

(2016) 02 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8203 of 2011

Aurobindo Pharma Limited

APPELLANT

Vs

Hyderabad Metropolitan Water Supply and Sewerage Board
and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Hyderabad Metropolitan Water Supply and Sewerage Board Act, 1989 — Section 2 (o),
Section 55

Citation : (2016) 4 ALT 47 : (2016) 4 AndhLD 443

Hon'ble Judges : M. Seetharama Murti, J.

Bench : Single Bench

Advocate : Vikram Poosarla, Advocate, for the Appellant; T. Sudhakar Reddy,
Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M. Seetharama Murti, J.—1. The relief sought for by the writ petitioner in this writ petition is to declare that the levy and the collection of the sewerage cess by the respondents in the monthly bill of the petitioners unit is illegal, arbitrary and contrary to the provisions of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 (the Act, for brevity).

2. I have heard the submissions of the learned counsel for the writ petitioner and the learned standing counsel appearing for the 1st respondent-HMWS & SB. I have perused the material record.

3. The learned counsel for the writ petitioner would submit that since the first respondent had not laid any sewerage line to the premises of the petitioners unit and as the petitioners premises is not directly connected to any sewerage system of the first respondent, the respondents are not entitled to collect the sewerage cess from the petitioner; the petitioner is carrying the effluents from its unit by tankers to Patancheru Enviro-Tech Limited (PETL, for brevity) for further

treatment and discharge of the effluents; the first respondent is collecting sewerage cess from PETL as per the terms of the Memorandum of Understanding dated 03.08.2002 between the PETL and the first respondent; under a separate agreement dated 11.10.2011 with PETL, the petitioner is paying charges that are being levied by PETL; therefore, consequential collection of sewerage cess from the petitioners unit by the respondents would amount to double taxation.

4. The learned standing counsel for the first respondent would submit that whether directly or indirectly, when the effluents are being let out into the sewerage lines of the 1st respondent Board, the Board is entitled to levy and collect the sewerage cess and that in the case on hand, the petitioner-company is carrying its effluents to PETL by tankers and that PETL is treating the effluents to certain level, and that such partly treated effluents are being let out by PETL into the sewerage system of the first respondent Board for carrying the same to the plant of the first respondent Board at Amberpet and that the PETL, before letting out the effluents into the main sewerage system of the respondent Board, would treat the effluents to bring down the contents of the effluents to some tolerable limits and that the plant of the first respondent Board at Amberpet is further treating the effluents so as to bring down the industrial effluents to the permissible limits and that the cess is being collected not only for using the sewerage lines but also for defraying the capital cost of the sewerage and sewerage treatment work being undertaken by the Board and for the operation and maintenance of the sewerage system from time to time and that therefore, the Board is justified in levying and collecting the sewerage cess on the petitioners unit. He would further submit that the subject matter of this writ petition is covered by an order dated 29.10.2003 passed by the Division Bench of this Court in W.P. No. 4917 of 2000 and batch and also the order dated 25.06.2014 of a learned Single Judge of this Court passed in W.P. No. 20117 of 2011 filed by the petitioner herein, wherein, the issue of non-laying of the sewerage line to the pharmaceutical units had also fallen for consideration.

5. I have gone through the pleadings, the additional and the reply pleadings of the writ petitioner and the counter affidavits of respondents 1 and 2. I have gone through the material record.

6. In W.P. No. 4917 of 2000, a Division Bench of this Court, while disposing of the said writ petition by order dated 29.10.2003, observed as follows:--

"The main contention of the petitioner is that there is no sewerage line of the Board connecting the petitioner premises to any sewerage system of the Board. No doubt, it is an admitted fact that there is no sewerage line of the Board working connecting the petitioners premises to the sewerage system of the Board, but the industrial effluents are being carried to J.E.T.L. and after treating the industrial effluents to certain extent, the effluents from J.E.T.L. are being carried to the sewerage treatment plant at Amberpet which is admittedly under the control of the Board. So, from J.E.T.L., to the Amberpet sewerage treatment plant, there is a 1000 diameter pipeline connecting these two treatment plants.

The former is being run by the Industries in and around the Jeedimetla Industrial Estate and the latter is being under the control of the Board. Though the petitioner is not directly using the sewerage line of the Board, but after immediately treated the effluents at J.E.T.L. the sewerage line of the Board is being used to bring the effluents to the permissible limits. The word Sewer is defined under Section 2 (o) of the Act, as meaning a closed conduct for carrying off sewage, sullage, rain water, polluted water, waste water or sub-soil water.

So, from the above definition it is clear that sewerage line between J.E.T.L. and Amberpet plant belongs to the Board is also Sewer within the meaning of the Act, because effluents of the petitioner company are being carried through this line.

It is an admitted fact that the industrial effluents of the petitioner were being carried to J.E.T.L. in closed tankers and after treatment there to some extent they are let into the Boards sewer. Therefore, the contention that the petitioner has not been provided with sewer line directly from the petitioners premises is only untenable and devoid of merits. If really the effluents of the petitioner-company are being treated at J.E.T.L. alone without further being treated at the Amberpet plant of the Board to bring the effluents within the permissible level, certainly the Board is not entitled to issue any demand notice to pay sewerage cess.

