

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.31322 OF 2012

ORDER

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The case of the petitioner is that it is a company registered under the Companies Act, 1956 situated at Chitkul, Patancheru Mandal, Medak District. The petitioner has applied for supply of water to the 1st respondent and the same was sanctioned. Pursuant to the same, the petitioner and the 1st respondent entered into an Agreement No.50 dated 23.04.2003 which provides for various terms and conditions of supply of water and levy of charges including that of sewerage cess etc. It is stated that as the 1st respondent has not installed any sewage lines for letting out the sewage or effluents from the petitioner's factory, it has installed sewage treatment plant (STP) with state of art technology and the entire effluent is treated at its plant and the resultant treated water is utilized by the petitioner's factory itself without letting to any of the sewage lines of the respondents herein. While so, the 2nd respondent issued letter dated 28.04.2009 stating that they decided to levy sewerage cess on certain types of consumers and sought for certain information. The petitioner replied to the same through its letter dated 02.07.2009 along with requisite material and details and requested for exemption of levying sewerage cess. Thereafter, another representation was also made on 17.04.2010 to the respondents clarifying that the petitioner is not liable to pay any sewerage cess. In spite of the same, the 2nd respondent issued a letter dated 02.05.2012 stating that the sewage treatment plant of the petitioner falls outside the GHMC area and therefore, the petitioner is liable to pay an amount of Rs.26,74,702.05 as sewerage cess and was asked to pay the said amount upto 30.04.2012, failing which the petitioner's water supply

would be disconnected. Aggrieved by the proceedings dated 02.05.2012, the present writ petition is filed.

Counter affidavit is filed on behalf of the respondents stating that petitioner is having 50 mm dia water supply connection under the category of Industries bulk and on the request of the petitioner, 68.190 kilo litres per day (KLD) of water was agreed to be supplied to the petitioner and to that effect an agreement was also entered into by the petitioner with the 1st respondent vide Agreement dated 23.04.2003 and as per the terms and conditions made therein, the respondent Board is supplying potable water to the petitioner company. It is stated that the petitioner is liable to pay the sewerage cess in the light of the circular dated 25.02.2009 to defray the recurring cost, as the Board is diverting and treating the flows from the storm water drains which is carrying effluents as well as sewage and as the petitioner company is letting out the effluents directly or indirectly into open areas, which ultimately join the sewerage system of the Board and as the same are treated by the STPs of the Board set up at various locations like Amberprt/Nallacheruvu etc, the petitioner cannot contend that it is not using sewerage system of the Board. It is also stated that as per the directions of the Hon'ble Supreme Court, two Effluent Treatment Plants (ETP's) were established at Patancheru and Jeedimetla called as Patancheru Envirotech Limited (PETL) and Jeedimetla Effluent Treatment Plant Limited (JETL) respectively known as Common Effluent Treatment Plants (CETP) and the petitioner has suppressed the fact that the effluents are directly or indirectly join the sewer mains of the Board which ultimately are connected to the STPs of the Board. Since the respondent Board incurs heavy expenditure on further treatment of the said industrial effluents to bring them down to the tolerance limits stipulated in the Water (Prevention and Control of Pollution) act, 1974, the petitioner cannot escape from his responsibility of paying

the sewerage cess. It is stated that the petitioner has paid only Rs.13,53,700/- towards arrears of sewerage cess leaving the balance amount of Rs.13,21,003.50ps/-. Further it is stated that unlike water supply which is distributed at pointed locations, sewage is collected either from point sources or non point sources by interception, division, transported to STPs and treated to the required standards by incurring heavy expenditure. As a matter of fact since the industrial effluents of the petitioner company are ultimately let into the Board sewer and that the Board on its expenses gives further treatment to the said effluents to bring them down to the tolerance limits stipulated in the Water Act, 1974, it is obligatory on the part of the petitioner to pay sewerage cess to the respondent Board and the respondent Board is entitled to collect the sewerage cess for the use of sewerage system of the Board. It is further stated that according to Rules 4 and 14 of Hyderabad Metropolitan Sewerage Rules, 1990, the Board is vested with the powers of charging the applicant seeking to discharge their trade or industrial effluents or sewage into the Board Sewer towards special treatment of costs of such sewage and finally sought for dismissal of the writ petition.

