

THE HON'BLE SRI JUSTICE M. SATYANARYANA MURTHY

WRIT PETITION NO.19040 OF 2004

ORDER:

This petition is filed under Article 226 of the Constitution of India, questioning the proceedings issued by the first respondent in D.Dis.No.2657/2002(D3) dated 17.07.2002, permitting the second respondent to construct a permanent sluice at M.32 + 250 LB of Eluru Canal while directing fourth respondent to incorporate the change in the village and mandal ayacut register and declare the same as illegal, irregular, arbitrary, without jurisdiction against the procedure contemplated under the Act.

The petitioner is the firm own and possessed an extent of Ac.141-86 cents in R.S.No.322 of Kurellagudem Vilalge of erstwhile Amberpet Village in Bhimadole Mandal, West Godavari District having purchased the same in the year 1981 to carry on farming in the said property. In the year 1952, permission was accorded temporarily by 3" diameter at 32/2 of the left bank of Eluru Canal to supply water to an extent of Ac.150-00 cents out of Ac.320-00 cents to the predecessor in title with a condition to dig a bode at their cost. Later, in the year 1958, the second respondent granted permission to cultivate entire extent of Ac.320-00 cents by a temporary pipe and a loading bode connecting the same at the expenses of the owners (predecessors in title) of R.S.No.322. Eversince, the entire land covering R.S.No.322 has been cultivated with the water drawn from Eluru canal through pipe situated at M.32/2+250 of left bank of Eluru Canal. The Central Government granted permission to the petitioner's predecessors in title to form Bode connecting it with pipe at their expenses. Thus, the petitioner is drawing water by furnishing a stoppage pipe at their expenses and also Bode laid to R.S.No.75 and has been drawing water and utilizing it for the lands covered by Sy.No.322 since the date of permission granted by the Government.

While the matter stood thus in the year 1982, the petitioner firm after acquiring land to an extent of Ac.141-86 cents in R.S.No.322 of Amberpet, has been drawing water through the said Bode, through insertion of special pipe and for laying bode to the lands covered by R.S.No.322 of Amberpet Village, since the said land is at the tail end of channels running from the Eluru Canal . After repeated investigations, permission was accorded for construction of sluice of 10" dia pipe and to lay Bode, subject to the expenditure being born by the petitioner. Pursuant to the proceedings of the Chief Engineer, Major Irrigation, the S.E Irrigation circle, Dhowaleshwaram issued proceedings P24/6/96 vide IC/1783/N in favour of the petitioners. Accordingly, the petitioner invested huge amount for construction of permanent sluice to provide pipe and to form bode. The petitioner firm has been paying water charges regularly for the land in R.S.No.322.

In the year 1996, permission was accorded by the Government on permanent basis to the petitioner for constructing sluice with shutters at M.32/2 + 250 of Left Bank Canal and also to meet the entire expenditure for the maintenance of Bode. Thus, the official respondents have recognized and accepted, time and again, the petitioner's exclusive right to draw water through the special pipe referred to above and the Bode running from the said pipe to the land covered by Sy.No.322. The petitioner firm has acquired all the rights available under law and it is not only a customary right and also a right of easement which has been perfected by prescription. Except the petitioners/owners of land in R.S.No.322, none else have got any right or interest to deal or meddle with the special pipe of M.32/2 + 250 Left Bank Canal which was arranged with the permission.

While the matter stood thus, the fourth respondent has been making attempts to interfere with the flow of water and the Bode referred above. Since 25.06.1999, the fourth respondent and his henchmen have been openly proclaiming that they will not allow the petitioner to draw water through the Bode and pipe and further

threatened the petitioner with dire consequences not resting there, they were bent upon causing loss to the petitioner. Thereupon the petitioner was constrained to institute O.S.No.69 of 1999 on the file of the Senior Civil Judge against the respondents 1,2, & 4 seeking declaration and perpetual injunction in respect of special pipe to left bank of Eluru Canal at M.32/2 + 250 and the Bode running from the said pipe to the lands covered by R.S.No.322 and the said suit is pending for disposal. During pendency of the suit, an interim order was passed in favour of the petitioner permitting him to enjoy the said source of water supply and restraining the defendants i.e. respondents 1,2 & 4 herein from interfering with such enjoyment.

