

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 4th February, 2011.

+ **W.P.(C) 8711-15/2005 & CM No.8018/2005 & CM No.6522/2005**
(both for stay)

% **FEDERATION OF GROUP HOUSING SOCIETIES**
& ORS. **Petitioners**
Through: Mr. Pushkar Sood, Adv.

Versus

GOVT. OF NCT OF DELHI & ANR **Respondents**
Through: Ms. Shobhana Takiar, Adv.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner no.1 claiming to be a federation of 118 Cooperative Group Housing Societies located at Indraprastha Extension, Patparganj, Delhi and petitioners no.2 to 5 being some of the members of the petitioner

no.1 have filed this writ petition for quashing of the Circulars dated 28/29th January, 2005 and 7th April, 2005 of the respondent no.2 Delhi Jal Board (DJB) levying 'service charge' on the societies which are members of the petitioner no.1. The grievance of the petitioners is that the respondent DJB is seeking to recover, what was earlier called as 'access charge' and now called 'service charge' on the basis of number of dwelling units/flats in each Society, though a single bulk water supply connection is provided to each Society and not separate connections to each dwelling unit/flat in each Society. It is contended that each Society has itself made arrangements for storage of water from the single connection and for supply of water to each dwelling unit/flat.

2. Notice of the writ petition was issued and vide interim order dated 20th May, 2005 which continues to be in force, the respondent DJB was directed not to insist upon payment of such access/service charge in respect of each of the Societies, subject to payment of 50% of the amounts raised towards the said charges. Pleadings have been completed. The counsels for the parties have been heard.

3. The counsel for the petitioners has first invited attention to the Circular dated 28/29th January, 2005 with the subject “Revised Water Tariff in Delhi”. The revised water tariff consists of “fixed access charge” and “water use charges”; the fixed access charges are payable “by all registered consumers to meet the cost of access to the network, operation and maintenance”.

4. The counsel for the petitioners has contended that since the fixed access charges are payable by registered consumers only, the respondent DJB can at best claim access charges as provided for one single connection from each Society which has been provided a bulk supply connection and not access charges on the basis of number of dwelling units/flats in the Society. It is urged that the Circular aforesaid permits levy of access charges on registered consumer and levying access charges on per flat basis tantamounts to levying the same on each flat owner, who is not the registered consumer of respondent DJB and with whom DJB has no privity. Attention is also invited to Clauses 2.3 and 2.6 of the said Circular where also reference is made to “registered consumer” or to “per

connection” and it is contended that thus the Circular provides for fixed access charges against each connection or each consumer and in case of registered Society, the connection being single and the consumer being one, the fixed access charges would be of single unit only and not multiplied by the number of dwelling units/flats in the Society as is being demanded by the respondent DJB.

5. It is rather contended that in the Circular dated 28th /29th January, 2005, there is no provision for levying fixed access charges on Societies. It is shown that the Circular categorizes the premises into several categories and prescribes the rate of access charges for each category and the premises of the Societies do not fall in any of the categories and thus no access charges at all can be levied on premises of Societies.

6. The Circular dated 7th April, 2005 sought to modify/clarify the revised water tariff. It changed the nomenclature of fixed access charges to “service charges”. It also provides that service charges with regard to the bulk water connections including to Cooperative Group Housing Societies shall be levied for each of the constituent unit.

7. The counsel for the petitioners has contended that once the revised tariff referred to per consumer and per connection, the subsequent Circular could not alter the tariff by making the fixed access charges payable not per connection/ per consumer but per constituent unit of a single consumer. It is contended that the clarification/modification is in excess of the tariff and thus unsustainable.

8. The respondent DJB in its counter affidavit has pleaded:

(i) That DJB established under the Delhi Water Board Act, 1998, is discharging the functions not only of water supply but also sewerage and sewage disposal and drainage within the National Capital Territory of Delhi.

(ii) That over the years, there has been a substantial increase in the water treatment capacity with the setting up of new Water Treatment Plants, Booster Pumping Stations and commissioning of new tube wells; there has also been an increase in the capacity of sewage treatment with more Sewage Treatment Plants and Sewage

Pumping Stations are being constructed/commissioned as a measure of environment pollution control; that all this has increased the expenditure of DJB.

