

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 5503/2018

1. Ratan Devi

2. Kammu Khan

-----Petitioners

Versus

1. The State Of Rajasthan Through The Secretary To The Government, Department Of Water Resources, Secretariat, Jaipur.

2. The Deputy Secretary To The Government, Indira Gandhi Nagar Department, Jaipur.

3. The Chief Engineer, Indira Gandhi Nahar Project, Bikaner.

4. The Executive Engineer, 16Th Division, Indira Gandhi Nagar Project, Bikaner.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 7493/2018

1. Anni Devi \

2. Ravindra Kumar

3. Indu Bala

4. Urmila

5. Pramila

6. Mangat. ~

7. Laxmi Devi

-----Petitioners

Versus

1. The State Of Rajasthan Through The Secretary To The Government, Department Of Water Resources, Secretariat, Jaipur.

Order**23/03/2022**

The cases are listed on the applications for vacation of interim orders, however with consent of learned counsel for the parties, the writ petitions are being heard and decided finally at this stage by this common order as impugned orders in all the writ petitions are similar and the issue involved in all these writ petitions is also identical.

Heard learned counsel for the parties.

Learned counsel for the petitioners submits that fields of the petitioners are irrigated through siphons since 1982 from the Rajasthan Canal. Learned counsel further submits that on the earlier occasion also, the persons like petitioners had approached this court and directions have been issued that the petitioners may appear before the Local Executive Engineer and satisfy the need of water individually for the purpose of providing the requisite amount of water through siphons till the irrigation facilities otherwise provided by the respondents and if the Executive Engineer finds that adequate irrigation facility is provided and the siphons are not required, in that event the siphons will not be sanctioned. Learned counsel further submits that in view of the directions issued by this court, the petitioners appeared before the respective Executive Engineer and pleaded their cases for providing adequate water facility for the irrigation purposes. The Executive Engineer thereafter passed the orders which were the subject matter of the litigation before this Court. He further submits that in view of the other pronouncements by this court as well as by the trial courts, the petitioners are receiving the water facilities through siphons. Learned counsel

further submits that since the fields of the petitioners are being irrigated through siphons facilities for last 40 years, the State Government cannot discontinue the same by passing the orders impugned in these writ petitions i.e. 27.11.2017 passed by Deputy Secretary to Govt. Indira Gandhi Nahar Department, Jaipur and 05.04.2018 passed by Executive Engineer, 9016th Division, Iganap, Bikaner. Learned counsel for the petitioners submits that the order dated 05.04.2018 which affects the water facility of the petitioners through siphons has been discontinued without giving a reasonable opportunity of hearing to them. He, therefore, prays that the orders dated 27.11.2017 and 05.04.2018 may be quashed qua the petitioners.

Per contra, learned State counsel Mr. Tak submits that the State Government is well within its right to take a decision on distribution of water to the persons like petitioners while considering the demand of the water facilities for irrigation *vis-a-vis* drinking purposes. He submits that with the passage of time, the demand for drinking water has increased manifold and, therefore, State is under an obligation to give precedent to supply of water for drinking purposes over the supply of water for irrigation. Learned counsel submits that the State functionaries have taken the decision in larger public interest and, therefore, the orders dated 27.11.2017 and 05.04.2018 are just, proper and correct. Learned State counsel very fairly submits that the orders dated 27.11.2017 and 05.04.2018 have been passed without giving an opportunity of hearing to the petitioners. He candidly submits that since the orders impugned are not in line of the principles of natural justice, therefore, the State may be given an opportunity to pass fresh orders after giving a reasonable

opportunity of hearing to the petitioners and all other effected persons.

I have considered the submissions made at the Bar and have gone through the documents placed on record. The facts in the present case are admitted to the extent that petitioners were irrigating their fields since 1989 in pursuance of a decision taken by the State Government in the year 1982 and the water being provided through siphons. The fact of the matter that petitioners are irrigating their fields through siphons system and the water being provided from the Rajasthan Canal is not disputed.

Learned counsel for the parties are also in agreement that in the litigation preferred before this court, the directions were issued to the respective parties to present their cases before the Executive Engineer and other State functionaries showing their bonafide need to provide the water facilities. The decision of the Executive Engineer/ Superintending Engineer were assailed before this court and the judgments were pronounced.

Taking into consideration the background of these cases, the admitted position which emerges clearly shows that petitioners are irrigating their fields through siphons for more than 35 years. A bare perusal of the orders dated 27.11.2017 and 05.04.2018 show that no opportunity of hearing was granted to the petitioners before passing these orders and straightaway the siphons facilities enjoyed by the petitioners were ordered to be disconnected. In the considered opinion of this court, the action taken by the respondents authorities is in gross violation of the principles of natural justice as no opportunity of hearing has been afforded before passing the orders which are having civil and evil

consequences, and, therefore, the orders are not sustainable in the eye of the law.

In view of the discussions made above, the writ petitions are allowed and the impugned orders dated 27.11.2017 and 05.04.2018 qua the petitioners are quashed and set aside.

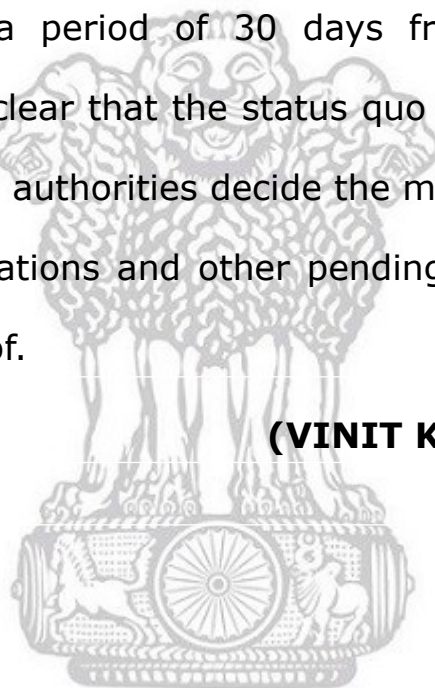
It is made clear that the State Government will be free to give a notice and after giving reasonable opportunity of hearing to the petitioners, pass a fresh order if they so desire.

In the event of passing an order against the petitioners discontinuing the water facilities through siphons, the State authorities will not straightaway disconnect the water facilities of the petitioners for a period of 30 days from the date of its decision. It is made clear that the status quo as exists today shall be maintained till the authorities decide the matter.

The stay applications and other pending applications, if any also stand disposed of.

(VINIT KUMAR MATHUR),J

20-SanjayS/Kashish-



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