

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WA.No. 1653 of 2015 IN WP(C).14968/2015

AGAINST THE JUDGMENT IN WP(C) 14968/2015 DATED 03/06/2015
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APPELLANT/PETITIONER IN WPC :

R. CHELLAPPAN AGED 72 YEARS
S/O RAMAKRISHNAN, MULLUVILA VEEDU, MULLOOR P.O.
VIZHINJAM, THIRUVANANTHAPURAM.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS/RESPONDENTS IN WPC :

1. THE EXECUTIVE ENGINEER
KERALA WATER AUTHORITY, THIRUVANANTHAPURAM-695001.
2. THE ASSISTANT EXECUTIVE ENGINEER
KERALA WATER AUTHORITY, NEYYATTINKARA
THIRUVANANTHAPURAM-695001.
3. ASSISTANT ENGINEER
WATER SUPPLY SECTION, KANJIRAMKULAM
THIRUVANANTHAPURAM, 695524.

BY SRI.JOSEPH JOHN, SC, KERALA WATER AUTHORITY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 1653 OF 2015

Dated this the 12th day of August, 2015

JUDGMENT

Shaffique, J.

The petitioner in W.P.(C) No.14968 of 2015 is the appellant who challenges the judgment dated 03.06.2015 by which learned Single Judge has dismissed the writ petition.

2. The writ petition has been filed seeking to quash Ext.P1 bill and for a direction to the respondents to reconnect the water supply to the petitioner having consumer No. VP/690. The facts involved in the writ petition disclose that the petitioner has a water connection with consumer No.VP/690. The petitioner was issued with Ext.P2 notice dated 02.06.2014 by which he was given two days time to rectify certain defects. In Ext.P2 it is stated that the connection was unauthorised and that the meter reading could not be taken properly. According to the petitioner, when further action has not been taken by the respondents in the matter, those issues had been settled. However, later petitioner sought certain information under the

Right to Information Act which was provided by the respondent authorities. Later he was served with Ext.P7 notice dated 08.05.2015 by which he was called upon to pay an amount of Rs.13,286/- for arrears of water charges up to April, 2015 along with a fine for unauthorised tapping amounting to Rs.10,000/-. He was given only three days time to remit the amount, failing which he was threatened that the water supply will be disconnected. The petitioner did not pay the amount as directed and therefore the water supply was disconnected. Thereafter the petitioner has approached this Court.

3. Statement has been filed by the respondents *inter alia* stating that water connection, VP/690 was given to the petitioner from March 1991 as a domestic water connection and petitioner has remitted water charges at domestic rate till August, 2014. It is submitted that the building to which domestic water connection No.VP/690 was provided is demolished and only a temporary shed was in existence. It is also stated that the water connection was used for construction of an adjacent premises which according to them, is unauthorised tapping of water.

4. Learned Single Judge, after taking into consideration the fact that notice has been issued to the petitioner in terms of Section 45(1) of the Kerala Water Supply and Sewerage Act, 1986, dismissed the writ petition as devoid of any merits.

5. Learned counsel for the appellant/petitioner submits that if at there is any deficiency on the part of the consumer, in either remitting the bill amount or any charges claimed by the authority in terms of Section 45(1)(a) of the Act, there is an obligation on the part of Kerala Water Authority to give 30 days notice, after serving the bill for the same. This statutory provision has not been complied with, is the complaint of the petitioner.

6. On the other hand, learned Standing Counsel for the Kerala Water Authority submits that Ext.P2 dated 02.06.2014 had been issued much earlier which itself will indicate that there is unauthorised tapping of the water and for the unauthorised tapping Ext.P7 notice was issued by giving 3 days time to remit

the amount. In the earlier notice itself there was indication of unauthorised tapping of water.

7. Having regard to the aforesaid factual situation, the question to be considered is whether the learned Single Judge was justified in dismissing the writ petition as devoid of merits. It is useful to quote Section 45(1) (a) of the Kerala Water Supply and Sewerage Act, 1986 which reads as follows:

"45. Power to cut off water supply.- (1) The Authority may cut off the water supply from any premises.-

(a) if any tax, fee, rental, cost of water or any charge or other sum due under this Act, is not paid within a period of thirty days after service of a bill for the same;"

It is apparent that if any tax, fee, rental, cost of water or any charge or other sum due under this Act, is not paid within a period of thirty days after service of a bill for the same, it is open for the authorities to disconnect the water supply from the premises. The main contention urged by the learned counsel for the appellant is that, for unauthorised use of water, even going by Ext.P2 dated 02.06.2014, only two days time has been granted to the petitioner to rectify the deficiencies. After issuing

Ext.P2 nothing else has been done in the matter. By Ext.P7 notice three days time has been granted which relates to water charges up to April, 2015 and fine of Rs.10,000/- for unauthorised tapping. When such bill amount had been issued, after one year from Ext.P2, i.e. 08.05.2015, it was necessary for the Kerala Water Authority to give 30 days notice. This apparently has not been done in the present case as rightly contended by learned counsel for the appellant.

8. Under such circumstances we are of the view that the action of Kerala Water Authority in disconnecting the water supply, was not in accordance with the statutory provisions. But having regard to the present factual situation, especially when the contention regarding unauthorised tapping of water was taken up by the Kerala Water Authority as early as on 02.06.2014, we are of the view that judgment of learned Single Judge deserves to be modified.

Hence the Writ Appeal is disposed of as under:

1. The water supply of the petitioner shall be restored on condition that the petitioner shall pay 50% of the amount demanded as per Ext.P7 notice;

2. The petitioner shall be at liberty to file objection, if any, to Ext.P7 notice which shall be considered in accordance with the statutory provisions. The balance amount shall be payable depending upon the finality of the objection raised by the petitioner in terms of Ext.P7 notice.

3. It is made clear that the entire process shall be completed within a period of six weeks from the date of production of a copy of this judgment.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**