

(2012) 02 MAD CK 0171

In the Madras High Court

Case No : Writ Appeal No. 938 of 2003 with WAMP. No. 1153 of 2003

Akshay J. Mehta and Others

APPELLANT

Vs

Madras Metro Water Supply and Sewerage Board,
Chintadripet, Madras-2 and The Accounts Officers, Area-1
Anna Poonga - Madras Metro Water Supply and Sewerage
Board, M.C. Road, Madras-21

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Boards Water Supply Charges (Levy and Collection) Regulations, 1982 — Regulation 13, 15, 2(4), 3

Citation : (2012) 2 CTC 54

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : N.G.R. Prasad for M/s. Row and Reddy, for the Appellant; B. Mani for respondents in for R2 and R3 and Mrs. Malarvizhi Udaykumar, Spl. G.P. for R1 in W.A., for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The question involved in these matters is: "whether the Chennai Metropolitan Water Supply and Sewerage Board (erstwhile Madras Metro Water Supply and Sewerage Board) (hereinafter referred to as the Board) could demand water charges from all the owners/occupants of an apartment, even though the apartment has only a common sump and no individual water connections have either been applied for by such owners/occupants or provided by the Board?" The appellants/petitioners are the owners of 22 out of 34 flats at No.196, Govindappa Naicken Street. Their case is that there is one common sump from which the 12 residential flat owners/occupants alone are drawing metro water apart from two borewells and they are paying water charges for the water consumed by them. Even though these appellants/petitioners did not apply for any metro water connection and are also not drawing any water from the common sump of the apartments, the Board has slapped on them the notices,

dated 31.12.1993 demanding water charges at the rate of Rs.5050/= per shop or godown. The said notices were challenged by the appellants by filing W.P.No.13903 of 1994. Since a learned single Judge of this Court has dismissed the same, the appellants have come forward to prefer W.A.No.938 of 2003. As, it seems, the Board has placed reliance on G.O.Ms.No.618, dated 22.6.1988 for their claim, during the pendency of the W.A.No.938 of 2003, the appellants have come forward to file W.P.No.8172 of 2003, praying to declare Regulations 3, 13 and 15 of the Chennai Metropolitan Water Supply and Sewerage Board's Water Supply Charges (Levy and Collection) Regulations, 1982 (hereinafter referred to as the Regulations) and the consequential G.O.Ms.No.618, dated 22.6.1998 as illegal.

2. Since the issue involved in both the matters is one and the same, both these matters are taken up for common hearing and are being disposed of by this common judgment.

3. The term "consumer" has been defined under Regulation 2(4) of the Regulations as follows:

any person drawing water supply from the Board and or having sewerage connection provided by the Board or owner or occupier of any premises provided with a service connection by the Board.

4. Thus, this definition clause brings in three types of persons within the ambit of "consumer". (i) Any person drawing water supply from the Board (ii) any person having sewerage connection provided by the Board and (iii) owner or occupier of any premises provided with a service connection by the Board. This clause does not make any difference between the person drawing or not drawing water from the service connection provided by the Board to any premises. The owner or occupier of any premises provided with the service connection by the Board is a "consumer" within the meaning of this Regulation and drawing or not drawing from the connection provided for by the Board is immaterial. This being the position and further since any premises containing both commercial and residential flats, should be construed only as "commercial flat" under Regulation 3 (which provision of law has already been upheld by a Division Bench of this Court in W.A.No.147 of 1993, dated 19.8.1997), we cannot say illegal, the action of the Board in issuing impugned notices to the owners/occupiers of the flat to which Board has provided a water connection. In fact, this position has been upheld by a Division Bench of this Court in an unreported judgment dated 20.4.2007 made in W.A.No.498 of 2001. In this view of the matter, the argument advanced on the part of the appellants/petitioners that they have not applied for any water connection and that they are not drawing any water from the connection provided to the building and hence they cannot be called as "consumers", cannot be appreciated.

5. The learned counsel appearing for the appellants/petitioners placed reliance on a judgment of the Honourable Apex Court in Municipal Corporation of Greater

Bombay Vs. Nagpal Printing Mills and Anr,] to argue that the water charges are based on actual consumption, otherwise the demand of water charges without water connection and supply is totally unjustified.

6. In the said case before the Honourable Apex Court, the petitioner was a commercial consumer whose water consumption quota was fixed by the Municipal Corporation. When the Corporation, without supplying the said quota of water has charged the consumer with water charges to the full extent, which was not commensurate with the supply, the Honourable Apex Court has held that the Corporation was empowered to levy charge only in respect of water that has in fact been supplied to and consumed by the consumer and it is to be levied on the basis of measurement or estimated measurement.

7. The facts of the case on hand are quite different from the above case. In the case on hand, the case of the appellants/petitioners is that they have not applied for any water connection and that they are not consuming any water from the connection provided by the Board to the flat. Such a case of the appellants/petitioners squarely falls within Regulation 2(4) of the Regulations as they are the owners/occupants of a flat to which water connection has been provided by the Board, thus falling within the meaning and ambit of "consumer" and real consumption of water is quite immaterial for this purpose. Therefore, the above judgment of the Honourable Apex Court do not come to the rescue of the case of the petitioners/appellants. This being the position, we do not find any ground to cause our interference into the order passed by the learned single Judge and hence, W.A.No.938 of 2003 is liable only to be dismissed answering the legal question framed above, in favour of the Board and against the appellants/petitioners.

8. With regard to W.P.No.8172 of 2003, as has rightly been pointed out on the part of the respondents, it is to be mentioned that this writ petition is liable to be dismissed on the sole ground of delay and laches. The impugned G.O. has been issued on 22.6.1988, but this writ petition has been filed on 5.3.2003, that too after dismissal of the W.P.No.13903 of 1994 filed by these petitioners by the learned single Judge on 11.2.2002 and after filing of the W.A.No.938 of 2003 on 26.2.2003. However, to give a quietus to the issues raised on the part of the petitioners, we have dissected the materials placed on record.

9. As has already been stated supra, Regulation 3 has been upheld by a Division Bench of this Court in W.A.No.147 of 1993, dated 19.8.1997 and the same has attained finality long back. Therefore, the present challenge made to the very same Regulation by the petitioners in this writ petition is not maintainable.

10. With regard to the challenge of the petitioners to Regulation 13, it has been omitted by G.O.Ms.No.1377, dated 26.12.1986 i.e. well before the filing of this writ petition by the petitioners in the month of March, 2003. Therefore, it goes without saying that even without verifying as to whether a particular provision of law is in statutes or not, the petitioners have resorted to filing this writ petition.

11. With regard to the challenge made by the petitioners to Regulation 15, fixing scale of tariff for unmetered consumers, who are located in premises with a service connection from the Board, it is to be mentioned that as per Section 47(2) of the Act, the water meter has to be installed by the owner of the premises at his cost and since in the case on hand, no such water meters have been fixed by the owners/occupants of the flats, such classification of tariff cannot be said to be illegal. Further, the classification for various types of buildings has been arrived at by the Board in a judicious way, in the sense lower price for domestic residential and higher price for commercial usage, which cannot be called as an unreasonable one.

Thus, viewing from any angle, there is no merit in any of the contentions raised on the part of the petitioners in Writ Petition. Accordingly, W.P.No.8172 of 2003 is also liable to be dismissed.

In the result, both the Writ Appeal and the Writ Petition are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.