

(1994) 03 MAD CK 0007
In the Madras High Court

Seshasayee Paper and Board Ltd.

APPELLANT

Vs

The Appellate Committee constituted under Section 13 of the Water (Prevention and Control of Pollution) Cess Act read with Rule 9 of the Water Prevention and Control of Pollution) Cess Rules, 1978 and Another

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Water (Prevention and Control of Pollution) Cess Rules, 1978 — Rule 4

Citation : (1994) 2 MLJ 394

Hon'ble Judges : Mishra, J

Bench : Division Bench

Judgement

Mishra, J.—The writ petitioner has questioned the validity of the levy imposed upon it by the respondents under the provisions of the Water

(Prevention and Control of Pollution) Cess Act, (36 of 1977). It has claimed that it is a scheduled industry, covered under item 11 of Schedule I to

the Act. The Government of Tamil Nadu is authorised u/s 4 of the Act to appoint and constitute a State Board with effect from such date, being a

date not later than six months of the commencement of the Act in the State, under such name as may be specified in the notification and the

Government has exercised the said power and constituted a Board originally known as Tamil Nadu Prevention and Control of Water Pollution

Board and now known as Tamil Nadu Pollution Control Board (represented by the second respondent herein), vide notification G.O.Ms. No.

340, Health and Family Welfare Department, dated 19.2.1982, to function with effect from 27.2.1982 onwards. According to the petitioner, as

required u/s 3 of the Act read with Section 5 thereof and Rule 4 of the Water (Prevention and Control of Pollution) Cess Rules, 1978, it has, as

requested by the Board so constituted by the State Government, been furnishing case returns regularly. Various provisions of the Act and the Rules

take care of the modalities and the extent of the realisation of the cess by prescribing inter alia that any person or local authority liable to pay cess

under the Act, can instal any plant for the treatment of sewage or trade effluent and claim rebate of 70% of the cess. The petitioner has installed, it

is so claimed, a huge effluent treatment plant at a cost of Rupees Fifty lakhs and meeting a cost of about Rs. 6,500 per day primarily as electricity

charges besides maintenance, repair and other expenses right from 1.1.1979 on it. According to the petitioner,

The power situation in the State of Tamil Nadu besides being capricious is dismal and it looks as though the petitioner-company is to be content

with high levels of power cut during all the 12 months of the year. In view of the uncertain power from the grid and for the purpose of continuous

running of the effluent treatment plant, the petitioner-company is compelled to connect the effluent treatment plant to turbo generator sets/diesel

generating sets whose power cost is much higher as it involves use of furnace oil for steam generation.

The effluent, treatment plant, however, has in all effectiveness, filtered and cleared the water discharge of the plants and machineries of the

petitioner, clean and clear, and it is used by the farmers to their utmost advantage for irrigating roughly about 500 acres of dry and barren lands,

which are otherwise exposed to the vagaries of monsoon. The water so treated and released by the petitioner-company substantially conforms to

I.S.I, specifications for irrigational requirements.

The petitioner has stated as follows:

It may not be out of plan to submit here that the superintending Engineer, Southern Minor Irrigation Circle, Ganjam, Berhampur, Orissa, who

undertook an extensive study of the lands irrigated by the treated effluent of the petitioner-company, and interviewed the agriculturists using the

effluent water for quite some time, submitted a report to the Orissa Government explaining how about 500 acres of dry and barren lands have

been brought under cultivation successfully de novo by using treated effluent discharge by the petitioner-company. It was personally observed by

him that the lands irrigated with the treated effluent of the petitioner-company

have given normal output per acre without any pest attack

whatsoever. In fact, he has recommended to the Orissa Government for utilisation of paper mill effluents from all paper mills in Orissa State for

irrigation purposes. He has also recommended that the treated effluent of the petitioner-company can be utilised for paddy cultivation as well as

cultivation of Cholan (Maiza), Sugarcane and Groundnut (copy enclosed-Annexure 2).

2. The Chief Water Analyst, Principal Public Health Laboratory, Coimbatore, attached to the Department of Public Health and Preventive

Medicine, collected samples of water taken from 14 wells in the effluent irrigated and adjoining areas for analysis and his concluding remarks,

according to the petitioner, were as follows:

As judged by the result of this examination, the effluent does not show any objectionable features for irrigation as judged by its mineral content, per

cent sodium, residual sodium carbonate, PH, BOD, Dil, Grease and BOD figures.

