

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

WRIT PETITION No. 22303 of 2009

Between:

The HMT Satavahana Nagar Welfare Association,
Rep. by its General Secretary B.Subhash Chandra Bose,
S/o. B.Satyanarayana Reddy, R/o. Plot No.416,
HMT Satavahana Nagar, Kukkatpally, R.R.District

.... PETITIONER

VERSUS

The Hyderabad Metropolitan Water
Supply and Sewerage Board,
Rep. by its Managing Director,
Khairatabad, Hyderabad and others

.... RESPONDENTS

JUDGMENT PRONOUNCED ON : 12.04.2017

HON'BLE SRI JUSTICE : C. PRAVEEN KUMAR

1. Whether Reporters of Local : Yes/ No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/ No
may be marked to Law
Reporters/ Journals
3. Whether Their Ladyship/ Lordship : Yes/ No
wish to see the fair copy of
judgment

JUSTICE C. PRAVEEN KUMAR

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 22303 of 2009

ORDER :

%Dated 12.04.2017

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..... RESPONDENTS

! Counsel for Petitioner : Smt. S.A.V.Patnam

^ Counsel for Respondents : T.Sudhakar Reddy

< GIST :

> HEAD NOTE :

? Cases referred :



THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.22303 OF 2009

ORDER:

1) The present writ petition came to be filed by HMT Sathavahana Nagar Welfare Association, represented by its General Secretary, seeking issuance of writ of mandamus to declare the action of the respondents in levying sewerage cess to the petitioner's association in pursuance of the circular, dated 25.02.2009, as illegal and arbitrary.

2) The brief facts, which lead to filing of the writ petition, are as under:

The employees of the HMT formed themselves an association and to provide houses to its employees, purchased land to an extent of Ac.42.00 from Bhagyanagar Housing Society. The said land was made into plots and about 430 houses were constructed in the name and style of HMT Sathavahana Nagar. After constructing the said houses, the same were sold to its members. The house owners, inturn, formed themselves into a society, got it registered and framed its own bye-laws with a primary intention to cater to the needs of the occupants of the houses. Instead of having individual drinking water connections from Hyderabad Metropolitan Water Supply and Sewerage Board (hereinafter referred to as "the Board"), the occupants of the colony constructed a sump with an overhead tank. Water stored in the said sump was pumped to an overhead tank, for distributing the same to each individual house. Each individual house was connected with a pipeline having ½ inch diameter, whereas the water sump is receiving bulk water through a pipe line having a diameter of 6 inches. About

350 to 400 kilo litres of water was being supplied to the colony @Rs.6/- per kilo litre. While things stood thus, the respondents issued a circular No.ED/ RBS/ Levy of Sew Cess/ 40, dated 25.02.2009, increasing the water cess by 35% to the existing cess, on the ground that the Board took the decision to levy cess on all consumers having pipe line with a diameter of one inch and above. In pursuance thereto, the respondents have been demanding the petitioner to pay the sewerage cess. Challenging the same, the present writ petition came to be filed.

3) By an order, dated 22.10.2009, this Court, while admitting the writ petition, granted interim stay as prayed for, for a period of two months, which was subsequently extended till further orders.

4) The main argument advanced by the learned counsel for the petitioner is that though each individual house is provided with water connection having a pipe line with $\frac{1}{2}$ inch diameter, it would be unjust to pay sewerage cess. It is urged that though water is being supplied in bulk with six inch pipe line, each individual house is being supplied with only $\frac{1}{2}$ inch diameter pipe line and since no individual water connection is taken by each individual house owner from the Board, levying of sewerage cess to the petitioner society is improper and incorrect. In other words, it is urged that when an individual connection with $\frac{1}{2}$ inch diameter is not penalized with sewerage cess, directing the petitioner to pay sewerage cess on the ground that bulk supply was made to the society with a pipe line of 6 inch diameter, is illegal and improper.

