

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5964 OF 2008

Federation of Association of
Industries, Through its
President
Shyamsundar Vasudev Agrawal
Age : 48 yrs, occu.: business
R/o 17, Ganesh Building, 122,
Navi Peth, Jalgaon.

Petitioner.

Versus

1. The State of Maharashtra
Through The Secretary,
Industries Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer
Maharashtra Industrial
Development Corporation,
Mumbai.
3. The Executive Engineer,
Maharashtra Industrial
Development Corporation
Dhule.
4. The Deputy Executive Engineer,
Maharashtra Industrial
Development Corporation
Jalgaon.

Respondents.

Mr.A.G. Talhar, Advocate for the petitioner.
Mr.Y.G. Gujrathi,A.G.P. for respondent No.1.
Mr.S.S. Dandge, Advocate for respondent Nos.3 & 4.

**CORAM : R.D. DHANUKA &
SUNIL K.KOTWAL, JJ.**

**Reserved on : 12.09.2017.
Pronounced on : 06.10.2017.**

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. In this Writ Petition, we are called upon to decide the issue whether Maharashtra Industrial Development Corporation is empowered to demand the service charges at the rate allegedly agreed under private negotiation with the parties or could demand such service charges only at the rate prescribed in Rule 29 of the Maharashtra Industrial Development Rules, 1962.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner-Federation of Association of Industries, Jalgaon has prayed for quashing of the communication dated 10.06.2008 made by the respondent No.3-Executive Engineer, Maharashtra Industrial Development Corporation, Dhule, claiming service charges at the rate of Rs. 10/- per square metre, per annum towards expenses incurred for maintenance of road

and street lights in the industrial area at Jalgaon from the industrial plot holders at Jalgaon in industrial development area, w.e.f. 01.05.2008.

3. The petitioner is Federation of Association of Industries and is registered under the provisions of the Trade Union Act. Respondent No.1 is the State of Maharashtra and respondent No.2 is the Chief Executive Officer, Maharashtra Industrial Development Corporation, Mumbai. Respondent No.4 is the Deputy Executive Engineer, Maharashtra Industrial Development Corporation, Jalgaon.

4. It is the case of the petitioner that the members of Industries Association had acquired industrial plots from respondent-Maharashtra Industrial Development Corporation (hereinafter referred as "M.I.D.C.") by executing lease deed. M.I.D.C. Authority had already recovered expenses for infrastructure facilities from the plot holders at that stage.

5. In the year 1989, M.I.D.C. Authority handed over the industrial area to the then Municipal Council, Jalgaon for maintenance of Jalgaon industrial area. However, the Municipal Council, Jalgaon did not provide any services and amenities in the said industrial area. Therefore, various industries and other associations repeatedly requested the Municipal Council and M.I.D.C. Authority to provide the required amenities in the industrial area. Though under amendment to the Maharashtra Regional and Town Planning Act, 1966 in the year 1994, the M.I.D.C. was treated as Special Planning Authority for industrial area and was obliged to provide services and amenities in an industrial area, no such services and amenities were provided. The Industrial Association of Small Scale Industries, Jalgaon through its President filed Writ Petition No.1012 of 2003 against M.I.D.C. Authorities and Jalgaon Municipal Corporation. The said Writ Petition was disposed of on 09.10.2006 and directions were issued against M.I.D.C. Authority to complete the required repair/construction work

of road within six months from the date of the said order and to provide other required amenities.

6. In the year 2007, M.I.D.C. Authority had taken a decision to recover service charges from the plot holders in the industrial area, which was opposed by the member of industries, and therefore, on 17.05.2007 a meeting was held between various Associations and M.I.D.C. Authority. It was decided in that meeting that after getting concurrence of the Municipal Corporation, Jalgaon, M.I.D.C. Authority and all Industries Associations, a decision in respect of service charges would be taken. However, on 10.06.2008 M.I.D.C. Authority had issued a letter to the industrial plot holders and claimed service charges @ Rs. 10/- per square metre per annum w.e.f. 01.05.2008 towards the expenses for the purpose of maintenance of road and street lights for the period of 10 years.

7. It is submitted by the learned Counsel

for the petitioner that under Rule 29 of the Maharashtra Industrial Development Rules, 1962 (hereinafter referred as "M.I.D. Rules"), the Corporation has no right to recover the service charges exceeding the amount mentioned therein at the relevant time, and therefore, the claim of the respondents for service charges at escalated rate of Rs. 10/- per square metre is bad in law and deserves to be quashed.

