

Case Note: Case discussing the obligation of the government to provide drinking water.

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HIGH COURT OF KERALA

2007(1)KLT368

W.P.(C) No. 16681 of 2006

Decision of 04 December 2006

Shajimon Joseph v. State of Kerala

Hon'ble Judges: V.K. Bali, C.J. and S. Siri Jagan, J.

JUDGMENT

S. Siri Jagan, J.

1. Kerala is widely known all over the world as a land of backwaters. In fact, the backwaters are important tourist attraction in Kerala. Alappuzha, one of the districts of Kerala, is also rich in that sense, since the district has backwaters in abundance. However, Alappuzha is a place which makes the old saying "water, water everywhere, but not a drop to drink", true to its real sense. In spite of water in such abundance all over the district, the inhabitants of Alappuzha do not get clean drinking water, despite the water supply system in existence operated by the Kerala Water Authority. The water which comes through the taps of the Kerala Water Authority at Alappuzha is so rich in all kinds of organic and inorganic impurities that no person who values his health would dare to drink the same. But for the paucity of adequate potable drinking water, we feel that the influx of tourists to Alappuzha would have been much greater than what is presently obtaining. This situation has been continuing for several decades. In spite of the fact that from the very inception of the Kerala State in 1956, very eminent political leaders representing Alappuzha had become ministers of the State, nobody could or seriously cared to find out a permanent solution for this drinking water problem of the people of Alappuzha. The same continues unabated even now. The people of Alappuzha go on suffering this misery while they go on paying for the dirty water which comes through the water supply system given by the Kerala Water Authority. It is in the above backdrop that two residents of Alappuzha have approached this Court with this Writ Petition with very serious allegations against the Government and the Kerala Water Authority not only regarding the apathy of the Government and the Water Authority towards their drinking water problem, but also complaining of corruption in the matter of putting into execution a project for supply of clean drinking water to the people of Alappuzha, which was envisaged as early as in the year 2000.

2. Kerala Water Authority was constituted by the Government of Kerala under Section 3 of the Kerala Water Supply and Sewerages Act, 1986 as an autonomous body under the direct control and supervision of the Government for the development and regulation of water supply and waste water collection and disposal in the State of Kerala and for matters connected therewith. A scheme known as "Alappuzha Water Supply Scheme" was envisaged by the Kerala Water Authority to cater to the drinking water needs of the people of the entire Alappuzha Municipality and the neighbouring eight Panchayat areas. Although the scheme was envisaged for immediate implementation, it is a sad fact that nothing concrete has happened yet from the side of the Water Authority and the Government who are to implement the project. It is stated that the Kerala Water Authority had conducted detailed scientific studies for two years in 2001 and 2002 and originally selected an intake water well site or collection center for the project at Kuriath kadavu in the banks of Pamba river. Later on, that site was abandoned as unworkable. Thereafter, a site at a place called 'Veeyapuram' was selected, after prolonged study and investigation. The said place is stated to be a river bed having water in abundance as three major rivers of Kerala, namely, Pamba river, Manimala river and Achankovil river converges at Veeyapuram. Originally, the scheme was envisaged as a collection center at Veeyapuram with an efficient water distribution system using M.S. Steel pipes which are available for supply from the Steel Authority of India which is a Central Government concern and in fact a notification inviting the tenders for the project was issued as Ext. P4. The petitioners allege that at this point of time, there was a conspiracy among the powers that be with the officers of the Water Authority, politicians and suppliers of pipes which led to a change in the scheme of things by which a decision was taken to substitute M.S. steel pipes with GRP pipes which, according to the petitioners, is below standard in terms of quality, which would, in future, cause recurring problems to the water supply system unlike M.S steel pipes. They would also submit that these GRP pipes are supplied by persons outside the State and for replacement of such pipes, in case of emergency repairs, the Water Authority would have to wait until these persons supply the GRP pipes from outside the State whereas if M.S. steel pipes are used, the dependable Steel Authority of India would be able to supply the same within no time as they have sufficient outlets in the State of Kerala. In order to execute this conspiracy into action, the Water Authority suddenly found it necessary to shift the collection center from Veeyapuram to a place called 'Pannai kadavu' which is very near to the earlier abandoned collection center, namely, 'Kuriath kadavu'. It was also decided to use GRP pipes instead of M.S. steel pipes and with this intention, issued a fresh tender notification dated 15.11.2002, which is Ext. P5. According to the petitioners, the people of Alappuzha was totally against these manoeuvres of the Water Authority. Suits and petitions followed. In view of this position, 2nd and 3rd respondents found that it would not be a smooth going affair for their sinister plan and to save their face, they are stated to have adopted a method to delay and scuttle the implementation of the project and on the pretext of the existence of the civil suits, they are taking a benign attitude in the matter of implementation of the project itself. They have also allegedly brought in a new reason by obtaining a report that on 10 days, salinity was found in the water at Veeyapurpm site. Petitioners have given a lot of data in the Writ Petition as to why the action subsequent to Ext. P4 tender notification issued was totally against the interest of the State and the people of Alappuzha as is evidenced by the fact that the Writ Petition runs into 20 pages and they have also produced 18 Exhibits comprised

