
(1954) 08 AP CK 0021

In the Andhra Pradesh High Court

Case No : S.A. No's. 725 to 727 and 1441 of 1950

Kapilavayi Satyanarayana and Others

APPELLANT

Vs

The Bezwada Munioi Pality

RESPONDENT

Date of Decision : 13-08-1954

Acts Referred:

Citation : (1954) 08 AP CK 0021

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : P.V. Chalapati Rao, P. Surya Rao for A. Tiriyambakam, C. Rama Rao, for B. Lakshminarayana and S. Subbiah Chowdari, for the Appellant; P. Suryanarayana, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, C.J.—The same question arises in these four appeals, namely whether the Vijiawada Municipality has the power to impose on and collect from the plaintiffs tap-rate charges in respect of the supply of water to their houses. The facts lie in a small compass and they may be narrated. The water works in the defendant's Municipality were completed in the year 1909. In the year 1912, house service connections were given by the Municipality to the houses of the plaintiffs without any tax. After several in fructuous attempts made by the Municipality to levy tax in one shape or other, in the year 1946. purporting to be in exercise of the power conferred upon it under the District Municipalities Act, they framed bye-laws empowering the Municipality to levy water charges in respect of the service connections either under the meter charge or tap rate systems, The defendant issued notices to all the plaintiffs threatening to enforce bye-laws Nos. 7 (a) and 9 (a) of the new water works bye-laws of 1946, and required them to pay tap rate charges. The suits were filed for a permanent injunction restraining the defendant from enforcing the said bye laws and from collecting any tap-rate charges from them in respect of the houses mentioned in the plaint schedules. The learned District Munsif held that the bye-laws were

valid and dismissed the suits.

2. In appeal, the learned Subordinate judge of Vijawada took the same view. Hence the appeals.

3. The learned Counsel for the appellants argued that in or about the year 1912, the Municipality entered into a binding contract with the plaintiffs to supply water to their houses free of cost and that they have no power under the District Municipalities Act to enact a bye-law authorizing them to collect tap-rate charges in respect of the connections covered by the contracts and in derogation of its terms. The impugned bye-laws are 7 (a) and 9 (a). They read:

7 (a) The charges for the supply of water for purely domestic purposes on the basis of tape-rates shall be as follows

* * *

9(a) Subject to the provisions of bye laws Nos. 3 and 8 above, any owner or occupier of a house having on the date of the coming into force of these bye-laws, a service connection, the water from which is used only for domestic purposes shall where the connection has been provided with a meter at the coat of the owner or occupier and where such meter is in working order, or is not in working order but can in the opinion of the executive authority be put in working order, have the option of continuing to pay water charges under the meter system or paying them under the tap-rate system specified in bye-law No. 4.

(b) All other service connections including those enumerated below, the water from which is used for domestic purposes only, shall be governed by the tap rate system.

(i) Service connections in existence on the date of coming into force of the bye-laws.

(1) which are without meter.

(2) which have been provided with meter at the cost of the Council.

(3) which are provided with meters at the cost of the consumer, but where such meters are not in working order and cannot In the opinion of the executive authority be put in working order;

(ii) Service connections coming into existence subsequent to the coming into force of these bye-laws.

4. These bye-laws were made under S. 306 (3) (a) (b) & (c) of the Madras District Municipalities Act, (Act V of 1920). Under the said bye-laws, the Municipality has power to impose tap-rate system in respect of service connections in existence on the date of coming into force of the bye-laws. If these bye-laws are valid, the Municipality has power to introduce tap-rate system in regard to existing connections. It was, therefore, contended that these bye-laws are ultra virus of the powers of the Municipality.

5. To appreciate the contentions, the relevant provisions of the Madras District Municipalities Act may be noticed :

Section (131):

(1) In Municipalities in which there is a pipe supply of water, the elective authority may at his discretion on application by the owner or occupier of any building arrange in accordance with the bye-laws, to supply water thereto for domestic consumption and use:

Provided that the executive authority shall not without the sanction of the Council, agree to supply water to any building assessed at an annual value of less than One hundred and twenty rupees;

(2) Whenever it appears to the executive authority that any dwelling house assessed at an annual value of not less than two hundred rupees is without a proper supply of water for domestic consumption and use and that such a supply can be furnished from a main not more than 100 feet distant from any part of such building, the executive authority may by notice require the owner to obtain such supply...

Explanation :-Supply of water for domestic consumption and use shall not be deemed to include a supply

(a) for any trade, manufacture or business:

(b) for gardens or for purposes of irrigation;

(c) for building purposes... but shall be deemed to include a supply;

(d) for flushing latrines....

Section 132:

The executive authority may at his discretion supply water for any purpose other than domestic consumption and use on receiving a written application specifying the purpose for which such a supply is required and the quantity likely to be Consumed.

Section 306:

The Council may make bye laws not inconsistent with this Act or with any other law to provide.