The fourth respondent is not ayacutdar under Eluru Canal and he is drawing water from Amberpet sluice even without any right to draw water to his lands. The lands admeasuring Ac.266.62 cents referred to in the impugned order are in fact not registered ayacut and the said lands are being irrigated under Amberpet sluice.

The first respondent has issued proceedings in D.Dis No.2657/2002 (D3) dated 17.07.2002 at the instance of the fourth respondent permitting the fourth respondent to draw water from the subject sluice without including the said Ac.266.62 cents of land under the ayacut, muchless without notice to the petitioner and to all the other effected parties. The petitioner's land being at the tail end under the Eluru Canal and having been provided the sluice and Bode at their cost to draw water from M.32/2 + 250 LB of Eluru Canal, the petitioner will be deprived of drawing water to his land from M.32/2 + 250 LB of Eluru Canal by inclusion of Ac.266.62 cents of land which were being feeded under the Amberpet sluice.

It is further contended that the first respondent, without following the procedure contemplated under Sections 5, 21 & 25 of The Andhra Pradesh Irrigation Utilization and Command Area Development Act, 1984, issued the impugned proceedings and it is hit by Article 21 of the Constitution of India. Therefore, the proceedings under challenge

bearing D.Dis.No.2657/2002(D3) dated 17.07.2002 are sought to be set-aside.

The second respondent alone filed counter affidavit denying material allegations, interalia, contending that the proceedings under challenge D.Dis.No.2657/2002 (D3) dated 17.07.2002 in which the ayacut of Ac.266.62 cents is brought under the pipe at M.32/2 + 250 Left Bank of Eluru Canal are issued in pursuance of administrative concurrence issued by the District Collector, vide proceedings in Dis.No.1929/75/(A2) rev dated 19.04.1976. The beneficiaries have also made another representation and the water users association, Pulla have also resolved for making early issue of necessary modifications. Thus, the proceedings were issued in accordance with the procedure and there is no violation as pointed out by the petitioner in the writ petition.

It is admitted that the petitioners were granted permission vide proceedings No.1929/75(A34) Rev. dated 19.04.1976 for construction of permanent sluice in place of temporary pipe already existing, by that time and connecting the temporary pipe at M.32-2-250 Left Bank of Eluru Caanal upto the tail end lands in R.S.No.322 of length about 5 kilometers was improved as drain namely "Polimera Punta codu" incurring an amount of Rs.96,000/-. This fact was admitted in writing by the Managing Partner of Firm vide his letter dated 19.04.1985. The District Collector, West Godavari, issued concurrence for the irrigation of the land of petitioner and the ayacut of Ac.266.62 cents of Sri Vatti Pullaiah and others in the year 1976 itself. The bodi is notified as government minor drain. Based on the representation of the firm, the Superintending Engineer, Irrigation Circle, Dowlaiswaram, vide proceedings No.IC/1783 date 24.06.1996 issued permission to draw water for the existing fish ponds from the existing pipe duly constructing the sluice on permanent basis and providing shuttering arrangement at the cost of firm, to draw water and to avoid wastage only. Further, the temporary permission was valid for a period of 10

years and will expire in the month of May, 2005 and the department may have to reconsider the issue of renewal as this extent is situated below 5 feet contour which is notified as wild life sanctuary as per G.O.Ms.No.120 dated 05.10.1999.

During the year 1997-1998, the Irrigation Department again improved Polimera Punta codu drain incurring Rs.3,42,000/-, thus, it once again brought to the notice that the bodi starting from M.32-2-250 LB upto R.S.No.322 (Kolleru Point i.e. in 5 ft contour) is a drain and the department have got every right over it. The drain is designed to carry 6.84 M3/Sec (241.55 c/s) against the designed capacity of the pipe is only 4.48 c/s. The department and the water users associations are working for the welfare of ryots and finally it is contended that the ayacut of Ac.266.62 cents was included under the pipe at M.32/2 + 250 in the proceedings dated 19.04.1976 and the Irrigation Department has also permitted them to draw water during the Fasalies 1391,139, 1393 and 1394 corresponding to agricultural years 1981 to 1984 years.

