
(1967) 06 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 2641 of 1965

Rajalakshmi and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-06-1967

Acts Referred:

Irrigation Rules, 1958 — Rule 7(b)
Travancore-Cochin Irrigation Act, 1956 — Section 15(2)

Citation : (1968) KLJ 544

Hon'ble Judges : V.P. Gopalan nambiyar, J; P. Govindan Nair, J

Bench : Division Bench

Advocate : K. Kuttikrishna Menon and A.P. Chandrasekharan, for the Appellant;

Final Decision : Allowed

Judgement

P. Govindan Nair, J.—The two petitioners in this writ application have challenged the notices Ex. P-1 and P-2 issued to them by the Tahsildar of Chittur demanding irrigation cess said to be payable by the petitioners under the, Travancore-Cochin Irrigation Act, 1956 (hereinafter referred to as the Act). Ex. P-1 notice mentions the cess as Rs. 1677.44 for eight years though at the bottom of the notice it is said that it is for the period from 20-11-1956 to 1964-65 and thus for 9 years. The extent of the land with reference to which this claim is made is said to be 27.90 acres. Ex. P-2 is the revenue recovery notice for the sum of Rs. 135.86 said to be cess payable on the 10th May, 1965. Apparently this cess is claimed for the lands mentioned above for the period subsequent to that for which the claim under Ex. P-1 was made. It is the case of the petitioners that they had no intimation whatever about the cess payable under the Act before these notices were served on them. These notices have been challenged on various grounds. It will be enough however to state one of such grounds, the non-compliance with Rule 7 of the Irrigation Rules 1958 (hereinafter called the Rules) which are admittedly the Rules that are applicable, for setting aside these notices.

2. We may refer to Rules, 4, 5 and 6 as well before we read Rule 7. Under Rule

4(a) the Executive Engineer in charge of a major irrigation work will have to send a report to the Board of Revenue and the Collector of the District informing them the date of provision of the irrigation facilities and the Secretary to the Board of Revenue shall publish in the Gazette a notice in Form A. In the case of works undertaken before the 1st January 1943, the Executive Engineer in charge will have to send a report in Form 1 to the Collector. The Collector after making enquiries has to forward to the Board of Revenue his recommendations as to the rate of cess to be levied. The Board of Revenue after making such enquiries as is deemed necessary will have to fix tentatively the annual cess per acre to be levied (Rule 5(A)). The decision of the Board of Revenue has to be published by the Collector in the Collector's office, and publication will have to be made in the Taluk office and in the office of the Executive Engineer. Rule 6(1), as we read it, applies to major irrigation works undertaken on or after the 1st January, 1943. Since the works with which we are concerned in this case admittedly were constructed before 1.1.1943, we need not refer to the other details provided in Rule 6(a). We shall now read Rule 7.

7(a) On receipt of the report in Form II, the Collector may order that the cess should be levied and recovered on the basis of the list tentatively.

(b) On receipt of the orders under sub-rule (a) or under rule 8 the Tahsildar shall prepare lists of persons in actual occupation or possession of the land and the amount of cess or installments of payments as the case may be payable by each person and issue notice in Form C to each.

(c) Appeal.-Any person aggrieved by the notice may appeal to the Collector.

Rule 7(a) has no application as it refers to the report under Rule 6. This report pertains only to construction which was undertaken on or after 1st January, 1943. Rule 7(b) is not very clear. It refers to orders under Rule 7(a) as well as under Rule 8. But Rule 8 which is in these terms:

8. The cess under these rules shall be levied with effect from the financial year during which the irrigation facilities were provided and shall be payable in two installments or otherwise on the dates prescribed in the rules made u/s 16 of the Travancore-Cochin Land Tax Act, 1955.

does not provide for any orders being passed. But reading all the relevant rules together it seems to be clear that Rule 7(b) is applicable not only in regard to irrigation works constructed after 1.1.1943 but those constructed before 1.1.1943 as well. In other words, there must be a Form C notice issued to every land, holder whose land is subject to the cess leviable under the Act and who has to pay the cess imposed. He has the right to object to such a notice. His objections should be heard and orders passed. No notices as required by Rule 7(b) have been issued to the petitioner is admitted. Notices Exs. P-1 and P-2 cannot therefore stand.