of about 80 pages. On the above allegations, the petitioners have approached this Court through this Public Interest Litigation seeking the following reliefs:

- i. Issue a writ in the nature of mandamus or such other appropriate writ or order or direction calling for the production of all the records and files relating to the Alappuzha Water Supply Scheme including the project reports as per Ext. P4 and P5 tender notifications, including the water analysis reports.
- ii. Command the 2nd and 3rd respondents to execute and complete the Alappuzha Water Supply Scheme as per the Ext. P4 tender notification dated 15.11.2002 within a time frame fixed by this Hon'ble Court or in the alternative to call for a new workable project report from the 2nd and 3rd respondents and this Hon'ble Court may further be pleased to direct them to complete the full implementation of the scheme within such period as the Court may fix.
- iii. To call for the records in the suit OS No. 704/05 on the files of the Munsiffs Court Alappuzha and pass appropriate orders and directions thereon, in the light of the findings of this Hon'ble Court in this Writ Petition.
- iv. To grant such other reliefs that are found just and proper to be granted in the facts and circumstances of the case or as may be prayed for during the cause of the above Writ Petition.

3. Counter affidavit has been filed on behalf of respondents 2 and 3 who are the Kerala Water Authority and the Superintending Engineer of Kerala Water Authority, PH Circle, Kottayam. We are surprised to find that in spite of the very serious allegations raised by the petitioners in the Writ Petition, which certainly amount, if not to allegations of corruption, to allegations of improper motive against the officers of the Kerala Water Authority as also others in the Government connected with that project, in the counter affidavit, there is no specific denial of these allegations. While admitting that the Investigation Planning and Design Wing of the Kerala Water Authority has prepared the project report of the Water Supply Scheme for Alappuzha and 8 adjoining panchayats with an estimate of Rs. 7783 lakhs during the year 2001, respondents 2 and 3, put the blame on the Government stating that it is because the Government refused to give guarantee for the HUDCO loan citing financial constraints, that the project did not take off. They would submit that the Kerala Water Authority put forward this scheme for financial assistance from HUDCO to the Government and administrative, sanction and technical sanction in accordance with the norms of HUDCO were duly issued. HUDCO considered the proposal for loan assistance, but insisted on Government guarantee for sanctioning the loan. Since the Government guarantee was not sanctioned, the HUDCO also did not sanction loan for the scheme. Although the tenders which were processed and placed before the Board of the Water Authority on 30/03/2004, the Board vide Ext. R2 resolution No. 256 dated 30/03/2004, decided to cancel the tenders and rearrange the works only after getting confirmation of funds for the scheme. During the review meeting held by the Minister of Water Resources at Alappuzha, it was decided to prepare a revised proposal for the scheme. According to respondents 2 and 3, as per the said resolution, Exts. P4 and P5 are not maintainable. Although they tried to justify their selection of the new source of intake of water, absolutely no technical data have been supplied in

