

(1988) 04 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 568 of 1988

Dr. Vithal Shrinivas Kulkarni

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 66 C, 71, 95
Karnataka Urban Water Supply and Drainage Board Act, 1973 — Section 31 A

Citation : (1988) ILR (Kar) 1235 : (1988) 1 KarLJ 550

Hon'ble Judges : Rama Jois, J;Rajendra Babu, J

Bench : Division Bench

Advocate : Vinod Prasad, for the Appellant; N.S. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—This Writ Appeal is presented against the order of the learned Single Judge dismissing the Writ Petition presented by the petitioner in which the petitioner had questioned the legality of the Notification fixing the water rate payable by the consumers in the town Jamkhandi in Bijapur District.

2. The undisputed facts of the case are as below: The Board constituted under the provisions of the Karnataka Urban Water Supply and Drainage Board Act, 1973 ("the Act" in short) has jurisdiction over the entire State of Karnataka except the City of Bangalore. The Act has been enacted by the Karnataka State Legislature. According to the preamble of the Act, responsibility of the Board constituted under the Act is for regulating and developing the drinking water and drainage facilities in the urban areas of State of Karnataka. Prior to the coming into force of the Act, in the towns the duty of supplying drinking water was entrusted to the concerned local authority. That duty has been now entrusted to the Board under the provisions of the Act.

Section 31-A of the Act reads thus -

BOARD'S POWER TO LEVY RATES ETC -

The Board may, in respect of any water supply or sewerage undertaking vesting in it, levy rates, fees, rentals and other charges and may vary such rates, fees, rentals and other charges from time to time in order to provide sufficient revenue -

- (a) to cover operating expenses, taxes and interest payments and to provide for adequate maintenance and depreciation;
- (b) to meet repayment of loans and other borrowings;
- (c) to finance normal year to year improvements; and
- (d) to provide for such other purposes beneficial to the promotion of water supply and sewerage."

In exercise of the power under the said section, a notification was issued on 24-10-1985 fixing the rate for the supply of water (Annexure-A) for Jamkhandi. According to the said Notification, rate fixed for domestic supply was 0-55 paise per one thousand litres upto 10,000 litres, 0-85 Paise per one thousand litres for supply of water above 10,000 litres. On 4-9-1987, the Board issued a public notice proposing to increase water rate with effect from 1-10-1987. The rate proposed was Rs. 1-32p per one thousand litres. The appellant filed objections in response to the said public notice. Some time in November or December 1987, according to the Board, final Notification u/s 31-A of the Act was issued fixing water rate as proposed with effect from 1-10-1987. Objections filed by the appellant and others were over-ruled on the ground that fixation of water rate at any-lower rate would result in loss to the Board and the Board was required to supply water on no loss and no profit basis. Questioning the legality of the Notification (Annexure-D) the appellant presented the Writ Petition. The main contention urged before the learned Judge was that sufficient time was not given to file objections and therefore the final notification was bad for violation of the provisions of Section 66C read with Section 71 of the Act and Section 95 of the Karnataka Municipalities Act, 1964. The said contention was negatived and the Writ Petition was dismissed. Aggrieved by the said order, the appellant has presented this appeal.

3. This appeal has come up for preliminary hearing. Sri N.S. Srinivasan, learned standing Counsel for the Board has put in his appearance. By consent of both sides, the Writ Appeal is taken up for final hearing and is disposed of by this Judgment.

4. Sri Vinod Prasad, learned Counsel for the appellant urged before us also that the procedure followed in fixing the water rate was in clear contravention of Section 66C and 71 of the Act and Section 95 of the Karnataka Municipalities Act. Section 66C of the Act reads thus:

66C: NOTICES ETC. TO FIX REASONABLE TIME - Where any notice, bill, order, or requisition issued or made under this Act or any rules or regulations made thereunder requires anything to be done for the doing of which no time is fixed in

this Act or the rule or the regulation made thereunder, the notice, bill, order or requisition shall specify a reasonable time for doing the same."