3. Before leaving this part of the case we must advert to the fact that the rules

have been amended by a notification dated 17th November, 1964 which has been published in the Kerala Gazette dated 1st December, 1964. The old Rule 7 was deleted and an a new Rule 7 has been incorporated reading as follows:

7(a) On receipt of a copy of the decision of the Board of Revenue under Rule 5 or of the order under sub rule (c) of rule 6, the Tahsildar shall prepare lists of persons in actual occupation or possession of land and the amount of cess or installments of payments as the case may be, payable by each person and issue notice in Form C which shall be duly served on the person in actual occupation or possession of the land.

(b) Any person aggrieved by the notice may appeal to the Revenue Divisional Officer within 30 days of the date of receipt of the notice or within 30 days after these rules came into force.

(c) If it is found after considering the appeal that the lands included in any Survey number or Survey sub number is not actually benefited by the Irrigation work, the Revenue Divisional Officer may exclude the survey number or survey sub number from the list. If he is not so satisfied, he may reject the appeal and inform the appellant and the Tahasildar accordingly.

(d) The particulars of the land so excluded shall be communicated to the Tahsildar and the Tahsildar shall cause the levy of cess on the land so excluded being cancelled and the amount of cess already recovered being refunded.

(e) If it is found after considering the appeal that any survey number or sub number included in any of the classes in the notices in Form C has to be grouped in another class, the Revenue Divisional Officer may reclassify the land accordingly. If he is not so satisfied, he may reject the appeal and inform the appellant and the Tahsildar accordingly.

(f) The particulars of the reclassification shall be communicated to the Tahsildar and the Tahsildar shall arrange for the revision of the cess accordingly.

(g) Any person benefited by a decision in appeal shall be entitled to the refund of any excess levy already collected from him.

(h) The decision of the Revenue Divisional Officer shall be final.

This leaves no room for doubt that a notice has to be issued even to persons who own lands which are benefited by the irrigation work constructed before 1.1.1943. The old Rule 11 has now been deleted completely. Any fresh notice Under Form C will have to be issued under the present Rules.

4. This is enough to dispose of this writ application. But we must advert to the elaborate arguments that have been advanced in regard to the impost that has been made. Counsel for the petitioner has pointed out that the extent of 27.90 acres mentioned in Ex. P-1 notice is wrong because the petitioner has only 18 and odd acres of land. This has been conceded now in the counter-affidavit that has been filed. Therefore there cannot be any demand of cess for an area in

excess of that owned by the petitioner. It was then contended that even according to the statement in the counter affidavit that has been filed the method adopted for levying the cess is thoroughly unjustified and cannot be supported by the provisions of the Act and or the Rules. We must in this connection refer to the relevant sections of the statute. It is now admitted that the works concerned, as we indicated earlier, are those constructed before 1-1-1943. The relevant part of the Section is Section 15(2) of the Travancore-Cochin Irrigation Act, 1956 and not 15(3). Those sub-sections are in these terms

15 (2) In the case of lands benefited by a major irrigation work the construction, expansion or alteration of which the Government have undertaken before the 1st January, 1943, the cess leviable under sub-section (1) shall be fixed upon an acreage basis and so as to ensure to the Government a return not exceeding three per cent on the capital outlay after making provision for depreciation and maintenance.

15(3) In the case of lands benefited by a major irrigation work the construction, expansion or alteration of which the Government have undertaken on or after the 1st January 1943 the cess leviable under sub-section (1) shall be at the following rates:

(a) lands already registered as single crop wet lands and on which two or more paddy crops could be raised.

Rs. 6 per acre

(b) other lands already registered as wet lands.