the counter affidavit in spite of the specific allegations raised by the petitioners in the Writ Petition, even though there is a vague explanation that downstream, river Pamba is subject to saline intrusion and the extent is increasing progressively and therefore upstream of river Pamba was considered as the ideal source of intake of water. They did not even refer to Veeyapuram or the reasons for rejecting Veeyapuram as the source of intake of water for distribution. We are disturbed to see that in respect of the very serious allegations raised by the petitioners, respondents 2 and 3 have taken the matter very lightly and filed a vague counter affidavit which does not even try to controvert the serious allegations of mala fides, if not corruption, against the officers of the Water Authority and the powers-that-be.

4. We are more distressed to find that neither the 1st respondent-State of Kerala, nor the Alappuzha Municipality, including the concerned block panchayat have not cared to respond to the Writ Petition. We find from Ext. P20 photographs that the Kerala Water Authority had put up a huge plaque showing the foundation stone laid by the then Chief Minister, on 30.8.2002 with the "HUDCO aided augmentation water supply scheme to Alappuzha Municipality and adjoining villages - Phase I" inscribed thereon. The plaque contains the names of the Minister of Water Resources, Member of Parliament of Alappuzha, four MLAs, District Panchayat President, Alappuzha and Chairperson of Alappuzha Municipality, in addition to the Managing Director of the Kerala Water Authority. We wonder whether these projects are intended only for inscription of names of these political personalities in the foundation stone for posterity. We had, sometime back, in our decision in *Vishala Kochi Kudivella Samrakshana Samithi v. State of Kerala*, reminded the Government of the responsibility of the Government in the matter of supply of drinking water to the citizens. We would quote the relevant passage from the same herein:

3. Water is one of the primary needs of man, second only to air. Water is in fact the elixir of life. Any Government whether proletarian or bourgeois and certainly a Welfare State committed to the cause of the common man, is bound to provide drinking water to the public which should be the foremost duty of any Government. When considering the priorities of a Government, supply of drinking water should be on the top of the list. However, for the past more than three decades, successive Governments who have ruled this State have given scant attention to the need for potable drinking water of the residents of West Kochi. This is indeed a callous and deplorable attitude of the Government, which needs to be deprecated in very strong terms. We have no hesitation to hold that failure of the State to provide safe drinking water to the citizens in adequate quantities would amount to violation of the fundamental right to life enshrined in Article 21 of the Constitution of India and would be a violation of human rights. Therefore, every Government, which has it priorities right, should give foremost importance to providing safe drinking water even at the cost of other development programmes. Nothing shall stand in its way whether it is lack of funds or other infrastructure. Ways and means have to be found out at all costs with utmost expediency instead of restricting action in that regard to mere lip service. The Government having failed in that respect for the past three decades, the need of the hour is to issue urgent and definite orders to the respondents in this regard.

In fact in that case, we had directed the State Government to complete all steps necessary for supplying drinking water to the people of the West Kochi within six

months. We gave categorical direction that on completion of six months, the people of West Kochi should be getting potable water in sufficient quantities through an efficient water supply system without fail. In spite of the fact that the same was the bounden constitutional duty of the Government to provide drinking water to the citizens of the State, the Government as well as the Kerala Water Authority had the temerity to file review petitions against the judgment challenging the competence of this Court to issue such peremptory directions. When we expressed our unhappiness over the attitude of the Government and the Water Authority* they themselves submitted that the review petitions may be treated as applications for extension of time to comply with the directions which we had allowed and further time was granted.