8. Mr. A.G. Talhar, learned Counsel for the petitioner has drawn our attention to Section 63 (2) (j) of M.I.D. Act which empowers the State Government to frame Rules in consultation with M.I.D.C. regarding recovery of fees and service charges from the plot holders. His contention is that even by private agreement or negotiations with Industries Associations, respondent Nos.3 and 4 cannot enhance or change the service charges in any manner, except under Rule 29 of M.I.D. Rules. He has drawn our attention to the judgment of this Court in case of **"Prakash Fabricators Pvt. Ltd. vs. Maharashtra Industrial Development Corporation**

and another", reported in **[2010 (Supp.) Bom.C.R. 771]** in support of his submission that no public body body or statutory authority can charge any fees or penalty without authority of law".

9. In reply, Mr. S.S. Dande, learned Counsel for respondent Nos.3 and 4 submitted written notes of argument as well as oral submissions that the petitioner has not impleaded M.I.D.C. as respondent which can be sued in its own name, and therefore, this petition suffers from the defect of non-joinder of necessary party. His next submission is that the petitioner has not filed registration certificate of the petitioner association and has not disclosed the names of the members of Association and therefore, the petition suffers from the vice of non-disclosure of details of petitioner association.

10. The next limb of the argument of the learned Counsel for respondent Nos.3 and 4 is that after the decision of Writ Petition No. 1012 of 2003 filed by Industrial Association of Small

Scale Industries, on 17.05.2007, a meeting was called of the Industries Associations and plot holders to decide the issue in respect of the recovery of charges of maintenance. Thereafter on 18.05.2007, a letter was sent to all the Industries Associations and plot holders seeking their consent to charge service charges @ Rs. 10/- per square metre per annum. On 28.05.2007, Industries Associations replied the said letter and raised objection that M.I.D.C. has no power to levy any charges.

11. On 10.06.2008, M.I.D.C. issued letters to all Industries Associations and plot holders to pay service charges @ Rs. 10/- per square metre per annum. Thereafter there was exchange of letters between M.I.D.C. and Industries Associations. On 27.05.2014, Jalgaon Industries Association, by its letter, agreed for revision of rates of service charges. At last, on 13.08.2014 the Corporation, in its 358th Board Meeting, decided to charge service charges @ Rs. 4.50/- per square metre per annum instead of Rs.10/-. This

decision was based on the proposal of Associations.

12. It is the case of M.I.D.C. that on 11.09.2014, in the meeting held with all Industries Associations, a decision of revision in charges from Rs. 10/- to Rs. 4.50/- per square metre was declared and the said meeting was attended by all Associations and some plot holders. In view of that decision, on 11.09.2014, M.I.D.C. issued letter to all Industries Associations. Near-about 13 Associations acknowledged the letter dated 11.09.2014. It is the case of M.I.D.C. that on 18.11.2014, near-about 8 Associations from Jalgaon requested for immediate compliance of the decision taken in 358th Board Meeting.

13. Learned Counsel for respondent Nos. 3 and 4 submits that thereafter on 19.01.2016, the Government issued a notification by amending Rule 29 of M.I.D. Rules and increased the service charges @ Rs. 4.50/- per square metre per annum.

However, by misrepresenting, some of the Industries Associations, the petitioner Association obtained letters from them, stating therein that they were not agreeable for the decision as taken for revision of service charges. When this protest was brought to the notice of the said Associations, they forwarded a letter dated 04.04.2016 to the Authorities of M.I.D.C. showing their readiness to pay service charges @ Rs. 4.50/- per square metre as per the decision taken in the meeting.

14. It is submitted by the learned Counsel for respondent Nos.3 and 4 that under Section 15 of M.I.D. Act, M.I.D.C. is empowered to enter into an agreement or contract which may be necessary for carrying out any of its functions and the provisions of the said Act. He submits that since all Industries Associations have agreed to pay the service charges at the revised rate of Rs. 4.50/- per square metre from 2008, the petitioner has no right to challenge the recovery of service charges at such revised rate. He has drawn our attention

to the judgment of this Court in cases of **"Paramhari Engineers Vs. The Maharashtra Industrial Development Corporation and Ors."**, reported in [2015 (4) ALL MR 745] and **"United Breweries Ltd. Vs State of Maharashtra and others"**, reported in [2013 (1) Mh.L.J. 871].

