

(1969) 09 OHC CK 0008
In the Orissa High Court
Case No : O.J.C No. 509 of 1966

Gouri Prasad Dehuri and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-09-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Irrigation Act, 1959 — Section 21, 27, 28, 4
Orissa Irrigation Rules, 1961 — Rule 1, 18, 19, 20, 21

Citation : (1970) 36 CLT 163

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The 24 Petitioners in this writ application under Articles 226 and 227 of the Constitution are villagers of Tangerpali in Boudh Sub-Division in the district of Phulban J. There is an irrigation work locally known as "Salki Irrigation Project" and the lands of the Petitioners are situated within the irrigable command of the said irrigation work. These lands of the Petitioners have been assessed to water-rate at the rate of Rs. 6/- per acre by assessment orders dated 12-7-1965. The Petitioners challenge this assessment on the ground that there has been no compliance of Rule 20 of the Orissa Irrigation Rules, 1961 (hereinafter referred to as the Rules) and no opportunity has been given to the Petitioners who are land-owners as contemplated under Rule 20 in the matter of fixation of the rate. It is therefore contended that the demand is contrary to law and cannot be enforced. The Petitioners have asked us to quash the assessments on the ground that they are legal, void and without jurisdiction.

2. The contention raised on behalf of the State of Orissa is that the Petitioners have been assessed to compulsory basic water-rate. Rule 20 has no application to assessment of such compulsory basic water-rate. Section 28 of the Orissa

Irrigation Act, 1959 (hereinafter referred to as the Act) read with Rule 45 of the Rules framed thereunder provides for assessment of such rate. The Petitioners are not entitled to raise objections in the matter of classification of the irrigation works at any stage earlier to the preliminary assessment. It is therefore contended that there is no basis for the writ application and the Petitioners are not entitled to relief on the ground that there was no compliance with Rule 20 of the Rules.

3. It is, therefore, necessary to examine with reference to the provisions of the Act and the Rules as to whether the contention raised by Mr. Ram for the Petitioners that Rule 20 was necessary to be complied with or the contention raised by the learned Advocate General for the State of Orissa that Rule 20 has no application in the matter of raising the compulsory basic water-rate is correct.

4. Terms like "Compulsory basic water rate", "Culturable commanded area" and Lands under irrigable command have been given statutory definitions in Section 4 of the Act. For convenience the definitions may be extracted:

(4) "Compulsory basic water rate" is flat water rate per acre of land within the culturable commanded area of an irrigation work payable to the State Government for supply of water whether "Used or not from an irrigation work for irrigation of the staple cereal crop generally grown in the area;

(5)"Culturable commanded area" means all lands under irrigable command of an irrigation work which are fit for cultivation;

(10)"Lands under irrigable command" means such lands as are irrigated or capable of being irrigated by flow from an irrigation work being under its command and shall include also such cultivated lands which receive, in the opinion of the Irrigation Officer or the Collector, by percolation or otherwise from an irrigation work or by indirect flow, percolation or drainage from or through adjoining land, an advantage beneficial to and sufficient for the requirements of the crop.

By Orissa Act 10 of 1968 the scheme of the Act in respect of levy of compulsory basic water rate has been amended. In fact no further compulsory basic water rate is leviable. Therefore, Orissa Act 10 of 1968 has also repealed the definition of "compulsory basic water rate" and another corresponding provisions in the Statute. Since the impugned assessment was made at a time when compulsory basic water rate was leviable, we are not concerned with the effect and consequence of the amendment brought by Orissa Act 10 of 1968.

5. Chapter IV of the Act relates to supply of water and Chapter V to levy of water rate and cess. Section 21 of the Act clearly indicates that any person desiring to have supply of water from an irrigation work has to make a written application to the prescribed officer, but the proviso makes it clear that no application will be necessary for irrigation of the crop or crops for which a compulsory basic water rate is levied u/s 28. Therefore, the scheme of the Act clearly indicates that the

lands within the irrigable command would be liable to a compulsory basic water rate which would be in the nature of a tax as it would be leviable whether water is actually utilised or not from an irrigation work, while the scheme under Chapter IV makes provision for supply of water on payment of money and any levy under Chapter IV is correlated to actual supply. Section 27 of the Act provides as follows:

All irrigation works belonging to or constructed by or on behalf of the State Government shall be classified into such number of classes as the State Government may determine having regard to the cost of construction of the work, the duration of supply of water and the amount of water supplied from such work and the compulsory basic water rate, water rate or water cess shall be levied in respect of each such class of irrigation work in any district or specified area at such rates as may be fixed by the State Government in the prescribed manner.

The relevant rules for implementing the provisions of Sections 27 and 28 of the Act are found in Chapter 5 of the Rules, and Rule 45 makes provision for assessment of compulsory basic water rate. The material portion of that Rule is as follows:

45 (1) The Irrigation Officer shall classify the irrigation works under his charge according to the principles laid down in Rule 1 and fix the compulsory basic water rate to be levied in respect of each individual work according to the classification arrived at. The amount of compulsory basic water rate payable by each owner or occupier for his lands within the irrigable command shall, there after be calculated keeping in view the principle laid down in Rules 41 to 44.