Learned Counsel for the appellant contends that in view of the above provision, reasonable time ought to have been given for filing objections to the proposal to increase the water rate. We fail to appreciate as to how the said provision applies to Section 31-A of the Act. The above Section applies only to cases where the provisions of the Act or rules and regulations made thereunder require the issue of any notice or require issue of a public notice before making an order under the Act. There is no provisions under the Act or the Rules which require giving of public notice before issuance of notification revising the water rate u/s 31-A of the Act. Provision of Section 66C of the Act is not at all applicable to this case. Section 71 of the Act is only a transitory provision which provides for Continuation of appointments, notifications, rules, bye-laws etc. under the relevant provisions of the Municipalities Act, in so far as they relate to supply of water, as that part of the duty was being shifted to the Board under the provisions of the Act. The only effect of the provisions of Section 71 of the Act was the water rate fixed by the Municipality prior to the coming into force of the Act continued to be in force until it was altered by the Board. Therefore that Section is not apposite and has no relevance to the giving of any specific time before issuing notification u/s 31-A of the Act. Section 95 of the Municipalities Act prescribes the procedure for imposing tax. It requires giving of 30 days time to file objections to the proposal to levy or to increase any tax. That Section has no relevance at all to the fixation of water rate under the Act for two reasons. Firstly, no provision of the Act makes Section 95 of the Municipalities Act applicable for fixing water rate u/s 31-A of the Act and secondly water rate payable u/s 31-A is not a tax. It is the price fixed for supply of water. Therefore, the contention of the appellant that the aforesaid provisions apply and consequently the final notification was bad for not giving 30 days time is untenable.

5. Learned Counsel for the appellant next contended that the principles of natural justice demanded that before revising the rates to the prejudice of the residents of the locality u/s 31-A of the Act, the Board should give an opportunity of hearing.

6. There can be no quarrel about this proposition. It is now too well settled that an administrative order having civil consequences must be preceded by compliance with the principles of natural justice (See: A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and S.L. Kapoor Vs. Jagmohan and Others, . Opportunity of hearing can be dispensed with either by express provision or by necessary implication. The wording of Section 31-A of the Act does not exclude the application of natural justice. Therefore, in view of the principle laid down by the Supreme Court in the aforesaid decisions, requirement of compliance with the rules of natural justice, must be deemed to be super-added to Section 31-A of the Act.

7. Sri Srinivasan, learned Counsel for the Board does not dispute that before raising water rate, opportunity of making representation should be afforded to the persons likely to be affected by the increase of water rate. He submitted that in the present case, rules of natural justice had been complied with. He invited our attention to the public notice vide Annexure-B. It is a public notice published in the issue of "Samyukta Karnataka" - Kannada daily, dated 4th September 1987. The said public notice clearly sets out the rates proposed to be fixed with effect from 1-10-1987 and also expressly stated that persons who had any objections to the increase of the rate might file their objections within 15-9-1987. The publication of this notification is not controverted by the appellant. Appellant's contention is that there was only 10 days time to file objections and it was unreasonable. We are not impressed by the submission. Giving 10 days time to file objections particularly when the notification related only to the residents of the locality of Jamkhandi town, in our opinion, was sufficient and if really any person was serious about filing of objections, he had sufficient time. In fact, the appellant had filed objections to the proposal to increase water. Hence this grievance is not real.

8. The next contention of the learned Counsel for the appellant was that inviting of objections would not amount to complying with the principles of natural justice unless the objections were considered by the respondents. The annexures produced along with the Writ Petition and in this appeal show that objections had actually been considered. There was a meeting held on 18-10-1987 in the chambers of the Assistant Commissioner, Jamkhandi, of the committee constituted by the Assistant Commissioner consisting of representative of persons interested, including officers of the Board, to consider the objections. In the said committee, proposals as well as objections filed by the petitioner/appellant there to were considered and in fact the committee recommended for fixing water rate at Re. 1-00 per 1000 ltrs. However, the Board on considering the above recommendation was of the view that fixing of rate at Re. 1-00 per 1000 ltrs was not feasible as it was likely to result in loss. Having regard to the expenditure for supply of water, the Board was of the view that water rate proposed, viz., Re. 1-32 per 1000 ltrs was reasonable. This is evident from the communication dated 28-11-1987 issued by the Board to the Assistant Commissioner Jamkhandi, produced by the respondent-Board (Annexure-R5). In the said letter, the Board communicated its approval for the proposed rate at Re. 1.32 per 1000 ltrs to the Executive Engineer of the Board and he was asked to implement the said decision. The relevant portion of the letter reads thus :

