

(1997) 10 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28171 of 1996 and CC No. 453 of 1997

I.V.N. Raju and others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 13-10-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : AIR 1998 AP 218 : (1998) 6 ALD 585 : (1998) 1 ALT 199

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. Mahmood Ali, for the Appellant; Government Pleader for GAD, Mr. E. Sambasiva Pratap, SC for A.P. Municipalities and Mr. C.V. Nagarjuna Reddy, for the Respondent

Judgement

1. When the WPMPs and the contempt case came up for hearing before me, the learned Counsel for both parties addressed arguments on the main writ petition itself. As such the writ petition as well as the contempt case is being disposed of finally by this common order.

2. This is a writ petition seeking a writ of mandamus directing the respondents not to proceed with the proposed scheme for supply of water to the residents of Vizianagaram town pursuant to the tender notice dated 22-11-1996 issued by the second respondent and declare the same as arbitrary, unconstitutional and violative of Article 21 of the Constitution of India.

3. The writ petition is filed by three individuals allegedly for the benefit of about one lakh population covering 37 villages of three mandals of Vizianagaram district. The first petitioner is the Mandal President of S. Kota Mandal Vizianagaram District whereas petitioners 2 and 3 are agriculturists belonging to Bonangi village. The petitioners claim to represent thousands of agriculturists belonging to the said 37 villages who cultivate their lands by means of borewells dug by them in the vicinity of the river Gosthani. It is alleged that an extent of about 1,00,000 acres is cultivated under the said borewells numbering about

10,000. Valuable crops like paddy, sugar-cane and banana are raised in the said lands. The Government of Andhra Pradesh had formulated a scheme costing about twenty crores for supply of water to Vizianagaram town by sinking borcwells in Gosthani river bed and constructing infiltration wells for which tenders were called for by issuing a notification dated 22-11-1996 by respondent No.2. According to the petitioners, if the above scheme is implemented all the borewells of the ryots in the said 37 villages will be dried up resulting in the very deprivation of their livelihood. The ryots, therefore, made a representation to the Hon"ble Chief Minister on 3-3-1997 requesting the Government to desist from implementing the above scheme but there was no response to the said representation. On the other hand the tender notice dated 22-11-1996 was issued. Hence they filed the present writ petition seeking the reliefs mentioned above.

4. It is stated in the affidavit filed in support of the writ petition that there are several alternative sources for drawing the water to meet the requirements of Vizianagaram town such as Champavathi river and Andhra reservoir which are more convenient as they are nearer to Vizianagaram town than Gosthani river bed. It is stated that Sri Ashoka Gajapati Raju, Hon"ble Minister for Finance, Government of Andhra Pradesh, who hails from Vizianagaram constituency is behind the sanction of the said scheme since it benefits the people of his constituency. The petitioners, however, state that they are not attributing any mala fides to the Hon"ble Minister but they contend that the sanction of the said scheme amounts to giving preferential treatment to the people of Vizianagaram which is not justified inasmuch as the said scheme, if implemented, results in drying up of 10,000 borewells of the agriculturists in the area depriving the very livelihood of the vast population of about 1,00,000 people and driving them to virtual starvation.

5. To prove their case, the petitioners seek to place reliance on a report prepared by Sri. K. Ramachandra Rao, retired Professor of Geology, Andhra University which is entitled "The Hydrogeological Survey conducted in the Ayacut Area of the Thatipudi Reservoir, Vizianagaram District, Andhra Pradesh". An affidavit of the author of the said report is also filed by the petitioners as a third party affidavit.

6. Two counter affidavits have been filed on behalf of the respondents, one sworn to by the Superintending Engineer (PH) Visakhapatnam on behalf of respondents 1 and 2, and the other by the Commissioner, Vizianagaram Municipality, the third respondent, controverting the allegations made by the petitioners and asserting that the implementation of the proposed water supply scheme does not have any adverse effect on the existing water sources or the borewells of the ryots or cause any detriment or injury to them. It is further stated that the site survey discloses that there are no existing bores or wells within a radius of 200 to 300 metres from the newly proposed infiltration wells and as such the question of bore-wells of the agriculturists being dried up does not arise. It is