15. It is submitted that the Writ Petition No. 5945/2008 and Writ Petition No. 6023/2008 filed by the Co-operative Industrial Estate and Lalit Enterprises have been withdrawn by them on 17.03.2016 and 19.03.2015 respectively.

16. We have to now consider whether M.I.D.C. has powers to recover the service charges from the industrial plot holders in the M.I.D.C. area towards expenses incurred by M.I.D.C. for providing necessary amenities to the industrial plot holders by private negotiations or whether such charges can be prescribed, fixed and recovered only under Rule 29 of M.I.D. Rules.

17. M.I.D.C., being a statutory body, cannot

deviate from the Rules and procedure prescribed under M.I.D. Act and Rules. Section 15 (j) of M.I.D. Act empowers M.I.D.C. to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions. Section 17 of the M.I.D. Act provides that the Corporation can lawfully levy fees or service charges to cover its expenses on maintenance of roads, drainage, water supply and such other services and amenities as may be provided by it including provision of street lighting, at such rates as may be prescribed from time to time. Such fees or charges may be levied on the plot holders or other persons receiving benefit of the services or amenities.

18. Section 63 (1) and (2) (j) of M.I.D. Act provides that State Government, after consultation with Corporation in regard to matters concerning it, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act and such Rule may provide for the "fees" which may be charged by the Corporation. Accordingly, the

Government framed Rule 29 for recovery of service charges, which reads thus :

29. Service Charges :- Where the Corporation provides any amenities in or to any industrial area or estate, then there shall be levied and collected from every person holding under the Corporation any premises whether as lessee or otherwise in such area or estate, a fee at such rate not exceeding the following rate as the Corporation may determine, regard being had to the expenses incurred for providing and maintaining such amenities therein, namely :-

(1) in the case of amenities provided in an industrial area where premises, consists of land, at a rate not exceeding per square metre of the land; and

(2) in the case of amenities provided in an industrial estate :-

(a) where the premises consists of land with or without building, at a rate not exceeding per square metre of the land: and

(b) where the premises consists of a part of a building, at the rate not exceeding, per square metre of the carpet area of such part of the building.

19. A perusal of the Notification issued by the State Government of Maharashtra dated 18.01.2001 shows that initially the service charges for industrial plot holders in industrial

area was 'fifty paise' per square metre per annum for open plot. On 18.01.2001, by amending Rule 29, it was increased as '1.50/- paise' per square metre per annum. Subsequently, on 19.01.2016, by way of amendment of Rule 29, these service charges have been increased @ Rs. 4.50/- per square metre per year. Thus, as per the Rules, prior to 18.01.2001 M.I.D.C. was empowered to recover service charges at the rate of 50 paise per square metre per annum for the premises consists of land in an industrial area and since 18.01.2001 M.I.D.C. was empowered to recover service charges @ Rs. 1.50 paise per square metre and after 19.01.2016 the Corporation is empowered to recover service charges @ Rs. 4.50/- per square metre.

20. In other words, on 10.06.2008 when the impugned letter was sent to the petitioner and other Industries Associations to pay service charges @ Rs. 10/- per square metre, as per the Rules, the M.I.D.C. had no authority to claim service charges @ Rs. 10/- per square metre. In our view, the demand letter dated 10.06.2008

demanding service charges @ Rs. 10/- per square metre per annum from 01.05.2008 for subsequent 10 years, is thus illegal and without authority of law.

21. As pointed out by learned Counsel for respondent Nos.3 and 4, certainly there were meetings in between Industries Associations and the Authorities of M.I.D.C. On 17.05.2007. In the first meeting the stand taken by Industries Associations was that the M.I.D.C. is bound to provide all necessary amenities to the plot holders, but the Corporation cannot recover any type of service charges or taxes from the industries. Accordingly, on 28.05.2007 a letter (Exhibit-C) was sent to respondent No.3 by Industrial Association of Small Scale Industries. However, again M.I.D.C. issued second letter dated 10.06.2008 (the impugned letter) to the industrial plot holders in M.I.D.C. area, Jalgaon and demanded service charges @ Rs. 10/- per square metre w.e.f. 01.05.2008 for the period of succeeding 10 years. In pursuant to this demand

letter, even demand bill (Exhibit-E) was sent to the industrial plot holders.