5. In spite of the above direction and the experience, we are sorry to say that the present Government also continues the apathy towards the drinking water problems of the people of Kerala. This Government, controlled by a political party which professes their commitment to the cause of socialism and promises a welfare State to the people, does not consider supply of drinking water to the public as their first priority, it seems. Because of this, if one says that the so called commitment of the Government to socialism and welfare State is mere lip service to the society, one cannot find fault with such criticism, if the attitude of the Government towards the drinking water problem of the people continues to be such. As we have said in our above said judgment, water is one of the primary needs of man, second only to air. Any Government which is interested in the welfare of the people should consider finding of solutions to drinking water problems of the people as their first priority, above all other needs of the State. We are sorry to find that by not even filing a counter affidavit to this Writ Petition which was filed as early as on 23.6.2006, the Government has not only turned a deaf ear, but also a blind eye towards this drinking water problem of the people of Alappuzha, which they are suffering from, for the last several decades. We once again take this opportunity to remind the Government of their priority in governance as stated above. Of course, it would be easy for the Government to just state that they have constituted the Kerala Water Authority under the Kerala Water Supply and Sewerage Act, 1986 and clothed them with enough powers to do whatever is necessary for supplying drinking water to the people of Kerala. But the 1st respondent State forgets the fact that what the Water Authority is expected to do is the obligations of the State Government itself. By constituting the Water Authority, the responsibility of the State to supply clean drinking water to the people of Kerala does not end there, since the Water Authority cannot on its own without sufficient funds to carry out that obligation. It has to come from the Government to do what is needed for finding funds for the projects in such cases. In this connection, we would bring to the attention of the Government, Article 47 of the Constitution of India which reads thus:

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Besides, the right to have clean drinking water supplied in sufficient quantities also forms part of the right to life guaranteed under Article 21 of the Constitution of India to citizens. Further, under Section 55, in discharge of its functions, the Water Authority shall be guided by the directions of questions of policy as may be given to the Government. Under Section 56, the Authority is expected to file annual reports, statistics and returns to the Government. As such, the responsibility of the Government is greater than that of the Kerala Water Authority to take such measures as are necessary for ensuring that the people of Kerala get pure drinking water in sufficient quantities either through Kerala Water Authority or through the local authorities or by itself. One cannot emphasise this responsibility of the Government in a better manner than as stated above. While we remind the Government of their responsibilities as above, we make it clear that it is our duty to see that the Government discharges its bounden constitutional duties without delay. In this connection we also note that in the budget estimate for 2003-04 and 2005-2006 an amount of Rs. 7783.28 lakhs has been earmarked for Alappuzha Water Supply Scheme.

6. Under Section 57 of the Kerala Water Supply & Sewerage Act, the local bodies also have duties. They are bound to render such help and assistance and furnish such information to the Authority and shall make available for inspection and examination such records, maps, plans and other documents as it may require to discharge its functions under this Act. Under Section 57(2) the Government also has retained with it the power to give any local body such directions as may be necessary or expedient for enabling the authority to perform his functions under the Act and the local body is bound to comply with such directions. In addition to the above, Chapter XVI of the Kerala Municipality Act makes it abundantly clear that it is also the duty of the Municipality to supply clean drinking water to the people of the Municipality Section 315B specifically lays down thus:

315B. Power of Municipalities to prepare and implement schemes with regard to water supply and sewerage.-

(1) Notwithstanding anything contained in the Kerala Water Supply and Sewerage Act, 1986 (14 of 1986) or on any other law, each Municipality have the power and right to prepare and implement the water supply scheme or the sewerage scheme within its Municipal area.

(2) The Municipality which prepare and implement the water supply scheme and drainage scheme under Sub-section (1) may realise water charge and service charge for sewerage from the beneficiaries in the manner as prescribed.

As such, it is very clear that the local bodies also have legal duties under law in the matter of supply of drinking water to the people of the Municipality spite of that, the 4th respondent-Alappuzha Municipality and the 5th respondent-Block panchayat have not even responded, to this Writ Petition which espouses a just and long pending but urgent cause of a section of people of Kerala who have been suffering for the last several decades. We wonder, why these authorities are so insensitive to the just cause of the people whom they govern. We feel that they should be ashamed of their callous attitude towards this problem.

