

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR
BENCH, NAGPUR.

WRIT PETITION NO. 606 of 2015

(Shri Sant Tukaram Pani Watap Sahakari Sanstha Maryadit, Karli through its
 President Shri Prakash Durge Vs. State of Mah. Through Secretary, Irrigation
 Deptt. and ors.)

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 Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 of directions and Registrar's orders

Court's or Judge's order

CORAM : B.P.DHARMADHIKARI &
 S. B. SHUKRE, JJ.

DATE : 22-4-2015.

Heard Mrs. S. D. Anjankar, learned Advocate for the petitioner and Shri M. J. Pathan, learned AGP for the respondents.

Learned Advocate for the petitioner submits that the petitioner, a co-operative society has been supplying water to its members. However, considering the scarcity, the petitioner was allowed to supply water to other villagers who were not members. Such non-members have also paid the petitioner in accordance with the bye-laws of the petitioner-society. Only 9 of them have refused to pay penalty. Because those 9 farmers made complaint, entire work being carried out by the petitioner for supplying water to non-members has been discontinued.

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Learned AGP submits that the facts disclosed by the petitioner though correct, law does not authorized the petitioner to levy penal charges and hence action has been taken against the petitioner.

During arguments, we find that water was supplied to 233 non-members by the petitioner. At this stage, it is pointed out that the petitioner has supplied water to its members from Karli lake and it supplied water to non-members from Bawanthadi project. As the need of water is apparent and there was urgency, we find the action of respondents high handed.

Learned counsel for the petitioner has urged that non-members as they have started receiving water from the petitioner and are paying for it, are also deemed to have become members of the petitioner – cooperative society as per Section 8 of the Maharashtra Management of Irrigation Systems by Farmers Act, 2005. We do not find it necessary to go into this contention at this stage. 9 complainants – farmers are not party before this Court as also other non-members who were supplied water, are also not party before this Court. We find that the impugned order dated 14-1-2015 and

19-1-2015 restrains petitioner from supplying water from Bawanthadi project and the recovery by petitioner of amounts spent by it for supplying said water has also been prohibited. The petitioner has been informed that the respondents are initiating steps to recover that amount from concerned farmers.

It is obvious that the petitioner has incurred expenditure for supplying water from Bawanthadi project to non-members. The water was allowed to be used for said purpose by respondents and as such, respondents cannot turn around and points out absence of written agreement between the parties. Non-members have used that water to irrigate their fields.

In this situation, we quash and set aside the impugned orders.

Respondent no. 4, Sub Divisional Officer to give appropriate show cause notice to petitioner and to extend it an opportunity of hearing.

We leave all contentions of Advocate Smt. Anjankar open and the same can be looked into by said authority.

After extending such opportunity, necessary orders shall be passed afresh. We

direct the petitioner to appear before respondent no. 4 on 5-5-2015 and to abide by its further directions in the matter.

The respondent no. 4 shall make fresh order within three weeks thereof.

Subject to this, the writ petition is partly allowed and disposed of with no order as to costs.

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