
(2012) 07 BOM CK 0117

In the Bombay High Court

Case No : Contempt Petition No. 379 of 2011 in writ Petition No. 466 of 1988

Santosh Govind Mahajan

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 21, 249, 250, 252

Citation : (2012) 6 BomCR 75 : (2013) 3 EFLT 56

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : P.G. Deshmukh, holding for Mr. Ankush Shinde, for the Appellant;
S.D. Kaldate . Advocate AGP for Respondent No. 1 and Mr. N.B. Khandare, for the Respondent

Judgement

S.S. Shinde, J.

PER COURT:

1. In pursuant to the order passed by this Court on 13th July, 2012, the Commissioner, Municipal Corporation, Aurangabad -respondent No.2 in this Contempt Petition is personally present in this Court. Two affidavits are filed by the Commissioner in this Contempt Petition. One affidavit has been filed on 28th October, 2011 and the additional affidavit has been filed on 16th July, 2012. Before advertng to the contents of the said affidavits, at this juncture, it would be appropriate to refer to some of the provisions of the Constitution and also the Bombay Provincial Municipal Corporations Act,1949 and also the judgments of the Supreme Court and this Court, which cast a duty upon the respondents and in particular, respondent No.2 to supply potable water to the citizens of Aurangabad city.

There are two essential requirements of the human life -firstly, fresh air and secondly, potable water. Without these two things, human being cannot survive. The Supreme Court in various expositions, has interpreted Article 21 of the

Constitution of India and has taken a view that right of access to clean drinking water is fundamental to life. Duty lies on State to provide clean drinking water to its citizens. In various pronouncements, this view has been reiterated by the Supreme Court and even this Court, in case of *Dhanajirao Jivarao Jadhav and others vs. State of Maharashtra and others* [1998(2) Mh.L.J. 462], had an occasion to consider the need of potable water of citizens Kolhapur city and the Division Bench of this Court, has taken a view that the right of access to clean drinking water is a fundamental right and State is bound to supply potable water to the citizens. It is not in dispute that the respondent No.2 is State within the meaning of Article 12 of the Constitution of India. The parliamentarians were cautious about the social rights of the citizens of the country and parliament in its wisdom thought it fit to add the word "Socialist" in the preamble of the Constitution way back in 1976. The directive principles of State Policy are given in Part IV and in particular, Articles 38, 39 and 47 cast an obligation on the State to take care of the health of the citizens and also to provide other facilities for good human life. Article 38, 39 and 47 of the Constitution of India are reproduced herein below for ready reference:

38. State to secure a social order for the promotion of welfare of the people.-

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State.-The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medical purposes of intoxicating drinks and of drugs which are injurious to health.

2. Equally, the citizens owe the duty under Article 51-A(g) of the Constitution to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Apart from the above, there is the Water (Prevention of Pollution) Act, 1974 of which, the Statement of Object and Reasons reads, as follows:

STATEMENT OF OBJECTS AND REASONS.-

The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. It is, therefore, essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy.

2. A Committee was set up in 1962 to draw a draft enactment for the prevention of water pollution. The report of the Committee was circulated to the State Governments and was also considered by the Central Council of Local Self-Government in September, 1963. This Council resolved that a single law regarding measures to deal with water pollution control, both at the Centre and at the State levels, may be enacted by the Union Parliament. A Draft Bill was accordingly prepared and put up for consideration at a joint session of the Central Council of Local Self-Government and the Fifth Conference of the State Ministers of Town and Country Planning held in 1965. In pursuance of the decision of the joint session, the Draft Bill was considered subsequently in detail by a Committee of Ministers of Local Self-Government from the States of Bihar, Madras, Maharashtra, Rajasthan, Haryana and West Bengal.

3. Having considered the relevant local provisions existing in the country and recommendations of the aforesaid Committees, the Government came to the conclusion that the existing local provisions are neither adequate nor satisfactory. There is, therefore, an urgent need for introducing a comprehensive legislation which would establish unitary agencies in the Centre and States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of such water courses and for controlling the existing and new discharges of domestic and industrial wastes.

4. The Bill follows the recommendations of the aforesaid Committees and seeks to-

(i) establish at the Centre as well as in the State Water Pollution Prevention Boards with the necessary complement of technical and administrative staff and to confer on them such powers as are necessary to deal effectively with the problem of water pollution in the country;

(ii) provide penalties for contravention of the provisions of the Act; and

(iii) establish, Central and State water testing laboratories to enable the Boards to assess the extent of pollution, lay down standards and establish guilt or default.

