
(1980) 06 KAR CK 0015
In the Karnataka High Court
Case No : WP 7040 etc/78 etc

Paddamma and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 11-06-1980

Acts Referred:

Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957 —
Section 10a

Citation : (1980) 2 KarLJ 465

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. As common questions of law arise for determination in these cases, I propose to dispose of them by a common order.
2. In these petitions, under Art. 226 of the Constitution, the petitioners have challenged the demand notices issued by the respective officers of the Revenue Department.
3. The petitioners are the owners or occupants of agricultural lands which are supplied with water from a major irrigation project called "Tungabhadra Project". In the impugned demand notices, each of the petitioner has been called upon to pay the amounts specified in the respective notices, as if it is arrears of land revenue. In some notices, the officer while specifying the name of the person, his address and the total amount due from the lands specified hereto, has not furnished any other details and in others in addition to the above, they have indicated the amounts due towards LR, WR, MC, RL LC EC and HC without anywhere stating what those abbreviations stand for.
4. At the forefront, the petitioners have urged that no Rules or Order for fixation of the water rate and other rates have been framed under S. 10-A of the Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act of 1957 (hereinafter referred to as "the Act") and even if any rule or order has been made under the said provision the same not having been made with the previous consent of the President of India, are unenforceable and the demands

made thereto are illegal. Secondly, they have urged that the demands made by the Revenue Officers without a determination of the liability by the authority under the Act either towards betterment contribution or towards water rate and without providing an opportunity of hearing are illegal.

5. In W.P. Nos. 13312 to 13336 of 1978, the respondents have filed their return denying the grounds urged by the petitioners. They have urged that the water supplied, though initially drawn from the Tungbudra Reservoir, is not supplied by the authority constituted under S. 66 of the Andhra State Act of 1953 (Central Act No. XXX of 1953) (hereinafter referred to as the Andhra Act) and is supplied by the Government of Karnataka. They have urged that Section 10A of the Act has no application to the water supplied by Government from whichever source it may draw. On the merits of the demand notices, the respondents have not joined issue.

6. Sri. Mohandas N. Hegde, learned counsel for the petitioners, contended that the demand notices cannot be enforced in the absence of previous consent of the President of India to the rule or order made fixing the water rate under the Act.

7. Sri S.G. Doddakale Gowda, learned Government Advocate appearing for the respondents, urged that S. 10-A of the Act had no application to the water supplied by Government of Karnataka, the demands made thereto and the proviso was applicable only to water stored, consumed, distributed or sold by the Authority constituted under S. 66 of the Andhra Act.

8. Under the Act, Government of Karnataka has framed rules called "the Karnataka Irrigation" (Levy of Betterment Contribution) Rules, 1964 (hereinafter referred to as "the Rules") inter alia fixing the rates of water leviable for the use of water from irrigation works and other incidental matters. The said Rules which carry out the purposes of the Act are not challenged by the petitioners. When the petitioners have not challenged the Rules, the question of examining their validity would not arise. Apart from the aforesaid Rules, neither party has referred and placed before me any other Rule or order fixing water rate, much less they have been challenged. In these circumstances, the challenge of the petitioners based on S. 10A of the Act does not really arise for determination. But, I do not propose to do so as the same is being agitated before this Court now and then in one form or the other and the same has not so far been decided. I, therefore, proceed to examine the contention of Sri Hegde after noting certain salient features that are helpful for a further examination of the same.

9. Before our country became independent, the then princely states of Mysore, Hyderabad and the then British Province of Madras in the years 1944-45 entered into an agreement and as a joint venture started the construction of a major irrigation project on an inter-state river called "Tungabhadra" to benefit the arid zones of those States. The Andhra Act, while establishing anew State called "State of Andhra" from 1-10-1953 provided for the merger of the district of

Bellary except the Taluks of Alur, Adhoni and Raidurg of that district, which were part of the then State of Manras with the then State of Mysore, S. 66 of the Andhra Act made special provisions with regard to Tungabhadra Project. By virtue of sub-section (4) of S. 68 of that Act, the President of India by notification No. DW. II. 22 (129) dated 29th September 1953 while issuing various directions constituted a Board called "The Tungabhadra Board" (hereinafter referred to as "the Board") from 1st October 1953. Under the States Reorganisation Act of 1956, the erstwhile State of Hyderabad was dismembered and a new State called the State of Andhra Pradesh came into being from 1-11-1956 consisting of the erstwhile State of Andhra and various parts of erstwhile State of Hyderabad. For our purpose what is important is that from 1-10-1953, the Board of an Authority contemplated by S. 66 of the Andhra Act, has come into being and is functioning ever since then. The Board has control only on the Reservoir proper and certain canals and has no control over the canals and other irrigation works that draw water from that Reservoir and supply water in Karnataka State and their exclusive control vests in Government of Karnataka (Vide-Chapter V of the report of the Krishna Water Disputes Tribunal with the decision, Volume I and II). Evidently, the contention of the petitioners based on S. 10-A of the Act, proceeds on the assumption that the water is supplied and their charges called "water rate" is recovered by the Board or its Officers which is factually not true. On this conclusion also, the contention of the petitioners is untenable.

