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Wasim Ahmad Khan vs. Govt. of AP, 2001

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Case Note: The writ petition was filed for provision of safe drinking water and proper drainage system to prevent spreading of diseases and epidemics. The court held that right to safe drinking water is a fundamental right and cannot be denied to the citizens even on the ground of paucity of funds. The court directed the State take up schemes to ensure safe drinking water to all citizens, to test water periodically etc.

Equivalent Citation: 2002(2)ALD264, 2002(5)ALT526

IN THE HIGH COURT OF ANDHRA PRADESH AT HYDERABAD

WP No. 29014 of 1998

Decided On: 10.12.2001

Wasim Ahmed Khan

Vs.

Government of A.P.

Hon'ble Judges:

Bilal Nazki and L. Narasimha Reddy, JJ.

JUDGMENT

L. Narasimha Reddy, J.

1. This writ petition is filed as a Public Interest Litigation (PIL) by the petitioner, who is a practising advocate. The relief claimed in the writ petition is for a declaration that the action (rather failure) of the respondent in not providing safe drinking water and also for not preventing the outbreak of Cholera and Gastro-enteritis diseases in the State of Andhra Pradesh, as illegal and unconstitutional and consequently direct the respondent to replace all the damaged and leaking drinking water pipes, replace the drainage system to prevent leakage and overflowing and to provide clean drinking water to all the citizens in the State.

2. In the affidavit filed in support of the writ petition, the petitioner had referred to certain news items in various newspapers about the outbreak of diseases like Cholera and Gastro-enteritis at various places, particularly in Adilabad District, which is attributed to the failure of the Government to supply safe drinking water. The petitioner referred to certain acts as well as omissions on the part of the Government, which according to him, have given rise to a situation wherein nearly 900 people have died and 10,000 people became sick due to the said diseases. The relief claimed in the writ petition is two fold, viz., to provide safe drinking water and to ensure proper drainage system to prevent spreading of all diseases and epidemics.

3. In response to the Rule Nisi, however, after seeking several extensions of time, the respondent filed a counter-affidavit dealing with the various contentions raised in the writ affidavit. It has been stated that the disease of Gastro-enteritis is not merely water a born disease and that there are several other factors, which also lead to eruption of this disease. In paragraph 5 of the counter affidavit, factors are enumerated which include eating of contaminated food, poor environment and sanitation apart from consumption of contaminated water. It was further stated that the disease is also transmitted on account of touching of the contaminated surfaces such as taps, children

toys, consuming eatables without washing hands. At the same time, the respondent has also narrated the various steps that are taken from time to time to ensure proper supply of potable water to as many people as possible and also to maintain the drainages properly within the available financial and natural resources. Paragraphs 6 and 7 of the counter-affidavit reads as under :--

"6. It is submitted that the Government is taking necessary action to provide safe and clean drinking water. In addition thereto, periodical sanitary survey of all drinking water sources is being conducted to identify the pollutants entering into the water supply sources and if any contamination is found corrective measures are being taken to remove them. Drinking water supply lines are being regularly inspected. Appropriate measures are being taken to attest leakages, without delay. Wherever water supply pipelines are found crossing drains, or running parallel to and in close proximities of drains, immediate steps are being taken to shift the drinking water pipelines to a safer distance and covering it with casing pipes to protect drinking water supply and prevent contamination thereto.

7. It is submitted that preventive measures are being taken in vulnerable areas where there is a possibility of outbreak of Gastroenteritis. These measures include conducting surveillance over the area, testing water regularly for contamination and making intensive efforts to identify the source of the epidemic. The Government has constituted joint inspection teams consisting of Engineering and Sanitation field staff to identify and inspect critical areas, which are prone to Gastro-enteritis. Necessary steps are taken to sanitize the place, where the incidents occur, using bleaching powder and other insecticides. Patients who need medical care are being shifted to nearby health centers for treatment. In addition to these measures, instructions are issued to hotels and other eating establishments for supply of pure drinking water. Steps are also taken to ensure proper hygiene and cleanliness in catering and other establishments Where food items are prepared and served to the customers. Daily reports are being called for by the Government from such area, as a part of its regular monitoring exercise to prevent outbreak of the disease."

4. An additional counter affidavit is also filed furnishing the statistics as to the extent of coverage of population who are provided with safe drinking water. Reference was made to statistics, such as, the area affected by fluoride contamination, iron affected areas and the steps taken together with the budget allocations to overcome the said problems. It has been summed up by stating that as far as the fluoride and iron contamination is concerned, the problem is being dealt within a phased manner and with the present allocations and rate of progress, the coverage of the fluoride habitations with safe drinking water would be complete by 2004-2005. The contributions made, steps taken by various State and Central Organisations and the financial assistance rendered or promised by them have also been extensively stated. The respondent has also submitted voluminous records in the form of status reports by the Municipal Administration and Urban Development Department and other agencies on the water supply in the twin cities in the State; Status report on Gastro-enteritis by the Medical and Health Department; Action plan for prevention and control of communicable diseases; calendar of activities of Gastro-enteritis for the year 2001; Status report on rural water supply by Panchayat Raj Department, etc. In a way, the response and reaction of the respondent can be said to be very positive and responsible.

