

(2011) 07 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 6720 of 2011

Daxaben Chandulal Acharya

APPELLANT

Vs

State of Gujrat and Others

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2011) 3 GLR 2737

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : P.H. Pathak, for the Appellant; Rashesh Rindani, learned Asst. Government Pleader for Respondent No. 1 and HS Munshaw, for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Rashesh Rindani, learned Assistant Government Pleader waives service of notice of Rule for Respondent No. 1. Mr. H.S. Munshaw, learned advocate waives service of notice of Rule for Respondents Nos. 2 to 4.

2. This Petition under Article 226 of the Constitution of India has been preferred, inter alia, with a prayer to issue an appropriate writ, order or direction, declaring the decision of the Respondents in restraining the Petitioner from lifting water from the Canal and to remove the pump sets from the site, as arbitrary, illegal and violative of Article 14 of the Constitution of India. The notice dated 20-05-2011, issued by the Respondent-authority, directing the Petitioner to remove her pump set from the Canal, is also the subject matter of challenge.

3. The brief facts of the case are that, the Petitioner is an agriculturist residing at village Santej, Taluka Kalol, District Gandhinagar and is the owner of 4.5 Vighas of land situated in the said village. Part of the land of the Petitioner was acquired by the Sardar Sarovar Narmada Nigam (Respondent No. 2) for construction of the Main as well as Branch Canal under the Narmada Canal Project. The

Petitioner is cultivating the remaining land and maintaining her cattle. According to the Petitioner, since the year 2005 the concerned authorities of Respondent No. 2 permitted the Petitioner to lift water from the Canal for agricultural purposes, and for drinking purposes for her cattle, as well. It is the case of the Petitioner that water charges were regularly recovered by the Respondent-authorities from the Petitioner and from approximately 400 other farmers, who require regular water supply for one and a half months. According to the Petitioner that water from the Narmada Canal is used for the purpose of cultivation on thousands of Acres of land since June,2004. A public notice dated 20-05-2011 was issued by the Respondent Corporation, directing the Petitioner to remove the pump set from the Canal and to stop lifting water from it within a day, failing which coercive action, including seizure of pump sets, as well as police action would be taken. This notice was received by the Petitioner on 23-05-2011. Aggrieved thereby, the Petitioner has approached this Court by way of the present petition.

4. Mr. P.H. Pathak, learned advocate for the Petitioner has submitted that the unilateral decision of the Respondent Corporation directing the Petitioner to remove her pump set and stop lifting water has been taken without application of mind. The hardship caused to the Petitioner and other farmers has not been considered. The pump sets have been built with concrete foundation on the site of the Canal and it is not possible to lift them immediately. The standing crops of the Petitioner are likely to be ruined without water for irrigation, as it is during the hot weather and summer season that crops and animals require more water. The Petitioner has been lifting water from the Canal for the past 5 years, therefore, an opportunity of hearing ought to have been provided to her before issuing the impugned notice. That the action of the Respondents in denying the Petitioner an opportunity of hearing is arbitrary and unjustified. It is further submitted that the Respondent Corporation has decided the rate for lifting water, and charges are recovered from the farmers regularly. The last payment has been made by the Petitioner on 01-04-2011. The supply of water to the farmers is regulated by the Respondent Corporation and the farmers have been permitted to establish pump sets at the site to lift water from the Canal as per requirement, therefore, issuance of the public notice directing the Petitioner to remove the pump sets and stop lifting water is arbitrary and deserves to be quashed and set aside. It is, accordingly, prayed that the petition be allowed.

5. Mr. H.S. Munshaw, learned advocate for Respondents Nos. 2 to 4 has submitted that the land on which the main Canal as well as the Branch canal have been constructed has been acquired by the Sardar Sarovar Narmada Nigam (Respondent No. 2 referred to as "the Corporation" hereinafter), under the provisions of the Land Acquisition Act. It is emphasised that the entire Branch Canal and land situated on both sides of the Canal is owned by the Respondent Corporation, and the same is being utilised for various purposes such as construction of service road, maintenance and inspection path, maintenance of land width, boundary gutter, etc. There cannot be any unauthorized

