

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23470 of 2012 (O&M)

Date of Decision:- 09.03.2018

Bant Ram and others

.....Petitioners

Vs.

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: - Ms. Madhu Dayal, Advocate,
for the petitioners.

Ms.Sunint Kaur, AAG, Punjab,
for respondents No.1 to 5.

Mr.Manoj Kumar Pundir, Advocate,
for respondents No.6 & 7.

RAKESH KUMAR JAIN, J.

The petitioners are residents of Village Teor, Tehsil Kharar, Distt. Mohali, who have prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 8.6.2012 passed by respondent No.2, a writ in the nature of mandamus seeking a direction to respondents No.1 to 5 to take over the management of the drinking water supply from respondents No.6 & 7 after quashing order dated 31.12.2009 with further prayer to direct the respondents to exempt the villagers having residential area less than 5 marlas or 125 sq. yards from paying water and sewerage charges as per notification dated 11.7.2006 and to charge flat rate of ₹60/- per month from rest of the villagers for the supply of water and further to direct respondents No.1 & 2 to conduct an enquiry against respondents No.6

& 7 for embezzlement/misappropriation of funds/bills amount and management of water distribution system.

It may be pertinent to mention that a public interest litigation was filed by the residents of the same village Teor bearing CWP No.5283 of 2012 in which their grievance was that the Gram Panchayat has been handed over the responsibility of providing water supply which should have been undertaken by the Department of Water Supply and Sanitation and that the petitioners should not be charged more than the flat rate of ₹60/- per month for supply of water. The said writ petition was disposed of on 21.03.2012 with the following order:-

“This Public Interest Litigation has been filed seeking interference of the Court with an order dated 31.12.2009 (Annexure P-1) by which the respondent No.7 who is the Sarpanch of Village Teor, Tehsil Kharar, District Mohali has been given the responsibility/duty of collection of water bills and payment of expenses incurred in connection with the water supply of the Village. According to the petitioners, the said order virtually amounts to handing over the responsibility of providing water supply to the respondent No.7 which responsibility should be undertaken by the Department of Water Supply and Sanitation. Furthermore according to the petitioners, while villagers

of the neighbouring villages are required to pay a flat rate of ₹60/- per month for supply of water in similar circumstances, the petitioners and other residents of their village are required to pay a higher rate. Hence the Public Interest Litigation.

We have considered the issues raised in the Public Interest Litigation and we have also noticed that the petitioners have filed representations in this regard to different authorities of the State including the Director, Department of Rural Development and Panchayat, Punjab. The said representation (Annexure P-13) is dated 27.6.2011. It appears that the aforesaid representation of the petitioners has been endorsed to the District Development and Panchayat Officer, S.A.S. Nagar by the Joint Director, Department of Rural Development and Panchayat on 2.8.2011 (Annexure P-14). No decision has been taken on the said representation by the concerned authority. It is also evident from the materials on the record that the petitioners had met the Director, Department of Rural Development and Panchayat on several occasions in

connection with the instant matter. However, in spite of the efforts made by the petitioners, no concrete steps have been taken, leaving the petitioners with no option but to institute the present Public Interest Litigation.

As already stated, we have taken note of the issues arising in the Public Interest Litigation. The primary issue is whether the petitioners and other residents of their village are liable to pay a flat rate of ₹60/- per month for the water supply received by them. This is a matter which can be easily resolved by the departmental authorities. We are, therefore, of the view that instead of entertaining this writ petition, it would be appropriate for us to direct the Director, Department of Rural Development and Panchayat, Government of Punjab, to take the representation filed by the petitioners on record and pass necessary orders in the matter, if required after hearing the writ petitioners. The needful will be done by the concerned authority, as stated above, within six weeks from the date of receipt of this order or a certified copy thereof.

The writ petition stands disposed of in the above terms.”

Since the order passed by this Court on 21.03.2012 was not complied with, therefore, the writ petitioners in the said writ petition filed COCP No.1695 of 2012 which was not pressed because in the meantime speaking order had been passed. The order dated 29.8.2012 passed in COCP No.1695 of 2012 read as under: -

“Learned counsel for the petitioners states that the compliance of the order of this Court has been made and a speaking order passed. He does not wish to press the instant petition but prays for liberty to assail the order. Permitted to do so. The petition stands disposed of with the liberty aforesaid granted.”

Thereafter, respondent No.2 had passed the impugned order on 8.6.2012. The relevant portion of which is reproduced as under: -

“After hearing both parties, I have come to the conclusion that as per notification dated 02.08.2006 issued by Department of Water Supply and Sanitation the Village Water Supply & Sanitation Committee has the power to levy the charges as per the requirement of running the Water supply Scheme. In pursuance to this notification the Village Water Supply & Sanitation

Committee to village Teor has levied the water charges. Therefore, the act of the committee is within its power given by the said notification. It has also been noticed that one Sh. Jarnail Singh s/o Gurbax Singh r/o Village Teor filed Consumer Complaint No.360 of 2010 before the District Consumer Disputes Redressal Forum, Mohali wherein similar issue was raised and the Ld. Commission after considering various aspects has also dismissed the complaint vide order dated 6.12.2010 and accordingly uphold the working of Village Water Supply & Sanitation Committee of Village Teor. In view of the aforesaid position, the representation of the petitioners is hereby rejected.”