The soil characteristics and its suitability for agriculture has been reported by the Assistant Soil Chemist of Salem Soil Testing Laboratory, who has

found that there was no adverse effect on the soil characteristics after three years of cane cultivation irrigated with the petitioner's effluent. In long

and short the petitioner has claimed that the irrigation with the effluent water, released by it, has helped in the increase of the yield of sugarcane and

plant characteristics. The petition has taken full care that drinking water is not polluted, that effluent causes no health hazards, that there is no

pollution by it to deny to it any amount of rebate, as above, and thus it is entitled to claim the rebate, as above. When however, the petitioner

claimed the rebate of 70 per cent, as above, the second respondent assessed the petitioner, without accepting its claim for rebate, as follows:

Assessment From To Amount

No. & Date Rs.

WCA/CA-2/ER/ Sep. 81 Feb. 82

09105/85.1 Sep. 83

dt.13.6.1985 Dec. 83 May. 85 6,17,953.55.

Since the second respondent did not grant to the petitioner 70% rebate, as claimed by it, it preferred appeal u/s 13 of the Act, read with Rule 9

thereof before the first respondent, the Appellate Committee comprising of three members (1) the Chairman of Tamil Nadu Pollution Control

Board, (2) Deputy Secretary to Government, Environment Control Department, Government of Tamil Nadu and (3) Chief Inspector of Factories

(Health and Safety), Government of Tamil Nadu, Madras. The first respondent, however, rejected all the contentions raised on behalf of the

petitioner and declined to extend the benefit of the rebate to the petitioner. The petitioner has questioned the validity of the assessment without

granting to the petitioner the rebate and thus the validity of the assessment by the Second respondent as well as the order of the Appellate

Authority.

3. In a common return on behalf of the respondents in both the petitions, there are detailed averments, upon which it is asserted that in view of the

trade effluent discharge of the petitioner, the natural water of river cauvery is polluted and, the problems of pollution of rivers and streams have

assumed considerable importance and, therefore, the Central Government in order to prevent such water pollution has enacted the law, as above-

under which alone the second respondent has been constituted and the second-respondent has acted strictly in accordance with law. The

respondent's stand as to when rebate can be extended to Scheduled Industry is reflected in these words:

As mentioned above, u/s 17 of the Water Act, the effluent standards for treating effluents have been laid down by the Board and only with

reference to such standards the treatment plant can be considered successfully commissioned or not, which criteria would be the basis for fixing

such date for granting the rebate. It is evident from the records that the samples of effluents were drawn from the petitioner's unit on 14.10.1982

and 17.10.1983 and got analysed at King Institute at Guindy and Chief Water Analyst, Coimbatore. The analysis report indicates that the level of

bio-chemical oxygen demand (B.O.D.) is in excess of the tolerance limit laid down by the Board. As a matter of fact, the writ petitioner unit

themselves by their letter dated 27.6.1983 have admitted that the primary treatment adopted by the writ petitioner was not efficient for effective

reduction of the bio-chemical oxygen demand (B.O.D) and the fact that the then existing treatment system was not adequate was also mentioned in

the consent order dated 29.8.1985 issued by the Board. Therefore, the claim for rebate u/s 7 of the Cess Act, by the writ petitioner is not

justifiable under law.

4. The petitioner has stated in the petition that its contentions for the rebate were as follows;

(a) As the petitioner-company has installed an effluent treatment plant it is eligible for a rebate of 70 per cent, as provided u/s 7 of the Act.

(b) The rule making power provided under the Act merely authorises prescription of a data from which rebate could be allowed. It has conferred

no authority for prescribing other conditions like successful commissioning of the treatment plant, as done in Rule 6 of the Water (Prevention and

Control of Pollution) Cess Rules, 1978. Successful commissioning of a plant is a matter coming under the purview of the Water (Prevention and

Control of Pollution) Cess Act 36 of 1977 and hence no rule can be made under the Cess Act to achieve the purpose of another Act, and

(c) Cess can be levied by the second respondent from the date of the constitution of the respondent Board namely 27.2.1982 and not from an

earlier date as there was no machinery for submission of returns and levy and collection of Cess before 27.2.1982. The respondents, stand as to

the above contentions were as follows: The Act provides for the levy and collection of cess in order to achieve the objects of the main Act, that

is to say, Water Prevention and Control of Pollution) Act, 1974, although the Board was constituted with effect from 27.2.1982, the Water Act

was adopted and brought into force in the State of Tamil Nadu with effect from 31.8.1991 itself. The case can be levied even from 31.8.1981.

