(1998) 06 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petitioner No. 3521 of 1987

The Bellary Nagarikara Vedike, Bellary APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 26-06-1998

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 94 (viii), 95
Karnataka Urban Water Supply and Drainage Board Act, 1973 — Section 31 A
Karnataka Urban Water Supply and Drainage Board Amendment Act, 1964 — Section 7

Citation : (1999) 4 KarLJ 200

Hon'ble Judges : R.P. Sethi, C.J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri A.V.S. Reddy, Additional Government and Sri. N.S. Srinivasan, for the Respondent

Judgement

R.P. Sethi, C.J.—Aggrieved by the revision of water rates made by the Karnataka Urban Water Supply and Drainage Board, Bellary Division, Bellary, vide public notice dated 3-12-1986 (Annexure-A), the petitioner-Association prayed for quashing of the aforesaid public notice with direction to the 2nd respondent to refrain from giving effect to the revised water rates. It is contended that the 1st respondent-State was duty bound to supply water to the citizens and maintain the minimum required water supply for drinking and other hygienically purposes for improving the standard of living and public life. The 3rd respondent had been entrusted with the supply of water in the Bellary Division. The Karnataka Urban Water Supply and Drainage Board Act, 1973 (hereinafter called the ''Act'') was enacted for the purposes noted herein above.

2. The 3rd respondent was supplying water to the citizens as regards domestic supply at the rate of 0.30 ps. per thousand litres which was revised to Rs. 10.00 per tap; whereas for non-domestic supply the rate was Rs. 2.00 per thousand litres and Rs. 3.00 per thousand litres for industries and cinemas. The rates were again revised on 17-8-1983. However, vide rates revised on 9-1-1985, it was provided that the domestic supply of water shall be at the rate of Rs. 1.86 per

thousand litres; non-domestic supply at the rate of Rs. 3.72 per thousand litres; and commercial supply at the rate of Rs. 5.58 per thousand litres. Vide Annexure-A, the rates of water supply were further revised substantially increasing the rates at the rate of Rs. 2.60 per thousand litres for Domestic metered connection; Rs. 5.20 per thousand litres for Non-Domestic metered connection and at the rate of Rs. 26/- per connection/month for a period from 1-1-1987 to 30-6-1987 in respect of un metered domestic connections and thereafter at the rate of Rs. 96/-per connection/month in respect of 1/2" bore; and Rs. 56/- per connection/month in respect of 3/4" bore upto 30-6-1987 and at Rs. 216/- from 1-7-1987 onwards. The petitioner-Association objected to the revision --in response to which, a meeting was held where the 2nd respondent furnished a copy of the note prepared explaining the basis for revision of rates. The proceedings of the Meeting held on 19-12-1986 and 23-1-1987 have been attached to the petition as Annexure-C and D respectively. Despite taking decisions, no relief was granted to the citizens. It is submitted that for the losses suffered by the Board, the respondents alone are responsible for which the common citizens cannot be burdened. It is contended that before increasing the rates, no rational approach is alleged to have been taken by the respondents. Action of the respondents is alleged to be against the statutory provisions requiring immediate action in public interest.

3. In the statement of objections filed on behalf of respondents 2 and 3 it is submitted that water rates have been revised from time to time for the reasons detailed therein. The revision of rates effected vide Resolution passed in the 45th Board Meeting held on 17-8-1983 could not be implemented due to public agitation as well as the objections which were raised by the City Municipal Council, Bellary. The rates were revised once again which were approved by the Board in its 54th Meeting held on 9-1-1985. As the Board was incurring heavy losses on the maintenance of water works in view of steep increase in the maintenance and repairs expenditure and also on account of nominal flat rate charged for the un metered connections, the Board approved the further revision of rates in its 68th Board Meeting held on 7-11-1986. The water rates are stated to have been worked out in accordance with the approved norms and practices in a rational and scientific manner based on facts which cannot be termed as irrational. The respondent- Board is stated to be consisting of two representatives from the Government; Municipal Commissioners of HDMC, Mysore, Gulbarga and other eminent retired Chief Engineers who are admitted to have worked in the field, The Board claims to have taken timely action against illegal connections, but despite best efforts could not recover the arrears. It is submitted that out of 9708 domestic connections, 8163 are un metered which represented 84% of the connections. The respondents have furnished the details of the actual expenditure incurred by the Board on the maintenance of Bellary Water Works from the time of taking over to the end of March 1987 as under:

"Sl. No.