It is further contended that the proceedings of the District Collector dated 17.07.2002 are in pursuance of earlier proceedings issued in 19.04.1976 based on the representation of ryoths and resolution of Water Users Association.

A similar writ petition was filed by Sri Palakurthi Gopalakrishna in W.P.No.25008 of 2003 which was dismissed by this Court vide order dated 02.12.2003 directing the petitioner to make a representation to the District Collector or to the government in which event, the same shall be considered on its own merits, but the said petitioner has not made any representation to the Government till date. Therefore, there are no merits in the representation and prayed to dismiss the same.

During the hearing of learned Senior Counsel for the petitioner, Sri B. Venkata Rama Rao, attention of this Court was drawn to the various provisions of the A.P. Irrigation (Constitution and Maintenance of Water Courses) Act, 1965 and would contend that a notice is

required to be issued under Section 4(2)(b) before inclusion of land of extent under the Ayacut and for construction of any water course calling for objections, but no such procedure was followed. Therefore, the procedure adopted by the respondents 1 to 3 in issuing the impugned proceedings is illegal and arbitrary and consequently the proceedings are liable to be set-aside and prayed to set-aside the same by issuing *Writ of Mandamus*.

Learned Government Pleader for Revenue would contend that, in view of the orders passed by this Court in W.P.No.25008 of 2003, the present petition is not maintainable, as in a similar writ petition this Court passed order directing the petitioner therein to make a representation to the District Collector or to the Government in which event, the same shall be considered on its own merits. Hence, the writ petition is not maintainable, since the proceedings are issued strictly in accordance with the Act and finally prayed to dismiss the writ petition.

Considering rival contentions and perusing the material available on record, the point that arise for consideration is: ***“whether any procedure is contemplated to modify the extent of ayacut, if so, in compliance of the procedure under the A.P. Irrigation Act, 1965, vitiates the entire proceedings impugned in this writ petition”.***

Undisputedly, the petitioner was permitted to draw water from M.32/2 + 250 Left Bank Eluru Canal arranging 3” diameter pipe initially on temporary basis in the year 1952 to the predecessor in title of the petitioners. Later, a permanent permission was granted for drawing water from the same pipe by arranging Bodi to fee their land in R.S.No.322. But, the contention of the second respondent is that it is only a temporary permission given, however, no document is produced either by the petitioner or by the second respondent to substantiate the same. The contention of the petitioners is based on the provisions of the Andhra Pradesh Irrigation Act, 1965. According to the learned counsel for the petitioner, the fourth respondent’s land was under the

ayacut of Amberpet Village and permission cannot be granted to the fourth respondent to draw water to his Ac.266.62 cents in R.S.No.322 and to include land of the fourth respondent under the ayacut and to draw water from M.32/2 + 250 Left Bank Canal, the procedure is prescribed and the same is required to be complied while inclusion of any land under the ayacut.

Whereas, the second respondent would contend that the respondents developed M.32/2 + 250 Left Bank Eluru Canal by incurring huge expenditure of Rs.96,000/- and the latter incurred Rs.3,42,000/- for improvement of Polimera Punta codu drain, but no piece of evidence is brought on record. It is the specific contention in paragraph 8 of the counter affidavit that Ac.266.82 cents belonging to the fourth respondent was included under M.32/2 + 250 LB vide proceedings dated 19.04.1970 and the department has also permitted them to draw water for the faslis 1391 to 1394. Therefore, the question of inclusion of these lands of Ac.266.62 cents under the ayacut to draw water from M.32/2 + 250 LB under the impugned proceedings does not arise.