5) A counter came to be filed by the 3rd respondent herein disputing the averments made in the affidavit filed in support of the writ petition. The said counter was filed on behalf of respondents 1 and 2 as well. It is stated that the petitioner with CAN No.064300089 is being supplied with potable water in bulk through 150 mm dia connection and that the petitioner association is not having S.T.P. to treat its sewerage. The said sewerage line is connected to G.H.M.C. sewerage line leading to Amberpet 12 MLD STP for treatment. Therefore, it is contended that the Board was right in issuing the impugned notice claiming sewerage cess from the petitioner association. It is further urged that the Board is not in any way connected with the internal arrangements being made by the residents of the colony but once water supply is being made through a pipeline having more than 1 inch dia, the petitioner is liable to pay sewerage cess, in the absence of any STP treatment plant. In support of the same, he refers to Section 55 of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 (for short "the Act").

6) Before proceeding further, it would be useful to refer to the contents of circular, dated 25.02.2009, which reads as under:

"the Managing Director vide reference cited above, issued orders to levy sewer cess to all the consumers having 1" dia above pipe size water connections.

A list of the consumers having 1" dia and above has been finalized at Board Office on the basis of available division wise and category wise data (list enclosed) proposed levy of sewer cess at the rate 35% of the water demand.

Therefore, all the General Manager (E), Operations and Maintenance Division No.1 to 12, 15 and 16 hereby

instructed to issue suitable instructions to the concerned to levy sewerage cess to the list enclosed. As most of the demand bills are prepared manually, every care has to be taken to calculate sewerage component and subsequently enter into the system, a suitable interface being provided to input. These orders will come into force with effect from 1st March, 2009 (ie. The demand raised for February, 2009)."

7) A reading of the said circular would show that the consumers having one inch dia and above shall be levied sewer cess @ 35% of the water demand. Accordingly, all the General Manager (E-operation) were instructed to issue suitable instructions to the concerned to levy sewerage cess to the list enclosed.

8) It may be true that the name of the petitioner association was not found in the list enclosed to the circular, dated 25.02.2009. Reasons could be many for non-inclusion of the petitioner association in the list, but that by itself shall not exclude the petitioner from payment of sewerage cess. Admittedly, the petitioner association is having 430 houses. No direct water connection was taken from the Board by each individual house owner. There was an internal understanding between the petitioner association and each individual house owner, which lead to construction of a sump and a overhead tank. Water which was being supplied by the respondent Board through 150 mm dia was first discharged into the sump and later it was pumped to the overhead tank. From the overhead tank, the association made arrangement for supply of water to each individual house through a 1/2 inch dia pipe. The respondent Board has nothing to do with the internal arrangement made by the petitioner with its members.

9) In order to appreciate the same it would be useful to refer to certain provisions of the Act and Rules therein.

“Section 2 (o) of the Act defines sewer: Sewer means a closed conduit for carrying off sewage sullage, rain water, polluted water, waste water or sub-soil water.

“Section 27 of the Act: Supply of water in bulk to the Government, Corporation and others local authorities.

“The Board may, by agreement, supply water in bulk to the Government including the Central Government, the Corporation or any other local authority or any other public or private undertaking on such terms as to payment and as to the period and the conditions of supply as may be agreed upon between the Board and such authority.”

Section 55 of the Act: 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 may be prescribed by rules, to defray the capital cost of sewerage 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.”

Rule 4 (2) of the Water Supply Rules, 1990: Every consumer possessing a water supply 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.

10) A reading of Section 55 of the Act along with Rule 4 (2) of the Water Supply Rules, 1990, would clearly show 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. Though the Act is silent with regard to non-payment of cess by consumers with $\frac{1}{2}$ or $\frac{3}{4}$ inch dia pipe line, the circular refers to levying sewerage cess to the consumers having water connection of 1 inch dia pipe and above.