encroachment or entry upon the said property. Mr. Munshaw has further contended that though water from the main Canal is for agricultural purposes it can be used for irrigation only as per the norms and policy formulated by the Corporation. Referring to Resolution dated 16-01-2006, passed by Board of Directors of the Corporation, it is submitted that the manner and method of disbursement of water has been decided and it is laid down that no individual farmer is to be given permission to draw water. Only the Water Users Associations ("WU As" for short) of the Command Area can draw water as per the arrangement, subject to conditions. It is submitted that Item No. 5 of the Resolution categorically lays down that no water shall be supplied during the hot weather and summer months, for irrigation. Further, it is stated in the Resolution that water shall not be supplied outside the Command Area of the Project. The learned advocate for the Respondent Corporation has emphasised that in the present case, village Santej, where the Petitioner is residing, is not within the Command Area, therefore, water cannot be supplied to it and the Petitioner is lifting water in an unauthorised manner. It is further submitted that water for irrigation is permitted to be used during two seasons of the Kharif and Rabi crops but the Petitioner has drawn water without permission or authority even after that period, therefore, a penalty was imposed upon her and charges were recovered. The receipt produced by the Petitioner dated 01-04-2011 is only for the Rabi season, for the year 2010-2011, which season ends on 15-03-2011. The Petitioner cannot draw water after 15-03-2011, as per the policy of the Respondent Corporation. It is clarified by the learned advocate for the Respondent Corporation that during the summer season water is only provided to public authorities like the Gujarat Water Supply and Sewerage Board, Ahmedabad Municipal Corporation, IFCO etc. for drinking purposes only. In violation thereof, the Petitioner has unauthorizedly put up pipes with a diesel pump to draw water from the Branch Canal for irrigation purposes. It is further contended that in spite of being repeatedly instructed not to do so, the Petitioner has continued to commit the above irregularities by encroaching upon the property of the Corporation and drawing water with the help of a diesel pump. Ultimately, the Respondent Corporation was constrained to issue notice dated 20-05-2011 to the Petitioner, asking her to withdraw the pump sets immediately or to face consequences, as mentioned. The potable pipe line and pump set of the Petitioner was disconnected on 21-05-2011, but has not been seized, as stated in the petition. That the activities of the Petitioner, such as unauthorizedly encroaching upon the land of the Respondent Corporation and putting up a huge pump set on a concrete base, are causing damage to the Canal and service road of the Respondent Corporation. On the basis of the above submissions it is prayed that the petition be dismissed.

6. Mr. Rashesh Rindani, learned Assistant Government Pleader for Respondent No. 1 has submitted that the Sardar Sarovar Narmada Nigam is a statutory authority that has framed its own policy. He has supported the stand taken by the Respondent Corporation.

7. I have heard learned advocates for the respective parties, perused the averments made in the petition, contents of the impugned notice and other documents on record.

8. The Sardar Sarovar Narmada Nigam is a wholly owned Undertaking of the Government of Gujarat. It has framed an Interim Irrigation Policy for the SSP Command Area. The said policy has been approved by the Board of Directors of the Respondent Corporation and a Resolution came to be issued on 16-01-2006. The relevant extract thereof is reproduced hereinbelow:

1. Water shall not be supplied outside the command area of the project.
2. In the command area where delivery of water is possible through minors, water shall be supplied for irrigation in command area through Water Users" Associations (WU As) only. Individual requests shall not be considered. Those farmers who are desirous of drawing water for irrigation by making their own arrangements e.g. pumping etc shall be supplied water through respective WU As only.
3. In absence of complete canal network for supply of water for irrigation, the Water Users" Associations of the Sardar Sarovar Command Area be authorized to draw water for irrigation from minors and below sub minors by making their own arrangements subject to the condition that concerned Water Users" Accordance shall maintain a record of water drawl in consultation with the concerned Executive Engineer of the Nigam and shall be responsible for recovery of the expenditure towards repair of such canals. Now onwards no individual farmer be given permission to draw water in this manner. Further no such drawl shall be permitted from Main Canal, Branch Canals or distributaries.
4. Farmers are free to decide the cropping pattern. However, no such approval shall be given to grow water intensive crops.
5. Water shall not be supplied during Hot Weather for irrigation.
6. Before commencement of each irrigation season, discussions with WU As shall be held at Executive Engineers level in respect of available quantum of water crop pattern to be adopted and distribution of water.
7. All the farmers of SSP Command who wish to obtain irrigation water shall be required to apply through WU As in prescribed form stating survey number - wise area and crops proposed to be irrigated. This applications once sanctioned would authorize farmers to draw water for irrigation through WU As for that particular season for which the passes are issued, limited to the area and crops shown in the passes.
8. ***
9. ***
10. After irrigation is completed, area of crop grown in each survey number shall

be measured. Karkoons are required to keep records of such measurements in field-books, which shall be maintained separately for each survey number. Where farmers have applied for complete area of their survey numbers for growing crops from Canal Water and if the same are fully sanctioned, measurements need not be taken as the area of such survey numbers shall be considered as a whole for working out charges which shall otherwise be based on area of crop grown. On completion of irrigation a statement showing dues to be recovered from each of the farmers (survey number wise) shall be prepared and shown through the WU As to all those concerned. If any objections are received the same shall be examined and if found necessary, "modified dues statements

shall be prepared and farmers be informed accordingly. WU As shall collect all irrigation dues and remit the same with the sub divisional offices designated by SSNNL. Necessary registers shall be required to be maintained in this respect by Section Officers and Deputy Executive Engineers.

