

(1997) 02 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 682 of 1997

Puttappa Honnappa Talavar

APPELLANT

Vs

The Deputy Commissioner, Dharwad District, Dharwad and
Others

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1997) 3 KarLJ 136

Hon'ble Judges : G. C. Bharuka, J

Judgement

1. In this writ petition and in other similar writ petitions, the prayer is for giving directions to the respondent-District Authorities to grant "Water Right Certificates" so that they may obtain electricity supply from the Karnataka Electricity Board.

2. The matter has already been examined at length by this Court in Writ Petition No. 28035 of 1996 disposed of on 4-10-1996 wherein it has been held that, the production of "Water Right Certificate" cannot be insisted upon by the Board for supply of electricity to a borewell. It has further been held that, the Board can refuse to grant electricity supply to a new borewell only if the same is in the proximity of 825 feet from the existing/proposed rural water supply scheme which is intended for supply of drinking water to the entire village.

3. Regulation 6.02 of the Electricity Supply Regulations framed by the Board reads thus:

"6.02: The applicant shall submit along with the application "Water Right Certificate" or "Khatha Certificate" from the Competent Authority to establish his right to draw water from the water source."

4. From the above regulation, it is clear that production of Water Right Certificate is not a condition precedent for supply of electricity to borewells. If the applicant produces the "Khatha Certificate" showing his undisputed possession or

ownership over the land on which the borewell is dug, then, the Board has to supply electricity subject to fulfilment of other conditions laid down in this regard.

5. Sri N.K. Ramesh, learned High Court Government Pleader has brought to my notice a recent Government Order No. CI 255 MGS 1996, dated 4-10-1996 issued by the State Government under its Commerce and Industries Department which intends to direct various Governmental agencies including the Karnataka Electricity Board regarding the distance between two borewells which is to the following effect:

"Government are pleased to direct that the Department of Mines and Geology, Karnataka Electricity Board, Financial Institutions and all Government Agencies concerned with groundwater exploitation, feasibility certification and financing etc., shall observe and implement the following restrictions and shall not provide any assistance or to any person/organisation in contravention of the following restrictions:-

1. The minimum inter-well spacing (successful wells) between two borewells, a borewell and a dug-cum-borewell, between two dug-cum-borewells between dug-cum-borewell and a dug well shall be 250 mts.

2. The minimum inter-well spacing between two successful dug wells shall be 182 mts.

3. The minimum inter-well spacing between two successful dug wells in the perennial command areas shall be 130 mts.

4. The inter-well spacing between a drinking water source (borewell, dug well, dug-cum-borewell etc.) and a borewell, a dug-cum-borewell and a dug well used for any other purpose shall be 250 mts.

5. No existing ground water extraction structure (borewell, dug well, dug-cum-borewell etc.) which is within a distance of 250 mts., from the drinking water source shall be redeveloped by means of deepening, drilling additional borewells in the open well and further re-drilling of the existing borewell to a greater depth.

6. The above minimum internal spacing between two ground water extraction structures shall not be applicable to borewells, dug-cum-borewells or open wells sunk or being used for the purpose of public drinking water supply by the Government agencies such as Public Health Engineering Department, Karnataka Urban Water Supply and Drainage Board, Bangalore Water Supply and Sewerage Board, Zilla Panchayats, Municipalities and other Local Authorities."

6. Admittedly, the said circular has not been issued pursuant to any statutory provisions. It is by way of an executive fiat. Stipulations made in the above circular will have bearing on the fundamental rights to life and livelihood as envisaged in Article 21 of the Constitution of India, of the persons intending to dig borewells for the purpose of drawing underground water either for drinking or cultivation or some other business or profession. Article 21 of the Constitution

guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. On the interpretations of this Article by the Supreme Court it is now well established that the right to life, enshrined in Article 21 means something more than survival or animal existence. It would include the right to live with human dignity. It means that right to live includes all those aspects of life which go to make a man's life meaningful, complete and worth living. See *State of Maharashtra v Chandrabhan*, AIR 1983 SC 803, *Olga Tellis and Others v Bombay Municipal Corporation and Others*, AIR 1986 SC 180, *Delhi Transport Corporation v D.T.C. Mazdoor Congress and Others*, AIR 1991 SC 101. It is further well-established that the word "Law" as used in Article 21 would not include mere executive or departmental instructions which have no statutory basis. See *D. Bhuvan Mohan Patnaik and Others v State of A.P. and Others*, AIR 1974 SC 2092 and *Makhan Singh Tarsikka v State of Punjab*, AIR 1964 SC 381. Therefore, the right to dig borewells to draw underground water can be restricted or regulated only by an Act of the legislature.

7. Mr. N.K. Ramesh, learned High Court Government Pleader on instructions states that, the Government has already taken a decision to bring out an appropriate legislation having an effective regulation on installing of borewells. In my opinion, this fact is of no consequence at this stage. As and when such legislation is brought into force it will be for the petitioners to examine the provisions thereof and if they feel aggrieved, may resort to appropriate remedial measures.

8. With the said observations and directions, the writ petition is disposed of.