(iii) Attention is invited to Section 55 of the Act empowering the Board to, for the purposes of services rendered by it under the Act, levy fees, charges including development charges, rentals and collect deposits, interest etc. and providing for fixation of the said fee, charges, rentals etc. to ensure recovery of all costs of operation, maintenance, repayment of debt and return of not less than 3 % on net fixed assets; it is pleaded that the costs being paid to Bhagirathi Plant and to Bhakra Beas Management Board for raw water have increased over the years.

(iv) It is thus pleaded that all this has led to increase in the operational costs being incurred by the DJB.

(v) That in the context of bulk water supply as to Cooperative Group Housing Societies, the benefit of free supply of upto 6 kl per

month is extended to each dwelling unit in the Society and not per Society; it is thus contended that on the same parity the fixed access charges are also taken per the number of dwelling units in the Society and not per Society (I may mention that the counsel for the petitioners has contended that the petitioners are agreeable to the respondent DJB withdrawing the said benefit and giving benefit of 6 kl per connection per month and in which way the charges levied on the Society would be much less).

(vi) It is pleaded that the occupier of each dwelling unit of the Society is beneficiary of network and services being provided by the respondent DJB directly or indirectly.

(vii) That since the respondent DJB is also providing sewage disposal facilities and for which no separate bills are raised and the costs whereof are also included in the water bills only, the respondent DJB is justified in levying fixed access charges per dwelling unit since each of them contribute to the sewage.

9. Being of the opinion that judicial review in the matter of price/tariff fixation is limited (see *Jheel Kuranja Residents Welfare Association (Regd.) Vs. DDA* 115 (2004) DLT 491 relating to DJB only and *Rohtas Industries Ltd. Vs. Chairman, Bihar State Electricity Board* 1984 (Supp.) SCC 161 relating to tariff fixation), I have at the outset enquired from the counsels whether there is any machinery provided in the Act for fixation of tariff as in the case of electricity and for challenge thereto. The only provision shown is Section 55 (supra) which empowers the Board to fix the tariff. I however find that Section 8 of the Act provides for constitution of a Water Consultative Council, one of the functions whereof is to advise the DJB on matters pertaining to interests of consumers and which Council is to comprise *inter alia* of experts, representatives of consumer interests, employees of the government and of MCD and NDMC. The counsels are however not able to inform whether such Water Consultative Council has been constituted or not. It appears that the grievances of the consumer against the tariff are to be made before the said Water Consultative Council.

10. The counsel for the petitioners has however argued that he is not challenging the tariff but the working by the DJB of the Circular aforesaid and the tariff prescribed therein.

11. The question which thus arises is as to whether the Revised Tariff permits levy of access/service charges on premises of Society and if so, to what extent.

12. The Circular dated 28th /29th January, 2005 provides that the fixed access charges are payable by “all registered consumers”. There is nothing to show that any of the consumers were to be exempted from payment of fixed access charges. The Societies are admittedly consumer of DJB and there is even otherwise no reason to exclude the Societies from payment of fixed access charges. The categorizations of premises of consumers made for prescribing the rate of fixed water charges have to be thus read in the said light, i.e. with a view to find in which category, the Societies best fit and merely because there is no separate category of Societies cannot lead to the inference that the tariff does not provide for levy of fixed access charges on Societies. The contention of the petitioners that because a

specific category of CGH Societies is not included, such Societies are exempt from fixed access charges, ignores imposition of fixed access charges on all consumers and thus cannot be accepted.

13. The next question which arises is as to at what rate fixed access charges are leviable on Societies. The categorization in Circular dated 28th /29th January, 2005 is on the basis of size of the premises/dwelling unit to which connection is provided; separate provision is made for premises of other nature viz. Hostel, Charitable/ Educational Institutions etc. However, none of the said categories deals with single point bulk water supply intended for separate dwelling units, as is the case in the case of a Society. The only case of bulk supply dealt with in the said Circular is to MES and NDMC, supply to whom is on actual cost basis. It may be mentioned that the fixed access charges and the water use charges recovered from the other consumers are stated to be not representing the actual cost incurred by DJB in rendering the services and are stated to be much lower than the actual cost incurred.

