

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2021

PRONOUNCED ON : 29.03.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.20579 of 2011

(Through Video Conferencing)

Taj Connemara  
A unit of Indian Hotels Company Ltd.,  
Rep.by its General Manager  
Vijay Pratap Shrikent,  
Binny Road, Chennai-2. ... Petitioner

vs.

1. The Managing Director,  
Chennai Metropolitan Water Supply & Sewerage Board,  
Chintadripet, Chennai-2.
- 2.The Controller of Finance ( Revenue)  
Chennai Metro Water Supply & Sewerage Board,  
No.25, Sathyamurthy Road,  
Chennai 31. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the 2<sup>nd</sup> respondent in Lr.No.CMWSSB/Area-VII/B&C/1559/2010 dated 20.07.2011 and quash the same.

For Petitioner : Mr.R.Subramanian

For R1 & R2 : Mr.S.R.Rajagopal  
Addl.Advocate General  
Assisted by I.David Singh

O R D E R

This is the 3<sup>rd</sup> round of litigation. In this writ petition, the petitioner has challenged the impugned order dated 20.07.2011 granting partial waiver of surcharge under Section 27 (iv) (b) of the Chennai Metropolitan Water Supply and Sewerage

Service Charges (Levy and Collection) Regulations, 1998. The petitioner was earlier served with a demand notice dated 30.03.2010 bearing Lr.No.CMWSSB/Area-VII/B&C/1559/2010 towards water supply charges under the metered category for the period from February 2000 to January 2003 along with surcharge for the aforesaid period. This was challenged by the petitioner in W.P.No.8111 of 2010 which came to be disposed on 04.08.2010.

2. By the aforesaid order, this Court directed the petitioner to pay the amount towards water charges. However, the Court gave liberty to the petitioner to seek waiver of surcharge under Regulation 27 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978.

3. Pursuant to the above said direction, the petitioner also had paid the water charges for the period in dispute from February 2002 to January 2003. The petitioner thereafter filed an application for waiver of surcharge with the respondent, which came to be disposed by a speaking order dated 02.02.2011 wherein the petitioner was held entitled for a partial waiver of surcharge of Rs.2,62,039/- out of Rs.13,94,195/-. Thus, the petitioner was directed to pay the balance amount of Rs.11,32,156/-.

4. Since the petitioner was asked to pay Rs.11,32,156/-, the petitioner filed W.P.No.6772 of 2011. The said writ petition came to be allowed by an order dated 18.03.2011 by directing the first respondent herein to pass speaking order within a period of six weeks from the date of receipt of a copy of the said order.

5. Pursuant to the aforesaid order, the impugned order dated 21.07.2011 bearing Lr.No.CMWSSB/Ara-VII/B&C/1559/2010 has been passed by the first respondent. The respondent has levied surcharge under Regulation 27(iii) of the Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection) Regulations, 1998 while granting a partial waiver for the period from July 2001 to January 2002 amounting to Rs.2,62,039/- being period during which there was admittedly no supply of water due to severe drought in the city. The said order seeking to give only a partial waiver of Rs.2,62,039/- out of Rs.13,94,195/- is sought to be challenged in this order.

6. It is the case of the petitioner that right from 1998, the petitioner's water line at Door No.772 there was no water supply and therefore there was neither justification in demanding water charges nor surcharge from the petitioner. It is further submitted that the petitioner had made a request as early as 22.06.2002 before the Chennai Metropolitan Water Supply. However, the 1<sup>st</sup> respondent Sewerage Board disconnected

the pipeline only on 19.02.2003. Therefore, the petitioner has not paid only water charges period between 22.06.2002 to 19.02.2003 but also during the drought period between July 2001 and January 2002. When there was a drought and there was no supply of water and the 1<sup>st</sup> respondent Board had granted waiver of surcharge for the period commencing from July 2001 to January 2002. Eventhough, there was no water supply only partial waiver during the said period has been granted. It is submitted that the impugned order is arbitrary and illegal and therefore the surcharge was liable to be quashed.