5. Legislation in respect of the aforesaid subject-matter is relatable to Entry 17 read with entry 6 of List II in the Seventh Schedule to the Constitution and Parliament has no power to make a law in the States (apart from the provisions of Arts. 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of Art. 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Gujarat, Jammu and Kashmir, Kerala, Haryana and Mysore have passed such resolutions. The Bill is intended to give effect to the resolutions passed by the Legislatures of the aforesaid States.

Apart from above, the provisions of section 189 of the Bombay Provincial Municipal Corporations Act, 1949, cast duty upon the State and in particular, in the present case, respondent No.2, to supply potable water to the citizens of Aurangabad. Apart from this, there are other provisions in the said Act, which cast duty upon the respondents to provide potable water to the citizens.

Precisely, the Supreme Court in *Suo Motu Writ Petition (Crl.) No.122 of 2011 Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Others*, , had an occasion to interpret Article 21 of the Constitution of India. A new dimension is given and it is held that an individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. As stated earlier, supply of potable water and access to it is a fundamental right of the citizens of this country and they cannot be deprived from having potable water.

In case of *M.K. Balakrishnan and Ors. v. Union of India and Ors.* [AIR 2009 SC (Supp) 1916], the Supreme Court held that right to life includes right to get water.

Yet, in another exposition in case of *A.P. Pollution Control Board II Vs. Prof. M.V. Nayudu (Retd.) and Others*, held that right of access to clean drinking water is fundamental to life. Duty lies on State to provide clean drinking water to its citizens.

Yet, in another reported judgment in case of *Research Foundation for Science (16) v. Union of India* [(2005) 13 SCC 668], the Supreme Court held that hygienic, clean and safe environment, right to air and drinking water is right to

life under Article 21 of the Constitution of India.

3. Coming to the affidavit filed by the respondent No.2 and in particular, paragraphs 4 and 14 which reads, thus:

4. It is submitted that, the whole water supply of the Aurangabad city mainly depends upon the stored water at Jaikwadi Dam, the distance between Jaikwadi to Aurangabad is about 45 k.m. For getting the water from Jaikwadi to Aurangabad, there are 2 schemes i.e. (1) 56 MLD Capacity & (2) 100 MLD Capacity. 56 MLD scheme was commenced in the year 1975-76 and 100 MLD scheme was commenced in the year 1992-93. It is submitted that, diameter and the carrying capacity of the pipe lines involved in these schemes are the same since inception. It has got its own life period and limitations. This is a four stage pumping system. The level of water at Jaikwadi from MSL is 551 meter and the level of water at Aurangabad where it is received at average MSL 620 meter at ground level. So the water is required to be lifted up and for this four stage pumping is required at various places. The water is supplied by gravity from Nakshatrawadi MBR to city and at 10 pumping stations in Aurangabad city. The water is lifted to the elevated storage reservoirs which are situated at elevated level ranging from 12 to 15 meters. It is submitted that, the pumping is required to be done for 24 hours from Jaikwadi to Aurangabad city and this fact is very much related to the supply of electricity. It is a crystal clear fact that, because of the load shedding of electricity and other reasons, the pumping activities are hampered to a great extent. This directly affects the supply of water.

14. It is further submitted that, the Cantonment Board having population of about 100000 is also being supplied water by Aurangabad Municipal Corporation, which is an extra burden on this water supply and management scheme. It is further submitted that, the pipeline has become old, it requires frequent maintenance time to time, which ultimately affects the uninterrupted supply of the water. Hence, for the reasons mentioned above i.e. in a nut shell, for electricity problems, the age, life and fixed diameter of the pipeline, the growth in population, floating population, occasional mechanical faults occurred and its maintenance. Thus the Municipal Corporation is not in a position to supply water every day to the citizens, therefore, AMC is supplying water on every alternate day for 40-50 minutes on an average. In spite of all these difficulties the Aurangabad Municipal Corporation is catering the needs of citizens of Aurangabad by providing about 80 to 100 liter of water per capita per day. It is submitted that, there is a regular time table for supply of water throughout the city of Aurangabad and in case of any emergency the people are well informed before hand through newspaper.