Learned counsel for the petitioner has drawn the attention of this Court to the proceedings in this writ petition issued by the District collector, West Godavari directing the Executive Engineer, Godavari Western Division, Nidadavole for construction of permanent sluice at M.32 + 250 LB of Eluru Canal to feed an extent of Ac.266.62 cents, the Executive Engineer, Godavari Western Division, Nidadavole is permitted to get the sluice constructed at the earliest within the current Fasli 1412. This fact itself suffice to hold that the land of an extent of Ac.266.62 cents which is counter signed was not included under the sluice at M.32/2 + 250 LB of Eluru Canal. No such order was passed.

The term 'construction' is defined under Section 2(C) of the Andhra Pradesh Irrigation (Construction and Maintenance of Water Courses) Act, 1965 and it includes extension, improvement or alteration of water course. Construction of a water course referred in

the proceedings meant in the writ petition is a construction of a sluice on permanent basis at M.32/2 + 250 Left Bank Eluru Canal to feed an extent of Ac.266.62 cents. Therefore, the sluice falls within the definition of Section 2(c) of the Act. Inclusion of Ac.266.62 in the ayacut as defined under Section 2(a) and the procedure prescribed under the Act is to be followed.

According to Section 3 of the Act, the owners of all lands within each distinct block of such extent not exceeding one hundred acres as may be prescribed, in the ayacut of an irrigation work shall be liable to construct and maintain at their own cost, water-courses required for the supply of water to their lands from the distributaries of the irrigation work for irrigation purposes and for the discharge of waste or surplus water from those lands in accordance with such directions as may be issued by the Irrigation Officer. Thus, in view of Section 3, the petitioner being the ayacutdar under Left Bank Eluru Canal at pipe No.M.32/2 + 250 LB, has arranged pipe and dug Bodi to feed or irrigate its land.

It is further contended by the learned counsel for the petitioner that for construction of permanent sluice, a notice under Section 4(2)(b) is required to be issued and it says that every person likely to be affected by the construction of the water-course or interested in the land on which it is proposed to construct the water-course to submit his petition to the Irrigation Officer stating his objections to the proposed construction within sixty days of publication of the notice. Subsection (2) deals with the publication of notice in the prescribed manner in every village through which the water course is proposed to be taken, specifying the extent of land which lies in such village and which has been marked out under subsection (1). Thus, a specific procedure is prescribed for consideration either suo motu or application by Irrigation Officer as defined under Section 2(e).

In the present facts of the case, no procedure under Section 4(2) of the Act is followed, though the respondents contended that the

procedure contemplated under the Act is followed, no piece of evidence is brought on record, more particularly, about publication of notice in the prescribed manner in the village through which water course is proposed to be taken, specifying the extent of land which lies in such village and calling for objections from the persons likely to be effected on account of proposed construction. In the instant case, no publication or notice was made as required under Section 4(2) of the Act, calling for final objections and hence, enquiring into the objection and publication under Section 5 does not arise. When specific procedure is prescribed under the Act while constructing water courses as defined under Section 2(j) of the Act, the procedure is to be followed scrupulously and any deviation of the procedure vitiates the entire proceedings.

Learned counsel for the petitioner to substantiate his contention that the total land under the ayacut is under temporary pipe No.M.32/2 + 250 Left Bank Eluru Canal was Ac.305.00, he produced a gazette publication issued by the Public Works Department, Government of Andhra Pradesh on 19.01.1962, which clearly establishes that only Ac.305.00 of Wet Land is the ayacut land under the temporary pipe at 32-2-250 LB of Eluru Canal. If, really the petitioner and the fourth respondent was permitted to cultivate the land of Ac.262.62, the respondents might have issued proceedings to include the said land under the ayacut by pipe No.M.32/2 + 250 LB of Eluru Canal. Therefore, non-inclusion of the land belonging to the fourth respondent under pipe No.M.32/2 + 250 LB of Eluru Canal itself is sufficient to disbelieve the contention of the respondents that the land of the first respondent was included under cultivation under pipe No.M.32/2 + 250 LB of Eluru Canal. In such a case, it can be said to be a new construction of water courses by the department under the proceedings and the procedure prescribed under the Act is not followed for the reasons known to the authorities. Thereby, the proceedings issued by the appellate authority i.e. the District Collector,

which is impugned in this writ petition is vitiated by irregularity. Even otherwise, such proceedings have to be issued by the Revenue Divisional Officer under the Act and whereas, the District Collector is the Appellate Authority.