22. Subsequently by writing letter dated 03.03.2014 (Exhibit.R-A) Jalgaon Industries Association showed willingness to pay service charges @ Rs.3/- per square metre without any DPC or interest from May 2006 to March 2014 and service charges @ Rs.5/- per square metre from April 2014 onwards. Again on 11.09.2014 a meeting was held in between the Authorities of M.I.D.C. and various Industrial Associations. However, no final decision was taken regarding rates of service charges. However, on 11.09.2014, M.I.D.C. informed all Industries Associations that in 358th meeting of the Directors of Corporation, dated 13.08.2014, Resolution No. 5399 was passed and the Corporation was ready to fix the charges @ Rs. 4.50 per square metre since May 2008. In response to that letter as well as letter dated 22.05.2014 Jalgaon Industries Association accepted that proposal and issued letter (Exhibit.R-C) to respondent No.3.

23. This series of events indicate that though initially Industries Associations and plot holders were not ready to pay any type of service charges, later on they have alleged to have shown their willingness to pay service charges @ Rs. 4.50/- per square metre per annum since May 2008 onwards.

24. The question that arises is whether by such private negotiations between Corporation, which is a statutory body, and Industries Associations, the service charges can be charged without consent of the Government of Maharashtra and without amending the rules. The answer to this question is obviously negative, because in view of Section 17 read with Section 63 (2) (j) of M.I.D. Act and Rule 29 of M.I.D. Rules, only State of Maharashtra can amend the Rules by notification in Official Gazette, with prior consultation with M.I.D.C. In our view, the act of M.I.D.C. and Industries Associations regarding negotiations and alleged settlement of service charges @ Rs. 4.50/- per square metre since May 2008 without

consultation with State Government and without amending Rule 29 of M.I.D. Rules is illegal and without authority of law.

25. No doubt, under Government notification dated 19.01.2016, Rule 29 of M.I.D.C. Rules is amended and instead of service charges of Rs. 1.50/- per square metre, service charges are enhanced upto the extent of Rs. 4.50/- per square metre for open plot holders in the year 2016. This notification itself shows that M.I.D.C. was not authorised to charge service charges more than Rs. 1.50/- per square metre for industrial plots till the rates were increased to Rs. 4.50/- per square metre. In our view, the notification dated 19.01.2016 does not apply with retrospective effect i.e. 01.05.2008 onwards. M.I.D.C. is thus not authorised to recover service charges @ Rs. 4.50/- per square metre from 01.05.2008 under amended Rule 29 of M.I.D. Rules. At the most from 19.01.2016, M.I.D.C can recover service charges @ Rs. 4.50/- per square metre from open plot holders.

26. In our view, by alleged private negotiation between some members of the Association and M.I.D.C., the service charges at the enhanced rate could not be decided contrary to Rule 29 and other provisions of the M.I.D. Act, 1961. There is no estoppel against statute. Such alleged negotiation and resolution passed based on such alleged negotiation has no statutory force and is not binding on any member of the Association.

27. The ratio in the case of **Paramhari Engineers Vs. Maharashtra Industrial Development Corporation** (cited supra) is not applicable in the case at hand, because in that case, this Court decided the question about the date from which the period of 5 years for completing construction work and obtaining building completion certificate, should be computed. In that case this Court nowhere considered the powers of M.I.D.C. regarding recovery of service charges under Rule 29 of M.I.D. Rules. Similarly, the ratio of second case relied on by respondents i.e. "**United**

Breweries Vs. State of Maharashtra" (cited supra) is not applicable in the facts of this case for the simple reason that this Court nowhere considered the powers of M.I.D.C. to recover service charges under Rule 29 of M.I.D. Rules. The question before High Court was not regarding the correctness of procedure adopted by M.I.D.C. for making changes in service charges.

28. Though respondent Nos. 3 and 4 have raised objection regarding not filing of certificate of registration of petitioner association under Trade Union Act and non-disclosure of names of the members of association, the same holds no substance for the simple reason that filing of certificate of registration by association is not condition precedent for entertaining the Writ Petition. So also, during the pendency of the Writ Petition, the petitioner has filed list of 12 Associations which are the members of Federation of Association of Industries. The alleged consent by some of the Associations, if any, will not validate the

illegal demand of service charges raised without authority of law.

