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**(2002) 03 MAD CK 0152**

**In the Madras High Court**

**Case No :** Writ Petition No. 22762 of 2001, WMP. No. 33492 of 2001 and  
WVMP.N o. 175 of 2002

A.L. Radhakrishnan

APPELLANT

Vs

The Chennai Metropolitan Water Supply and Sewerage Board

RESPONDENT

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**Date of Decision :** 28-03-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2002) 03 MAD CK 0152

**Hon'ble Judges :** P.K. Misra, J

**Bench :** Single Bench

**Advocate :** C. Harikrishnan, for H. Karthik Seshadri, for the Appellant; A.L. Somayaji, Senior Advocate for V. Perumal, for the Respondent

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**Judgement**

P.K. Misra, J.—The petitioner has challenged the validity of the order of transfer passed by the respondent in this writ petition.

2. The respondent, Chennai Metropolitan Water Supply and Sewerage Board (hereinafter referred as "the Board") has been constituted under the Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 (hereinafter referred as "the Act"). The petitioner joined the services under the respondent as an Assistant Engineer and has been subsequently promoted as Assistant Executive Engineer. The petitioner sought permission from the Board to register for Doctorate degree under Anna University and permission was granted and thereafter the petitioner has registered himself for the degree, duration of which is for a minimum period of 3 years. While the matter stood thus, the petitioner has been transferred by the respondent to Madurai by an order dated 15.11.2001. The aforesaid order of transfer is being challenged in the present writ petition.

3. In support of the writ petition, two contentions have been raised. It has been submitted that the Board which has been constituted under the Act has been established with a view to look after the question of water supply within the area

of Chennai and as such the Act does not contemplate transfer of any person to any area beyond Chennai area and as such transfer to Madurai is without jurisdiction. Secondly it is submitted albeit with less conviction that the application of the petitioner for undergoing Ph.D. degree course in Anna University, Chennai having been allowed by the respondent, the petitioner should not have been transferred before completion of the course.

4. A counter affidavit has been filed in support of the respondent. The contention of the petitioner to the effect that no person can be transferred beyond Chennai has been refuted. It has been further submitted that in the application seeking for permission, the petitioner himself had indicated that the course was for 4 to 6 months and moreover, he himself has given an undertaking that he shall not seek for transfer or cancellation of transfer for the purpose of pursuing his studies. It has been indicated that the petitioner has been transferred in the public interest to look after the work at Madurai which has been entrusted to the Board by the State Government.

5. Learned counsel for the petitioner has placed reliance upon several provisions of the Act and particularly on the preamble and contended that by necessary implication, the Act contemplates that the entire operation of the Board is confined to Chennai and as such the question of transfer to other places beyond Chennai Metropolitan area does not arise.

Preamble of the Act reads as follows :-

" An Act to provide for the constitution of the Chennai Metropolitan Water Supply and Sewerage Board, for exclusively attending to the growing needs of and for planned development and appropriate regulation of water supply and sewerage services in the Chennai Metropolitan Area with particular reference to the protection of public health and for all matters connected therewith or incidental thereto."

6. Section 2(h) defines "Chennai Metropolitan Area" means the Chennai Metropolitan Area as defined in clause (23-a) of section 2 of the Tamil Nadu Town and Country Planning Act, 1971.

Learned counsel has also placed reliance upon Section 5 of the Act which defines the functions of the Board.

Section 5(1) is extracted hereunder :

" 5. Functions of the Board. - (1) The Board shall perform all, or any of the following functions, namely:-

a. promoting or securing the planned development, efficient operation, maintenance and regulation of water supply and sewerage system in the Chennai Metropolitan Area;

b. preparing long term plans to meet the future requirements of water supply and sewerage in the Chennai Metropolitan Area, based on estimates of demand,

surveys on availabilities and usage of water and other relevant matters and periodically reviewing, revising and bringing up-to-date such plans;

c. undertaking developmental activities with a view to meet the future requirements of water supply and sewerage in the Chennai Metropolitan Area;

d. operating and maintaining the water supply and sewerage services in the Chennai Metropolitan Area to the best advantage of the inhabitants of that area;

e. such functions relating to water supply or sewerage as the Government may, by notification, entrust to the Board provided that such entrustment shall be with the Board's concurrence, if it does not relate to anything to be done in respect of the Chennai Metropolitan Area;

f. any other matter which is supplemental, incidental or consequential to any of the above functions; and

g. such other functions as may be entrusted to the Board by or under any other law for the time being in force."