With regard to the double payment of sewerage cess if petitioner proves that he is paying sewerage cess to the J.E.T.L. and also to the Board then it can be said that it would be a double payment for the single act, which is not normally allowed under law. Therefore, it must be shown by the petitioner that he is paying sewerage cess to the J.E.T.L. as well as the Board for the industrial waste let out by the petitioner company.

A specific plea has been taken by the Board that the payments made by the petitioner-company to J.E.T.L. are for treating the effluents to bring it to acceptable quality for transmission through the Boards C.O.S. system but not for sewer purpose. Further there is no material filed by the petitioner company to show that the petitioner-company is paying sewerage cess to the J.E.T.L. or that the J.E.T.L. in turn is paying sewerage cess to the Board for using the pipe line from Jeedimetla to Amberpet. Even the letter dated 06.11.1998 addressed by the petitioner to the Board would indicate that the J.E.T.L. is charging them for treatment purpose. The treatment of industrial effluents to bring down the contents to some tolerable limits is one thing and transmission of those contents through the sewerage system of the Board is another thing. Therefore, whatever J.E.T.L. is charging the industrialists is only for treating the effluents to bring them to the acceptable quality for transmission through the sewerage system. Even assuming for a moment that the petitioner-company is paying some amounts to the J.E.T.L., it cannot be said that it is towards sewerage cess..

(Reproduced verbatim)"

7. In the aforementioned two decisions, this Court considered both the contentions of the writ petitioners. While distinguishing the reported cases on facts of the present case, the learned counsel for the writ petitioner would contend as follows: In the case on hand, it was shown that PETL is paying sewerage cess to the first respondent Board and that the writ petitioner is paying the charges to the PETL. However, in the aforementioned cited cases, which were earlier decided by a Division Bench and a learned Single Judge of this Court, the above-mentioned facts, which are established in the present case, were not established. Therefore, the cited decisions are distinguishable on the established facts of the present case. The payments that are being made by the petitioner to PETL, which are established, would absolve the petitioner of the liability to once again pay the sewerage cess to the first respondent Board. In the facts and circumstances of the present case, any further levy and collection of the sewerage cess by the Board would amount to double taxation. In regard to these submissions, what is to be noted is that admittedly, there is no sewerage line connecting the petitioners unit to the sewerage system of the Board and therefore, the effluents are being carried to PETL from the petitioners unit by tankers; however, after treating such effluents at PETL to a certain tolerable limits, such partly treated effluents are being let out by the PETL into the sewerage system of the Board and the same are being carried through the sewerage system of the first respondent Board to the sewerage plant of the first respondent Board at Amberpet, which is admittedly under the control of the Board. From PETL to the first respondents plant at Amberpet, there is a pipeline connecting these two treatment plants. The PETL is a central treatment plant being run by the industrialists or the industries in and around Patancheru and the plant at Amberpet is under the control of the first respondent Board. Though the petitioners unit is not directly using the sewerage line of the first respondent Board to carry the effluents of its unit, nevertheless, the effluents that are being carried to PETL from the petitioners unit by tankers are being treated partly to certain level at PETL; further, the sewerage line of the first respondent Board is being used to carry such partly treated effluents from PETL to the treatment plant of the 1st respondent Board at Amberpet. Therefore, the contention of the writ petitioner that the 1st respondent Board is not entitled to levy and collect the cess as the petitioners unit is not directly connected to any sewerage line/system of the Board appears to be untenable.

8. Further, the specific contention of the first respondent Board is that the payments that are being made by the petitioner company to PETL are for treating the effluents of the petitioners unit at PETL to bring them to acceptable quality for transmission through the first respondent Boards central sewerage system, but not for sewerage purpose. In the facts and circumstances of the case, the contention that PETL is collecting the charges towards the sewerage cess from the petitioners unit and that PETL in its turn is paying the sewerage cess to the first respondent Board is not a ground to hold that the 1st respondent Board is not entitled to levy and collect sewerage cess from the petitioners unit