4. It is abundantly clear that in those paragraphs, the respondent No.2 has stated that whole water supply of Aurangabad city is mainly dependent upon the stored water at Jaikwadi Dam, and the distance between Jaikwadi to Aurangabad is about 45 k.m. For getting the water from Jaikwadi to Aurangabad, there are 2 schemes i.e. (1) 56 MLD Capacity & (2) 100 MLD Capacity. 56 MLD scheme was

commenced in the year 1975-76 and 100 MLD scheme was commenced in the year 1992-93. It is stated in the said para that, diameter and the carrying capacity of the pipe lines involved in these schemes are the same since inception. It has got it's own life period and limitations. In paragraph 14 of the affidavit, which is reproduced herein above, the respondent No.2 has, to some extent, reiterated the contentions in para 4 and stated that the pipeline has become old, it requires frequent maintenance time to time, which ultimately affects the uninterrupted supply of the water. For the reasons mentioned i.e. for electricity problems, the age, life and fixed diameter of the pipeline, the growth in population, floating population, occasional mechanical faults occurred and its maintenance, the Municipal Corporation is not in a position to supply water every day to the citizens, therefore, AMC is supplying water on every alternate day to the citizens of the city.

In the additional affidavit also, it is stated that the distribution system is functional through 966 km. underground pipeline covering entire city including CIDCO area pipes used of different diameter and make of different material such as A/C, RCC and PVC. Distribution system is of 35 to 40 years old. Major portion of pipeline is of A/C pipes and get damaged of impact load of heavy vehicles fly (sic. "ply") on road which is considerably increased last so many years. It is again repeated that old pipes are prone to inside scale formation may cause contamination. Population of Aurangabad city is 12.00 lacks & water demand of the city as per norms of 135 LPCD is near about 200 MLD. Lifting capacity of existing scheme is 150 MLD & at present the scheme is running at its ultimate stage. In the additional affidavit, further reference is made that the water distribution system of the city has become age old and therefore, problems are recurring with expansion and development of city and also because of increased population. It is further stated that instead of spending energy and finance for maintenance and repairing a new big project for water supply namely "Samantar Jalwahini" project is undertaken covering entire city taking into consideration the population which would be in 2041.

5. When the learned Counsel for respondent No.2 was confronted with a query as to who is responsible to replace the old pipelines or pipes, he fairly concedes that it is the responsibility of the Corporation. Though, in the additional affidavit, it is stated that new water supply project is undertaken, the affidavit is too vague and it is not stated what is the stage of the said project, when it is undertaken, when it will be completed and till completion of said project, what will happen with the supply of potable water to the citizens. All these questions which are posed in the affidavit filed by the respondent No.2, have to be answered and addressed by the respondent No.2 and also by the respondent State, which is party to this contempt proceedings. Since the duty is cast on the respondents to supply potable water to the citizens, naturally, they will have to answer and provide solution to the problems, which are addressed in the affidavit by respondent No.2. The solution will lie and can be provided only by the respondents and how the said solution can be provided is the matter to be looked into by the

respondents.

6. From the tenor of the affidavit, it is abundantly clear that the capacity of lifting water is limited and requirement is more. It is also clear that the pipeline has become old and that causes frequent disturbance in supply and water gets contaminated. However, raising such contentions and problems in the affidavit-in-reply is of no avail. The respondents will have to take steps to replace the pipelines. The respondent No.2 should file further affidavit explaining why steps are not already taken to change the pipelines in the city. According to the respondent No.2 himself, the pipeline has become very old and therefore, administration is facing difficulty to supply potable water to the citizens.

7. For the time being, this Court feels it appropriate to defer hearing of this contempt petition. The respondent No.1 is also directed to file affidavit. However, it is made clear that depending upon the further reply of the respondents, this Court will think whether to initiate contempt proceedings or not against the respondents and in particular, respondent No.2. The learned Counsel for the respondent No.2 has assured this Court that details in respect of "Samantar Jalwahini" will be placed on record. As already observed, further affidavit of respondent is necessary including details in respect of "Samantar Jalwahini". It is made clear that if the petitioner places on record any authentic information or report of any authentic laboratory in which particular area of city finds contaminated water supply, in that case, appropriate orders will be passed. Liberty to the petitioner to file his response to the affidavit and also to the additional affidavit which is filed by respondent No.2, and also to place on record the report collected by two members whose names were suggested by the petitioner. The respondents will be at liberty to contest the said report. Time being, the presence of the respondent No.2 Commissioner, Municipal Corporation, Aurangabad is dispensed with unless specifically ordered in future. Whenever these contempt proceedings are notified for hearing in future, the respondent No.2 shall ensure that an Officer, not below the rank of Deputy Commissioner, and who is conversant with the subject matter, is deputed on each date of hearing.

At the request of the learned Counsel for the parties, S.O. to 1st August, 2012.