Case Note: Case concerning the power of Government to regulate the usage of water by riparian landowners. The Court observed that any decision on questions arising under the Easements Act can only taken on collection of evidence, investigation of facts and conclusions drawn thereon and a proceedings in a Writ Petition is ill-suited for such questions and therefore it would not go into the issue of rights. It however struck down the Government notifications restricting the water utilization by petitioners on the ground that it was not a reasoned notification and thus violated Article 14 of the Constitution.

1992(3)KarLJ474

IN THE HIGH COURT OF KARNATAKA

Decided On: 25.06.1992

N. Sankappa Shetty
v.
State of Karnataka

Hon'ble Judges:
Rajendra Babu, J.

ORDER

Rajendra Babu, J.

1. The petitioners in these cases are owners possessed of lands situated in Savanoor or adjacent villages of Puttur Taluk, Dakshina Kannada District. They claim to cultivate in the said lands areca, coconut, banana, cocoa and pepper; that they are agriculturists by profession and are solely dependent on agriculture for their livelihood; that the lands where cultivation is being carried on are on the banks of either Nethravathy or Kumaradhara rivers; that the water from the said rivers is utilised not only for cultivation of their lands but also for household purposes and for maintaining their cattle from time immemorial; that formerly the petitioners and their predecessors were lifting water by some mechanical means and that from the year 1967 onwards or thereabout the petitioners obtained Licences to draw water from the said rivers by using electric pumps. The Licences given to the petitioners are produced in the cases and they form two sets; one set of Licences indicate that they are permanent in nature, not being limited to any particular period. However, a clause is included therein empowering the Government to revoke the licences without specifying any reason and the Licensee within a period of six months from the date of termination of such Licences, has to remove the mechanical appliances and all other work connected with the same and restore the land or its part to its original condition as far as possible. In the other set of Licences a condition is incorporated limiting the period of Licence to five years excluding, however, the utilisation of water for the period between 1st February to 15th of June every year. It is

made clear in that set of Licences that the permission granted is purely temporary and would not entitle the petitioners to claim any permanent rights. It is also stated therein that the Executive Engineer reserves the right to cancel the Licences if the minimum summer flow is not sufficient to meet the requirements of water to Mangalore Town, Mangalore Port, Fertiliser factory and so on. The validity of these conditions is also called in question in these Petitions.

2. The Government on 18th May 1987 issued a Circular stating that since water was being indiscriminately utilised without reference to the needs relating to drinking purposes and requirement thereto and instructed the concerned Engineer and Irrigation Officer to prohibit the lifting of water between February and June every year so that water scarcity is not felt in towns and villages in the vicinity for drinking purposes. On the basis the licenses issued contain a bar as to utilisation of water from 1st February to 15th of June every year. The validity of the aforesaid Circular and the consequent action taken by the Karnataka Electricity Board is also called in question in these Petitions.

3. Considering the complexity of the matter, at my request Shri Ashok Haranahalli, learned Standing Counsel for the Central Government, assisted the Court as Amicus Curiae and the Court is beholden to him for the valuable services rendered by him.

4. The contentions urged on behalf of the petitioners may be summarised as follows:-

(i) That the rivers in question, namely, Nethravathy and Kumaradhara, are natural streams and are not water works as defined under the Karnataka Irrigation Act (hereinafter referred to as the Act);

(ii) That the circular impugned is purported to have been issued under the Act but the Act itself being inapplicable to the rivers in question the circular is *ultra vires* the provisions of the Act;

(iii) That the petitioners have a natural right to draw water from the rivers in question for cultivation purposes and that right cannot be curtailed except with the authority of law and, in the present cases, there is no such authority of law;

(iv) That the Circular instructions are arbitrary having not taken note of the realities of the matter;

(v) That the instructions contained in the impugned Circular are discriminatory inasmuch they sought to give preference to Governmental works to which water is supplied and later on water is diverted to private parties;

(vi) That in any event the petitioners having been allowed to draw water from the rivers in question over long period running to several years and in some cases even several decades, they have a legitimate expectancy that same state of affairs would be continued and that expectancy cannot be foiled; and

(vii) That in the Notification and the Circulars issued there is no reference to Kumaradhara river at all, even so, the authorities are applying the said Circulars to the lands adjacent to Kumaradhara river also without the authority of law and the respondents cannot therefore restrict or prohibit the utilisation of water during summer months.