Therefore, the Irrigation Officer is required by Rule 45(1) to classify the irrigation works and the principle for such classification is as laid down in Rule 1. It is patent from the language of Rule 45(1) that the method adopted for classification is the principle contained in Rule 1a. Rule 1a has not been engraved bodily into the scheme of Rule 45, but it is only the principles that have been introduced into the sub-rule as providing the guide line for the Irrigation Officer in the matter of classification of irrigation works. Mr. Ram contended before us that in view of the fact that Rule 45 has made reference to Rule 18, it is the necessary intendment of the statutory rules that irrigation charts are to be prepared and on the basis of the procedure laid down in Rule 20 the compulsory basic water rate has to be assessed. We find it difficult to accede to the contention in view of the fact that the scheme of the Statute is clear and there is absolutely no ambiguity left to raise such a contention.

6. As has already been indicated, compulsory basic water rate is leviable whether water is actually drawn from the irrigation work or not, while water is also available to the land owners within the culturable commanded area on payment of rates determined by the Irrigation Officer. Rules 18, 19, 20, 21 and 23 deal with the determination of the basis and the ultimate rate at which water can be

supplied at request. Rule 45 however deals with the compulsory basic water rate. The scheme of the Act and the Rules seems to be that in case of fixation of water rate in respect of supply of water at the request of land owners, Rule 20 is applicable and from the stage of preparation of the irrigation charts which is one of the preliminary stages for determination of the rate, owners of lands under irrigable command of each irrigation work are entitled to participate in the proceedings, raise objections and, if not satisfied with the orders of the Irrigation Officer, even carry appeals to the Collector of the district. But in respect of compulsory basic water rate the classification of the irrigation works has been left to the Irrigation Officer and the process of classification is absolutely within the jurisdiction of the Irrigation Officer and at that stage the land owners have not been given the liberty of raising any objection or being heard. Once the Irrigation Officer completes his classification following the principles laid down in Rule 1a and proceeds to prepare a preliminary assessment roll of compulsory basic water rate the stage is reached when a right to object is provided. The objection contemplated in Sub-rule (4) of Rule 45 is not limited to any particular ground and the reason is obvious. The classification by the Irrigation Officer having been made all by himself and the persons to be affected by the classification having not been given a hearing, the scope of objections under Sub-rule (4) has not been restricted. Wide as it is, any person aggrieved by such classification is also entitled to challenge the classification itself. For instance, it is open to the objector to contend that the principles laid down in Rule 18 have not been followed and consequently the classification is wrong. Therefore, the objector can contend that the preliminary assessment roll in respect of the village in which are his lands is not correct and requires modification. Rule 45, to our mind, is a complete Code by itself relating to the classification of the irrigation works, raising of the assessment (preliminary and final), and exemption from such rates. The other Rules in Chapter V provide for an appeal to the prescribed authority and an ultimate revision before the state Government. As such, the scheme of the statutory rules clearly goes to show that many guarantees have been provided to safeguard the interests of the owners of lands in respect of the levy of compulsory basic water rate.

7. The Collector of Phulbani has filed an affidavit before us wherein it is stated thus:

6...Under Rule 45(1) of the said rules the Irrigation Officer is required to classify the works according to the principles laid down in Rule 1a for preparing preliminary assessment roll. There is no provision for observance of the procedure laid down in Rule 20 while taking up assessment of compulsory basic water rate.

7...The Irrigation Officer before starting individual case records has discussed the matter with Salki Project Engineers, perused the records supplied by the Engineering person regards the commendable area with the plot numbers etc. and classified this project as a class II irrigation source in accordance with the

principals laid down in Rule 18. Thereafter the Irrigation Officer prepared the preliminary assessment rolls, in respect of the lands in the village Tanganapalli coming under the irrigable command of the Salki Project in form "M" as per Rule 45(2) and issued notice of the preliminary assessment to each of the Petitioners in form "N" under Rule 45(3). On expiry of the period provided under the notice the Irrigation Officer considered the objections filed before him under Rule 45(a) and in suitable cases modified the draft assessment rolls. Out of the Petitioners Sri Gouri Prasad Dehuri (Petitioner No. 1) and Shri Sansar Prasad Dehuri (Petitioner No. 24) had filed objections before the Irrigation Officer.

These assertions in the counter affidavit have not been disputed by Mr. Ram. He clearly stated before us that according to him Rule 20 had application even in the matter of classification of the irrigation works for the purpose of levy of compulsory basic water rate, and the only ground on which he wanted the assessment to be quashed was non-compliance of the requirements of the said rule.

8. On the analysis we have made of the scheme provided by the Act and the Rules framed thereunder, we are clearly of the view that Rule 20 of the Rules has no application to the classification of irrigation works for the purpose of Rule 45 and, as such, the Petitioners are not entitled to make a grievance on the score that Rule 20 had not been complied with in the matter of assessment of compulsory basic water rate in respect of their lands.

9. The Petitioners had various remedies open to them against the decision of the Irrigation Officer. They could have preferred appeals under Rule 46, gone up in revision under Rule 5a and could have even moved the State Government. Even though two of them had actually raised objections before the Irrigation Officer as indicated above, they approached this Court on an erroneous basis of non-compliance of Rule 20 as indicated above. The Petitioners are, therefore, not entitled to any relief in this writ application.

10. The writ application fails and is dismissed, but in the peculiar circumstances of this case we do not make any order as to costs.

G.K. Misra, C.J.

11. I agree.