

(2014) 08 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 374 Of 2012 and CMA No. 1480 Of 2013

Gulab Chand and Others

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Citation : (2014) 4 JKJ 366

Hon'ble Judges : Bansi Lal Bhat, J

Bench : Single Bench

Advocate : F.S. Butt, Advocates for the Appellant; M.A. Goni, Sr. Advocate, H.A. Siddiqui, AAG and Ajay Singh Kotwal, Advocates for the Respondent

Judgement

Bansi Lal Bhat, J.—The writ petition on hand, filed in representative capacity by petitioners Gulab Chand and Baldev Singh Rana, former

being the Sarpanch of Panchayat Halqa Trigam-C and the later being the Sarpanch of Panchayat Halqa Janwas-Tehsil and District Kishtwar seeks

the following relief:--

Mandamus; so as to command and direct the respondents not to divert the water of Galigad Nallah for proposed WSS Wani and Phagwar or any

other scheme which will deprive the inhabitants of panchayat Galigad and Janwas from drinking water facility as well as the agricultural source on

which major population of the area survives and which is lone source of earning livelihood, as from the said Nallah already more than Ten water

supply schemes (pipe lines) and Ten Irrigation Khuls are functioning and any further scheme will dry the water and deprive the inhabitants from

drinking water facility and water for agricultural purposes.

The case put forth by petitioners is that the respondents have provided drinking water facility to the inhabitants of Panchayat Halqa Trigam-C and

Janwas by introducing the water supply scheme from Galigad Nallah. Water Supply Schemes and Khuls, each numbering more than ten are said to

have been constructed respectively for supplying drinking water and feeding the agricultural lands. Entire population of these panchayat halqas is

said to be dependent upon these water supply schemes and khuls described in para-4 of the writ petition. Respondents are said to have proposed

to tap two more water supply schemes namely WSS Wani and WSS Phagwar from the said Galigad Nallah at Nagni and Khandgore raising

apprehensions in the minds of petitioners that the existing water supply schemes and Khuls using Galigad Nallah as its source will become defunct.

It is pointed out that a similar effort made by respondents earlier was resisted by the inhabitants of these two Panchayat Halqas who filed a civil suit

before learned Sub-Judge Kishtwar which was decreed in their favour on 29.12.2004 by passing a decree of permanent prohibitory injunction

restraining the respondents from diverting water from Galigad Nallah. Thereafter, respondents are said to have proposed a new water supply

scheme for the area viz Drab and Phagwar line from Kumarnag (Ghan) popularly known as Kandni Nallah with reservoir to be constructed at

Agral. Despite laying pipelines, the Scheme was later abandoned for unknown reasons. According to petitioners, the respondents are again hell

bent upon diverting the water of Galigad Canal, aggrieved whereof, petitioners claim to have served legal notice on respondents but to no avail.

Respondents are said to have collected material on spot to go ahead with the proposed water supply schemes. Petitioners case is that the residents

of the aforesaid two Panchayat Halqas are already reeling under acute shortage of water as they are getting drinking water on turn basis and the

introduction of new water supply schemes by respondents will leave them with no option but to migrate from the area.

2. Respondents 1 to 5 have filed objections pleading that respondent No. 4 had constituted a team of technical officers of the department for

computing total discharge of Galigad Nallah and the tapped discharge for irrigation and drinking water purpose. The Team visited the site and

prepared a report which reveals that Galigad Nallah has three tributaries in its catchment namely Gramni Nallah, Doon Nallah and Nagni Nallah

