

(1988) 07 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 2806 to 2817 of 1988

Koripalli Vijayalakshmi

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 01-07-1988

Acts Referred:

Karnataka Irrigation Act, 1965 — Section 28 (5), 32 (4), 68

Citation : (1989) ILR (Kar) 3401 : (1988) 2 KarLJ 282

Hon'ble Judges : Rajasekhara Murthy, J

Bench : Single Bench

Advocate : Umesh Murthy and B.S. Raikote, for the Appellant; H.L. Dattu, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Rajasekhara Murthy, J.—In these batch of cases, the petitioners who are the owners of several survey numbers referred to in the defaulter notices, served on each one of them under Rule 112 of the Land Revenue Rules, have challenged the demand notices. The demands represent the penal water rate levied both u/s 28(5) and Section 32(4) of the Karnataka irrigation Act ("the Act"). Though consolidated demands are made as per the notices, they comprise of the penal water rate levied both for unauthorised user of the water which attracts penalty u/s 28(5) and for unauthorised cultivation of crops which attracts penalty u/s 32(4) of the Act.

2. The original records of these cases are produced by the learned Govt. Pleader. The recoveries are in respect of the years 1980 to 1987. The Irrigation Officers concerned in these cases are present before the Court, when asked to produce the notices served on the petitioners some sample notices which are purported to have been served on the petitioners in the year 1981 have been produced before me. These notices are issued u/s 32(4). The records do not disclose whether similar notices were issued for levy of penal water rate u/s 28(5).

3. Number of irregularities are noticed in the implementation of the provisions of the Irrigation Act and in the observance of the procedure before the penal water rate is levied either for unauthorised user or for unauthorised cultivation. The notices issued under 32(4) are required to be served on the owners of the land and in the manner provided for such service u/s 68 of the Karnataka Irrigation Act. The said provisions makes it mandatory to serve a copy of the notice issued under the Act by delivering or tendering a copy thereof signed by the Officer therein mentioned. Whenever it may be practicable, the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the service of the notice may be made by sending a copy of such notice by registered post to such person at his usual place of residence.

4. It is seen that many of the notices are not served on the persons concerned nor on any adult member of the family residing with him nor is any notice issued to the persons concerned, by registered post. I fail to understand why the notices could not be served in accordance with the Rules on the persons concerned while it was possible to serve the defaulter notices under Rule 112 through the agency of the Revenue Department, namely, the Village Accountant. Therefore, there is no valid reason for the non-compliance of the requirement of the procedure laid under the Rules.

5. Regarding the violation of the crop pattern as notified by the Government in exercise of its powers conferred u/s 31(1) of the Act, it is seen from the facts relevant for the present case, that what was permitted to be grown in the lands in Pannapur village, Gangavathi Taluk was Khariff and rabi crops and cotton, which are light irrigation crops. It is also seen that pamphlets were issued prohibiting the ryots from growing paddy.

6. Whenever such notifications are issued under the Act, the ryots must be made known about the restrictions regarding the crop pattern imposed on them under the notification. Such notification has to be published as required under Rule 19-A of the Rules which contemplates publication of the notification by affixture on the Notice Board of the Office of the Irrigation Officer and also by causing affixture on the Notice Board of the Office of the Tahsildar of the Taluk and in the Chavadies of the village concerned. These are the mandatory requirements of the Rules. However, if there is substantial compliance with the intimation of the notification, namely, to make ryots aware of the cropping pattern in each area, there are several ways of achieving it, such as by issue of pamphlets in the areas to be covered. The Authorities have resorted to this mode of publicity in addition to what is required to be done under Rule 19-A.

7. It is submitted on behalf of the concerned Irrigation Officer that wide publicity was given in the villages concerned and pamphlets were distributed among the ryots. The publicity was done by the concerned Irrigation Officers.

In my opinion, there was substantial compliance to the requirements of the Rules. It is not as though the ryots are not aware of the cropping pattern as notified. But the ryots have with impurity grown paddy and other irrigation crops contrary to the notified cropping pattern. The only infirmity which is noticed in all these cases is, that the notices proposing to levy penal water rate both under Sections 28(5) and 32(4), have not been served on the persons concerned or in the manner provided u/s 68.