Rs. 5 per acre

(c) lands made fit for cultivation and on which only one paddy crop could be raised.

Rs. 6 per acre

(d) lands made fit for cultivation and on which two or more paddy crops could be raised.

Rs. 10 per care

(e) other lands benefited.

at such rates per acre not exceeding rupees ten as may be fixed by the Government from time to time:

5. In the counter affidavit dated 4th November, 1966 filed by the Tahsildar, Chittoor in Paragraph 3 the following statement is made:

On working out the rates of cess with reference to the capital outlay of the Irrigation works in question, it was found that the rates of cess ranged from Rs. 6.28 to Rs. 20.08 per acre for different works. Under rule 4 (c) of the Irrigation

Rules, 1958, the District Collector recommended to the Board of Revenue to levy cess at the rate of Rs. 5/-, Rs. 7.50 and Rs. 10/- per acre for S.C.W, D.C.W. and dry lands respectively. Under rule 5 (a) of the same rules, the Board tentatively fixed the above rates after obtaining government orders namely G. O. Rt. 1564/63 PW dated 27-7-63 and G. O. Rt. 1328/64 PW dated 25-6-64. From this statement in the affidavit it is clear that what has been done is to mix up the cess that can be claimed from the lands benefited by different kinds of irrigation schemes. The levy under the Act seems to be related to particular irrigation schemes benefiting particular sets of lands. As we read the provisions of the statute, there cannot be a mixing up of the cess payable in relation to the lands benefited by one particular scheme with that payable with reference to an entirely different scheme. The procedure adopted therefore is not warranted by the Act or the Rules.

6. There is another patent mistake that seems to have been committed. As far as irrigation works constructed before 1.1.1943., the statute does not make any distinction between the different types of lands like single crop, double crop and drylands. These are mentioned for the purpose of Section 15(3) which pertain to irrigation works constructed after 1.1.1943. Apparently the provision in Section 15(3) was borne in mind and perhaps applied for the purpose of evaluating the cess in relation to an irrigation scheme which was admittedly constructed before 1.1.1943. In fact we had occasion to peruse the covering letter forwarding Form 1 report sent by the Executive Engineer as required by Rule 4(b) of the Irrigation Rules 1958 to the District Collector. In Paragraph 2 of the communication it is stated:

In this connection I would also like to point out as per clause 3 of para 15 of the Travancore-Cochin Irrigation Act, 1956, No. VII of 1956, only a cess of Rs. 6 per acre can be levied on the lands benefited by the Scheme.

7. The reference is clearly to sub-section (3) of Section 15 of the Act. Section 15(3) can have no application. Though the Collector in his report to the Board of Revenue as is pointed out by counsel for the respondents has adverted to Section 15(2) it appears to us that the mistake committed by the Executive Engineer has been practically accepted. This is an aspect which has to be considered before the rate is finally fixed and any demand made.

8. We may also refer to the argument that has been advanced on the basis of Section 15(2). Section 15(2) provides for ensuing to the Government a return, not exceeding 3 per cent on the capital outlay after making provision for depreciation and maintenance. Counsel for the petitioner has contended that "capital outlay" can refer only to the actual amount expended at the time of the construction of an irrigation work. The method adopted as is seen from the papers made available to us seems to be to find out the cost for the construction of the works had it to be undertaken at the time of the investigation and then to deduct depreciation at the rate of 1% per year. This, it is urged, is not the method for computing the return on the capital outlay. According to counsel, the

original cost will have to be found out and the return must be a percentage of that cost. The return may of course provide for three matters : 3 per cent on the capital outlay as determined above and amounts for maintenance and depreciation. Apparently this is not the method adopted in the fixation of the cess leviable. This is another aspect which should be borne in mind before fresh fixation is made. In the result, we quash the demands Ex. P-1 and P-2 and allow this writ application. Before making a fresh demand a notice under Rule 7 will be issued and the tentative fixation of the levy will be made only after considering the aspects pointed out in this judgment. There will be no order as to costs.