

(1992) 09 MAD CK 0047
In the Madras High Court

R. Arumugasamy

APPELLANT

Vs

The Divisional Development Officer, Cheranmahadevi and
Others

RESPONDENT

Date of Decision : 16-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 MLJ 325

Hon'ble Judges : M. Srinivasan, J

Bench : Division Bench

Judgement

M. Srinivasan, J.—These two writ petitions are connected. They relate to the same matter. The petitioner in W.P. No. 7591 of 1992 is a permanent resident and native of Kudankulam village which falls within the jurisdiction of Radhapuram Panchayat Union. He has filed the writ petition in the interest of all the residents of the village. Under the Rural Water Supply Scheme, the Tamil Nadu Water Supply and Drainage Board installed an overhead tank for the benefit of the villagers in 1988. The village is generally a drought prone area and the villagers have to walk for 4 to 5 Kms. to fetch water for drinking and bathing. When the tank was installed after the great efforts of the villagers, the Tamil Nadu Water Supply/and Drainage Board imposed a condition when handing over charge of the tank to the Panchayat that no individual house service connection should be given. The tank is installed with a capacity of 1,00,000 litres. 35 water tapes were also installed in the village to supply water to the residents of the village.

2. The District Collector of Tirunelveli District issued an order in 1988 to all the Panchayat Union Commissioners that no house service connection should be given from the overhead tank installed under the scheme. The 2nd respondent also passed an order on 1.11.1988 to all the Presidents of the Panchayat Board under his jurisdiction directing them not to provide house service connection. In spite of strict instructions by the Collector and the 2nd respondent, the

Panchayat passed a resolution in April, 1989 to provide house service connection on a monthly charge of Rs. 15 per house and on a deposit of Rs. 300. It is alleged by the petitioner in the writ petition that the President got the resolution passed with the connivance of other members of the Panchayat with a view to get water service connection to their houses and to make money out of it. It is not necessary for me to consider the correctness of the said allegations as the persons to whom the house connections were given are not impleaded as parties in that writ petition.

3. Suffice it to point out that the house service connections have been given against the instructions issued by the Collector and the Commissioner of the Panchayat Union and the resolution of the Panchayat was contrary to the said instructions. It is also contrary to the specific condition imposed by the TWAD Board at the time of giving charge of the overhead tank to the Panchayat.

4. The Divisional Development Officer, Cheranmahadevi, passed an order dated 12.7.1990 that Koodankulam and Radhapuram are drought areas and the action of the Panchayat in passing a resolution to give house service connection was totally illegal and its would affect severely the residents of Koodankulam. The President of the Panchayat instead of disconnecting the water connection issued an order directing the persons who got house service connections not to take water from the taps installed in their houses. Aggrieved thereby those persons filed W.P. No. 11292 of 1990 in this Court. In that writ petition, the petitioner in W.P. No. 7591 of 1992 got himself impleaded as a party. The writ petition was disposed on 24.4.1992. An order was passed allowing the writ petition on the sole ground that no notice was given to the petitioners therein before the impugned order was passed. The court observed that action could be taken after issuing due notice to the petitioners therein.

5. Pursuant to the said order, the Panchayat Union issued a notice on 22.6.1992 to the persons who got house service connection. In that notice, they had referred to the condition imposed in the scheme under which the overhead tank was installed and handed over to the Panchayat. It is also stated in the notice that he condition was violated and the resolution was passed by the Panchayat to give house connection to 15 persons. It is further stated that the Divisional Development Officer as well as the Commissioner of Panchayat Union had given instructions already that house connections should not be given and, therefore, action is being taken to disconnect the connections already provided. A reference is made to the writ petition filed in this Court and orders passed therein. The notice called upon the petitioners in W.P. No. 9423 of 1992 who had the house connection to send their objections if any within 15 days from the date of receipt of notice and otherwise action would be taken to disconnect the pipe.

6. On receipt of the said notice, the petitioners caused through their advocate the issue of a telegram. In that telegram he wanted copies of Water Board's communication, orders of the Director of Rural Development and the District Collector under which tap connection was said to be prohibited and that without

the said documents it would be impossible for the petitioners to submit an effective reply. They also prayed for extension of time by 15 days after furnishing of the said documents. A notice was issued on 30.6.1992 by counsel. In the notice also there was a prayer for extension of 15 days after furnishing of documents.

