(2004) 01 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 7836 of 2003 and WPMP No. 10057 of 2003

Sadan Tools Room Pvt. Ltd. APPELLANT

Vs

Chennai Metropolitan Water Supply and Sewerage Board and Others RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:
Chennai Metropolitan Water Supply and Sewerage Board Water Tax and Sewerage Tax (Levy and Collection) Regulations, 1991 — Regulation 10

Citation : AIR 2005 Mad 29 : (2004) 1 CTC 608 : (2004) 2 LW 21 : (2004) WritLR 207

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : P.B. Balaji, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The petitioner seeks a writ of Certiorarified Mandamus to call for the records relating to the impugned demand dated

31.12.2002 served on 11.2.2003 on the file of the second respondent and consequent Distraint Notice No. 18235 dated 6.3.2003 on the file of

the third respondent, quash the same and to consequently forbear the respondents from taking any coercive steps against the petitioner.

2. The respondents viz., Chennai Metropolitan Water Supply and Sewerage Board by impugned proceedings dated 31.12.2002 raised a demand

for a sum of Rs. 98,596 i.e. Rs. 57,747 towards water and sewerage tax and Rs. 40,849 towards surcharge from the petitioner. The said Rs.

57,747 towards water and sewerage tax was demanded as per the following details:

Period Tax

Rs.

2/1988-1989 917.00

1/1992-1993 837.00

2/1992-1993 837.00

1/1993-1994 837.00

2/1993-1994 837.00

1/1994-1995 837.00

2/1994-1995 837.00

1/1995-1996 837.00

2/1995-1996 837.00

1/1996-1997 1754.00

2/1996-1997 1754.00

1/1997-1998 1754.00

2/1997-1998 1754.00

1/1998-1999 1754.00

2/1998-1999 4596.00

1/1999-2000 4596.00

2/1999-2000 4596.00

1/2000-2001 4596.00

2/2000-2001 4596.00

1/2001-2002 4596.00

2/2001-2002 4596.00

1/2002-2003 4596.00

2/2002-2003 4596.00

3. Mr. P.B. Balaji, learned counsel for the petitioner while fairly concedes as to the liability of the petitioner to pay the water and sewerage tax viz.,

Rs. 57747 for the periods referred to above, stoutly disputes the liability of the petitioner to pay the surcharge viz., Rs. 40,849 contending that the

question of paying surcharge would arise only when the petitioner fails to pay the water and sewerage tax within the time specified in the demand

notice dated 31.12.2002.

4. According to Mr. P.B. Balaji, learned counsel for the petitioner, the petitioner was served with a demand notice only on 31.12.2002 and

therefore, since the petitioner is willing and ready to pay the said sum of Rs. 57,747 demanded by notice dated 31.12.2002, the question of

demanding surcharge on the said water and sewerage tax does not arise.

5. Inter alia, the learned counsel for the petitioner placing reliance on Regulation 27(iv) of the Chennai Metropolitan Water Supply and Sewerage

Service Charges (Levy and Collection) Regulations, 1998, contends that the respondents are empowered to waive the surcharge in appropriate

cases viz., (a) during drought period, (b) during the period of no water supply and (c) defective water supply due to unforeseen circumstances.

Since the respondents in their counter affidavit have not disputed the averment made by the petitioner that there was no water supply to the

petitioner''s building during the periods referred to above, the petitioner is entitled to the waiver of the surcharge.

6. Unfortunately, there is no representation on behalf of the respondents Board. However, I am unable to accept the contention of Mr. P.B. Balaji

learned counsel for the petitioner that the liability of the petitioner to pay the surcharge starts only when the petitioner fails to pay the water and

sewerage tax after the receipt of the demand notice.

7. Regulation 10 of the Chennai Metropolitan Water Supply and Sewerage Boards Water Tax and Sewerage Tax (Levy and Collection)

Regulations, 1991, empowers the respondents Board to levy and collect the water and sewerage tax, which shall be 7% of the property tax

assessed by the Corporation of Chennai under the provisions of Chennai City Municipal (Corporation) Act, 1919, which, of course, is not

disputed by the learned counsel for the petitioner. Once the liability of the petitioner to pay the property tax after the same has been arrived at by

the Corporation of Chennai commences, a duty is cast upon the petitioner to pay the water and sewerage tax statutorily by operation of law. The

moment the petitioner fails to pay the water and sewerage tax, he is liable to pay surcharge on the said tax and the right vested on the respondents

Board to collect the surcharge simultaneously starts. It is only in this context the respondents Board levied surcharge for the belated payment of the

water and sewerage tax.

8. Even though an emphasis was made on behalf of the petitioner that the first limb of Regulation 10 of the said Regulations viz., the payment of

water and sewerage tax shall be made as specified in the demand notice, water and sewerage tax card or as intimated by the Board from time to

time, in my considered opinion, it would only mean that a duty is cast upon the petitioner to pay the amount as demanded because such a payment

is based on the statistics prescribed under the statute itself viz., 7% of the property tax and not for any other purpose particularly not for the

commencement of its liability. But, at the same time, even though the liability of the petitioner commences simultaneously at the moment the

Corporation of Chennai assesses property tax, the legislature is clear that such a liability is not an automatic one irrespective of the reasons for such

non payment of tax in time. For that reason, the respondents Board is empowered with power of waiver of such tax, but not water and sewerage

tax as provided under Regulation 27 of the said regulations, which reads as follows:

27(i) ***

(ii) ***

(iii) ***

(iv) Surcharge may be waived on the following reasons after proper examination and on approval of Competent Authority:

(a) During drought period.

(b) During the period of no water supply.

(c) Defective water supply due to unforeseen circumstances.

Therefore, under the genuine and bona fide circumstances of the case, which may differ from case to case, either with reference to the drought

period or period of no water supply or defective water supply due to unforeseen circumstances, as in the instant case that there was no water

supply during the relevant period to the petitioner''s premises, which is not disputed by the respondents Board in their counter affidavit, the

alternative contention of Mr. P.B. Balaji, learned counsel for the petitioner seeking waiver of the surcharge requiring the respondents to exercise

the power under Regulation 27(iv) of the said Regulations cannot be rejected. Hence, I am inclined to pass the following order:

(i) the petitioner shall pay a sum of Rs. 57,747 towards the water and sewerage tax demanded by notice dated 31.12.2002, of course after

deducting the payment already made by him pursuant to the orders of this Court dated 6.10.2003;

(ii) the petitioner is at liberty to make a representation to the first respondent to waive the surcharge explaining the reasons relied upon by the

petitioner within thirty days from the date of receipt of a copy of this order; and

(iii) on receipt of such representation seeking waiver of surcharge by the petitioner as permitted above, the respondents Board shall pass

appropriate orders on the same within sixty days from the date of receipt of a copy of the representation.

The writ petition is disposed of accordingly. No costs. Consequently, WPMP. No. 10057 of 2003 is closed.