(1) The petitioner is entitled to for a rebate of the Cess only if and when it has installed a treatment plant, which has been commissioned

successfully and not otherwise and

(2) The rule making power is in no way extended beyond the purposes of either the Water Act or the Act (the Cess Act).

Learned Counsel for the parties strongly canvassed their respective arguments. Learned Counsel for the petitioner has placed a very strong

reliance on a judgment of the High Court of Kerala.

5. In the case of Gwalior Rayon Silk Mfg. (Wvg) Co. Ltd., Mavoor Vs. The Appellate Committee for Water Cess, Trivandrum and Others, , a

learned Judge of Kerala High Court has recorded his finding that the power conferred u/s 17(1) of the Cess Act is to make rules for the purpose

of that Act and not for the purposes of the Pollution Act. The purpose of the Pollution Act is to control Water Pollution, but the purpose of the

Cess Act is only to levy and collect cess, that is to say, a tax for a special administrative purpose. One cannot make rules under the Cess Act to

achieve the purpose of another Act. Without reference to the rules under the Cess Act, there are enough provisions in the Pollution Act for creating

machinery for the control of the water pollution; (2) The rule making authority cannot cut down its sweep by adding further conditions of its own.

The word ""installs"" in Section 7 cannot be restricted by the condition of the installation being a successful installation. The words ""successfully

commissioned"" and ""Functions Successfully"" in Rule 5 with which the Court was concerned, it observed, have to be read down so as to apply to

those cases where what is installed is no plant or where there is no installation worth the name; (3) such sanctions of the Pollution Act which have

to be achieved by it or the rules made thereunder, cannot be achieved by making use of the rule making power granted by another enactment for a

different purposes.

6. My exercise, however to demonstrate that there are enough errors of approach in the said judgment of learned Judge of Kerala Court is

reduced substantially because a Bench of the Court in the case of The Member-Secretary, Kerala State Board for Prevention and Control of

Water Pollution, Kawadiar, Trivandrum Vs. The Gwalior Rayon Silk Manufacturing (Weaving) Company Ltd., Kozhikode and Others, , has

reversed the said judgment and said that Rule 6 of the Cess Rules is fully within the rule making powers of the Cess Act, that the words

commissioned"" and ""so long as it functions successfully"" in the Rule which insist on the successful commissioning of the plant and its successful

functioning are not beyond the rule making powers of the Government and,

The Cess Act is dovetailed into the Pollution Act. The charging section itself explicitly states that the levy of the cess is for the purposes of the

Water (Prevention and Control of Pollution) Act, 1974 and utilisation there under. Therefore, it is impossible to understand or construe the Cess

Act, de hors the provisions of the pollution Act.

Accordingly the Division Bench has said that Section 6 of the Cess Act will enable an industry to earn a rebate if, and only if it subserves the purposes of the Pollution Act, namely, controlling the deterioration in the quality of the trade effluent. If the plant installed is one which gives a satisfactory treatment of the trade effluent, rebate could to be given to such an industrialist and so long as the treatment of the trade effluent is effective from the point of view of the Pollution Act. Therefore, rebate cannot be earned by the mere installation of some plant. Rebate will be due only if the plant is able to achieve the results. The period during which rebate could be claimed is only that period during which the trade gets properly and satisfactorily treated by the plant.