Relying upon these provisions and particularly, preamble, it is contended that the area of work by the Board is confined to Chennai Metropolitan Area as defined u/s 2(h) of the Act and as such the question of transferring a person to a place beyond Chennai Metropolitan area would not arise.

7. The aforesaid submission though attractive on the face of it, does not bear closer scrutiny. Section 5(e) which has already been extracted clearly indicates that the government by notification may entrust functions relating to Water supply and sewerage. However, if such entrustment or function to water supply and sewerage does not relate to anything to be done in respect of Chennai Metropolitan area, such entrustment can be done only with the Board's concurrence. It is thus obvious that though ordinarily the situs of work is within Chennai Metropolitan Area, work beyond such area can be undertaken.

8. It has been brought to my notice by the learned Senior Advocate appearing on behalf of the respondent that in fact the Government has entrusted with the concurrence of the Board the working of Pollution Control Schemes in Madurai and Kumbakonam. Since this is a function entrusted to the Board u/s 5(e) of the Act, it is obvious that the Board has to post officers at such places and it cannot be said that the petitioner cannot be transferred to an area beyond Chennai Metropolitan area. First submission of the counsel appearing for the petitioner, therefore, fails.

9. Learned counsel appearing for the petitioner then submitted that since the petitioner was permitted to undergo studies for Ph.D., degree under Anna University, which is for a period of three years, the Board is estopped from transferring the petitioner till the completion of the course. It is true that permission has been granted by the respondent Board to the petitioner to undertake the study. However, the respondent has relied upon an undertaking

given by the petitioner at the time of making the application to the following effect :-

#### UNDERTAKING

1. My studies will not interfere with my normal working in case of emergency. I will work beyond normal hours of circumstances so want.
2. I will not request for a Transfer or request for cancellation of transfer solely because it interfere with my studies.
3. I will take leave to complete this studies if necessary.

It has been therefore submitted that there is no legal bar for the respondent to transfer the petitioner in the public interest and the question of estoppel does not arise.

10. In this connection it has been submitted by the learned Senior Counsel appearing for the respondent that transfer is a normal incident of service and in the absence of any legal embargo or mala fides, an order of transfer is not to be interfered by the High Court in exercise of jurisdiction under Article 226 of the Constitution. In support of such submission, the learned counsel has placed reliance upon several decisions of the Supreme Court such as State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, and AIR 1986 S.C. 1995 (B. VARADHA RAO Vs. STATE OF KARNATAKA)

11. There cannot be any quarrel with the proposition laid down in no uncertain terms by the Supreme Court in several cases. In the absence of any legal impediment and mala fides vitiating the order of transfer, an order of transfer is not open to challenge in a court of law. In the present case, there is no legal impediment for the transfer and the petitioner has not made out a case of factual mala fide vitiating the order of transfer. Learned counsel for the petitioner has however submitted that even though there is no factual mala fide involved, in can be said that there is "legal mala fide" in as much as the respondent has sought to transfer the petitioner even though the petitioner had been permitted to join the course. This submission is also untenable in view of the specific undertaking given by the petitioner. It may be that the area of operation of the Board is ordinarily confined to area coming with Chennai Metropolitan area and at the time of giving the undertaking, the petitioner had not contemplated that he may be transferred to any place beyond Chennai Metropolitan area. However, in view of the fact that work has been entrusted to the Board beyond the places of Chennai, there was and is no legal embargo in transferring the petitioner.

12. In course of hearing of the writ petition, the file relating to transfer has been produced. The file does not indicate that the authority transferring the petitioner was aware regarding the registration of the petitioner for undertaking Ph.D. course under Anna University. Thus, even if there is no legal bar for transferring the petitioner, the question as to whether he has to be transferred or he could have been permitted to continue in view of the fact that he himself has been

registered to Ph.D., degree has not been specifically considered by the Board.

13. For the aforesaid purpose, interest of justice would be served by permitting the petitioner to make a representation to the Board and if any such representation is filed, the same may be considered by the appropriate authorities within ten days thereafter notwithstanding the fact that an undertaking had been given by the petitioner. In the alternative, the petitioner may also seek for leave, if otherwise admissable. Such representation against the order of transfer or relating to leave may be considered by the appropriate authorities within a period of ten days from the date of receipt of such representation and the order of transfer may not be given effect to till such representation is considered provided such representation is made on or before 8th April 2002.

Subject to the aforesaid observation, the writ petition is disposed of without any order as to costs. Consequently, WMP.NO.33492 of 2001 and WVMP.No.175 of 2002 are closed.