

(1989) 08 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 2285 of 1987

Kartar Singh and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Irrigation and Drainage Rules, 1955 — Rule 14, 15

Citation : (1989) 2 WLN 673

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—The judgment disposes of the cases mentioned in the Schedule appended to it as similar questions of law and facts are involved in these cases.

2. For the convenient disposal of these writ petitions the facts of Kartar Singh and Anr. v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 2285 of 1987 are taken into consideration:

3. The petitioners got certain land in square No. 72 situated in Chak No. 33 G.B. This land was converted for the purpose of making bricks. After conversion, the petitioners obtained a licence for making bricks from the Mining Department, Government of Rajasthan. But before starting the work of making bricks, it was necessary to obtain water from the Irrigation Department for the purpose of making bricks. Therefore, the petitioner made an application for supply of water for this purpose. The petitioner was sanctioned water in accordance with the provisions of Rule 14 read with Rule 15 and Schedule-1 of the Rajasthan Irrigation and Drainage Rules, 1955 (here in after referred to as "the Rules of 1955"). In this Schedule-1 at Section No. 1 provides the rate for supply of water, which reads as under:

Brick making and pisa wall building at rate of 4 Annas 6 Pie per 100 cubic ft.

Taking into consideration the above-mentioned rates the charges for the supply of water were calculated as Rs. 4,778 on 24-1-1983. The petitioner deposited the

charges for supply of water as calculated. The sanction which has been issued vide Ex. 1 was extended from time to time by the Executive Engineer, Gang Canal, South Division, Sri Ganganagar. It is alleged that the petitioner again approached the respondent No. 2 for extension where upon he was told that the Government has decided to charge Rs. 10 per 1000 cft. for supply of water for industrial purposes and a copy of the order of the Government dated 11-8-1987 (Ex.2) was supplied to him. In view of this communication dated 11-8-1987 (Ex. 2), the respondents No. 2 and 3 did not extend the period and they insisted on the petitioners to deposit the amount in accordance with the rates of Rs. 10 per 1000 cft. and on deposit of the charge, the petitioner can be given water for construction of bricks. Hence, the petitioners approached this Court by filing the present writ petition challenging that the order of the Government is without jurisdiction and the respondents cannot insist on charging Rs 10 per 1000 cft. against the rates mentioned in the Schedule appended to the Rules.

4. A return has been filed on behalf of the respondents and the respondents had pleaded that in terms of Rule 14 they are entitled to charge at the rates as contracted in agreement Ex. 1. It was submitted that as per Ex. 1 the respondents can increase the rates from time to time and they can charge at the higher rates also.

5. The question before me is that whether the respondents can charge at rate of Rs. 10 per 1000 cft. or as per the rates mentioned in Schedule-1 appended to the Rules of 1955

6. For the convenient disposal of the matter, it is necessary to quote the necessary provisions of the Rajasthan Irrigation and Drainage Act, 1954 (here in after called "the Act of 1954") and the Rules framed thereunder i.e. Rules of 1955. Section 31 of the Act of 1954 reads as under:

31. Water supply to be subjected to rules--In the absence of a written contract, or so far as any such contract does not extent, every supply of water from an irrigation work shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the State Government in respect thereof.

The Government has framed the Pules under the Rajasthan Irrigation and Drainage Act, 1954 and they are known as the Irrigation & Drainage Rules, 1955. Rules 14 and 15 of the Rules of 1955 have a direct bearing on the cases in band. Rules 14 and 15 of the Rules of 1955 reads as under:

14. Contracts for water for other than irrigation purposes. The Divisional Irrigation Officer make contracts for the supply of canal water for purposes other than irrigation for any term not exceeding one year. For terms exceeding one year the previous sanction of the State Government shall be necessary."

"15. Charges for water used for other than Irrigation purposes in the absence of a special contract. With the previous permission of the Divisional or Sub-

Divisional Irrigation Officer, tanks may be filled, or water may be supplied without a special contract, from a canal direct in small quantities, for purposes other than irrigation, at the rates, mentioned in Schedule-1.

According to Rule 14, the Divisional Irrigation Officer may enter into contracts for supply of canal water for the purposes other than irrigation for any term not exceeding one year and for terms exceeding one year the previous sanction of the Government is required. Rule 14 has been amended and the amended Rule 14 reads as under:

14. Contracts for water for other than irrigation purposes: The Divisional Irrigation Officer may make contracts for the supply of canal water for purposes other than irrigation for any term after previous sanction of the State Government.

The above amendment has been brought about by the notification dated 3-6-1987. Now according to the amended provisions of Rule 14 of the Rules of 1955 the Divisional Irrigation Officer can enter into contract for supply of canal water for purposes other than irrigation for any term, but a rider has been put that it should be done after the previous sanction of the Government. The unamended Rule 14 empowered the Divisional Irrigation Officer to enter into a contract for supply of canal water for purposes other than irrigation for a period of one year but for the period extending one year the previous sanction of the Government was necessary. But now that power has been curtailed and a rider has been put that he can supply water for purposes other than irrigation but that has to be done by the previous sanction of the State Government. So far as the amended provision is concerned we are not concerned in these cases because all the learned Counsel for the parties submit: that these cases are governed by the Rules in force prior to 3-6-1987. Therefore, we have to concentrate on the unamended provision of Rule 14 only. It may be pertinent to note that in Rule 14 of the Rules of 1955 the purposes have not been described. Rule 14 of the Rules of 1955 only says that by a contract entered between the Divisional Irrigation Officer and the consumer, he can supply water for the purposes other than irrigation for a period of one year. Rule 15 deals with the charges for the water used for any other purposes except irrigation in terms of special contract. Under Rule 15, water can be supplied at the rates mentioned in Schedule-1. In the Schedule various rates have been prescribed for different purposes. The first item relates to the brick making and pise wall building. The rate prescribed is 4 Annas 6 Pie per 100 cft. For other purposes also like laying/concrete/and brick or stone masonry, metalling road, consolidation of katcha service road, industrial and other various purposes different rates have been prescribed. In this connection, reference now made to the letter issued by the Secretary to the Government Ex.2. By this letter respondents have increased the rates for use of water for industrial purpose. Letter Ex. 2 reads as under:

