made available to those who afford Rs. 20,000. Thus, the respondents justified their action."

11. I heard both the counsel in detail.

12. It is seen that the Panchayat has passed a resolution No. 49 in February, 1997 and it was a consequence of the same that the petitioner and the others paid the amount for getting water supply connection. The District Collector has cancelled the resolution about nine months later, i.e., on 8.11.1997. In the meanwhile, the water connection also was given to the petitioners and other persons. The District Collector has taken more than nine months to consider the resolution passed by the Panchayat.

13. It is true that the Inspector of Panchayats the District Collector has got the powers to cancel the resolution and in such cases, it is also stated that the panchayat is also an aggrieved person and no notice is required to any other person. But, when a third party's interests are affected, I feel that, that is a case where they are also to be heard before final orders are passed.

14. It is also not disputed by the respondents that the panchayat has remitted or accounted for Rs. 1,20,000 which the panchayat has received from various individuals for supply of water connection. They have paid the considerations which has already been acknowledged by the panchayats and the amount is retained by the Government or the Panchayats.

15. I do not think that the authorities will be justified in cancelling the allotment or connection already made, without hearing them. Till date there is no offer made by the Government or by the District Collector for refund of the amount collected from the individuals. While retaining the amount, it follows that the District Collector also justifies the action of the panchayat in passing the resolution and giving connection.

16. It is stated that water is a scarce commodity in the coastal area and there is a total ban of giving separate house connections. Such a decision was taken in the year 1982. It is further submitted by the learned Government Pleader that the same decision, even now stands. It is also submitted that the decision which has already been taken and which has not been replaced by any other order still continues as a valid order under the present Panchayats Act.

17. I do not doubt the legal position submitted by the Government Pleader. Even in spite of the Government Order, the panchayat passed a resolution and when the amount is collected which is still retained, the petitioner and other persons

can legitimately expect the said order banning separate house connection is not in force. There is also nothing to say that the order of the year 1982 was brought to the notice of the individuals before they are asked to pay the amount. In this case, it is also to be noted that even in the resolution dated 8.11.1987 cancelling the resolution, no reference is made to the Government Order of the year 1982 banning the separate house connections. The case has been developed in the counter affidavit. The respondent has to justify their action on the basis of the wordings as seen in the order.

18. The learned Government Pleader did not dispute the contention that it is for the panchayats, to take decisions in regard to the basic necessities like water. When the local authority passed a resolution, it is presumed that they have the jurisdiction to take the decision. The long delay of the District Collector in reversing or cancelling the resolution also support the said view.

19. In this connection, we may also consider what is provided in the order dated 6.11.1997. The individual connection is sought to be cancelled on the basis of the direction dated 6.11.1997 which reads thus:

Even the third respondent has only directed to take necessary action to disconnect the water connection after taking necessary proceedings in that regard

I do not think that the said direction has been complied with as per the proceedings dated 8.11.1996. The said direction has been misinterpreted. The authorities assumed that the disconnection may be had immediately.

20. I feel that the decision is liable to be struck down since it violates the principles of natural justice. The petitioner is entitled to be heard, because he has paid consideration for getting water connection. There is a long delay on the part of the Inspector of Panchayats in cancelling the resolution passed by the panchayat. The order cannot stand without hearing the third parties when their interests are affected.

21. In the result, I allow the writ petition and forbear the respondents from disconnecting the water supply connection given to the petitioner on the basis of the impugned orders. I make it clear that the respondents can take action after giving notice to the petitioner or after hearing him and after giving reasonable opportunity to him as to why the water supply connection shall not be disconnected. No costs. Consequently, the connected W.M.Ps. are closed.