

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT APPEAL NO.774 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in WP.No.22303 of 2009 dated 12.04.2017. The appellant herein is the petitioner in the Writ Petition wherein they sought a mandamus to declare the action of the respondents, in levying sewerage cess on the petitioner's association pursuant to the Circular dated 25.02.2009, as arbitrary and illegal.

By the Circular dated 25.02.2009, the Managing Director of the respondent-Hyderabad Metropolitan Water Supply and Sewerage Board (Board) issued orders on 22.02.2009 to levy sewer cess on all the consumers having 1" dia above pipe size water connections. Along with the Circular dated 25.02.2009, issued by the Executive Director of the Board, a list of consumers, having 1" dia pipe connection, was finalized on the basis of available division wise and category wise data. All General Managers were instructed to issue suitable instructions to levy sewerage cess on the consumers in the list enclosed.

The petitioner is a welfare association consisting of more than 430 residential units to each of whom water is supplied by the association. Water is supplied to the Association by the Board and such supplies are stored in a common sump. While the connection to the sump is through a 150 mm dia pipe, which is much more than the 1" dia pipe, the claim of the petitioner is that

supply of water to individual connections is made, from the common sump, through a pipe less than 1" dia in size; and, therefore, the directions of the Managing Director are inapplicable to the case of the petitioner. Alternatively, it is contended that, since the cess was directed to be levied only on the consumers in the list enclosed to the Circular and as the name of the appellant-writ petitioner does not find mention therein, the action of the respondents in levying sewer cess on them is illegal. Smt. S.A.V.Ratnam, learned counsel for the appellant-writ petitioner, would submit that, in any event, it is not open to the Board to recover arrears of the accumulated sewer cess charges for more than eight years, and the appellant-writ petitioner cannot be mulcted with interest and fine on the said amount.

In the order under appeal, the learned Single Judge, relying on Sections 27 and 55 of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 ("the Act" for brevity) and Rule 4(2) of the Water Supply Rules, 1990 ("the Rules" for brevity), held that every consumer or occupier of both domestic and non-domestic premises, possessing a water supply service connection, shall pay to the Board, at the rate not exceeding 35% of the bill charging for the water consumed or at such rate as may be prescribed by the Rules; neither Section 55 of the Act nor Rule 4(2) of the Rules make any distinction with regard to the diameter of the pipe through which water is supplied; the Circular shows that instructions were given to collect sewerage cess from the consumers having water connection with 1" dia, and on the basis of the available division and category wise data; the list shows that sewerage cess was directed to be levied in categories of colonies,

industries, commercial and domestic; the list included companies, hospitals and JNTU etc; the instructions of the Board could be extended to group houses/gated communities, where water is supplied in bulk; and the contention that the petitioner need not pay the water cess, as its name is not included in the list, cannot be accepted.

As has been observed by the learned Single Judge, in the order under appeal, neither Section 55 of the Act or Rule 4(2) of the Rules restrict levy of sewer cess at 35% only on water pipes exceeding 1" dia. The Managing Director of the Board has, in his wisdom, issued instructions on 22.02.2009 to collect sewer cess from consumers with more than 1" pipe. As noted hereinabove, water is supplied to the petitioner's sump by the Board through a pipe of 150 mm dia larger than a 1" dia pipe. The mere fact that, from the sump, individual connections are supplied water through pipes less than 1" dia, is of no consequence. The list enclosed to the Circular is based on the data available. The power to levy sewer cess is traceable to the provisions of the Act and the Rules, and the appellant-petitioner cannot be heard to contend that the Circular should take precedence over the provisions of the Act and the rules; and that no sewer cess can be levied on those consumers whose names are not reflected in the list enclosed to the Circular.

It is only in view of the interim order passed by this Court in the present Writ Petition, which was admitted in the year 2009, that the Board was disabled from collecting sewer cess. Consequent on the dismissal of the Writ Petition, the Board is entitled to restitution and their action, in seeking to recover the

said amount, cannot be faulted. Since the claim, of fine and interest by the Board, was not in issue in the Writ Petition, it is wholly unnecessary for us to express any opinion in this regard. Needless to state that, if the petitioner is aggrieved by the imposition of fine and levy of interest, it is always open to them to question the same in appropriate legal proceedings. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order passed by the learned Single Judge suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

21st June 2017
RRB