The water rates shall be decided separately by the SSNNL."

9. A perusal of the contents of the Resolution makes it clear that the Respondent Corporation has formulated an exhaustive policy for regulation of water supply from its Canal for the purpose of irrigation. As per Clause (1) water cannot be supplied outside the Command Area of the Project. Village Santej where the land of the Petitioner is situated, is not in the Command Area as is evident from communication dated 18-01-1993, addressed by the Deputy General Manager of the Respondent Corporation to its Superintendent Engineer. In the said communication it is stated that it has been decided by the Respondent Corporation that the area of village Santej may be excluded from the Command Area, and water for irrigation saved on this account may be kept reserved for future consideration of more needy areas.

10. Apart from this fact, individual farmers are not permitted to draw water directly from the Canal by making their own arrangements. Water can only be lifted through the WU As which have to maintain a record of water drawn, in consultation with the concerned Executive Engineer. The most salient feature of the Resolution is at Clause No. (5), wherein it is categorically stated that water shall not be supplied during the hot weather for irrigation purposes. The case of the Petitioner is that she requires water during the hot summer season for the purpose of irrigating her fields and for maintaining her cattle. This is directly in contravention of the policy formulated by the Respondent Corporation.

11. The public notice dated 20-05-2011 has been specifically addressed to the Petitioner and has been received by her on 23-05-2011. It is not as though the pump set of the Petitioner has been demolished or seized without affording her an opportunity to remove the same, therefore, the contention of the learned advocate for the Petitioner that no opportunity of hearing has been provided to the Petitioner is not plausible. The Petitioner has continued to lift water during the hot summer months, even after the Rabi season. Lifting of water during the

summer season is banned for irrigation purposes by the policy of the Respondent Corporation. The policy itself has not been challenged in the petition. By the impugned notice the Petitioner has been asked to refrain from lifting water from the Canal in an unauthorized manner, and to remove the pump sets installed by her, failing which appropriate action would be taken. It is not as though any action has been taken without prior information to the Petitioner. The Petitioner has installed the pump set on a concrete base on the land of the Corporation. There is nothing on record to show that she has been permitted to instal the pump set. The action of the Petitioner is clearly unauthorised and contrary to the policy of the Respondent Corporation, and no material has been produced on record to the contrary. Therefore, it cannot be said that the principles of natural justice have been violated. The reply filed by the Respondent Corporation makes it clear that the potable pipe lines and pump sets were disconnected but were not seized.

12. Water is a precious natural resource that is essential for sustenance of life of all living beings, in addition to being necessary for the cultivation of crops that form the main source of livelihood of farmers. Considering the extent and pace of environmental degradation that is taking place, water is fast becoming a scarce commodity. It has become imperative that water resources are managed sagaciously and the supply of water is regulated efficiently, taking care to strike a balance between the amount of water used for drinking and other purposes by the public at large and for irrigation purposes. Both aspects are important. While formulating the policy, the Respondent Corporation appears to have made an attempt to maintain the balance between use of water for drinking and other purposes by the general public and for irrigation purposes by agriculturists, and certain restrictions have been imposed to regulate the supply of water from its Canals. Considering the fact that water is scarce during the hot summer season and there is normally a shortage of drinking water in various parts of the State, the restrictions imposed are not unreasonable; rather they are necessary to conserve water and regulate its distribution and use in a balanced manner, looking to the exigencies of the prevailing situation. It is not only the individual requirement of the Petitioner that has to be considered but the requirement of the public at large has also to be taken into account, looking to the weather conditions prevailing in the State. If the Petitioner, and others like her, act in contravention of the policy formulated by the Respondent Corporation, it would prevent the use of water for the greater good and would result in water being used by individuals at random, as per their own requirements. In the hot summer season, generally a water shortage prevails in most parts of the State, therefore, keeping this harsh reality in mind, no water is permitted to be lifted for irrigation purposes during that period. Only public authorities such as the Gujarat Water Supply and Sewerage Board, Ahmedabad Municipal Corporation, IFCO etc. are permitted to lift water, in order to provide drinking water to the public at large. The Petitioner, therefore, cannot be permitted to use water during the hot summer season for purposes of irrigation, when such use is specifically

banned by the policy formulated by the Corporation. The interest of the individual has to give way to that of the public at large. In this view of the matter, therefore, it cannot be said that the action of the Respondent Corporation in issuing the impugned notice, restraining the Petitioner from lifting water from the Canal and asking her to remove the pump sets installed by her from the property of the Respondent Corporation is either arbitrary, illegal, unjust, or in violation of Article 14, of the Constitution of India.

13. For the aforestated reasons, the petition, being devoid of merit, deserves to be dismissed. It is, accordingly, dismissed. Rule is discharged. There shall be no orders as to costs.