7. Defending the impugned order, the learned Additional Advocate General Mr.S.R.Rajagopal submits that there is no irregularity or illegality in the impugned order. He further submits that the scope for challenging an order passed by the 1<sup>st</sup> respondent was limited in a jurisdictional review under Article 226 of the Constitution of India and the court was not concerned with the ultimate decision but only decision making process. He further submits that the respondent has not demonstrated any illegality or perversity in the impugned order.

8. The learned Additional Advocate General further submits that the petitioner was informed about the corrosion of pipe line within the petitioner premises. However, the petitioner did not chose to rectify the pipe line within its premises and was therefore liable to pay not only the water charges but also surcharge. He further submits that the petitioner was receiving water supply both at Door Nos.771 and 772. Both the door numbers were having pipe line and therefore it is incorrect on the part of the petitioner to state that no water supply to the petitioner in one of the lines by the 1<sup>st</sup> respondent Chennai Metropolitan Water Supply and Sewerage Board. It is submitted that since no supply was effected through pipeline during the 1<sup>st</sup> respondent board has granted partial waiver. He further submits that the 1<sup>st</sup> respondent has considered the Regulation 27(iv)(b) of the aforesaid Regulations and granted partial waiver from payment of surcharge in terms of the order of this Court in W.P.No.8111 of 2010 vide order dated 04.08.2014 and therefore prays for dismissal of the writ petition.

9. Heard the learned counsel for the petitioner and the learned Additional Advocate General for the respondents.

10. The issue in the present writ petition is whether in absence of water supply through pipeline, the petitioner was entitled for waiver during the period. By an order dated 04.08.2010 in W.P.No.8111 of 2010, this Court has upheld the demand for waiver of surcharge amounting to Rs.9,32,574/- for the period from February 2000 to January 2003.

11. Therefore, the only question that has considered is whether the request for partial waiver of surcharge for the period between July 2001 and January 2002 alone was justified when the city of Chennai and there was no water supply through pipeline alone or whether the petitioner is entitled for waiver from the date of application for disconnection of pipeline and therefore the petitioner was entitled to waiver even for the period commencing from 22.06.2002 to 19.02.2003 being the date on which, the pipeline was disconnected by the Chennai Metro Water Supply and Sewerage Board. It is agreed between the parties that there was no supply of water from the Chennai Metro Water supply and Sewerage Board during drought. It is also not in dispute even though there was no supply of water, the petitioner was required to pay the water charge inturms of order dated 4.08.2010. The water connection was disconnected by the respondents in terms of Regulation made under Section 81(j) of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 r/w Regulation 27(3) under Regulation 27(i) and (ii), the Board shall levy surcharge at the rates specified from time to time for the belated payment of water supply and sewerage service charges. Present rate of surcharge is 1.5% p.m. for domestic flat rate and metered consumers and 20% p.m. for other category of consumers including metered consumers. The power to grant waiver of surcharge is limited only for the circumstances specified under Regulation 27(iv) of the Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection) Regulations, 1998. They are as under:

(iv) Surcharge may be waived on the following reasons after proper examination and on approval of competent authority-

- (a) During drought period,
- (b) During the period of no water supply,
- © Defective water-supply due to unforeseen circumstances

12. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent and I have also perused the impugned order passed by the 1<sup>st</sup> respondent.

13. The provisions of the Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection ) Regulations, 1998 is very specific. Under clause 27(iii), the respondents Board in addition to clause 27(i) and (ii) the Board shall levy surcharge at the rates specified from time to time for the belated payment of water supply and sewerage service charges. Present rate of surcharge is 1.5% p.m. for domestic flat rate and metered consumers and 20% p.m. for other category

of consumers including metered consumers. The officers exercising jurisdiction under Regulation 27(iv) of the Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection) Regulations, 1998, cannot grant a waiver of any other grounds other than those that have been specified under the aforesaid clause.