5. In elucidation of their contentions, the learned Counsel for the petitioners contended that the petitioners have a natural right to the utilisation of water and such a right is a valuable right and any restriction thereof must be strictly interpreted. According to them, such a right being one which is in furtherance of their professional activities as agriculturists any restriction thereof must be strictly interpreted. They also contended that as part of Article 21 of the Constitution the rights guaranteed thereof have been interpreted to mean that life and liberty should be meaningfully understood and that utilisation of water being essential to life forms part of that right. Even otherwise, that right having been granted even before the advent of the Act the same should be understood to have been granted under the Easements Act.

6. Before I embark upon a discussion or consideration of the various contentions advanced on behalf of the petitioners it is necessary to understand the exact scope of the rights in relation to water. In Robert Fisher and Ors. v. The Secretary Of State For India In Council, Through The Collector Of Madura, ILR 1932 Madras 141 it has been held that the Government has power to regulate in public interest, the collection retention and distribution of waters of rivers and streams flowing in natural channels and of waters introduced into such rivers by means of words constructed at the public expense, and in the public interest, for the purpose of irrigation, provided they do not thereby inflict injury on other riparian owners and diminish the supply of water hitherto utilised by them. The Karnataka Land Revenue Act provides that all natural streams and rivers vest in the State. Thus, it is clear that the sovereign power of the State extends to regulation of water and distribution thereof. The riparian rights arising under the Easements Act are understood to mean only as rights to enjoy the flow of water without interruption and no more. Any question that arises under the Easements Act will have to be examined with reference to the factual matrix thereof and that could be done only on collection of evidence, investigation of facts and conclusions drawn thereon and a proceedings in a Writ Petition is ill-suited for such questions for in order to decide the easementary rights necessarily the situation of the land, the distance between the river and the land and the extent of rights will have to be examined. In the present cases, at any rate, I need not examine the nature of the rights held by the petitioners nor the extent of restricting powers of the State.

I will proceed to examine the case as is sought to be made out on behalf of the State itself. It is well settled that any State action should be supported with reason and disclose that such action is informed by reason and all actions of the State, whether administrative or legislative, must pass the muster of Article 14 of the Constitution. It is only in this background I shall examine the impugned circulars and orders though the arguments advanced by the learned Counsel span on a very wide canvass, which has been adverted to by me earlier.

7. The learned Counsel appearing for the State supported the Circular on the basis of a Note made by the Executive Engineer and stated that the same afforded as a background material which compelled the State to issue the circular in question. The said Note has been produced before me with a memo. The Note disclosed that there is acute scarcity of water in Mangalore town and therefore various measures have been taken to offset that problem. It is on that basis the petitioners were sought to be prohibited from lifting water during summer months. A close scrutiny of the Note will make it clear that the Committee constituted to go into this question itself felt that it was not necessary to withdraw the permission for grant of licence to lift water from Nethravathy river on account of shortage of water in Mangalore City inasmuch as the same would result in undue hardship to the agriculturists and unless permission was given to them to utilise water it would lead to other problems. That aspect of the matter has not been properly appreciated by the Government at all. Apart from that fact either in the circular issued by the Government or in the note appended to the circular is there a mention of any officer of the Government applying his mind to find out as to the average quantity of water available in Nethravathy or Kumaradhara rivers say for a period of ten years prior to the date of issue of the Circular in order to determine as to what would be the average inflow and the extent and nature of utilisation thereof. Unless this exercise is done it becomes difficult to state that the Government had really applied its mind to the facts. The Government ought to have considered whether the supply of water could be regulated by changing the pattern of letting out water for irrigation or curtailing the period of supply, the quantity available and whether by adopting different measures the problems of Mangalore Town could be overcome. This clearly demonstrates that the respondents had not at all acted in a reasonable manner and the action impugned herein necessarily must be characterised as arbitrary and not having been based on necessary data. Indeed, the note itself makes it clear that the requirements of water supply to Mangalore City and other details as follows:-