8. One other fact which needs to be noticed is, the recovery notices are issued pursuant to the statements prepared at a joint inspection conducted by the Assistant Executive Engineer and the Tahsildar every year and for every season. On the basis of the actual crops grown by each owner a separate statement of water rate payable by each ryot is prepared for purposes of levy of penal water rate both under Sections 28(5) and 32(4). After such statements are prepared what the owners are communicated is only the notice of demand issued by the irrigation Officer. But, the statement of penal rates as determined by the Irrigation Officer is forwarded to the Tahsildar for the purpose of recovery. Thereafter the notices to defaulters are issued under Rule 112 of the Land Revenue Rules. These notices are challenged in these Writ Petitions as illegal and therefore shall not be enforced.

9. The petitioners' main grievance is that no enquiry is done before determining the penal water rate both under Sections 25(5) and 32(4) and no reason is given why the maximum penalty, in several cases, has been levied. The case of the petitioners is that issue of a show cause notice is a mandatory requirement of law before determining the penal water rate and that therefore, the recovery now sought to be enforced without complying with the said mandatory requirements, is illegal. It is also asserted by the petitioners that no enquiry was conducted to establish the contravention of the provisions of Sections 28 or 32.

10. On an examination of the records produced by the learned Government Pleader what emerges is so far as this particular area, namely, lands situate in and around Ponnapura village in Gangavathi Taluk is concerned, the respondents have taken care to comply with the requirements of law upto a certain stage. Elaborate enquiry is done, statements are prepared after the joint inspection and the penal rate is also computed according to the contravention alleged. The contravention as found from the enquiry is both as to unauthorized use of water and unauthorised cultivation of crops. But the infirmity as could be seen from the records starts from the stage of issue of show cause notice to the ryots based on these reports. None of the petitioners has been issued with the show cause notice in any of the cases which are before me in this batch of cases. Though signatures are taken on the show cause notices, the respondents are not in a position to assert whether it is in accordance with Section 68 and also whether the persons who have received notices are the owners of the lands or adults members of the family. In these circumstances, I hold that the service of the proposition notices is not in conformity with law. Before disposing of the

petitions, it is necessary to observe that the statements prepared by the respondents are under the amended Rules 4 of the Karnataka Irrigation (Levy of Water Rates) Rules, 1965.

11. Though the statements are prepared for purposes of and as required under the Karnataka Irrigation (Levy of Betterment Contribution) Rules 1957 for the purpose of fixing betterment contribution and water rate under the said Act, the same information is made use of and in my opinion appropriately, for determining the penal water rate or unauthorised cultivation under the Irrigation Act. I must place on record my appreciation for the elaborate statements prepared at the joint inspection which gives all the necessary particulars for the purpose of levy of penal water rate.

12. Therefore, in my opinion, there was ample material in the possession of the respondents to come to the conclusion that the petitioners and other ryots in the area violated the provisions of Sections 28(5) and Section 32(4) of the Act as the case may be and are therefore liable to pay penal rate of levy for the contravention and violation of both the provisions of Sections 28(5) and 32(4) of, the Act. I am also convinced that there can be no dispute about either of these violations by each one of the petitioners.

13. Some of the sample notices issued before the penal rate was levied, which form a part of the record, show the owner's name; the crops that are to be grown under the Government Notification, the area in which crops are grown in violation of the Notification and the penal levy is also indicated, in the cases where the authorities want to levy the maximum penal rate, there is a further requirement of law that they cannot resort to levy of maximum rate without giving any reason for adopting the maximum rate. Both as regards the procedures to be followed and the nature of enquiry conducted, this Court has laid down in more than one decision and indicated the guide lines to be followed in cases like this. The decisions reported are cited below:

(1)1974 (2) KarLJ 88; Bhaskar Rao vs State of Karnataka

(2)1983 (1) KarLJ 473; Uloor Gangamma vs State of Karnataka

(3)1981(1) KarLJ 454; Basavanagoud vs Deputy Commisioner

(4)1981(2) KarLJ 339;Pullaiah vs Tahsildar

Therefore, on the facts of the cases and allegations made by the petitioners in the Writ Petitions, the recovery notices are liable to be quashed for the reasons stated above.

In the result, Writ Petitions are accordingly allowed and the notice impugned in each of these cases, is quashed reserving the liberty to the respondents to issue fresh show cause notices for each contravention and serve it in accordance with Section 68 of the Act and thereafter proceed to recover the same after giving sufficient opportunity to the petitioners of being heard.