

(2009) 02 MP CK 0038
In the Madhya Pradesh High Court

Manoj Rajani and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : AIR 2009 MP 229 : (2009) ILR (MP) 2210 : (2009) 2 MPHT 292

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.—The petitioners are all residents of Dewas town in the State of Madhya Pradesh and have filed this writ petition under Article 226 of the Constitution as a Public Interest Litigation praying for directions to the Municipal Corporation, Dewas, and the Municipal Corporation, Indore, to supply 13 Lac Gallons of water per day for the residents of Dewas town.

2. The facts briefly are that the Dewas town is situated on the banks of river Kshipra which dries up by the end of December every year and as a result the town faces acute shortage of water till the next rainy season. To take care of this shortage of water, the Municipal Corporation, Dewas, entered into an agreement with the Municipal Corporation, Indore, on 20-2-2002 whereunder the Municipal Corporation, Indore, was to supply 10 Lac Gallons of water per day from the Narmada Water Supply Scheme, to the Municipal Corporation, Dewas, at the rate of Rs. 1.75 per thousand liters. By an order dated 22-2-2001 the State Government of Madhya Pradesh also directed the Municipal Corporation, Indore to supply 3 Lac Gallons of water per day to the Municipal Corporation, Dewas.

3. The case of the petitioners in the writ petition is that in breach of the agreement dated 20-2-2002, and the order dated 22-2-2001, the Municipal Corporation, Indore, has supplied much lesser quantity of water to the Municipal Corporation, Dewas. The petitioners have annexed with the writ petition charges showing the supply of water during different months in the years 2005, 2006, 2007 and 2008 which show that the average water supplied in the months from

January to July, 2005, was 8.62,8.59,9.32,10.50,9.51,7.80 and 5.82 Lac Gallons per day respectively, in the months from December, 2005, to July, 2006, 7.40, 7.53, 7.00, 7.08, 6.17, 5.18, 4.85, 4.98 Lac Gallons of water per day respectively, in the months from February to July, 2007, 4.25, 6.68, 5.59, 5.52, 5.30 and 5.05 Lac Gallons per day respectively and in the months from February to May, 2008 (upto 5-5-2008) 4.95 to 4.23 Lac Gallons per day respectively.

4. Mr. Sanjay Agarwal, learned Counsel for the petitioners submitted that in AIR 1991 420 (SC) , and in M.C. Mehta Vs. Union of India (UOI) and Others, , the Supreme Court has held that the right to live guaranteed under Article 21 of the Constitution includes the right to enjoyment of pollution free water and air for full enjoyment of life. He submitted that Section 66 (1) (k) of the M.P. Municipal Corporation Act, 1956 (for short "the 1956 Act") casts an obligation on the Municipal Corporation to provide sufficient supply of suitable water for public and private purposes. He referred to Section 220 of the 1956 Act which provides that for the purpose of providing supply of water, proper and sufficient for public and private purposes, the Commissioner may do any of the acts mentioned therein. He argued that considering these provisions of the Constitution as well as the 1956 Act and the provisions of the agreement between the Municipal Corporation, Indore, and the Municipal Corporation, Dewas, the Court should direct the Municipal Corporation, Indore, and the Municipal Corporation, Dewas, to supply 13 Lac Gallons of water per day for private and public use for the residents of Dewas town.

5. Mr. Brian Da'Silva and Mr. Gaurav Sharma, learned Counsel appearing for the Municipal Corporation, Dewas on the other hand, referred to the reply filed by the Municipal Corporation, Dewas, and submitted that for the present population of Dewas town there is a requirement of 45 Lac Gallons of water per day against which approximately 22 Lac Gallons water is drawn from river Kshipra during the months of July to December. They submitted that on 20-2-1992 an agreement was entered into between the Municipal Corporation, Dewas, and the Municipal Corporation, Indore, and under which the Municipal Corporation, Indore, agreed to supply 10 Lac Gallons of water per day and on 20-2-2001 the State Government also directed the Municipal Corporation, Indore, to supply extra 3 Lac Gallons of water per day to the Municipal Corporation of Dewas and, therefore, 13 Lac Gallons water per day was required to be supplied by the Municipal Corporation, Indore, to the Municipal Corporation, Dewas. He submitted that despite the fact that the aforesaid agreement and order are still in force, the Municipal Corporation, Indore, has not supplied 13 Lac Gallons of water to the Municipal Corporation, Dewas.