further stated that the infiltration wells are proposed in shallow depths (less than 10 meters) while the borewells of the agriculturists are driven to much deeper depths upto 20 metres (60 feet). As such the envisaged project, in no way, attempts to draw the deep underground water resources. On the other hand, it is claimed that the ryots downstream will be benefitted by the said scheme as their borewells will be charged due to the release of the water from the dam. It is also stated that there will be surface run off in the river bed throughout the area, that the site for the proposed scheme has been investigated by the ground-water department and the locations were finalised, and that the radius of influence, while pumping from the infiltration wells in the river bed, will be less than 50 metres. The scheme is prepared and formulated by the Public Health Department after thorough investigation on its merits and by Ground-water Department Report. It is finally stated that the proposed scheme is essential to meet the domestic needs of the residents of Vizianagaram town as well as the floating population coming to Vizianagaram, which is the district headquarters, and which has population of 2.35 lakhs and that it is the primary duty of the Municipality to provide the water to the citizens. It is also stated that the representation given by the ryots to the Hon'ble Chief Minister was duly considered and negatived by the Irrigation Department. It is also stated in the counter-affidavit filed on behalf of respondents 1 and 2 that the authorised ayacut under the river Gosthani (Thatipudi dam) is Acs. 13,861 and that the required water was supplied every year by the Department for irrigation. It is further stated the counter-affidavit that the age old Vizianagaram town water supply scheme was initially started in the year 1912 for a population of 50,000 with an amount of Rs.4.86 lakhs. The population increased to 82,000 in 1967 and as per 1981 census it was 3,54,580 and it has presently crossed two lakhs. The existing source i.e., Champavathi river, though near to the town, is not dependable and its potential is not sufficient to feed the increased population. Hence the initiation of the present scheme has become inevitable. It is finally stated that the writ petition is not maintainable as it involves several disputed questions of fact and several technical issues pertaining to the water table etc., which cannot be resolved in the writ petition.

7. A similar stand is taken in the counter-affidavit filed on behalf of the third respondent also furnishing more details about the growth of the population in Vizianagaram town and its increased requirements for supply of water which necessitated the proposed scheme. It is further stated that the scheme is being financed by the HUDCO to an extent of 17 crores and the Municipality as well as the State Government are also contributing their share. A sum of rupees twenty lakhs was also sanctioned and released for this scheme by the local Member of Parliament Sri K. Pydithalli Naidit from the MP Local Area Development Fund. The entire scheme is being executed by the Public Health Engineering Department. It is also stated that any delay in the execution of the scheme is likely to result in great hardship to the general public and also irreparable loss to the Municipality due to escalation of the cost.

8. A reply-affidavit is filed on behalf of the petitioners with a view to meeting the allegations made in the counter-affidavits filed on behalf of the respondents and to show that despite the interim orders of status quo granted by this Court, the respondents were trying to proceed with the execution of the work by awarding contracts to certain contractors. Alleging violation of the status quo order granted on 31-12-1996, the petitioners have filed contempt case CC No.453 of 1997.

9. The Vizianagaram District SC/ST Samkshemasangham, Reg.No.245 of 1995 Vizianagaram represented by its President, has filed a petition WPMP No. 14993 of 1997 seeking to implead itself as the 4th respondent to the writ petition stating inter alia that the population of Vizianagaram town has presently crossed two lakhs and that the original water supply scheme which was started in the year 1913, is absolutely unequal to the task of catering to the needs of the present population and hence the administration was fully justified in taking up the new scheme. It is also stated that the report of Dr. K. Ramachandra Rao, retired Professor of Andhra University, relied on by the petitioners is not entitled to any weight as the author of the said report has not taken into consideration the location, the exact specifications and the nature of the infiltration wells proposed under the scheme vis-a-vis the depth of the existing borewells and it does not show how the borewells of the petitioners will get affected by the scheme. The said report cannot, therefore, form any basis whatsoever to substantiate the petitioner's claim that the proposed water supply scheme would deplete the source of Gosthani river and affect the interests of the agriculturists having borewells. On the other hand, it is stated that in the wake of the controversy raised by the petitioners the official respondents engaged Dr. M.L. Narasimham, Professor of Civil Engineering of Andhra University who, after in-depth study of all the aspects gave his report dated 5-2-1997 expressing a clear opinion that the proposed water supply scheme is in no way detrimental to the interests of the agriculturists having borewells in the area. It is further stated that even on the petitioners' own showing the depth of their bore-well's is 60 feet (20 metres) whereas the depth of the infiltration wells does not exceed 30 feet (10 metres). As the proposed wells under the scheme will be at a much higher level than the existing bore-wells of the petitioners, there is no question of the scheme affecting the interests of the petitioners or any other agriculturists having the bore-wells in the vicinity. It is further stated that the petitioners failed to establish their right to draw water from the public water source as admittedly the petitioners are not ayacutdars of the river Gosthani. The petitioners therefore, have no enforceable legal right to maintain this writ petition and they have no right to stall the implementation of a scheme for the supply of drinking water to the citizens which is an important public purpose.

