

(2015) 01 KL CK 0036
In the High Court Of Kerala
Case No : Writ Petition(C) No. 9755 of 2013

Hilite Builders (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2015) 1 ILR Ker 845 : (2015) 1 KHC 438 : (2015) 1 KLJ 639 : (2015) 1 KLT 568

Hon'ble Judges : V. Chitambaresh, J.

Bench : Single Bench

Advocate : C.K. Karunakaran, for the Appellant; George Mathew and Gikku Jacob, Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V. Chitambaresh, J.—The right to life guaranteed under Art. 21 of the Constitution of India encompasses in itself the right to have clean drinking water supplied to a citizen in sufficient quantities. (See Vishala Kochi Kudivella Samrakshana Samithi Vs. State of Kerala, and Shajimon Joseph Vs. State of Kerala,). The petitioners are builders and the association of builders of residential apartments who complain of discrimination in the matter of water supply to apartments. The water supply in the State of Kerala for domestic as well as non-domestic purposes is governed by the Kerala Water Supply and Sewerage Act, 1986 [hereinafter referred to as "the Act" only]. S. 38 of the Act deals with the supply of water by the Authority (Kerala Water Authority) and its mandatory duty to grant supply of water for domestic purposes is discernible therefrom. The relevant part of S. 38 of the Act is extracted hereunder:-

"38. Supply of water by the Authority:-

(1) The Authority shall on an application made to it by the owner of any premises or by the occupier with the consent in writing of the owner thereof, grant supply

of water for domestic purposes on such terms and conditions as may be provided by regulations.

(2) The Authority may on application made in that behalf, grant supply of water for any purpose other than domestic purposes."

(emphasis supplied)

The word "shall" has been employed in S. 38(1) of the Act in the case of supply for domestic purposes whereas the word "may" has been employed in S. 38(2) of the Act in the case of other purposes. Thus an element of discretion is vested in the Authority to grant or not to grant supply of water only for any purpose other than domestic purposes.

2. Section 38A of the Act deals with water supply to flats and multi-storied buildings subject to such terms and conditions as may be provided by regulations. S. 38A of the Act is as follows:-

"38A. Water supply to flats and multi-storied buildings:-

(1) Notwithstanding anything contained in this Act, and subject to sub-section (2), the Authority may supply water through cisterns, tanks, sumps and ground level reservoirs to multi-storied buildings and flats, subject to such terms and conditions, as may be provided by regulations.

(2) The supply of water referred to in sub-section (1) shall not be made from a distribution main having diameter of 150 mm or less."

The water can be supplied through cisterns, tanks, sumps and ground level reservoirs and the stipulation is that the supply of water shall not be made from a distribution main having diameter of 150 mm or less. The residential apartments of the petitioners are evidently not meant for non-domestic activities and hence not a "multi-storied building" as defined under S. 2(xva) of the Act. The term "main" has been defined under S. 2(xiii) of the Act to mean a pipe laid by the authority for the purpose of giving a general supply of water. The respondents have no case that a distribution main having diameter of 150 mm or less is only available in the vicinity and hence unable to provide supply of water to the petitioners.

3. Kerala Water Authority (Water Supply) Regulations, 1991 [hereinafter referred to as "the Regulations" for short] have been framed under S. 65 of the Act. The Regulations have been framed with the previous approval of the Government for the administration of the affairs of the Authority including the grant of supply of water. Clauses 2(f) and 2(1) of the Regulations define "domestic connection" and "non-domestic connection" to mean separate categories of water supply connection. Clause 2(h) defines "house connection" to mean the connection by pipes from the main to the limit of the premises or to the meter whichever is farther from the main.

4. The Assistant Executive Engineer is entitled to deny house connection to an

applicant if in his opinion the pressure in the main is not sufficient for providing the connection. The respondents have no case that the pressure in the main is not sufficient and the petitioners also assert that several new connections are being given for non-domestic purposes. Clauses 7(d) and 7(g) of the Regulations dealing with the house connections are relevant and are extracted hereunder:-

"7. House connections:-

(a) x x x x

(b) x x x x

(c) x x x x

(d) Separate house connections may be provided to buildings situated in the same premises but bearing separate house numbers.

(e) x x x x

(f) x x x x

(g) House connections using connection pipes of size exceeding 25 mm diameter shall ordinarily be allowed only in respect of premises where water demand is estimated to be high such as in residential complexes, flat type of residential buildings or premises where bulk consumption of water is expected and where the service pipe is proposed to be connected directly to a storage tank facilitating a free discharge of water to it. In such cases where connections are to be given directly to storage reservoirs the provisions contained in Appendix "C" to these Regulations shall apply."

Clause 7(d) of the Regulations speaks of separate house connections to buildings situated in the same premises bearing separate house numbers like individual flats in a residential apartment. Clause 7(g) of the Regulations speaks of house connections in respect of premises where bulk consumption is expected and enables connection directly to a storage tank. Connection pipes exceeding 25 mm diameter shall ordinarily be allowed in such contingency wherein the provisions contained in Appendix "C" to the Regulations apply. It is upto the applicant to opt for separate house connection under Clause 7(d) or connection to a storage tank facility under clause 7(g) of the Regulations.

Clause 21 of the Regulations is an eye opener to the question as to whether connection to domestic purposes should be given preference to non-domestic purposes. Clause 21 of the Regulations reads as follows:-

"21. Disconnection of non-domestic connections on inadequacy of water:-The Assistant Executive Engineer or any person authorised by him may disconnect without notice from any premises, water supply given from the mains for non-domestic purposes, if due to natural calamities, water shortage or any other reasons the water supplied through the water supply system is found inadequate to meet the domestic requirements of the consumers.

In the event of such disconnection, the water supply shall be restored to the above premises as soon as normalcy in the system is restored and the disconnection and re-connection fees provided in clause (d) of Regulation 14 of these Regulations shall not be levied."

Thus disconnection without notice of water supply given from the mains for non-domestic purposes is permissible if the water supply to meet the domestic requirements of the consumers is found inadequate. Therefore the applicants for domestic connection stand at a higher pedestal than the applicants for non-domestic connection even as per the Regulations. The respondents have no case that no connection for non-domestic purposes have been given after the receipt of the applications for domestic purposes. The petitioners cannot be asked to wait indefinitely on the ground that water will be available in plenty after the implementation of "JICA" project. Flats are mushrooming in urban areas and altitudinal expansion of apartments is inevitable when horizontal expansion is impossible due to lack of space. The applicants for water supply to flats as well as to villas and independent bungalows are to be treated alike by the State and the Authority. Any discrimination between them in the matter of connection for water supply would violate the equality clause enshrined in Art. 14 of the Constitution of India. The applications for house connection have to be given precedence to the one for non-domestic connection going by the scheme of statutory regulations. The petitioners lament that new connections are being given for non-domestic purposes and bungalows keeping their applications for house connection pending. The respondents are directed to provide house connection to the residential apartments of the petitioners within three months if their applications are in order.

The Writ Petition is disposed of. No costs.