Article 226 in The Constitution Of India, 1949, conferred Power of High Courts to issue certain writs and it explicitly brings out that; Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose; the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories; where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so

furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated and the power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

Learned counsel for the petitioner in support his contentions, has drawn the attention of this Court to the judgment rendered by this Court in **Manne Kishtiah and others vs. The Revenue Divisional Officer, Medak, Government of A.P. and others**^[1], wherein this Court had an occasion to decide the similar issue with reference to compliance of Section 4(2)(b) of the Act and held that if the respondents fail to follow the procedure contemplated under Sections 4 & 5 of the Act, without affording any opportunity of hearing to the writ petitioner (ayacutdar), it amounts to passing an order in statutory provisions.

The expression 'every person likely to be effected by the construction of the water-course' referred to in Section 4(2)(b) of the Act, does not necessarily require the affected person to be an ayacutdar under a particular water-course which is proposed to be constructed. What the Section 4(2)(b) clarifies is that, any ayacutdar under a particular irrigation work who is likely to be effected by the work of a water course can submit his petition to the Irrigation Officer stating his objections to the proposed construction under Section 4(2)(b), but no such opportunity was accorded to state their objections by the ayacutdar or in person who is affected by such water-course. It is nothing but denial of a statutory right. Therefore, it is prayed to set-aside the order passed by the Revenue Divisional Officer.

In the present case, the District Collector who is the Appellate Authority passed the order impugned in the writ petition. Though the Revenue Divisional Officer is competent to pass such an order, the petitioners lost their opportunity to file before the Appellate Authority

i.e. the Revenue Divisional Officer and no procedure prescribed under Section 4 & 5 of the Act was followed even by the District Collector, in absence of any such order which is impugned in this writ petition.

Similar question came up before this Court in the judgment rendered by this Court in **Aitha Gopalakrishna vs. District Collector, Visakhapatnam and others**^[2] wherein the learned Single Judge held that without the procedure contemplated under Sections 4(2)(b) and 5 of the Act is not followed, the order is liable to be set-aside, since the order is in violation of the statutory provision and further directed the respondents to follow the procedure contemplated under Sections 4(2)(b) and 5 of the Act and pass appropriate orders.

The facts before me are clear that no procedure contemplated under Sections 4(2)(b) and 5 of the Act is followed by the respondents and instead of passing an order by the Revenue Divisional Officer, who is the original authority, the order was passed by the first respondent, the District Collector, who is the Appellate Authority, for different reasons, thereby depriving the right of the petitioner to file an appeal before the Original Authority and as such the order cannot be sustained under law by applying the principles laid down.

Under Article 226 of the Indian Constitution, this Court while exercising the power of judicial review can interfere with the orders impugned under the writ petition, if the order is passed in violation of any statutory provisions or rules or in violation of principles of natural justice.

As discussed above, undisputedly, the respondents did not follow statutory provisions, more particularly, Sections 4(2)(b) and 5 of the Act. Thus, the order passed is in violation of the statutory provisions i.e. The Andhra Pradesh Irrigation (Construction and Maintenance of Water Courses) Act, 1965, thereby the order is liable to be set-aside and accordingly, held in favour of the petitioners and against the respondents.

In the result, the writ petition is allowed, setting aside the impugned order passed by the first respondent in proceedings D.Dis.No.2657/2002(D3) dated 17.07.2002. However, it is made clear that the authorities are at liberty to follow the procedure contemplated under Sections 4 and 5 of the Act, and pass appropriate orders, if necessary, within three months from the date of receipt of the copy of this order, after affording opportunity to both the petitioner and the fourth respondent.

JUSTICE M. SATYANARYANA MURTHY

Dated 15.07.2016
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[\[1\]](#) AIR 1972 ANDHRA PRADESH 276 (V.59 C72)

[\[2\]](#) 2002 (6) ALT 623