having a discharge of 12.00 cusecs, 7.50 Cusecs and 32.00 cusecs respectively. From Gramni Nallah, one irrigation Khul namely Jinwas Khul and one Zamindari Khul namely Shrawal Khul have been tapped with discharge of 4.80 cusecs in the vicinity of Jinwas (Irrigation) Khul. The proposed PHE Scheme having two inch diameter and one and a half inch diameter will tap 0.28 cusecs of water for drinking purpose leaving water in the nallah to the tune of 6.92 cusecs unutilized. Similarly, other irrigation Khuls and PHE Network utilizes 23.65 cusecs of water leaving unutilized water to the tune of 27.85 cusecs in Nallah which gets discharged in river Chinab. It is further pleaded that half a dozen water mills run throughout the year in Galigad Nallah. Therefore, apprehension of petitioners that the existing water supply and irrigation schemes will be adversely affected are quite baseless. Respondents further pleaded that WSS Wani was being tapped from Nagni Nallah having discharge of 32.00 cusecs and the discharge of WSS Wani would be only 0.32 cusecs. Similarly WSS Phagwar was being tapped from Gramni Nallah having discharge of 12.00 cusecs with the discharge proposed to be tapped for drinking water scheme at 0.28 cusecs whereas discharge of irrigation and zamindari khul was to the tune of 4.80 cusecs, thus, leaving an unutilized discharge to the tune of 6.92 cusecs. It is further pleaded that other PHE/Irrigation Schemes are tapped downstream of Gramni Nallah thereby not affecting the volume of water available for use of petitioners.

3. Vide order dated 21.10.2013, Secretary State Water Resources Regulatory Authority was impleaded as respondent No. 6 and directed to submit a detailed report, with regard to capacity of water, with the assistance of Revenue Authorities. Later two individuals Amarnath and Om Parkash-both residents of Phagwar were impleaded as respondent Nos. 7 and 8. While respondent No. 6 has filed the detailed report required of him, respondents 7 and 8 have not filed objections to the petition.

4. Respondent No. 6 has filed his report regarding capacity of water in Galigad Nallah. The report which is based on the report submitted by Deputy Commissioner, Kishtwar reads as under:--

2 a) There are three census villages namely; Jinwas, Drab and Trigam having a total population of 5875 souls as per 2011 census data. Jinwas village is comprised of 6 Mohras with a total population of 1117 souls, Drab

village is comprised of 4 Mohras with a total population of 1000

souls, and Trigam village is comprised of 9 Mohras with a population of 3758 souls. Village-wise and Mohra-wise details are given in the

statement enclosed as Annexure-A.

b) The total quantity of water available in Galigad Nallah is 51.50 cusecs based on the discharge taken in the second week of April 2012 by a

team of officers/officials of the Hydraulic Division, Kishtwar. This discharge in Galigad Nallah is inclusive of discharge of its tributaries namely;

Nagni Nallah (32.0 cusecs), Doon Nallah (7.5 cusecs) and Gramni Nallah (12.0 cusecs). The details are given in the statement enclosed as

Annexure-B.

3. The total quantity of water required for drinking purposes for a projected/ designed population of 11,515 souls after a period of 30 years works

out to 0.32 cusecs. This has been computed on the basis of present norm of supplying drinking water @ 15 gallons (70 litres) per capita per day.

However, it has been noted that the existing 10 water supply schemes drawing water from Galigad and its tributaries are capable of drawing

approximately 0.47 cusecs of water, and that the two proposed new schemes namely; (i) Doon, Gramni Nallah to Phagwar and (ii) Khandak to

Wanyee are designed to carry 0.186 cusecs of water. Thus, the total quantity of water which all the 12 schemes are capable of drawing comes to

approximately 0.66 cusecs only. Further, if a provision of 0.25 cusecs is made for any new settlement etc, the total quantity shall still be only 0.91

cusecs approximately.

3.1. The scheme-wise details are given in the statement enclosed as Annexure-C.

4. In so far as requirement of water for feeding/servicing the three existing minor irrigation kuhls is concerned, it has been worked out as 13.5

cusecs only. Another minor irrigation scheme namely; Lal Kundan Mandri has been proposed which shall have a discharge capacity of 3.75

cusecs. It is also estimated that all existing local kuhls shall together be utilizing approximately 5 cusecs of water. Thus, the total quantity of water

for irrigation purposes, including for the proposed new scheme is assessed to be 22.25 cusecs.

