
(1999) 10 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 80, 81, 1000, 1101 and 1651 of 1996

D.C.M. Shriram Ind. Ltd. and

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Rajasthan Irrigation and Drainage Act, 1954 — Section 60(2)
Rajasthan Irrigation and Drainage Rules, 1955 — Rule 14, 15

Citation : AIR 2000 Raj 117 : (2000) 2 WLC 281

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : M.D. Agrawal, Anurag Agrawal and Paras Kuhad, for the Appellant;
B.P. Agrawal, General and Rajendra Prasad Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Verma, J.—All the writ petitioners are aggrieved by the same impugned notification dated 17-5-1995 passed by the State of Rajasthan by which notification the price / charges for water supply in bulk for industrial purposes has been raised from Rupees 10/- per 1000 CFT to Rs. 20/- per 1000 CFT.

2. On the basis of the said notification, the petitioners were given the bill of water charges vide Annexures 17 and 18 and prayer has been made to quash the submission of bill. Copy of the impugned notification is attached as Annexure-19.

3. All the petitioners are the registered companies engaged in the manufacture of certain products in the State of Rajasthan. The facts and law of challenge involved are similar and identical. For reference the facts are being taken from S.B. Civil Writ Petition No. 81/96 J. K. Synthetics v. State of Rajasthan.

4. The factories of the petitioners require raw water for industrial purposes. For regulating the irrigation and drainage in the State of Rajasthan, the Government had enacted the Rajasthan (Irrigation and Drainage (Act, 1954) hereinafter referred to as the Act). u/s 31 of the Act, the supply of water from an irrigation

work shall be deemed to be given at the rates and subject to the conditions prescribed by the Rules to be made by the State Government. S. GO empowers the Government to make rules for regulating the matters enumerated in Clauses (a) to (e) and Sub-section (2) of Section 60. State had also framed the Rules called the Rajasthan Irrigation and Drainage Rules, 1955 (hereinafter called as the rules). Rule 14 and 15 of the rules read as under:--

"Rule 14 :-- Contracts for water for other than irrigation purposes : The Divisional Irrigation Officer may make contracts for the supply of Canal water for purposes other than irrigation for any terms not exceeding one year. For terms exceeding one year the previous sanction of the State Government shall be necessary.

Rule 15 : Charges for water for other than irrigation purposes in the absence of a special contract: With the previous permission of the Divisional or Sub-Divisional Irrigation Officer, Tank may be filled or water may be supplied without a special contract, from a canal direct in small quantities for the purposes other than Irrigation at the rates mentioned in Schedule-1".

5. Initially, the water was being supplied to the industrial establishments as per agreement which was for a period of 20 years, the rate was mentioned in the agreement itself.

6. The schedule to the drainage rules provide rates for supply for various purposes and so far as the industrial purposes is concerned, the previous rates prescribed for supply of bulk water was enhanced to Rs. 1/- per 1000 CFT, during the period when the agreement was in force or even after agreement from 20-6-1982 and bills were accordingly raised on the industrial establishments. Vide notification dated 28-11-1991 as published in the Rajasthan Gazette on January 2, 1992. Schedule Item 5(a) of Schedule I to the rules were amended. The rate of bulk supply of raw water was increased to Rupees 20/-. The amendment of 1991 reads as under :

IRRIGATION DEPARTMENT

NOTIFICATION

Jaipur, November 28, 1991.

S.O. 138--In exercise of the powers conferred under Sub-section (1) of Section 60 read with Section 31 of the Rajasthan Irrigation and Drainage Act. 1954 (Act XXI of 1954) the State Government hereby makes the following amendment in Item No. 5 (a) of Schedule-I of the Rajasthan Irrigation & Drainage Rules. 1955, the other Items and their rates shall remain same :--

S. No.

Name of Items

Rate per thousand CFT

5(a)

Water supplies in bulk for Industrial purposes.

Rs. 20/-

7. Bills were raised accordingly on the factories concerned as per Rs. 20/- per 1000 CFT. Number of industrial houses including the writ petitioners filed the writ petitions in the High Court which were decided by one common order on 2-4-1993 being D.C.M. Shri Ram Consolidated Ltd. v. State of Rajasthan & Others D.B. Civil Writ Petition No. 2282/92. The Division Bench of this Court had gone into the matter in detail by the judgment aforesaid, copy of which has been attached as Annexure-13 to the present writ petitions. The Division Bench had held that the legitimate expectation is not attracted in the cases as had been contended by the learned counsel for the petitioners. It was further observed that it was a matter of policy as to what price should be charged for water supply in bulk to the industrial establishments and so far as the doctrine of legitimate expectation is concerned, it could not be made applicable and it could not be attracted to the legislature field unless it could be shown that in fixing the rate for supply of bulk water for industrial purposes, the authorities had acted arbitrarily or unreasonably. It was observed that the water tanks vest in the State Government and it is the property of the State Government. It was further observed that this Court was not an expert body and it is not expected from the Courts to say and direct as to what price for the supply of water for industrial purposes be charged.

