
(2001) 03 KAR CK 0043
In the Karnataka High Court
Case No : Writ Petition No. 6658 of 2001

Sidaraya

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Citation : AIR 2001 Kar 316 : (2001) 2 KCCR 1191

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : K.B. Adhyapak, for the Appellant; A. Padmanabhan, HCGP, for the Respondent

Judgement

V. Gopala Gowda, J.—Though this matter is listed for preliminary hearing, since it could be disposed of on a short ground, Sri A. Padmanabhan, H.C.G.P. is directed to take notice on behalf of respondents. By consent the matter is heard on merits and disposed of by this order.

2. Petitioner dug a well by availing loan from the 5th respondent Primary Co-operative Agriculture and Rural Development Bank, Athani. The well failed. In respect of failed wells and bore-wells, the Government has formulated a Scheme vide its orders dated 30-5-1984 and 6-3-1990 for payment of compensation. The petitioner applied for compensation under the said Scheme by producing all necessary documents. The Geologist has issued certificate as per Annexure-E certifying that the well dug by the petitioner has failed and recommended for payment of compensation. The Assistant Commissioner, Chikkodi, has also recommended for payment of compensation vide Annexure-F. However, by the impugned order at Annexure-G dated 22-4-1998 the Deputy Commissioner rejected the claim of the petitioner. On that basis, the petitioner was issued with the impugned endorsement at Annexure-H dated 10-11-2000 stating that since motor is fixed to the well dug by the petitioner, it is not possible to waive the loan in respect of the failed well. The petitioner was called upon to pay the principal and interest towards the loan within 7 days. Aggrieved by the same the

petitioner has filed this writ petition seeking to quash the impugned order at Annexure-G and the Endorsement at Annexure-H.

3. I have perused the impugned order at Annexure-G. The Deputy Commissioner has referred to the report of the Assistant Commissioner and the documents and passed the impugned order without referring to the recommendation of the Geologist. For non-consideration of the said material document the impugned order at Annexure-G is bad in law and cannot be sustained.

4. There is yet another reason for holding that the impugned order and the endorsement at Annexure-H are bad. The reason assigned in them is that the claim of the petitioner for compensation for the failed well cannot be considered as motor has been installed to the well. Installation of motor to the well was not the criteria for rejecting the claim. The parameter consideration was, whether the well/bore-well dug by raising loan is failed. Since the Geologist has certified that the well dug by the petitioner has failed and recommended for payment of compensation, the Deputy Commissioner ought to have acted on such recommendation. It is not stated in the impugned order and endorsement that there was water in the well dug by the petitioner and to pump the same motor has been installed and the report of the Geologist was false. In the absence of such statement, the rejection of petitioner's claim for compensation for the failed well in terms of the Scheme was wholly illegal and arbitrary. There is total non-application of mind while rejecting the claim of the petitioner. Hence, both the impugned order and endorsement are liable to be quashed.

5. For the reasons stated supra, this Writ Petition is allowed and the impugned order at Annexure-G and the Endorsement at Annexure-H are quashed. The 2nd respondent is directed to re-consider the case of the petitioner in the light of the observations made during the course of this order and pass appropriate orders within three months from the date of receipt of a copy of this order. Until then, respondents shall not initiate any recovery proceedings against the petitioner.

6. Sri A. Padmanabhan, H.C.G.P. is permitted to file his memo of appearance within three weeks from today.