xxx xxx xxx Copy to Executive Engineer, K.U.W.S. & D.B. Division, Bijapur, for information and necessary action to implement the revised rates as already approved by the Board and start collection of water charges at the new rates with effect from 1-10-1987."

From the above communication, it is clear that by that letter the Executive Engineer was directed to issue the final notification raising water rate in

accordance with the approval granted by the Board.

9. At this stage, we asked the learned Counsel on both sides to show the final notification issued pursuant to the aforesaid decision both of them invited our attention to Annexure-D which reads thus:

The aforesaid notification, does not bear the date on which it was issued. It is not a public notice published in any newspaper. Both the learned Counsel explain that it was a pamphlet printed by the Executive Engineer of the Board and circulated for the information of the public. We asked the learned Counsel for the Board as to how the aforesaid notification can be regarded as a notification issued u/s 31-A of the Act and how rates can be regarded as having come into force with effect from 1-10-1987 in view of the following serious infirmities in that notification.

(i) A reading of the aforesaid notification which is stated to be the final notification, at once indicates that it is also a proposal in respect of which objections were invited. This is clear from the last paragraph of the notification wherein it is expressly stated that if anybody had any objection he should submit his objection before 15-9-1987.

(ii) If it can be regarded as notification issued subsequent to 28-11-1987 and a final notification too then how the Board can fix the rate retrospectively w.e.f. 1-10-1987.

Learned Counsel for the Board submitted that actually Annexure-D was intended to be the final notification but unfortunately the Executive Engineer who issued the notification while preparing the final notification, did not delete the portion "inviting objections" incorporated in the proposal. Whatever that may be, the fact remains that there is no final notification at all increasing the water rate for Jamkhandi till date.

9. Another serious infirmity which came to light during the course of arguments is that the notification has not at all been issued by the Board. Section 31-A, the contents of which are extracted earlier, shows that it is the Board which is invested with the power to issue the notification. Therefore, final notification could be issued only by the Board and not by the Executive Engineer or any other officer. Annexure-D which according to the learned Counsel for the Board is the final notification, has not been issued by the Board at all. Moreover, as pointed out earlier, the said notification also invited objections and therefore it cannot be regarded as final notification at all.

10. As this is a public interest cause, we pointed out to these infirmities and asked the learned Counsel for the Board to state as to how he could get over the serious infirmities. The learned Counsel for the Board submitted that the difficulty was unsurmountable and the Board had no alternative than to issue a fresh notification u/s 31-A of the Act fixing a prospective date with effect from which the rates approved shall come into force. Learned Counsel for the Board

also submitted that in fact the residents of Jamkhandi Town had been agitating for reduction of water rate and ultimately by the intervention of the concerned Minister, the Board had agreed to reduce the water rate from Re. 1.32 per 1000 litres to Re. 1.17. In view of the serious infirmities which renders the impugned notification nonest, the only course open to the Board now is to publish a fresh final notification giving effect to the reduced rate as indicated above.

11. In the result, we make the following order:

(i) The Writ Appeal is allowed.

(ii) In reversal of the order made by the learned Single Judge, we make the following order:

(a) The Writ Petition in so far as it challenged the procedure followed by the Board in fixing the revised rate is concerned, it is dismissed.

(b) The Writ Petition is partly allowed and the Board is directed to collect the revised rates only with effect from a prospective date to be specified in the notification to be issued by the Board itself u/s 31-A of the Act.

(iii) No Costs.