* * *

(3) (d) for the conditions on which house connections with the Council's water supply main may be made; for their alteration and repair and for their being kept in proper order.

(e) for supply of water for domestic consumption and use;

(f) for the prevention of waste of water and

(g) for the measurement of water.

Section 307:

Bye-laws with regard to drainage of, and supply of water to, buildings, and water closets, earth-closets, privies, ash pits and cuss-pools in connection with buildings and the keeping of water-closets supplied with sufficient water for flushing, may be made so as to affect buildings erected before the passing of the bye-laws or this Act.

6. A gist of the aforesaid provisions may be stated thus:- The Municipality may supply water for domestic consumption and use and also for purposes other than domestic consumption and use. Certain categories of use are excluded from domestic consumption and others are expressly included therein. But whether the supply is for domestic consumption and use, or for a purpose other than domestic consumption and use, in either case, the supply is to the buildings. In the former case, the owner is exempted from the payment of any tax, or he may be made liable to pay for user in excess of a particular limit.

7. In the latter case, the entire water supplied may be charged. S. 306 empowers the Municipality to frame bye-laws to provide for the conditions on which the house connections with the Council's water supply may be made, for the supply of water for domestic consumption and use, for the prevention of waste of water and for the measurement of water etc. S. 307 enables the Municipality to make bye laws, among others, in respect of the supply of water to buildings, so as to affect buildings erected before the passing of the bye-laws or the Act. A combined reading of the aforesaid provisions makes it abundantly clear that the Municipality can frame bye-laws in respect of buildings constructed before the bye-laws are framed for the supply of water for domestic consumption. The argument of the learned Counsel that S. 307 will apply only to water supplied to houses for purposes other than domestic consumption, is not borne out by the express language used in S. 307. As I have already pointed out, whether the supply of water is for domestic consumption and use, or for purposes ether than domestic consumption, the supply is always made to the building. S. 131 (1) proviso which speaks of supply is always made to the building. S. 131 (2) which mentions dwelling houses without proper supply of water for domestic consumption, clearly show that even in the case of supply of water for domestic consumption, the supply is to a building. So, the words supply of water to buildings"" in S. 307 clearly take in both the purposes, and therefore that section is wide enough to apply to supply of water even for domestic consumption and use. If so, the only question is, whether this power conferred on the Municipality in general terms is restricted by the terms of any contract entered into between the Municipality and owners of houses prior to the making of the bye-laws.

8. Neither S. 306 nor S. 307 saves preexisting contracts from its operation; nor is there any prohibition expressed or implied in those provisions precluding the

Municipality from making a bye-law in derogation of any terms of any contract entered into before the enactment of those sections. Further, no question of any retrospectively arises in this case. The Municipality did not purport to make any bye-law changing the tap-rate charges for a period prior to the making of these byelaw. The bye-laws framed are prospective in operation and they impose a liability only for the future. As the Statute conferred upon the Municipality an express power to do so, I must hold that even if there was a contract in the year 1912, that could not affect the statutory powers conferred upon the Municipality. The bye-laws are, therefore, valid.

9. I cannot also hold, in this case, that there was any contract entered into between the Municipality and the plaintiff predecessors-in-interest, where under the Municipality agreed to supply water to the plaintiffs' buildings free of any tax forever. There is no document to that effect, nor did the statutory provisions in force in the year 1912 enable the Municipality to enter into any contract with the owners of houses, agreeing not to demand any tax at any time in respect of their water supplied. S. 147 of the District Municipalities Act, 1834, as amended in 1909 which was in force when the service connections were given to the plaintiffs' buildings, does not support the existence of any such contract. Cl. (1) of S. 107 provides that the Chairman may, at any time, limit the quantity of water to be supplied whenever he considers it necessary. It authorizes him to supply water in such quantities as he deems seasonable with reference to the annual rental value of the building concerned. Sub-S. (3) authorizes the levy of charge at such rate as may be prescribed by the Municipal Council for water taken in excess of the limit allowed under Sub-S. (1). It is, therefore, clear that the Municipality could not have entered into a contract with the plaintiffs' predecessors-in-interest, agreeing to supply water forever without any charge. Further such a contract could not have been entered into by the Municipality for that would be abandoning its statutory functions and relieving itself of its statutory duties. Certainly, they would not have had any such power to do so, I cannot assume in the absence of clear evidence, that a statutory body entered into a contract, embodying terms in derogation of the express provision of the statute. From the mere fact that the tax was not collected for some years, such a conclusion cannot irresistibly flow.

10. I would, therefore, hold that the plaintiffs have failed to establish that there was a contract between the Municipality and their predecessors-in-interest, where under the Municipality agreed to supply water forever to the plaintiffs' free of charge. I would go further and hold that if there was in fact such an agreement, it was beyond the powers of the Municipality. The conclusions of the lower Courts are correct. The appeals fail and are dismissed with costs. No leave.