10. The Act is a consolidating and amending Act. The Act while repealing the provisions of the Act referred to in S. 12, has made uniform provisions for the levy of Betterment Contribution and Water Rate in the State of Karnataka. Section 3 provides for the levy of betterment contribution. Ss. 4, 5, 6, 7 8 and 9 are machinery provisions and are intended to carry out the levy of betterment contribution imposed by S. 3 of the Act, S. 10 of the Act provides for the levy of water rate. Clauses (b) and (c) of sub-section (1) of that section provides for the levy of water rate in respect of water supplied from any work belonging to or constructed by Government either directly or indirectly. Clause (d) of that section empowers the levy of water rate on the water supplied or made available to Government by the Board. The said provision, in unmistakable terms authorises Government of Karnataka to levy water rate in respect of water supplied from the Tungabhadra Reservoir, which in turn supplies the same to the land owners. In the very nature of things, the Rules only carry out the purposes of these provisions, the validity of which is not challenged by the petitioners.

14. S. 10-A of the Act, on which the entire case of the petitioners rests reads thus:

"10-A. Application of this Act to the Tungabhadra Project:-The provisions of this Act relating to the levy of water rate shall be applicable in respect of any water stored, consumed, distributed or sold by the authority established under section 66 of the Andhra State Act, 1963 (Central Act XXX of 1953);

Provided that no rule or order for the fixation of the water rate and other

incidents in respect of such water rate shall be made except with the previous consent of the President of India."

The main part of S. 10-A of the Act provides that the provisions of the Act relating to levy of water rate shall be applicable in respect of any water stored consumed, distributed or sold by the Board. When the Board supplies water to any person, it can fall back on the provisions of the Act. Proviso to the said section declares that no rule or order for fixation of water rate and other incidents in respect of water rate shall be made except with the previous consent of the President of India. As a general rule a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily a proviso, is not interpreted as stating a general rule (vide *ShamBhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Singha* , AIR 1961 SC 1956 at P. 1800. An analysis of S. 10-A and the proviso, reveal that the previous consent of the President of India should be obtained for any rule or order made in respect of water supplied and sold by the Board and not by Government of Karnataka. From this also, the contention of the petitioners is misconceived and is devoid of merit.

12. Let me assume that S. 10-A applies and examine whether there is merit in the contention.

13. The proviso commences with negative terms and also employs the word "shall". From this, at first sight, one can say that the proviso is mandatory. However, the mere use of the negative word and the word "shall" does not by itself lead to the conclusion that the said provision is mandatory. Any failure of Government to obtain previous consent, assuming that was necessary, can only be construed as a failure of a public authority to perform its public duty. Provisions providing for performance of public duties are generally construed as directory and not as mandatory particularly when the consequences of holding as mandatory would be disastrous to the public exchequer. From this, it would be proper to hold that the proviso to Section 10-A of the Act is only directory and the disobedience of the same does not invalidate the rule or order fixing the water rates. Assuming that this conclusion is not sound and the proviso is mandatory, in such a case also, these are not fit cases in which this Court should assist the petitioners. Firstly, the petitioners had the benefit of supply of water and therefore they cannot avoid their liability solely on the ground that the rules or order had not been made with the previous consent of the President of India. Secondly, there has been inordinate delay in raising this objection.

14. For all the above reasons, I hold that there is no merit in the contention of Sri Hegde, and I reject the same.

15. Sri. Hegde, next contended that the demand notices are extremely vague, unintelligible and illegal.

16. A perusal of the impugned notices reveals that the criticism of Sri Hegde is well founded.

17. In many of the notices, the authority has not specified in respect of what claim the said demand is made. In many other notices the abbreviations used are so unintelligible and are not clear. In W.P. Nos. 13691 to 13698 of 1978 decided on 18-1-1978 I have examined the validity of similar notices and held that they cannot be sustained and for the reasons stated therein, the impugned notices are liable to be quashed. I, therefore, quash the impugned notices reserving liberty to the Revenue Officers and other authorities functioning under the Act to recover the amounts from the petitioners in accordance with law and in the light of the observations made in this order.

18. Rule issued is made absolute in all these cases.

19. In the circumstances of the case, I direct the parties to bear their own costs.