8. On the contention of the learned counsel for the petitioners to the effect that the price of Rs. 20/- per 1000 sq. CFT for bulk supply of water for Industrial purposes was arbitrary or not, it was observed by the Division Branch that in order to arrive at any decision including the price fixing of water supply for the purpose other than irrigation, it was the normal practice of the State Government or the Central Government to appoint an expert committee to examine the matter and thereafter consider the report of the expert committee and to take a final decision. It was observed that it was for the expert committee to come to the conclusion as to what price should be fixed taking into consideration of the cost of the various projects as on today subject to review or revision periodically made or the price should be fixed on the basis of year and cost of project from which water is supplied. It was observed that there was hardly any dispute that taking into consideration the escalation in the cost of various projects, there is need of consistent review of the charges of water supply for various purposes including the Industrial purposes.

9. In the last concluding para the Division Bench had held that the State Government would appoint a committee which would go into the matter of fixing the charges for supply of water in bulk and in the mean time Rs.10/- per 100 CFT would be charged. It was further ordered that the petitioner shall be liable to pay the price from November 29, 1991 as fixed and determined by the

committee in case the charges are enhanced from Rs. 10/- per 1000 CFT or in case the charges are decreased, in that situation, the industries will be entitled to refund. The concluding para reads as under :

"Consequently, we hereby partly allow these writ petitions and set aside the amendment on Schedule I, item 5(a) of the Rajasthan Irrigation & Drainage Rules, 1955 in so far as relates to the rate for water supply in bulk for Industrial purposes, for the reasons stated earlier. The bills raised at the rate of Rs. 20/- per thousand Cft. in each of the writ petitions are quashed. The respondents will be free to raise fresh bills at the rate of Rs. 10/ - per thousand Cft. for water supply in bulk for industrial purposes to the petitioners. If the expert committee to be appointed fixes higher rate than Rs.10/- per thousand Cft. for water supply in bulk for industrial purposes from November 28, 1991 when the rate was revised to Rs. 20/- per thousand Cft. and -- or the Drainage Rules are revised, the petitioners will have to pay the price at that rate and if the rate is fixed less than Rs. 10/ - per thousand Cft. they shall be entitled for the adjustment of any amount paid in excess thereof. Costs made easy."

10. It is stated in the written statement that as per the orders passed in the writ petitions, an expert committee was constituted comprising of the Chief Engineer. Irrigation, Jaipur as Chairman. Chief Engineer of Irrigation (North) Hanumangarh and Chief Engineer (Head quarters). Jaipur as members of the committee and they were directed to submit its recommendation by 30-6-1993 as per Annexure R-I. In view of the recommendations of the committee, ultimately notification dated 17-5-1995 as published on 29-5-1995, copy of which is also attached as Annexure R/2, was issued, whereby the charges have been fixed as Rs. 20/- after amending the schedule for Industrial purposes.

10A. The petitioners submit that the rates fixed are very high and the amount should not have been enhanced to Rs. 20/- per 1000 CFT and the fixation of rate is unjustified and the approach made by the respondents is very casual.

11. After hearing learned counsel for the parties, I do not find any merit in the writ petitions. The matter already stands settled by a judgment of the Division Bench of this Court in the case of D.C.M. Shri Ram Consolidated Ltd. v. State of Rajasthan & Ors. (supra). It had been held by the Division Bench that the State shall appoint an expert committee who will go into the facts of fixing of rates. The committee was constituted as Annexure R-I. The report had been submitted by the committee even though the committee had recommended a higher rates as per agreement in the written statement, yet the Government had decided to fix Rs. 20/-per 1000 CFT.

12. From the report produced for perusal, it is revealed that the committee was constituted and even on the representation of the Chamber of Commerce and Industries, the Chamber of Commerce was directed to appear for the purpose of hearing on 13-8-1993 and again on 24-8-1993. A representation in writing was also given by the Chamber of Commerce and Industry in this regard. The

representation was submitted in detail. Committee had gone into the various aspects of the cost factor for storage of water for irrigation projects and came to the finding that the cost per 1000 CFT was Rs. 125/- . The committee had recommended to charge 21% under the heading of interest, depreciation and maintenance i.e. 18% , 2% and 1% and the total amount of Rs. 20.25 per CFT was recommended, which was reduced to Rs. 20/- The committee has already gone into all these aspects and the cabinet had also approved such decision.

13. I have gone through the original proceedings of the committee which were produced by the learned Advocate General. The expert committee has already given its opinion. As has been held by this Court that it is up to the State to fix the water charge after going through the various aspects of the matter on the recommendation of the committee and further that the parties shall be bound to make the payment at the enhanced rate from November 28, 1991. The earlier judgment of the Division Bench is binding on the parties and thus if the bill has been raised as per notification, which notification has been published as per the finding of the expert committee constituted under the orders of this Court as reproduced above, no interference is called for in the writ petitions.

14. All the above writ petitions are dismissed. No order as to costs.