Year

Actual M & R Exp.

Amount in Rs. lakhs

Revenue from water rates Excess expenditure

1.

1981-82 (from 1-2-1982 - 31-3-1982)

6.60

0.75

5.85

2.

1982-83

38.42

7.55

30.87

3.

1983-84

39.55

10.25

29.10

4.

1984-85

54.98

16.13

38.85

5.

1985-86

64.47

15.23

49.24

6.

1986-87 (including unpaid electricity charges)

59.27

23.83

35.44

263.09

73.74

189.35"

It is submitted that the power charges alone constituted 60% of the total expenditure and about 20% is accounted towards establishment and the balance for chemicals, consumables, repairs, etc. The average cost of supplying water works out to Rs. 2.85 per 1000 litres, whereas the rate charged to the domestic use is Rs. 2.60 per 1000 litres resulting in a loss of 0.25 ps. per 1000 litres. In case of un metered connections, water rates are arrived at, based on the average consumption per month and bore size. Section 31-A of the Act empowers the Board to fix and revise the water rates in respect of any water supply schemes from time to time in order to provide sufficient revenue to cover operating expenses, taxes, interest payment and to provide for adequate maintenance and depreciation. It is also intended to meet repayment of loans and other borrowings etc. The action of the respondents is claimed to be strictly in accordance with law which is neither irrational nor unreasonable.

4. While issuing rule on 12th March, 1987 respondent 2 was directed to collect water rates at the rate of Rs. 2/- per 1,000 litres for domestic supply. The said order was modified on 27th July, 1987 directing petitioners to pay the charges and respondents 2 and 3 to fix the meters for all water connections in Bellary on or before 15-9-1987. Till then respondents 2 and 3 were directed to collect water rates at the rate of Rs. 2/- per 1000 litres and for un metered connections at the rate of Rs. 26/- per meter connection. It appears that the stay granted by the Court was not extended after 31-3-1988.

5. It is not disputed that the impugned Public Notice has been issued u/s 31-A of the Act which provides:

"31-A. Board''s power to levy rates, etc.--The Board may, in respect of any water supply or sewerage undertaking vesting in it, levy rates, fees, rentals and other charges and may vary such rates, fees, rentals and other charges from time to time in order to provide sufficient revenue,--

(a) to cover operating expenses, taxes and interest payments and to provide for adequate maintenance and depreciation;

(b) to meet repayment of loans and other borrowings;

(c) to finance normal year to year improvements; and

(d) to provide for such other purposes beneficial to the promotion of water supply and sewerage."

The constitutional validity of the aforesaid section has not been challenged in this petition. The action of the respondents in revising the water rates is therefore referable to a statutory provision. The petitioners have not brought anything on record to show that before issuance of the impugned notice, respondents had not complied with the statutory requirements. The mere fact that the revision of water rates has resulted in hardship to some citizens cannot be made a basis for issuance of directions including the quashing of the impugned public notice.