Learned counsel for the petitioner submits that since the petitioner company is not served with sewage system, the respondent Board is not entitled to collect sewerage cess as per the provisions of Section 55 of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 (for short 'the Act'). He also submits that even as per clause 6 of the agreement dated 23.04.2003, the respondent Board is not entitled to collect the sewerage cess as per the provision of Section 55 of the Act and the Rules and Regulations made there under. He further submits that the respondent Board addressed a letter dated 28.04.2009 seeking certain information and though all the information was provided, without any basis, the

impugned proceedings dated 02.05.2012 were issued asking the petitioner to pay the sewerage cess which is not in accordance with Section 55 of the Act and the Rules made therein. When once the petitioner company is not served with sewerage system by the respondent Board and when no water is let into Board sewer, the respondents cannot levy sewerage cess. Further, he submits that the petitioner company has installed its own sewage treatment plant (STP) and the entire effluent is treated at its plant and the resultant treated water is utilized for gardening purpose, as such no sewage is let to the sewerage system of the Board.

On the other hand, the learned Standing counsel for respondents submits that whether directly or indirectly when the sewage is let into the sewerage mains of the respondent Board, they are entitled to levy sewerage cess. He also submits that in the present case, the petitioner company is letting out its effluents into nalas, from there it joins into sewer mains of the Board and thereafter they are treated at STPs of the Board to bring them down to river standards, as such, the respondent Board is entitled to collect sewerage cess from the petitioner. He also submits that the respondents are entitled to collect sewerage cess as per Section 55 of the Act read with Rule 4 of the Rules. He further submits that in similar circumstances, this Court upheld the levy of sewerage cess in W.P.Nos.4917 of 2000 and 5044 of 2000 and the same was followed in W.P.No.20117 of 2011.

In this case, it is an admitted fact that the petitioner company is not served by the sewerage system of the Board. But the case of the respondents is that sewerage is being let out by the petitioner's company into nalas and ultimately they join the main sewer of the board, from where they are treated at STPs of the Board for making them into river standards, they are entitled to collect sewerage

cess. It is also their case that information was sought for and basing on the said information, sewerage cess is imposed. The respondents relied on provisions of Section 55 of the Act and clause 6 of the agreement dated 23.04.2015 entered into by the petitioner and respondents for levying sewerage cess.

Section 55 of the Act reads as follows:

“Charges towards the use of sewerage cess:

Every occupier of both domestic and non-domestic premises shall pay to the Board at the rate not exceeding thirty five percent of the bill charging for the water consumed or at such rate as and sewage treatment works undertaken by the Board and the operation and maintenance of the sewerage system from time to time.

Provided that no such charges shall be levied in any premises situated in the areas which are not served by the sewerage system of the Board.”

Clause 6 of the agreement dated 23.04.2015 reads as follows:

“a) the sewerage cess would apply to:

- i) The customer who is provided with water supply connection and premises is situated within the area serviced by the sewerage system of the HMWSSB or the sewage system of the HMWSSB **or the sewage system of the customer is ultimately let into the sewage transmission system of HMWSSB.**
- ii) The customer where a premises is not provided with water supply connection, **but sewage from that premises is ultimately let into the sewage transmission system of the HMWSSB.”**

No doubt Section 55 of the Act empowers the Board to levy sewerage cess on both domestic and non-domestic premises but exempts levy of cess in the areas which are not served by the sewage system of the Board. Rule 4 makes it clear.

Rule 4 of the Water Supply Rules, 1990 reads as follows:

“4 (1) Every applicant seeking new water supply service connection shall pay pipe line service charges

at such rates as may be specified from time to time by the Board. In addition to fees, rates, tariff, prescribed by the Board from time to time.

(2) Every consumer possessing a water supply service connection for any purpose shall pay such percentage of water bill as sewerage cess as fixed by the Board from time to time to defray to capital and maintenance and operation cost of sewerage system.”

But according to Rule 4 every consumer possessing water supply service connection shall pay the sewerage cess as fixed by the Board.

In the counter specific assertion is made stating that petitioner company is a polluting industry and is letting out the effluents directly or indirectly into open areas which find their way into storm drains which are intercepted by H.M.W.S & S Board, transported and treated and thus they ultimately join the sewerage system of the Board and are treated by the STPs of the Board set up at various locations like Amberpet/Nallacheruvu. As per clause 6 of agreement dated 23.04.2015 sewerage cess applies where sewage is ultimately let into the sewage transmission system of HMWSSB. This Court also upheld the imposition of sewerage cess, though the effluents are not directly let into the sewage mains of the respondent-Board and the same was followed in W.P.No.20117 of 2011.

In view of the same, I do see any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER

REDDY,J

Date: 03.09.2015

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