6. A reply has also been filed on behalf of the Municipal Corporation, Indore, in which it is stated that from its own sources of water the Municipal Corporation, Indore, is able to meet only the 50% of the requirement of water for the residents of Indore city and, therefore, it was not practically possible to supply 13 Lac Gallons of water per day to the Municipal Corporation, Dewas. The

Municipal Corporation, Indore, has further stated in its reply that despite this difficult situation in Indore city with regard to supply of water, the Municipal Corporation, Indore, has been supplying as much water as possible to the Municipal Corporation, Dewas.

7. The law does not compel one to do that which one cannot possibly perform. This preposition of law finds place in the observations of C.J. Ray in *Re. Presidential Election, 1974*, AIR 1974 SC 1682, to the following effect:

The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit adimpossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him".

Since the Municipal Corporation, Indore, has taken a stand before us in its reply that out of its water sources it can only meet 50% requirement of water of the residents of Indore city and it is practically impossible on its part to supply 13 Lac Gallons of water per day to the Municipal Corporation, Dewas, we cannot compel the Municipal Corporation, Indore, by a writ or direction to supply 13 Lac Gallons of water to the Municipal Corporation, Dewas.

8. The Municipal Corporation, Dewas, on the other hand, has statutory obligations u/s 66 of the 1956 Act to provide sufficient supply of suitable water for public and private purposes in the town of Dewas. This will be clear from Section 66 (1) (k) of the 1956 Act, which is quoted herein below:

66. Matters to be provided for by Corporation.- (1) The Corporation shall make adequate provision, by any means or measures which it may lawfully use or take, for each of the following matters, namely:

*** ***(k) the management and maintenance of all the Municipal water-works and the construction and maintenance of new work and means for providing a sufficient supply of suitable water for public and private purposes.

9. The Municipal Corporation, Dewas, has, however, contended before us, and this is also the case of petitioners, that during the months from January to June every year the river Kshipra, from which the town draws its water, dries up and hence the Municipal Corporation, Dewas, is unable to meet the requirements of water of the residents of the town. Since the right to pollution free water is a fundamental right guaranteed under Article 21 of the Constitution, as has been held by the Supreme Court in *Subhash Kumar v. State of Bihar* and *M.C. Mehta v. Union of India* (supra), this plea of inability on the part of the Municipal Corporation, Dewas, cannot be accepted by the Court particularly when it is its statutory duty u/s 66 of the 1956 Act to supply such water. If the river source of water is not available to be drawn during the months of January to June every

year, the Municipal Corporation, Dewas, is under an obligation to supply sufficient quantity of water for its residents both under Article 21 of the Constitution as well as u/s 66 of the 1956 Act.

10. Moreover, we find that in Section 220 of the Municipal Corporation, 1956, sufficient powers have been vested with the Commissioner of a Municipal Corporation to purchase any water or to enter into any arrangement with any person to supply water for the purpose of providing a supply of water, proper and sufficient, for public and private purposes. Section 220 of the Municipal Corporation Act, 1956, reads thus:

220. General Powers for supplying the city with water.- For the purpose of providing a supply of water proper and sufficient for public and private purposes, the Commissioner may, either within or without the City:

(a) construct and maintain water-works and do all acts which may be necessary or expedient in connection with such construction or maintenance;

(b) purchase or take on lease any water-work or any water or right to store water or to take and convey water; or

(c) enter into any arrangement with any person for the supply of water:

Provided that if in the city any Government Department is administering and controlling water-supply, the Commissioner shall not make any such arrangement without prior approval of the Government and the arrangement shall be subject to the terms and conditions laid down by Government in this respect.

11. Considering the aforesaid provisions of Section 220 of the 1956 Act, by our order dated 9-2-2009, we called upon the Municipal Corporation, Dewas, to file an affidavit before the Court whether drinking water is being obtained from different places of the country in trains or in water tankers to meet the short fall of drinking water in Dewas town, and an affidavit has been filed by the Municipal Corporation, Dewas, saying that it was only in the financial year 1990-91 and in the year 2001 that some supply of water was obtained through Railways but thereafter no water supply has been received through Railways.

12. We are of the considered opinion that the Municipal Corporation, Dewas, has to procure sufficient quantity of water on a regular basis for public and private purposes in Dewas town to discharge its constitutional obligations under Article 21 of the Constitution and statutory obligation u/s 66 of the 1956 Act.

13. We, therefore, direct the Municipal Corporation, Dewas, to procure water in sufficient quantities, if necessary, through Railways or through motor vehicle tankers for supply for public and private purposes. This direction will be complied with by the Municipal Corporation, Dewas, as early as possible and in any case within a period of one month from today. This order, however, will not be construed by the Municipal Corporation, Indore, to have absolved the Municipal

Corporation, Indore, of its obligations under the agreement to supply water to the Municipal Corporation, Dewas.

14. With the aforesaid directions, the writ petition is disposed of.