6. The Board was created for the purpose of supply of water in the municipal areas including the Municipality of Bellary on ''no profit, no loss'' basis. In their reply, the respondents have given the details of the expenditure incurred by them which justify the revision of rates. None of the circumstances mentioned by the respondents can be termed to be unreasonable or irrational. The respondent-Board has been suffering huge losses for the Supply of water which were required to be meted out from the consumers of water. The rates prescribed cannot be termed to be not referable to the criterions contemplated for justification of the increase in the rates. According to the revised approved water rates of the Bellary City (Annexure-R5), it appears that the capital cost of the Board was Rs. 98,56,099.00, whereas the annual burden was Rs. 112,32,898.00. The additional annual burden to absorb the loss of Rs. 2,72,33,019/- had been estimated at Rs. 33,28,795.00. The Board is shown to have suffered loss for the year 1982-83 to the extent of Rs. 45,32,977.00; for the year 1983-84 Rs. 43,62,160.00; for the year 1984-85 loss is to the extent of Rs. 54,14,463.00 and for the year 1985-86 at Rs. 65,01,487.00.

7. The record also reveals that out of 10468 water connections in the municipality of Bellary, only 2055 were metered and the rest un metered, obviously resulting in heavy financial loss to the Board. In order to cover the repayment of loans and other borrowings as contemplated by clause (b) of Section 31-A of the Act, the Board appears to be justified in issuing the impugned notice. No citizen can claim the supply of water without escalation of its price unless such escalation or increase in rates is shown to be not warranted by law or is unreasonable. Dealing with similar situation and interpreting the provisions of Section 94 of the Karnataka Municipalities Act, a Full Bench of this Court in M/s. Pragathi Printers, Shimoga Vs. City Municipal Council, Shimoga, , held:

"3. Section 94(viii) of the Act, at the relevant time, read as follows:

"94. Taxes which may be imposed.--(1) Subject to the general or special orders of the Government a Municipal Council-

(a) after observing the preliminary procedure required by Section 95, and

(b) with the sanction of the Government and at rates not exceeding those specified in Schedules I to IV,

may levy any one or more the following taxes-

(i) to (vii) xxx xxx xxx;

(viii) a water-rate or water-rates for water supplied by the Municipal Council which may be imposed in the form of tax assessed on buildings and lands, or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case,"

4. The section, as it stood at that time, authorises the Municipality to levy one or more of taxes including a water-rate or water-rates for water supplied which may be imposed in the form of tax assessed on buildings and lands or in any other form including that of charges for such supply, the mode of which, has to be fixed. Interpreting the word ''or'' contained in the section, the Full Bench held that, for water supplied by the Municipal council, it is competent for the Municipality only to levy a water tax or charges for the water supplied and not both.

5. The above section was amended by the Municipalities Amendment Act (Act 33 of 1984), by which, the wording of Section 94(viii) was amended. The words "which may be imposed in the form of a tax, assessed on buildings and lands, or in any other form including that of charges for such supply" was substituted by the words "imposed in one or more of the following forms that is to say, in the form of a tax assessed on buildings and lands or in any other form including in the form of charges for such supply." After the amendment, Section 94(viii) reads:

"a water-rate or water-rates for water supplied by the municipal council imposed in one or more of the following forms that is to say, in the form of tax assessed on buildings and lands or in any other form including in the form of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case."

The Amendment Act further provides that, amendment to Section 94 shall be deemed to have come into force with effect from 7-4-1964. Section 7 of the Act is the validation clause by which levy on water-rate made before the Amendment Act, was validated as if the levy was in accordance with the amended provisions. Section 7 of the Act further provided that, any tax assessed on the basis of water-rates and also on the basis of the actual water-consumption shall be valid and effective as if such levy was made in accordance with the provisions of the Amended Act. The Act made further provision that no Court shall enforce any decree or order directing the refund of any such rates."

8. We are, therefore, satisfied that there is no merit in this petition and the action of the respondents is neither unconstitutional, illegal nor unreasonable. The petition which is apparently misconceived is accordingly dismissed. Rule

issued is discharged. It is however held that despite the dismissal of this petition, the respondents would not be entitled to recover any difference of amount as arrears, the benefit of which had accrued to the citizens of Bellary by virtue of the interim orders passed in this petition.

No costs.