

(1981) 06 KAR CK 0020
In the Karnataka High Court
Case No : WP 8148 to 8150/78

Pulliah A. and Others

APPELLANT

Vs

Tahsildar, Sindhanoor and Others

RESPONDENT

Date of Decision : 16-06-1981

Acts Referred:

Karnataka Irrigation Act, 1965 — Section 32(4)

Citation : (1981) 2 KarLJ 339

Hon'ble Judges : K. Jagannatha Shetty, J

Judgement

1. The petitioners are agriculturists. They are called upon to pay the penalty levied under S. 32(4) of the Karnataka Irrigation Act for the unauthorised use of water from an irrigation source. The penalty amount is sought to be recovered as arrears of land revenue.

2. In these petitions, the petitioners have challenged the recovery proceedings on the ground, among others, that there was no notice served on them before the penalty orders were made and they were not treated as defaulters before the recovery proceedings were initiated.

3. The respondents have not filed the return, but they have made available the relevant records to the Court. The concerned Irrigation Officers are also present to assist the Court in the proper determination of the question raised.

4. From the records produced today, it is seen that the Irrigation Officer has issued notices to the petitioners stating that there was a joint inspection by the Assistant Engineer and the local Tahsildar and in that joint inspection it was found that the petitioners had cultivated the lands by raising crops which were not authorised. The notice also called upon the petitioners to show cause why they should not be made liable to pay the penalty under S. 32 of the Act.

5. In spite of service of notices the petitioners were not present before the Irrigation Officers of the date shown for appearance. Thereupon, the Irrigation Officer levied the penalty at ten times the usual water rate. The orders so made

were transmitted to the Tahsildar of the Taluk with a request to recover the amount as arrears of land revenue. The Tahsildar called upon the petitioners by notice under Rule 112 of the Karnataka Land Revenue Rules to pay the penalty.

6. These are the facts which we can gather from the records. It is clear that the petitioners were notified before the penalty orders were made. The notice served on each of the petitioners also contained the allegations made against them. But the petitioners did not reply to the said notice nor they were present before the Irrigation Officer for the purpose of enquiry. The first contention that they were not served with notice is therefore contrary to the records.

7. There is also no substance in the second contention urged. After the penalty order was made, it was unnecessary to treat the petitioner as defaulters before revenue recovery proceedings were initiated. The Act does not require that they should be notified by the irrigation Officer before initiating proceedings against them to recover the penalty as arrears of land revenue. They have got an opportunity to pay before the revenue authorities if they want to avoid attachment and sale of their properties.

8. That, however, is not the end of the matter. There still remains another question for consideration. The question is whether the uniform penalty levied by the Irrigation Officer on all the petitioners was justified under law and also in the circumstances of the case. Sec. 32(4) which authorises the Irrigation Officer to levy penalty, as amended by Karnataka Act 12 of 1969 provides:

"In all cases in which the person who has sown or grown any unauthorised crop or allowed any land to be grown or sown with such unauthorised crop cannot be found, the holder of the land, in addition to such other person concerned, shall- (a) be liable for contravening the provisions of this section; and (b) also be liable to pay such water rate, as may be determined by the Irrigation Officer, not being less than five times and not exceeding ten times the water rate which he would otherwise have been required to pay."

Under this provision, the Irrigation Officer may determine the penalty not being less than five times and not exceeding ten times the water rate which the petitioners would otherwise have been required to pay. In the instant cases it is admitted that the Irrigation Officer has levied the maximum penalty prescribed by the above provision. He has not given any reason why the levy of the maximum penalty was found necessary. The provisions of S. 32 (4) (b) are penal in nature and the power conferred is quasi-judicial and it goes without saying that that power should be exercised reasonably. There is an implied duty to adopt a fair procedure wherever there is a duty to exercise discretionary power.

"It has often been asserted in judicial dicta and academic literature that all statutory powers (or at least all statutory powers directly impinging on private rights) must be exercised reasonably; and inasmuch as powers are conferred subject to an implied requirement that they be exercised reasonably, an authority failing to comply with this obligation acts unlawfully or ultra

vires." (See de Smith's Judicial Review of Administrative Action, 4th Edn. Page 346)

The Irrigation Officer who is concerned in one of these cases is personally present before the Court and the Government Pleader after consulting him, submitted before me that he has executive instructions to impose the maximum penalty whenever the agriculturists raise unauthorised crops repeatedly. There is some difficulty to accept this contention. First of all there cannot be an instruction to control the judicial discretion. The judicial discretion must depend upon the facts of each case. Secondly, there is no evidence on record that the petitioners have repeatedly raised the unauthorised crops. In the absence of any evidence that the facts of all these cases are similar, or the petitioners have repeatedly raised the crops contrary to the approved pattern, the levy of penalty at 10 times the usual water rate cannot be sustained.

9. In the result, the rule is made absolute and the impugned notices are quashed with liberty to the Irrigation Officer to proceed in accordance with law and in the light of the observations made.

10. To avoid further delay in the matter, I direct the petitioners to be present before the concerned Irrigation Officer, i.e., the Assistant Executive Engineer, No. 2 Canal Sub-Division, Karatgi, Gangavathi Taluk in July 27, 1981 to receive further order and the petitioners are not entitled to any notice.

No costs.