7. Thereafter, they filed W.P. No. 9423 of 1992 with a prayer for issue of mandamus - for bearing the respondents from disconnecting the water service connection given to the petitioners.

8. There is no justification for the request made by the petitioners for furnishing of the documents set out in the telegram issued by the advocate. Even in the counter affidavit filed by the Divisional Development Officer, Cheranmahadevi, in W.P. No. 11292 of 1990 in which he was the first respondent, all the relevant particulars had been set out. The said counter affidavit refers to the resolution passed by the Panchayat on 29.3.1989 and points out that in view of the fact that the Managing Director of Tamil Nadu Water Supply and Drainage Board had specifically instructed not to extend water supply for private purposes as the people belonging to economically weaker sections would be deprived of getting enough water for their requirements if individual house service connection were given, the resolution of the Panchayat was not valid. The number of the letter and the date thereof were set out in that affidavit. There is also reference in that affidavit to the instructions issued by the Commissioner, Panchayat Union, Radhapuram, on the basis of guidance given by TWAD Board and also to the contentions of the petitioners therein against the orders issued in proceedings A5/3433/90, dated 12.7.1990. A reference was made to the notice issued by the President of the Panchayat on 16.5.1990 in the first instance and the second notice on 14.7.1990. It was also pointed out that no reply was sent by the petitioners to the notice dated 16.5.1990. It was stated in the counter affidavit that the decision to disconnect the individual house connection was taken with the sole intention that economically weaker sections should not be deprived of their chance of getting enough drinking water and there was no sufficient supply so as to give house connection to the residents of the villages.

9. I am of the view that on the facts referred to above, the petitioners cannot claim any right in them to continue the water connections given to their houses. The very basis of giving connections to their houses was illegal and it was pursuant to a resolution passed by the Panchayat contrary to the instructions given by the authorities and contrary to the conditions stipulated at the time of handing over the overhead tank to the Panchayat. When the connections given to the petitioners were based on an illegality at the inception they cannot claim any right to have them continued and contend that they are entitled to get some more particulars from the authorities concerned. All the relevant particulars were made available to them in the counter affidavit filed by the first respondent in W.P. No. 11292 of 1990. Apart from that no other particulars are necessary to be given to the petitioners therein or the petitioners in W.P. No. 9423 of 1992.

10. In any event, it has been held by the Supreme Court in several cases that the principles of natural justice need not apply as a matter of rule in every case. They can be excluded in certain cases. Vide *Union of India and Another Vs. Tulsiram Patel and Others*, at page 1462, para 101. In the present case, it has been pointed out by the authority that it is against the interest of the general public of the village to grant house service connection as they would not be able to have sufficient supply of drinking water if individual house service connections are given. That is why even when the tank was handed over to the Panchayat a condition was imposed. When it is against the interest of the public at large, the court should take into account only such interest and should not give credit to the grievance of a few individuals of the villages particularly when the said benefits were given to the said individuals by the authorities illegally.

11. Hence, the petitioners in W.P. No. 9423 of 1992 have no right to be enforced under Article 226 of the Constitution of India. They cannot contend that the connections given to their houses should be continued on the only ground that they have not been furnished with the orders of the authorities and the documents referred to by the authorities in their notice. At any rate, I refuse to exercise my discretion under Article 226 of the Constitution in favour of the petitioners in the said writ petition. Consequently, the said Writ Petition No. 9423 of 1992 is dismissed.

12. In the other writ petition, the prayer is for issue of mandamus directing respondents 1 to 3 to disconnect all the house service water connections given by the then President of Koodankulam in violation of the orders of the District Collector and the Commissioner of Radhapuram Panchayat Union. It follows automatically that this writ petition should be allowed and mandamus should be issued as prayed for by the petitioners. Respondents 1 to 3 in W.P. No. 7591 of 1992 are directed to disconnect the house service water connections given by the then President of Koodankulam Panchayat Union within one week from this date. There is no necessity for the respondents to give any further notice to the persons who have obtained house connections under the illegal resolution passed by the Panchayat earlier. The writ petition (W.P. No. 7591 of 1992) is ordered accordingly. There will be no order as to costs.