14. In my opinion, out of the categories mentioned in Circular dated 28th /29th January, 2005, the category in which the Society falls is that of a bulk consumer of water; DJB was therefore entitled to, in accordance with clause 6.1 of the Circular, recover from the Societies the actual cost of water supplied by assessment of total expenditure including cost of depreciation and interest. DJB however opted to bill the Societies at the rates of consumption provided for other consumers and with fixed charges multiplied with the number of dwelling units/flats in the Society.

15. The Societies protested/represented thereagainst. In response thereto, in the subsequent Circular dated 7th April, 2005, a separate category for Societies was created with provision for fixed access charges on per dwelling unit/flat basis. In my opinion, the Societies will have to shell out much more for the water supplied, if made to pay on actual cost basis and are better off with payment as demanded.

16. In view of the subsequent Circular dated 7th April, 2005, the question of the claim of DJB being outside or contrary to Revised Tariff does not arise. In so far as the argument of petitioners of fixed access

charges being levied on the consumer and per connection are concerned, the said words have to be read in the context of the services being provided by the respondent DJB. The connection for a single dwelling unit cannot be compared to a connection to the Society having large number of dwelling units and no case of discrimination is made out. As aforesaid, the respondent DJB is not charging merely for water but also for sewage disposal and treatment. It cannot be said that the sewage outflow from a Cooperative Group Housing Society where more than 100 families are residing, would be comparable to the sewage disposal from a residential house where a single family is residing.

17. The counsel for the petitioners has relied on *Commissioner of Central Excise, Lucknow, U.P. Vs. Chhata Sugar Co. Ltd.* (2004) 3 SCC 466, para 27 to contend that there has to be an element of *quid pro quo* for imposition of fee. However, there are no pleadings to the effect that the amount being charged from the petitioners or the amount totally being realized by the respondent DJB from the city is in excess of the operational costs and 3% return on assets as provided in Section 55 (2) of the Act.

Rather, the said judgment supports the claim of DJB, of the fixed charges qua Society being more than qua a single dwelling unit/flat.

18. The counsel for the respondent DJB has also invited attention to Clause 3.5 of the Circular dated 28/29th January, 2005 which empowers the Director (Revenue) to classify premises not falling in any of the categories mentioned, depending upon the use/nature of the premises. She contends that since in the Circular no specific mention is made of premises of Cooperative Group Housing Societies, the Director (Revenue) of the respondent DJB was empowered under the said Clause to make a separate classification with respect thereto. However the said clause allows the Director of DJB to adjust the premises not classified into one of the categories and does not empower creation of a new classification. The said clause thus does not help DJB. However a new classification was created vide Circular dated 7th April, 2005 and which DJB was entitled to do.

19. The petitioners in the alternative have also claimed the relief of direction to DJB to provide separate connection to each dwelling unit/flat in the Society. It is pleaded that water supplied through single bulk

connection is not sufficient requiring Societies to spend money on drawing and distributing ground water also; if separate connections are provided, the Society will not have to spend money on ground water. It is also contended that if separate connection is provided the pipeline till each dwelling unit/flat shall be laid by the DJB and not by the Society as has presently been done. DJB in its counter affidavit has stated that presently it is not technically feasible to provide separate connections and the bulk supply is as per assessment of requirement depending upon dwelling units/flats in each Society.

20. I may at the outset state that a separate connection is no assurance of sufficiency of supply; cases of single dwelling unit/flat also making alternative arrangement are not unknown. I also do not find any merit in the contention that for separate connection pipeline till each dwelling unit/flat will have to be laid by DJB. Section 15(5) of the Act requires the agency carrying out multistoried construction to ensure provision of water supply through storage tanks, booster pumping station etc; the obligation of DJB is only to give water in the mains feeding the service pipe. The

Societies are thus not prejudiced in any manner. In view of the technical non-feasibility expressed and no ground for interference therewith in judicial review having been made out, the relief of granting separate connections cannot be granted.

21. There is thus no merit in the writ petition; the same is dismissed. The petitioners are granted three months time to pay the amounts payment whereof has remained stayed under interim orders of this Court, together with interest at the rate of 9% per annum from the date when the charges fell due and till the date of payment. Upon the failure of the petitioners or any of the Societies to so pay the said amount within three months, the respondent DJB shall be entitled to take action for disconnection of water supply and other coercive action as may be entitled to.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 04, 2011

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