"1) Mangalore City	...	4.00 M.G.D.
2) M.C.F. Ltd	...	3.00 M.G.D.
3) N.M.P.T.	...	0.50 M.G.D.
4) Industries, Town Municipal, Surathkal,		
Katipalla and other villages	...	1.50 M.G.D.
	Total	9.00 M.G.D."

But in the latter part of the Note it has been noted that though the requirement of water for drinking purposes would be around 4.50 M.G.D., actually what is sought for is to the extent of 6 M.G.D. I am referring to this aspect only to demonstrate that there is no due application of mind to the relevant facts and not to state as to the regulation permissible so far as the Government is concerned. This Court of course cannot set any arithmetical standards in such matters. But when it is apparent on the face of the record that the action

of the respondents is arbitrary certainly this Court has a duty to interfere with the same. The data upon which the respondents based their conclusions is totally inadequate.

One other aspect may be taken note of. The prohibition to utilise water under the circular is during summer, namely, from 1 st of February to 15th June every year. Considering the climatic conditions and the pattern of the monsoon in the area to which the Circular is applicable, it may safely be stated that during the rest of the period the petitioners may not need water from the rivers because of the heavy rainfall. If at all there is any need to utilise water it is only during summer months by the agriculturists. This aspect also has not been taken note of by the Government while regulating the supply of water to the agriculturists for irrigation purposes.

8. I may at this stage refer to one other aspect of the matter. The Government is maintaining certain water works. Though there is no exemption granted to the supply of water to these water works maintained by the State, while implementing the Circular made by the Government the Karnataka Electricity Board states that electricity will not be cut off to the Government water works. It is alleged in some of the Petitions that the Government water works supply the water to certain private agencies. If really electricity is supplied to Government water works only for the purpose of supplying water to private agencies, necessarily no distinction could have been made by the Electricity Board. If the prohibition was intended to be applicable to all agriculturists, it could not have been confined only to the private parties because even the Government was not utilising the water for its own purposes but for the benefit of some private agencies. Again therefore the orders impugned herein clearly become discriminatory. Though the Governmental water works and private water works fall into two categories and if water is ultimately utilised only for the purpose of private agencies, the object sought to be achieved namely rationalisation of the distribution of water to Mangalore City and other areas could not be achieved. Therefore, the action clearly comes in the teeth of Article 14 of the Constitution. Consequently the Circulars issued in the present cases and the consequent action taken impugned herein are liable to be quashed.

9. In some of the Licences granted to the petitioners some conditions have been imposed such as revocation of Licences without assigning any reason and in this context reliance is placed upon a Decision of the Supreme Court in Central Inland Water Transport Corporation Ltd And Anr. v. Brojonath Ganguly And Anr., to propound the argument that such conditions are unconscionable. But it is unnecessary for me to examine that aspect of the matter in the present cases. But suffice to say that the Circular issued by the Government shall not come in the way of granting licences to the petitioners as I have quashed the same.

10. In the result, the impugned orders including the condition contained in the relevant Licences imposing a prohibition upon the petitioners not to draw water from the rivers in summer months from 1st of February to 15th of June every year, are quashed. However, it is made clear that it is open to the Government to make appropriate enquiry and collect necessary data and pass appropriate orders making equitable distribution of water. It is equally clear that as and when such action is taken it is certainly open to the petitioners to

make out a grievance thereof. In the light of this Order it is open to the petitioners to approach the authorities for grant of fresh Licences or renewal of the Licences already granted, if necessary. The contentions not dealt with by me are kept open. Petitions are allowed. Rule made absolute accordingly.