Ex. 2. IMMEDIATE OUT TODAY Rajendra Jain Commissioner & Secretary to Govt. Irrigation Department

No.F.28(I) Irrag. 87 JAIPUR. August 11, 1987 My dear,

This is with reference to your letter No. F.22(3) Rev/2973 dated 25-7-87, vide which you had forwarded the representation of Shri Hansraj Midha, MLA.

The matter has been considered by the Government and it has been decided that the Executive Engineers may continue to release water for drinking purposes and industrial purposes upto 30-9-87. The rates shall be the old rate for (drinking purposes and Rs. 10/- per 1000 cubic ft. for industrial purposes).

Water is being given to various industries under the pretext of giving it only for period of one year, where as, the requirement of such industries is a long term. Even under the unamended rules the Executive Engineers could not give water to such industries without seeking prior approval from the Government, but they were doing so under the garb of releasing water only for less than one year and doing so every year.

It has, therefore, been desired that a list of all consumers to whom water is being released other than for irrigation purposes be prepared by the Executive Engineers concerned, giving the name of the consumer the month wise quantity of water required by the consumer and purpose for which it is required. These lists should be scrutinised by the Superintending Engineer concerned and they should forward it through you to the Government latest by 31st August, 1987, to enable the Government to consider the release of water to these consumers under the amended rules. This has to be given top priority and therefore, I am endorsing a copy of this letter to the Superintending Engineer also.

I am sure, you will be able to send me the list of all consumers, along with their total water requirement for non-irrigation purposes in Ganganagar district, by 31st Aug., 1987.

Yours faithfully, sd/- (Rajendra Jain) Sh. G.C. Kanjolia, Chief Engineer, Irrigation Department, Rajasthan, Jaipur.

By this communication, it has been directed by the Secretary that charges should be raised for industrial purchases at rate of Rs. 10/- per 1000 cft. It has not been pointed out in this letter that whether brick making for which special charges have been prescribed in the Schedule has been amended or not and secondly whether the making of bricks has been brought under the sphere of industrial purposes or not. The letter of the Secretary dated 11-8-1987 cannot be substituted for the Schedule prescribed under the Rules. If the Rules specifically provides the rates for particular items, then the rates cannot be changed by the Government unless that Schedule is amended and rates were revised in accordance with law as prescribed in the Act and the Rules. Letter like Ex.2 of the Secretary cannot authorise the Executive Engineers to insist upon the consumers for payment of increased rate unless a proper amendment is brought about in the Rules by the Government in accordance with law.

7. Mr. R.P. Vyas and Mr. G.K. Vyas, both the Deputy Government Advocates

straneously contended before me that Rules 15 talks about charges for water used for other than irrigation purposes in the absence of special contract. Therefore, the rates prescribed in the Schedule under Rule 15 of 1955 will not govern the brick making and it is open for the Government as per Ex.2 to increase the charges. The contention of Mr. Vyas cannot be accepted, for the reason that in Rule 14 no charges have been fixed, but in Rule 15 charges have been fixed for supply of water under various heads. The Government has framed the Rules and now it cannot give a complete go bye to the Rules and the Secretary on his own cannot increase the rates in contravention of the Rules framed by the Government under the Act of 1954. Once the Government has framed the Rules and they have prescribed certain charges the Government has to abide by those charges, the Secretary's letter cannot be substituted for the Rules. Apart from that Ex. 2 only talks about the industrial purposes and it has not been pointed out in that letter whether brick making has been included in the expression "industrial purposes or not. The Schedule was amended and item No. 5 was inserted by the notification dated 2-10-1975, which provides water supply in bulk for industrial purposes and for that rates were prescribed as Re. 1/- per 1000 cft. The brick making and pise wall building is a specific item mentioned in the Schedule and for which rate has been prescribed as 4 Annas 6 Pie per 100 cft. but no amendment was brought about in this item. Therefore, this letter Ex. 2 does not empower the Executive Engineers for insisting on payment of Rs. 10/- per 1000 cft. for brick making. Thus, unless the Schedule is properly amended in accordance with law, the Executive Engineers cannot insist for charges @ Rs. 10/- per 1000 cft. by virtue of the letter Ex. 2-

8. In the result, the writ petitions are allowed and the respondents are restrained from insisting for payment @ Rs. 10/- per 1000 cft. for brick making. If any payment has been recovered from any of the petitioners at this rate then the same may be refunded back to them. It will be open for the State Government to amend the Rules of 1955 in accordance with law.

9. No orders as to costs.