29. Learned Counsel for respondent Nos.3 and 4 has also drawn our attention towards letters issued by Corrugated Paper Box Manufacturing Association and M-Sector Industrial Charitable Trust, Jalgaon under which they have given consent to pay charges @ Rs. 4.50/- per square metre from May 2008 onwards as well as they have informed that they have no concern with the petitioner Federation. However, the consent of some of the Industrial Associations to pay service charges since May 2008 @ Rs. 4.50/- square metre, which was not approved by Government by modifying Rule 29 of M.I.D. Rules, is of no significance and has no binding force of law.

30. By consent of parties, no illegal act can be legalised. Even if the consent by some of the members of petitioner Federation to file this petition is withdrawn, the same does not affect

the merits of this case in any manner, for the simple reason that even single industrial plot holder in Jalgaon M.I.D.C. area can challenge the enhanced demand of service charges which is contrary to the law and procedure described under M.I.D. Act and Rules. The Association of Small Scale Industries is permitted to prosecute this petition. Therefore, the objection raised by respondent No.3 regarding suppression of material facts from the Court is of no merit.

31. Learned Counsel for respondent No.3 also raised objection regarding non-joinder of M.I.D.C. as party to the petition. However, learned Counsel for the petitioner has pointed out that under Section 16 of the M.I.D. Act, respondent No.2 Executive Officer of M.I.D.C. is authorised to sign any document on behalf of the Corporation. Under Order 29 Rule 1 of the Code of Civil Procedure, Corporation can be sued through respondent No.2. It is not the case of the respondent Nos.3 and 4 that the petitioners have challenged their individual action in this Writ

Petition or that they are defending this Petition in their individual capacity.

32. In our view, though under Section 17 of M.I.D. Act, the Corporation has right to recover service charges incurred towards providing amenities to the Associations and plot holders in M.I.D.C. Area, those powers are subject to the compliance of the mandatory procedure under Rule 29 of M.I.D. Rules read with Section 63 (2) (j) of M.I.D.C Act. The powers of Corporation under Section 15 (j) of M.I.D. Act to enter into and perform all such contract as it may consider necessary for expedient for carrying out any of its functions are general powers which cannot be exercised for recovery of service charges by private negotiation and contract. Powers under Section 15 (j) of M.I.D. Act and Rule 29 of M.I.D. Rules are distinct and operate for different purpose.

33. In our view, the demand of the respondent Nos.3 and 4 for recovery of service charges @

Rs.10/- or @ Rs. 4.50/- per square metre from 01.05.2008 onwards till the date of amendment of Rule 29 prescribing the rate of service charges @ Rs. 4.50/- per square metre is ex-facie illegal and without authority of law.

34. Prior to 18.01.2001, the prevailing rate of service charges in M.I.D.C. Area, Jalgaon for the open plot holders was 50 paise per square per metre per annum. On 18.01.2001, Rule 29 of M.I.D. Rules was amended and these service charges for the plot holders in M.I.D.C. area were increased to the extent of Rs. 1.50/- per square metre per annum. Thereafter only on 19.01.2016, Rule 29 was amended and these service charges were increased to the extent of Rs. 4.50/- per square metre per annum for industrial plots in M.I.D.C. area. In our view, only from the date of respective notification, the Corporation can recover service charges in accordance with amended Rule 29 of M.I.D. Rules.

35. Though some of the Associations of

industries had given alleged consent to pay service charges at enhanced rate of Rs. 4.50/- per square metre per annum from May 2008 onwards, M.I.D.C. has no legal right to claim service charges at such enhanced rate for the period prior to 19.01.2016 i.e. the date of notification, amending Rule 29 of M.I.D. Rules. Parties would be governed by the notification dated 18.01.2001 till the Rule 29 of M.I.D. Rules was amended by notification dated 19.01.2016 prescribing the service charges @ Rs. 4.50/- per square metre. In the circumstances, the demand of M.I.D.C. from Industries Associations and open plot holders in M.I.D.C. area, Jalgaon of the service charges @ Rs. 10/- or @ Rs. 4.50/- per square metre per annum w.e.f. 01.05.2008 under letter dated 10.06.2008, is absolutely illegal.

36. We, therefore, pass the following order.

ORDER

- a) Writ Petition No 5964 of 2008 is allowed in terms of prayer clause (C).

- b) Respondent Nos.2, 3 and 4 will be at liberty to recover service charges only in accordance with respective notifications amending Rule 29 of the M.I.D. Rules as declared aforesaid.
- c) Rule is made absolute in aforesaid terms.
- d) No order as to costs.

(**SUNIL K. KOTWAL**)
JUDGE

(**R.D. DHANUKA**)
JUDGE