Learned counsel for the petitioner has submitted that the respondents have not addressed to the primary issue as to whether the petitioners are liable to pay ₹50/- per month and ₹3/unit for the water supply received by them. It is also submitted that respondent No.4 failed to determine as to how an amount of ₹220/- per month is being charged from the villagers as water charges. It is also submitted that the water charges are exempted in the case of residents of municipal limits having 5 marla house whereas it is being imposed to the petitioners who are also having the residential area less than 5 marla.

Learned counsel for the respondents has submitted that on 16.9.2008 Gram Panchayat of Village Teor had passed resolution to allot land measuring 3 kanals for the purpose of installation of tubewell and water tank. It was clearly mentioned in the resolution by the Gram Panchayat that the village would follow the requisite guidelines and principals of the World Bank in order to attain such financial assistance and in that process constituted the Gram Panchayat Water Supply Committee (GPWSC) comprising of 21 members including one Chairman (Sarpanch) and one Convener (Junior Engineer). The members of the committee was comprised of all communities of the village. After the constitution of GPWSC, survey of the village was conducted in the presence of the villagers. The survey report was finalized and PSR was prepared and administration approval of the Punjab Government vide letter dated 19.1.2009 amounting to Rs.44.41 lacs was granted. Thereafter, DSR prepared was technically sanctioned by the DPD-cum-Superintending Engineer, Water Supply & Sanitation Circle, Chandigarh vide its letter dated 10.2.2009 amounting to Rs.43.55 lacs. After the technical sanction of Detail Scheme Report (DSR), whole of the work was bifurcated in 3 packages and Bid documents of all the 3 packages were prepared and approved by DPD-cum-SE, Chandigarh vide letter dated 29.5.2009. It is further alleged that GPWSC participated at every step and signed Preliminary Scheme Report (PSR), Detailed Scheme Report (DSR) and Bid documents. The tenders were called by Chairman GPWSC in accordance with the norms and work of providing the water services in the village by sinking tubewell. The Scheme was transferred and handed over to GPWSC for operation and maintenance from 1.1.2010 onwards and it is the duty and responsibility of the GPWSC for fixing tariff for collection of

water charges for paying electricity bills and salary of pump operators etc. It is further alleged that the object of decentralization of the responsibility of intra-village water supply and sanitation, in partnership with the Gram Panchayat User Groups, is to improve the rural water supply and sanitation service delivery and achieving greater participation of rural inhabitants. Notification in this regard was issued by the Water Supply and Sanitation Department on 02.08.2006. As per the provisions of the notification, the Gram Panchayats would set up Gram Panchayat Water Supply and Sanitation Committees (GPWSC) and entrust it with the responsibility of planning, operating and maintaining water supply, sanitation and drainage schemes. The said committee would also have the power to levy user charges on the consumers as per para 5 of the notification dated 2.8.2006. Para 5 of the notification dated 2.8.2006 read as under: -

“Powers and Responsibilities of GPWSC:

(Xiv) Levying connection fee and cost of providing connection to households in respect of water supply and sanitation scheme.

(Xv) Fix and collect from the users of water supply and sanitation facilities such charges, fees, tariffs or deposits as it may deem fit for fully recovering the operation and maintenance cost of water supply and sanitation infrastructure, facilities and services.”

The GPWSC vide its resolution dated 10.2.2010 fixed the water bills as ₹100/- per month in order to maintain cost of water supply, infrastructure, facilities and services. It was also observed by the Department of Water Supply and Sanitation and the committee that due to flat rate charges, consumers do not care for wastage of water, therefore, on the request of village people, it was decided to install water meters on all private connections by the Department. It is further submitted that the petitioners have given a wrong data in respect of electricity bills of the tubewell connections. It is further submitted that the notification dated 11.7.2006 is not applicable to the petitioners because it is in regard to the properties situated within the Municipal Limits and the same notification cannot be applied to the petitioners as it is based upon the policy of the Government.

I have heard learned counsel for the parties and after taking into consideration aforesaid facts and circumstances, I do not find any reason to interfere in this petition much less in the impugned order dated 8.6.2012 which has been passed by respondent No.2 in terms of the notification dated 02.8.2006 in which Clause 5 confers the power and responsibility upon GPWSC for levying connection fee and cost of providing connection to households in respect of water supply and sanitation scheme and also to fix and collect from the users of water supply and sanitation facilities such charges, fees, tariffs or deposits as it may deem fit for fully recovering the operational and maintenance cost of water supply and sanitation infrastructure, facilities and services. The water meters have been installed on unit basis besides the monthly meter rent to check the water wastage which was found to be happening because of the flat rate being charged as the consumers were having no concern about the unnecessary wastage of

water as they had to pay only a flat rate and with the installation of the meter, the consumer has been made aware of the liability of payment of water charges in case it is being wasted. The entire action has been taken by the committee which has been constituted in terms of notification dated 2.8.2006. In so far as exemption is sought in terms of the notification, it is applicable only to the Municipal Limits and not to the Gram Panchayats and it cannot be applied to the petitioners as it is a matter of the policy of the State.

Thus, in view of the aforesaid facts and circumstances, there is hardly any reason to interfere in this petition and hence, the same is hereby dismissed.

09.03.2018

Vivek

Whether speaking/reasoned
Whether reportable

(RAKESH KUMAR JAIN)
JUDGE

Yes/No
Yes/No