14. The respondent has correctly granted waiver to the petitioner during the period when there was drought. There is no case made out for non-supply of water inasmuch as the petitioner had two connections at Door Nos.771 and 772 water reaches to both the water connections of the petitioner through the same pipeline which runs through the Corporation area. Therefore, it cannot be said that the respondents Board have not supplied water to the petitioner during the period in dispute except during the period when there was an acute shortage of water and the respondents Board was not supplying water through its pipelines. The dispute pertains to be alleged non-supply of water by the respondents Board in respect of Door No.772.

15. It is not in dispute that the internal pipelines of the petitioner within the premises at Door No.772 had some corrosion and therefore the petitioner was unable to tap from the water supplied by the respondents Board through their pipes. Whether water was indeed received by the petitioner in its premises through the said pipeline and was absorbed in the ground or due to corrosion the water was never supplied inside the premises of the petitioner cannot be decided at this point of time. Therefore, it will be hazardous to assume that there was no water supply by the respondents Board.

16. Further, the fact that the petitioner has been also made payment for charges implies that the petitioner received water and therefore the petitioner was not entitled to any waiver under the aforesaid Regulation. Therefore, I find no merits in the present writ petition. The impugned order is well reasoned.

17. Under such circumstances, the writ petition is dismissed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

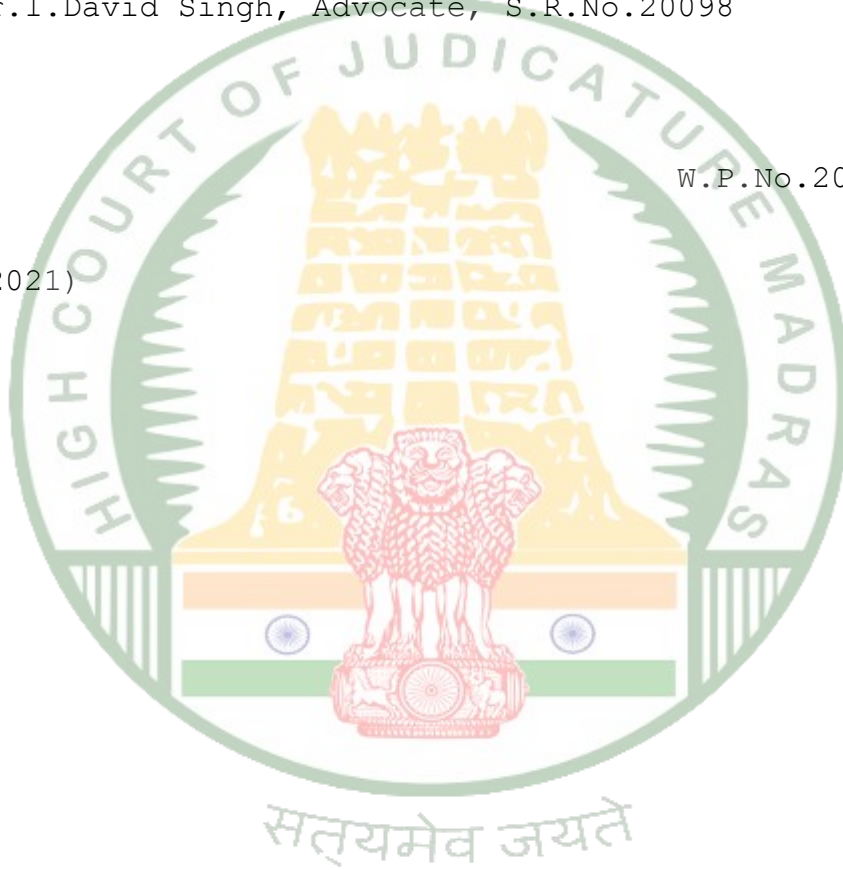
To

1. The Managing Director,  
Chennai Metropolitan Water Supply & Sewerage Board,  
Chintadripet, Chennai-2.
- 2.The Controller of Finance ( Revenue)  
Chennai Metro Water Supply & Sewerage Board,  
No.25, Sathyamurthy Road,  
Chennai 31.

+1cc to Mr.I.David Singh, Advocate, S.R.No.20098

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PL(CO)  
KM(27/04/2021)



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