

**(1982) 11 KAR CK 0030**  
**In the Karnataka High Court**  
**Case No : WP. 14414/75**

Uloor Gangamma and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

**Date of Decision :** 02-11-1982

**Acts Referred:**

Karnataka Irrigation Act, 1965 — Section 28(5)

**Citation :** (1983) 1 KarLJ 473

**Hon'ble Judges :** M. P. Chandrakantaraj Urs, J

## **Judgement**

1. This writ petition is filed by the two petitioners who are mother and son respectively. They own lands in Bagewadi village, Siraguppa Taluk, Bellary District. The total extent of lands owned by them is 16 acres 42 cents. They are comprised in several survey numbers of Bagewadi village. It is stated that though part of the lands are included in the command area of the Thungabhadra Project, lands in S. No. 320-C1 measuring 1 acre 36 cents and S. No. 320-A1 measuring 28 cents and S. No. 320-B1 measuring 48 cents and in S. No. 320-B1 no water was supplied. Thus, totally 2 acres and 12 cents were not supplied with water, though in the command area and localised. It is averred that in respect of S. No. 160-A3 measuring 2 acres 36 cents and S. No. 160-B3 measuring 22 cents and 1 acre 80 cents out of S. No. 161 altogether measuring 4 acres 38 cents penalties were being levied year after year prior to the order passed by the Tahsildar, Siraguppa, dated 20th August 1972. As per Annexure-A to the petition, the Tahsildar, Siraguppa, appears to have passed an order on the representation made by the first of the petitioners. By that order, he recorded certain findings of facts as to the pilferage of water by the petitioners in respect of certain lands belonging to them though they were not included in the command area and localised. He also found that the Thungabhadra Project authorities had not supplied water to some lands which were included in the command area and localised. In that circumstance, he took a lenient view of the matter and imposed water rate at double the rate prescribed as penalty for the years 1965 to 1972. Nothing appears to have been done thereafter pursuant to that order dated

20-8-1972. However on 24-10-1974 a demand notice was issued by the Tahsildar demanding a total sum of Rs. 8,569-40 towards water rate and penalty at 20 times the prescribed rate for some of the survey numbers in the demand notice, which admittedly belong to the petitioners. Aggrieved by the demand notice which is at Annexure-B to the petition, the petitioners have approached this Court for relief, inter alia contending that the demand is without the authority of law and till 1972 they have paid up all the penalties imposed on them and therefore the demand for 20 times the water rate is illegal, while the Tahsildar had ordered collection of penalty only at double the rate prescribed in his order dated 20-8-1972.

2. It is also contended for the petitioners that from the reading of Annexure-B, there is no indication that there was any enquiry preceding the imposition of penalty under sub-sec-(5) of S. 28 of the Karnataka Irrigation Act, 1965, hereinafter referred to as the Act) for unauthorised use of water from Government water works.

3. A detailed statement of objections is filed on behalf of the respondents, namely, the State of Karnataka, the Tahsildar, Sirguppa and the Superintending Engineer, Thungabhadra Project, Munirabad Circle. Though the statement of objections is detailed, lengthy and exhaustive, nevertheless, it does not cover the grounds urged for the petitioners. The sum and substance of the justification in the statement of objections is that the Tahsildar in his order dated 20-8-1972 had taken into consideration the equities of not supplying the water to some areas of land owned by the petitioners and therefore pilferage of water in respect of other areas ungated by them though those areas were not localised or within the command area and in that circumstance they had reviewed the order of the Tahsildar and issued a demand notice levying penalty at 20 times the rate prescribed.

4. This appears to be a very novel method of enforcing sub-sec. (5) of S. 28 of the Act. Sub sec. (5) of S. 28 of the Act specifically provides imposition of penalty by a prescribed officer. The learned Government Pleader does not dispute that the prescribed officer is the Assistant Executive Engineer having jurisdiction over the area and not the Tahsildar. Sub-sec. (5) of S. 28 of the Act itself provides for the rate at which penalty may be imposed i.e., it should not be less than 10 times the water rate for unauthorised use of water and it should not exceed 30 times the water rate prescribed. The water rate is prescribed separately by rules, under the Karnataka Irrigation Levy of Water Rates Rules, 1965.

5. This Court on more than one occasion has held that the prescribed officer under sub-sec. (5) of S. 28 of the Act should necessarily give opportunity to the persons who are likely to be affected by any imposition of penalty, under sub-sec. (5) of S. 28 of the Act, as rules of natural justice compel them to do so though it may not be specifically provided in that section.

6. In the present case, though the respondents claim that a show cause notice was issued to the 2nd petitioner but it is admitted that notice was issued by the Tahsildar and not by the prescribed officer under sub-sec. (5) of S. 28 of the Act.

7. Therefore, in my opinion, both the orders of the Tahsildar dated 20-8-1972 and the subsequent demand notice issued by him in 1975 which is at Annexure-B to the petition were clearly without jurisdiction and without understanding the working of the Act.

8. In the result, both the orders are liable to be set aside as not being orders made in accordance with law nor demand made in accordance with law. They are set aside.

9. However, liberty is reserved to the 3rd respondent to initiate proceedings through the prescribed Officer to recover the penalty which the prescribed Officer shall impose after notice to the petitioners in respect of water unauthorisedly used in their lands, which to some extent they have admitted before the Tahsildar in the proceedings culminating in the order dated 20-8-1972.

10. In the result, rule issued is made absolute in terms above and all articles attached in execution of the demand notice at Annexure-B to the petition, which is now set aside, shall be returned to the petitioners and if grains have been attached and sold, the money realised there from shall be held in the custody of the Government for a period of three months from today within which any proceedings to recover under sub-sec. (5) of S. 28 of the Act shall be completed and if any penalty is imposed, the amount so retained shall be adjusted towards the penalty imposed and if found short proceedings for recovery may be separately initiated.

11. In the circumstance, there will be no order as to costs.