7. The sheet anchor thus of all the contentions raised in the writ petition is no longer available to the petitioner and it is not possible to hold in agreement with the submissions of the learned¹ counsel for the petitioner that successful commissioning of a plant is a matter coming under the purview of the Pollution Act and so no rule can be made under the Cess Act to achieve the purpose of another Act and that cess can be levied by the second respondent from the date of the constitution of the respondent/Board and not from an earlier date, i.e., the date on which the law authorised the respondents to collect cess. It is almost axiomatic that the two enactments are complimentary to each other and the later, i.e., Cess Act, has been introduced only for the purpose of facilitating and achieving the objects of the former, i.e., Pollution Act. It will be difficult, only because no proper mechanism has been created at a certain point of time, to say that the competent authority cannot realise cess unless mechanism for the same is created. Assuming that there cannot be any cess collection unless the mechanism is created, once the mechanism has been created it is open to it to commence realisation from a retrospective date.

8. Petitioner, however has some support to an argument that, in his case when a plant has been installed to treat the effluence and experts have opined that the same has worked effectively and since it has worked effectively, the petitioner/Industry is qualified for the rebate. A Division Bench judgment of the High Court in *Tata Iron and Steel Co. Ltd. Vs. The State of Bihar and Others*, to which I was a party, has considered in some detail various questions arising under the Cess Act and hold that the Cess

imposed under the Act is a compulsory exaction of money under statute by the public authority for public purposes and so it is a tax. The Bench has said. From the scheme of a Act as also from the contentions of the writ petitioners as referred to herein before, it is clear that industries may obtain rebate to the extent of 70% if they set up water treatment plant. Thus a cess is to be imposed mainly for the purpose of treating the effluent of the factory and no other sewages so that the common public may not have to use contaminated water or polluted water. It need not be stated that by doing so the state has undertaken a job to protect the people from health hazards. Further, besides payments of cess under the said Act, even in terms of the 1974 Act, the owners of the specified industries also the other local authorities are required to perform various functions, disobedience whereof is penal in nature. Thus, in substance, the said Act has been enacted for the purpose of controlling a part of the functions of the industries and other local authorities who discharge polluted water after use thereof.

After holding as above, the Division Bench has referred to various decisions on the subject, and referred to Section 7 of the Act read with Rule 6 of the said Rules. The Branch has further observed thus:

68. Section 7 of the Act read with Rule 6 of the said rules do not leave any doubt whatsoever that the Parliament in its wisdom intended to provide

some relief to the owner of an Industry who has installed a water treatment plant in their industries. In sense the said provisions are beneficent to

the owner of an industry. It is well known that while construing a beneficent legislation interpretation thereof must be done in such a manner which

advances the remedy and removes the evil. Reference in this connection may be made to the case of *Authorised Officer, Thanjavur and Another*

Vs. S. Naganatha Ayyar and Others, and *P. Rami Reddy and Others Vs. State of Andhra Pradesh and Others*, . In *Paradise Printers and Others*

Vs. Union Territory of Chandigarh and Others, the law has been laid down as follows:

The meaning to be given to a word depends upon the context in which it is used. The word takes the colour depending upon the context we must

ask what does the word meaning in its context? We must examine why the rule making authority has chosen that word. After examining the

purpose and scope of the rule, it must be given such meaning as to render the

rule workable in a fair manner. We must give that meaning which would promote the purpose and object of the rule. When there is a choice of meaning, there is a presumption that one which produces an unjust or inconvenient result was not intended.

In *Ram Chandra Singh Vs. State of Bihar and Others*, a Full Bench of this Court laid emphasis on looking to basic purpose and the larger scheme of the provisions while construing an enactment:

In *K.V. Gangopadhyaya v. Union of India* 1975 P.L.J.R. 418, the Supreme Court laid down the law as follows:

We listen largely to the language of the statute but where, as here, clearing up of marginal obscurity may make interpretation surer if light from

dependable sources were to beam in, the Court may seek such aid. What has been described as the sound system of construction, excluding all

but the language of text and the dictionary as the key, hardly holds the field specially if the enactment has a fiscal or other mission its surrounding

circumstances speak and its history unfolds the mischief to be remedied. The court, in its comity with the legislature, strives reasonably to give

meaningful life and avoid cadaveric consequence. We have set out the story of the rebirth, as it were, of the law of minor mineral royalty levy to

drive home the propriety of this method of approach. No doubt, there is some remissioners in the drawing up of what professes to be a validating

law and the neglected art of drafting bills is in part the reason for subtle length of submissions where better skill could have made the sense of the

statute lustrous and its validity above board. Informed by realistic idea of short falls in legislative drafting and of the social perspective of the statute

but guided primarily by what the Act has said explicitly or by necessary implication we will examine the meaning and its impact on counsel's

contentions.

