**(2010) 09 MAD CK 0171**

**In the Madras High Court**

**Case No :** Writ Petition (MD) No. 6704 of 2009 and M.P. (MD) No. 2 of 2009

S. Pandiyan and Others — APPELLANT

Vs

The Commissioner Dindigul Municipality — RESPONDENT

**Date of Decision :** 22-09-2010

**Acts Referred:**

**Citation :** (2010) 09 MAD CK 0171

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** S. Ramasamy, for the Appellant; R. Janakiramulu, Special Government Pleader, for the Respondent

## Judgement

K. Chandru, J.—The petitioners are working as bill collectors in the respondent Dindigul Municipality and they have filed this writ petition challenging the order dated 02.04.2009 wherein by which the Commissioner of the respondent Municipality directed to recover the outstanding dues from the salary of the petitioners.

2. As per the impugned order, it was informed that since the limitation period has been increased to 12 years, the petitioners are liable to pay the outstanding dues which were not collected 12 years before. Challenging the same, the present writ petition has been filed.

3. In the writ petition, notice of motion was ordered and pending notice, interim stay of recovery was granted. On notice from this Court, a counter affidavit has been filed. It is the stand of the respondent that since the employees/petitioners are not performing their duty, they are bound to pay outstanding dues and hence the impugned order is valid. It is the petitioners who have performed all the collection of arrears of tax and therefore they are negligent and the arrears of tax can be recovered from them.

4. The issue raised in this writ petition is no longer res integra. In earlier occasion in Nagarajan V. v. Commissiner, Salem Municipality, Salem reported in

1988 WLR 38 this Court has held as follows;

The petitioner is a Bill Collector of the respondent. He is being penalised and is being called upon to pay the profession taxes, on the ground, he allowed their collection and recovery from the tax payers to become time-barred. The view of this Court with regard to liability of the Bill Collector of a Municipality to recoup it on the allegation of his failure to collect the taxes and allowing them to become time barred, has been expressed by Mohan, J., in A. Selvaraj and Ors. v. The Commissioner, Tiruvarur Municipality W. Ps. 3364 to 3369 of 1976, order dt. 23.11.1976, saying:

Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to the Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time-barred. The very elaborate procedure relating to collection of taxes mentioned in paragraph 65 of Municipal Volume I would clearly indicate that it is the duty of the Executive Officer to have periodic verification of the arrears. If he had failed to do the duty and thereby the arrears of tax had become time-barred for recovery, that liability cannot be passed on to the Bill Collector.

The above view has been followed by V. Ramaswami, J. as he then was, in S. Nagarajan v. Commissioner of Ramanathapuram Municipality W.P. 3221 of 1977, order dt. 29.2.1980 by Padmanabhan, J. in S. Nagarajan v. Commissioner, Ramanathapuram Municipality W.P. 3911 of 1977, order, dt. 28.4.1980 and by me in S. Srinivasan and Ors. v. The Special Officer, Tiruvallur Municipality W.P. Nos. 3421 to 3426 of 1978, order, dt. 4.2.1981. My attention has not been drawn to any pronouncement of this Court, taking a contrary view. The respondent in the present case seemed to have acted against the petitioner under the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, but withheld recovery process on account of stay by the Government. Now, by virtue of the Government vacating the stay, the process of recovery from the salary of the petitioner is being set in motion by the present order of the respondent. It is only in that context, a writ of Mandamus is being asked for by the petitioner, to forbear the respondent from recovering from the salary of the petitioner, the time-barred profession taxes. Basically, there are no grounds at all to pin down the liability on the petitioner, as is now being done. The proceedings taken in this behalf are the result of a misconception of the legal position. They have to stand ignored and cannot be implemented. Taking note of the ratio of this Court, I have to hold that the petitioner cannot be mulcted with liability on this account. In view of this, this writ petition so far as the petitioner is concerned, is allowed. No costs.

5. The similar issue came to be covered by this Court in M. Ramiah v. Commissioner, Tirunelveli Corporation and Anr. reported in 2008 ILM 1362, wherein this Court has held in paragraph 13 as follows;

 

13. In view of this fact, the impugned order will stand set aside and the first respondent corporation is directed to hold a proper enquiry and fix the liability to the extent the petitioner was responsible for the loss. While doing so, the first respondent corporation, against whom several Writ Petitions have been filed earlier on similar issues, wherein this Court had held that for the time barred tax dues or non-collection, responsibility cannot be fixed on the collecting officials and there must be further materials to prove that they were directly responsible for causing loss to the Corporation, shall take note of the same. After taking note of the circumstances, the first respondent should pass appropriate orders, after giving opportunity to the petitioner and fix the liability. If the petitioner is even thereafter aggrieved, it is open to him to work out his remedy in the manner known to law. The first respondent is hereby directed to undertake this exercise within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

6. In the light of the above, the writ petition stands allowed and the impugned order of recovery is set aside. In future, it is always open to the Municipality to fix the liability on the basis of negligence and take appropriate action. Consequently, connected miscellaneous petition is closed. No costs.

 