10. The learned Government Pleader for Municipal Administration appearing for respondents 1 and 2, Sri Sambasiva Pratap appearing for the third respondent and Sri C. V. Nagarjuna Reddy, appearing for the proposed 4th respondent have mainly contended that this writ petition, which involves disputed questions of fact and technical issues relating to the underground water table and the effect of the

proposed water supply scheme on the bore-wells of the agriculturists cannot be decided in a proceeding under Article 226 of the Constitution and on this short ground the writ petition is liable to be dismissed. It is also contended that the petitioners failed to prove by acceptable evidence that they have any enforceable legal right for drawing water from river Gosthani for the cultivation of their lands or that the accustomed supply of water to them will be adversely affected by the implementation of the scheme.

11. The learned Government Pleader for Municipal Administration has placed strong reliance on the judgment of this Court in *K. Narasimhulu and others v. the District Collector, Cuddapah and others* 1990 (1) An WR 113 wherein has been held that a writ petition filed by some ayacutdars seeking closure of a sluice to a water channel by the authorities on the plea that there was diminution of the accustomed supply of water to them was not maintainable as such, a pica requires adequate proof of the extent of water that was supplied previously and the extent of diminution and the reduction in the equality or quantity of crops that are raised. Such facts cannot be established in a writ petition, but can be established only in a Civil Court to which the Government as also the ayacutdars to whom water is proposed to be supplied are made the parties. His also held in the said judgment that the right of the Government to control the supply and distribution of irrigation waters is not a new proprietary right but a sovereign right. Any prescriptive right which is a subject may obtain against the Government could be in curtailment of Government's proprietary rights but never in curtailment of Government's Sovereign rights to regulate and distribute the available water. If on account of a fresh regulation of the water system there is any diminution in the accustomed water supply of any ayacutdar paying water tax, he can seek a remedy against the Government either for injunction or for damages.

12. Sri Mohammed Ali, the learned Counsel appearing for the petitioners on the other hand argues that the power of the High Court under Article 226 of the Constitution is wider than the power of English Courts to issue prerogative writs, that the High Court can try question of both fact and law and that disputed questions of fact can also be gone into a writ petition in case of violation of any fundamental rights. In support of his contentions, Sri Mohammed Ali cited the following decisions :

Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, , *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, , *Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others*, and *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, . He further contended that as the implementation of the proposed water supply scheme will have the effect of depriving the very livelihood of the petitioners and the other ryots in the area violating their fundamental right under Article 21 of the Constitution, the petitioners are entitled to file this writ petition. He further contends that though the proposed water supply scheme is for a

public purpose, irrigation and cultivation of huge extents of land belonging to thousands of ryots is also a public purpose which, in fact, is a larger public purpose. He also submitted that the report of Prof. K. Ratnachandra Rao is more reliable than the report of Dr/.M Narasimham, Professor of Civil Engineering Andhra University which is relied on by the respondents. He further submitted that it is a fit case where this Court should call for another technical report from a competent authority.

13. It is true that even in a proceeding under Article 226 of the Constitution the High Court may, in appropriate cases, go into questions of fact and also record evidence if necessary. But it is well settled that where a detailed enquiry into complicated and disputed questions of fact is necessary, a proceeding under Article 226 of the Constitution is not an appropriate forum for such a detailed examination of facts. In the instant case, admittedly the petitioners are not claiming to be the registered ayacutdars under Gosthani river. Even according to them, they are cultivating their lands by digging bore-wells in their lands. Prima facie, they have not established any legal right for the use of the water from Gosthani river for cultivation of their lands. Further the question whether there will be any diminution of water in their bore-wells on account of the implementation of the proposed scheme is a disputed question of fact. There are conflicting reports on the said question by two professors. I am afraid it is not practicable or desirable for this Court to go into this disputed question which requires elaborate evidence and examination of several technical aspects. Such matters can be more appropriately gone into only in a civil suit. Though it is vehemently argued that the fundamental rights of the petitioners and the other rights guaranteed under Article 21 of the Constitution will be affected and they will be deprived of their livelihood, there is no acceptable evidence on record to substantiate this claim. The judgment of this Court in K. Narasimhitlu and others v. the District Collector Cuddapah and others (supra) is directly in point and it fully supports the contention raised by the respondents. Further I do not find any valid grounds whatsoever to stop the execution of a Scheme for supply of drinking water to the residents of Vizianagaram town which has been formulated and sanctioned by the competent authorities after proper investigation. I do not, therefore, find any merit in the writ petition and it is accordingly dismissed but without costs. The interim order of status quo granted on 13-12-1996 stands vacated.

14. In view of the orders passed in the writ petition, I do not find any valid grounds whatsoever to continue the contempt case and it is accordingly closed.