4.1. The scheme-wise details of water required for irrigation purposes, respective command areas, potential utilized and unutilized potential are

given in the statement enclosed as Annexure-D.

5. In view of the above, it can be safely concluded that the availability of water in Galigad Nallah and its tributaries is more than adequate to

service the needs of all existing as well as proposed new schemes, both for drinking and irrigation purposes. In this regard, it is significant to note

that a team of engineers of the Hydraulic Division, Kishtwar has observed in the course of a field study of one week in April, 2012, which is a

relatively lean period, that the total discharge available in the Galigad Nallah and its tributaries was as much as 51.50 cusecs (Annexure-D). This

clearly shows that the apprehensions expressed by the petitioners may not have any real basis.

5. Heard the rival sides and considered the matter which was taken up for consideration with the consent of parties.

6. Life, in all forms and manifestations, depends upon water which is a natural resource. With growth in population, increase in

agricultural/horticultural activities, rapid industrialization, urbanization, and merciless deforestation the water resources are fast depleting, green-

house effect further contributing to global warming and shrinking of water bodies. The water crises in recent years has set the people thinking to

devise ways and means of conserving water so essential for sustaining human life on planet earth. Right to have access to water is a recognized

public right. In a welfare State like India, provision for drinking water to each and every citizen is one of the highest policy objectives of

Government. Section 3 of Jammu and Kashmir Water Resources (Regulation and Management) Act, 2010 (hereinafter to be referred to as the

Act, 2010) provides that every water source in the State is and shall remain the property of Government. It further declares that any proprietary

ownership or any riparian or usage right on such water sources vested in any individual, group of individuals or any other body, corporation,

company, society or community shall, from the date of commencement of the Act, be deemed to have been terminated and vested with

Government. On plain language of this provision, it is abundantly clear that all water sources, existing or those which are yet to come into existence,

are and shall be the property of the State.

The provision also takes within its purview sources of water in respect of which

rights of ownership including riparian and usage rights were vested in an individual or body of individuals or a society or a community. Such rights stand extinguished and vested with the Government from the date of enforcement of the Act, 2010. Section 177 of the Act, 2010 excludes the jurisdiction of Civil Courts to entertain any suit or proceeding in respect of any matter which an assessing officer, an appellate authority or an adjudicating officer appointed under the Act is empowered to determine. Civil Courts jurisdiction stands barred in so far as grant of injunctive relief in respect of any action taken in pursuance of power conferred by the Act is concerned. It is manifestly clear that the Civil Court's jurisdiction stands ousted in matters relating to exercise of power by various authorities contemplated under the Act to deal with the matters arising out of or connected with water sources. In view of this legal position, it is futile on the part of petitioners to harp on the tune of existence of Civil Court decree acting as a detriment for respondents to respond to the clarion call of residents of adjoining areas for providing them the basic necessity of drinking water, more so as the decree, passed in ex-parte, does not deal with the technical aspect of volume of water in the Galigad Nallah and its tributaries and the extent of requirement of petitioners for drinking and agricultural purpose. It may be emphasized that existence of water source in a locality no more vests any proprietary, usage or riparian rights in local residents and it is for the Government to formulate schemes for drinking water and to provide for irrigation of land to grow food for all, regard being had to local needs and the volume of water available for such schemes.

7. The technical report filed by respondent No. 6 has been prepared by a team of Engineers with the help of Revenue Officials. The volume of water available in each tributary of the Galigad Nallah has been assessed with reference to cusecs and it has been found that even after tapping water for the proposed WSS Wani and WSS Phagwar Schemes from Galigad Nallah water source plenty of water shall remain unutilized. This report prepared by public authorities in discharge of official duties assigned to them stands uncontroverted. There is no reason to exclude the same from consideration merely because petitioners take exception to same without substantiating their plea that the implementation of proposed schemes would result in drastic reduction of volume of water at the water source

thereby rendering the existing water supply Schemes and irrigation canals defunct. There being no merit in the instant petition, the same is dismissed. Interim direction, if any, shall stand vacated.