as there is no material on record to accept the contention that the petitioner company is paying any amount towards sewerage cess to PETL. The copies of the two agreements filed by the petitioner are on record. One agreement dated 11.10.2011 was between PETL and the petitioner company and under it the scope of service to be provided by PETL is limited to treatment of liquid waste of the petitioners unit at the central effluent treatment plant. The other is a Memorandum of Understanding dated 03.08.2002 between the 1st respondent Board and PETL for treating the effluents to an acceptable quality for transmission through the first respondent Boards sewerage system to Amberpet plant from PETL. The material record would only indicate that the PETL is charging the petitioners unit for treatment of the effluents of its unit for the purpose of bringing down the effluents to certain tolerable limits before letting out the effluents into the central sewerage system of the Board for being carried to the Amberpet Plant of the Board. Therefore, the contention of the learned counsel for the petitioner that PETL is collecting certain amounts towards sewerage charges from the petitioners unit cannot be countenanced. The contention of the learned counsel for the petitioner based on the terms of the MOU to the effect that the rate of sewerage charges is subject to increase, time to time depending upon the maintenance expenditure incurred by the HMWS & SB in transmitting, treating and disposing the sewerage and other effluents collected within the sewerage system and also added into the sewerage system of HMWS & SB and that PETL, Patancheru agrees to accept the rate as such, either increased or varied time to time, finalized and informed by HMWS & SB and to pay the sewerage charges accordingly every month regularly to HMWS & SB is not going to advance the case of the writ petitioner for the reason that the petitioner is not contributing any amount towards the sewerage charges but is only paying to the PETL, as already noted, certain charges towards the treatment of the effluents by PETL to certain level at Patancheru plant. Further, a plain reading of the Section 55 of the Hyderabad Metropolitan Water Supply & Sewerage Act, 1989, which deals with the charges towards use of sewerage cess, would show that it contemplates that every occupier of both domestic and non domestic premises shall pay to the Board at the prescribed rate, the sewerage cess to defray the capital cost of sewerage and sewerage treatment works undertaken by the Board and the operation and maintenance of the sewerage system from time to time. The proviso to the said section also states that no such charges shall be levied on any premises situated in the areas which are not served by the sewerage system of the Board. In the case on hand, the PETL is treating the effluents of the petitioners unit to certain tolerable limits and is letting out such partly treated effluents into the sewerage system of the first respondent Board for further transmission to the Boards Amberpet plant for treating the same to permissible limits in accordance with the provisions of the Prevention and Control of Pollution Act, 1974. Therefore, it cannot be said that the petitioners unit is not being served with the sewerage system of the Board. Since the partly treated effluents of the petitioners unit are ultimately joining the sewerage system of the Board and are being eventually treated at the sewerage

treatment plant of the Board, though the effluents of the petitioners unit are not being directly let into the sewerage mains of the 1st respondent Board, the fact that the petitioners unit is being served by the sewerage system of the Board is undeniable. Therefore, the fact that the 1st respondent had not laid any sewerage line directly to the premises of the petitioners unit would not disable the first respondent Board from levying sewerage cess on the petitioner.

9. In W.P.no.20117 of 2011 earlier filed by this writ petitioner, this Court having followed the ratio in the order dated 29.10.2003 passed by the Division Bench of this Court in W.P. No. 4917 of 2000 and batch, had also held as follows:

"It is evident, therefore, that failure to lay a sewerage line would not disable the HMWS & SB from levying the sewerage cess on the petitioner herein."

10. On careful consideration of the ratio in the order of the Division Bench of this Court in the aforementioned writ petition and the order of the learned Single Judge in the earlier writ petition filed by the petitioner herein and also the facts of the case and on an analysis of the aforesaid facts and reasons, this Court finds that the two contentions now raised by the learned counsel for the petitioner are already examined and are negatived and that there are no new vital facts brought to the notice of this Court to examine afresh the said two contentions. Hence, this Court finds that the writ petition is liable for dismissal.

11. Before parting with the case, it is necessary to deal with one more contention of the learned Standing Counsel. It is urged that though the petitioner had filed a writ petition in W.P. No. 20117 of 2011 before this Court for the same relief and the said writ petition was dismissed by order dated 25.06.2014 following the ratio laid down by a Division Bench of this Court in W.P. No. 4917 of 2000 and batch, that fact was not mentioned in any of the pleadings including the additional and reply pleadings of the writ petitioner and that the said vital fact was thus suppressed and that, therefore, on that ground of suppression of material facts, this writ petition is liable for dismissal.

12. In reply, the learned counsel for the writ petitioner would submit that when similar sewerage cess was levied in April 2009 on a different unit of the petitioner company, they have approached this Court by way of W.P.no.1066 of 2009 challenging the said levy and that the pendency of the said writ petition and the interim direction that was granted in a miscellaneous petition filed in the said writ petition, are stated in the present writ petition and that the other writ petition in W.P. No. 20117 of 2011 was filed on 15.07.2011, i.e., after filing of the present writ petition in March 2011 and that the said writ petition was disposed of on 25.06.2014 and that by oversight or for some genuine reason, the dismissal of the other writ petition is not stated in the petitioners reply affidavit filed in February 2016 and that therefore, the same cannot be viewed as wanton suppression of a material fact. In the well considered view of this Court, no valid explanation is forthcoming from the petitioner for not mentioning about the dismissal of the W.P.no.20117 of 2011 in the reply affidavit filed in February 2016

and not bringing the said fact to the notice of this Court till the 1st respondent made a mention of the same by filing a copy of the order of this Court in the said writ petition. In the absence of valid explanation for not mentioning about the aforementioned facts, the present writ petition is liable to be dismissed as the remedy under Article 226 of the Constitution of India is an equitable one and suppression of a material fact disentitles the writ petitioner to such a relief.

13. Having regard to the reasons, this Court finds that the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.