69. It is also well known canon of interpretation of statutes that the Parliament intends to do justice and avoid injustice. Reference in this

connection may be made to *Ganesh Pd. Singh v. State of Bihar* 1977 B.B.C.J. 307 and *Mahadeo Oil Mills v. S.D.M. Araria* AIR 1976 Pat. 86

where the law has been stated as follows:

Without doing any violence to the express language of the statute, if it can be shown that the construction sought to be put by learned Counsel for

the respondents would result not only in palpable injustice, inconvenience and absolute hardship but also in absurdity, such a construction, if possible should be avoided.

70. Considering the provision of Section 7 of said Act and Rule 6 of the Rules, in my opinion, the petitioners would be entitled to get rebate to the extent water is treated in its treatment plant so long the same continues to function smoothly.

71. It is also useful to refer to the scheme of the said Act and the Rules framed there under relating to imposition of cess. Payment of Cess as seen herein before, is linked with the supply and/or consumption of water by the local authorities or by the industrialists for the purposes specified in Schedule 2 of the Act, in measurement of the water consumed is taken by the meter installed for the purpose. The standard of such meter and the places of such instalment are prescribed under the rules.

72. The consumer is required to file returns in prescribed form. Rule 4 of the 1978 Rules provide that every consumer shall furnish on or before the 5th day of every calendar month, to the assessing authority a return in Form I showing the quantity of water consumed in the previous month.

73. Form I appended to the said Rules provides for the return regarding water consumed during a particular month. One of the columns of the said Form I provides for figures to be supplied to the authorities under the said Act regarding quantity of water qualifying for rebate according to the assessee. The said form I further provides a remarks column wherein the assessee for the purpose of claiming rebate under column 7 to indicate therein analytical and other reports annexed to the return in support of this claim.

74. From the requirement of the law aforementioned it is clear that the assessee may claim rebate even if he is not in a position to treat the entire trade effluent or sewage in the water treatment plant installed in the premises of its work.

While recording my agreement with the above, which is to be found in the judgment of S.B. Sinha, J., I have in my separate judgment said as follows:

Brother Sinha, J. has concluded that from the requirement of law it is clear that the assessee may claim rebate even if he is not in a position to treat the entire trade effluent or sewage in the water treatment plant installed in the

premises of its work. The said conclusion alone shall make Section 7 of the impugned Act, and Rule 7 aforementioned reasonable. I fully concur with the conclusions recorded by Brother, Sinha, J. and accordingly allow the applications to the extent that the matter be remitted to the extent that the matter be remitted to the respondent No. 2 for a fresh decision in accordance with law without misdirecting himself with respect to grant of rebate to the petitioner. Impugned orders as contained in Annexures 2 and 3 are quashed.

9. Learned Counsel for the respondents has not been able to bring to my material to take a view other than one taken in the case of Tata Iron and Steel Co. Ltd. Vs. The State of Bihar and Others . The view of the said judgment alone, as has been noticed therein, will save Section 7 of the Act from being declared ultra vires. It will not lie in the mouth of the respondents to say that they shall realise a tax and shall not extend the rebate to a person who has contributed to the treatment of the effluents and by that method rendered the service as required by the statute to enable him to claim a rebate. It will be most unreasonable in my view to say that a person can claim rebate only when the treatment by the plant installed by him is successful, in the sense that no further treatment of the effluent is required at all, assigning to the word ""successful"" in such a situation will be a relative success and not an absolute} success.

10. For the reason that I have taken the view that while deciding whether the petitioner is entitled to a rebate or not, the respondents shall be obliged to determine the extent of the treatment provided by the plant installed by it and since no such determination is available, it is a fit case, in my opinion, to remit the whole matter to the second respondent for a fresh decision in accordance with law without misdirecting himself with respect to grant of rebate to the petitioner. Impugned orders for the said reasons, are quashed. The case is remitted for a re-hearing and disposal in accordance with law by the second respondent in the light of the observations made above. The writ petitions are, accordingly, allowed. There shall be no order as to costs.