7. Of course, this Court, with its limited technical knowledge as to the proper selection of the source of intake of water for the supply system cannot say as to whether the Veeyapuram site or the Pannaikkadavu is the most suitable for the project. But we are distressed by the fact that in spite of the petitioners having, with whatever material they have, tried to project at least an argument that in the scheme of things Veeyapuram site would be the most suitable one for the project and it is because of mala fides on the part of the powers-that-be that the same has been discarded, neither the Water Authority nor the State has even attempted to controvert the same with any material whatsoever before us. Normally in the absence of any specific denial of such allegations made in the Writ Petition, in their counter affidavit by the Water Authority, we should assume the same to be true. But since the petitioners themselves are not technically equipped to convince us about the suitability of the site of water intake, we cannot go by their version alone in the matter of selection of site, for fear of overindulgence without expertise.

8. It is also distressing to note that in spite of specific allegation in the Writ Petition that with mala fide intention respondents 2 and 3 are changing GRP pipes by M.S. Steel pipes for use in the water supply system, that too, giving sufficient data showing the comparative qualities of various pipes, in the counter affidavit there is absolutely no answer to the same. From the averments in the Writ Petition which is not controverted in the counter affidavit we also feel that ordinarily M.S. Steel pipes should be preferred to GRP pipes in the scheme of things particularly because its main supplier is a Government owned institution which has sufficient outlets in Kerala for supplying the same at short notice. We also note the contention of the petitioner that the Water Authority already had bad experience with GRP pipes when they were used in the water supply system in Kochi.

9. In the above circumstances, we issue the following directions to the Kerala Water Authority and the Government:

(1) The Water Authority shall once again make a detailed study of whatever sites that are available for water intake including Veeyapuram site and with the help of scientific data so collected take a final decision on the site to be selected for water intake for the Alappuzha Water Supply project. This shall be done within one month from the date of receipt of a copy of this judgment. Thereafter proceedings for finalisation of tender for the project shall be drawn up. While doing so, the Water Authority shall address itself to the question as to whether M.S. steel pipes should be used in the water supply system or GRP pipes, taking into account the specific averments made by the petitioners in the Writ Petition and if the averments in the Writ Petition are true M.S. steel pipes shall be preferred to GRP pipes. Tender proceedings shall be completed within a further period of one month from the date of finalisation of the water intake site as directed above.

(2) On finalising the tender proceedings, the Government of Kerala shall ensure that the Water Authority gets finance necessary for implementing the project either by providing guarantee for HUDCO loan or by providing finance from other sources or by themselves. Whatever is necessary for providing adequate funds for enabling the Water Authority to implement the project shall be done within 15 days from the date of finalisation of the tender proceedings. However, the Government shall not wait till the finalisation offender to start finding ways and means to get at the resources.

Within two years thereafter, the entire project for supplying drinking water to the people of Alappuzha Municipality and the surrounding 8 panchayats shall be completed and it must be ensured that the people of these localities get clean drinking water in sufficient quantities through an efficient water supply system without fail, within the above said period.

10. We also take this opportunity to remind the officers of the Water Authority of Section 30 of the Kerala Water Supply and Sewerage Act which reads thus:

30. Surcharge.-

(1) The Chairman or the Managing Director or any other member, officer or employee of the Authority shall be liable to surcharge for the loss, waste or misapplication of any money or property of the Authority if such loss, waste, or mis-application is a direct consequence of his neglect or mis-conduct while acting as such Chairman or Managing Director or other member or officer or employee.

(2) Procedure of surcharge under Sub-section (1) shall be such as may be prescribed.

(3) Any amount found due from any person as surcharge under Sub-section (c) as a result of proceedings for surcharge shall be recoverable as arrears of land revenue,

(4) Nothing in Sub-section (3) shall prevent the Authority from deducting any amount referred to therein from any sum payable by the Authority on account of remuneration or otherwise to such Chairman or Managing Director or other member, officer or employee.

We make it clear that although we are leaving the expert decisions to be made by the Water Authority as per our directions, if their decisions prove to cause any damage or loss, proving the petitioners' allegations correct, it would be open to the petitioners or other persons of the affected area to bring this fact to the attention of this Court so as to see that appropriate action under Section 30 as above is initiated against the individual officers responsible for the same. This observation we are constrained to make since the Respondents 2 and 3 have not found it necessary to controvert the specific allegations of mala fides made against them in the Writ Petition.

The Writ Petition is disposed of as above.

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