5. After hearing the learned Counsel for the petitioner and the learned Additional Advocate-General on various aspects of the matter, through order dated 19-9-2001, the Court directed the Chief Analyst, Institute of Preventive Medicine, Narayanguda, to collect 50 samples of drinking water from different parts of twin cities, spread over a period of seven days, and submit its analysis report to this Court. The petitioner was permitted to request the Chief Analyst to take sample of water of any particular area. In compliance with the directions, the Institute of Preventive Medicine had collected samples from as many as 50 places and submitted a report. It is evident from the report that the level of chlorine content in the samples is within the required limits.

6. In a way, the purpose of filing the writ petition can be said to have been served. The authorities of the concerned departments were alerted and the quality of the water was maintained.

7. So far as the relief in general terms which was claimed by the petitioner is concerned, it should be borne in mind that in a State or rather a country where growth of population is in geometrical proportion and the natural resources are not only static but depleting or made to deplete, it will be only utopian to issue a direction as desired by the petitioner.

8. There cannot be any second opinion that the State is under obligation to provide atleast drinking water to all its citizens, but at the same time, the limited availability of the water resources as well as the financial resources cannot be ignored. Within the available resources, the problem should be attended to with utmost importance and promptitude. In fact, it should be treated as a priority issue. At the same time, making the Government alone responsible and liable to provide water may not solve the issue. The people at large should address themselves to the problem and learn to use the water, particularly drinking water, in a judicious and reasonable manner. Wastage of drinking water, which is not available in plenty, would naturally result in denial of the same to the other needy persons. Individual and collective efforts in this regard are very much necessary and such efforts go a very long way in minimizing the scarcity.

9. Facts and figures submitted by the respondents reveal a very agonizing situation that even after more than five decades of independence safe drinking water is not available to large multitude of population. In the affidavit filed by the Secretary to Government and Commissioner it is stated that out of 69732 habitations in the State 38039 are fully covered @ 40 litres per capita per day and 18583 are partially covered @ 10 litres per capita per day. If we take the habitations representing the population, then almost half of the population of Andhra Pradesh is not getting sufficient safe drinking water and it has been stated in the affidavit that an action plan has been drawn for coverage of balance habitations to provide safe drinking water by the year 2005 by spending Rs. 3480 crores. We expect that this dead line will be kept. Right to safe drinking water is a fundamental right and cannot be denied to the citizens even on the ground of paucity of funds. State has made a commitment that all people in the State shall have the availability of safe drinking water by 2005. Therefore, we order that the scheme enunciated by the State Government should be completed by the end of year 2005.

10. During the course of hearing, we were told that in order to redress the grievances of the people with regard to the quality of the water a mechanism has been evolved and even a control room has been set up where persons are available on telephone

round the clock. When we entered into our chamber for the break, out of curiosity we dialed the phone number given to us. We tried it many times but there was no response. We called the learned Additional Advocate-General to our chamber and requested him to dial the number. He also did not get any response. After the break when the case was taken up a Chief Engineer who was present in the Court had been informed by the Additional Advocate-General that nobody was lifting the telephone on the number given by him. It appeared that he had sent a man who had contacted the persons and we were told that the person who was on duty had gone for lunch. On the day when the Chief Engineer made a commitment before the Court that there was a phone number for 24 hours a day for hearing the complaints of the people we expected a man to lift the phone. Since he was not available on that day we presume that he was not available for hearing the grievances of the people. This cannot be allowed to happen. The Chief Engineer was told to take corrective measures and we expect that this phone number will work and there would be a man to lift it atleast. We direct the Chief Engineer to make advertisements in all newspapers published in twin cities of Hyderabad and Secunderabad to inform the people about the control room and its telephone numbers. We also expect that some senior officer will be posted in that control room to look to the grievances of the people.

11. We also direct that periodical check ups of the water supplied to the people be made in each ward of the Hyderabad and Secunderabad cities atleast once in six months. The water should be tested on various localities by taking various samples. We also direct that more laboratories should be opened for testing the water and an advertisement should also be published in the newspapers in Hyderabad and Secunderabad informing the people that if they want water to be tested and analysed it will be analysed at their laboratories subject to payment of usual costs. It is also desirable that the twin cities are divided into certain zones so that a few grievance cells are put up at different locations where people can make complaints atleast during the working hours.

12. During the hearing of the case it was revealed that the water pipes in most of the areas in the twin cities have been laid before independence. Therefore, we direct that within a period of six months the Government shall devise a mechanism for either repairing or replacing the pipes. This project shall be completed as soon as possible keeping in view the financial and other technical constraints, but the scheme shall be formulated within a period of six months.

13. With these directions we dispose of this writ petition.