11) In the instant case, the petitioner association obtained water connection with a pipeline having more than 1 inch dia. But, by virtue of an internal arrangement made, each individual house is having connection with less than 1 inch dia pipe. If the plea of the petitioner is to be accepted, they need not pay any sewerage cess though the petitioner association is having water connection with a pipe line having more than 1 inch dia and are not having a separate STP. Neither Section 55 of the Act nor Rule 4 (2) of the Water Supply Rules, 1990, makes any distinction with regard to the diameter of the pipe through which water is supplied but by referring to the circular, dated 25.02.2009, the learned counsel for the petitioner intends to make out a case stating that payment of sewerage cess will only be by those house owners having water connection with one inch dia pipe and above. A reading of the said circular would show that instructions were given to collect sewerage cess from the consumers having water connection with 1 inch dia and above on the basis of available division

and category wise. A perusal of the list shows that the authorities were directed to levy sewerage cess in categories of colonies, industries, commercial and domestic. The list includes all the companies, hospitals and also JNTU, Kukatpally campus as well as IDPL.W.Co.op.H.G. society. Probably these directions were intended to levy sewerage cess in respect of companies, industries, university, having water connection with morethan one inch dia pipe line. It appears that situation of this nature was never contemplated, while preparing the list of the consumers to whom sewerage cess is to be levied. But, since the Board directed collection of sewerage from Housing Societies like IDPL etc., the same can be extended to ground houses/ gated communities, where water is supplied in bulk. Therefore, the argument that petitioner need not pay sewerage cess, as its name was not included in the list cannot be accepted.

12) The learned counsel for the respondents relied upon various judgments of this Court, in support of his plea, that levying of sewerage cess is mandatory irrespective of the diameter. But, a reading of the said Judgments would show that in all the cases the issue was with regard to levying of sewerage cess in spite of the petitioner companies therein not having any sewerage line for letting out the sewerage or effluents from their factory or directing payment of sewerage inspite of they have separate sewerage treatment plant.

13) In the instant case, there is no dispute with regard to petitioner association being provided with a sewerage line by the respondent Board. The counter affidavit clearly discloses that the petitioner association is discharging all its sewer into STP maintained by the Board

and the same is transmitted to KS Main of the sewerage system of the Board. The domestic sewer is let into 1000 mm dia sewerage trunk main belonging to the Board through which the said sewer is carried from Kukatpally to Amberpet Treatment plant, where the sewerage disposals are treated to bring down the tolerance limits.

14) Therefore, the question would be whether the Board was right in levying sewerage cess to the petitioner association when water is being supplied to each individual house owner by the association through half inch dia pipe after receiving the same in bulk through a pipe having more than 1" dia?

15) It may be true that each individual house owner may not be having individual water connection but the sewer from each house is being transmitted through a pipe line maintained by the Board and the same is treated at Amberpet treatment plant, at the cost of the Board.

16) As stated above, the water connection though not given to each individual house owner the association took one water connection whereby bulk water is discharged into an underground sump from where it is distributed to each individual house, by way of an internal mechanism. Therefore, the water supplied by the Board is being used by each individual house owner.

17) A reading of Section 55 of the Act read with Rule 4 (2) of the Rules makes it very clear that every occupier of domestic and non-domestic premises shall pay to the Board, sewerage cess at the rate not exceeding 35% of the bill charging for the water consumed. Since the members of petitioner association are consuming water supplied by the Board through an internal mechanism adopted by their association,

the petitioner association cannot escape from payment of sewerage cess when the association is receiving water through a pipeline laid by the Board on their request. It is also to be noted that CAN number was not given to each individual house owner but was given to the petitioner association, in whose name the water connection stands.

18) Even assuming for a moment that sewerage cess has to be levied in terms of the impugned circular, the petitioner association is provided with a water connection having a pipeline of more than 1 inch dia. The internal arrangements made by the petitioner association for supply of water is of no concern to the Board, since water is provided to the association (with more than 1 inch dia) and the sewer of all the residents is being discharged through the infrastructure provided by the Board. Viewed from any angle, this Court is of the opinion that petitioner association cannot escape from payment of sewerage cess. Hence, I see no merits in the writ petition and the same is liable to be dismissed.

19) Accordingly, the writ petition is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

12.04.2017

Note: L.R Copy to be marked.

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