IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.Nos.20876 and 20881 of 2021
and
W.M.P.Nos.22143 and 22147 of 2021

The Malayalee Club Madras,
Represented by its Secretary
D.Ganesan,
New No.28, Club Road, Chetpet,
Chennai-600 031.

...Petitioner in both WPs

-Vs.-

The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
1, Pumping Station Road,
Chintadripet,
Chennai - 600 031.

...Respondent in W.P.No.20876 of 2021

The Commissioner
Chennai Corporation
Ripon Building
Chennai. ...Respondent in W.P.No.20881 of 2021

Writ Petition No.20876 of 2021 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent herein to dispose of the representation of the petitioner dated 14.09.2021 to waive the demand of water tax of the petitioner for the period 21.03.2020 to 03.09.2020 and 25.04.2021 to 27.08.2021 in service No.08/107/07981/000 and to issue the revised demand after adjusting a sum of Rs.2,00,000/- which was already paid.

Writ Petition No.20881 of 2021 filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent herein to dispose of the representation of the petitioner dated 13.09.2021 to waive the demand of property tax of the petitioner for the period 21.03.2020 to 03.09.2020 and 25.04.2021 to 27.08.2021 in service No.08-107-07981-000 and to issue the revised demand after adjusting a sum of Rs.5,00,000/- which was already paid.

For Petitioner in both WPs.	:	Mr.Manoj Menon. for Mr.K.Kulandai Velu
For Respondent in WP.No.20876 of 2021	:	Mr.P.K.Paneerselvam standing counsel for CMWSSB
For Respondent in WP.No.20881 of 2021	:	Ms.S.Vaitheeswari standing counsel for Chenani Corporation.

C O M M O N   O R D E R

This common order will govern the captioned two main writ petitions and 'writ miscellaneous petitions' [hereinafter 'WMPs' in plural, 'WMP' in singular for the sake of brevity, convenience and clarity] thereat.

2. Writ petitioner in both the main writ petitions is the same, for the sake of convenience and clarity 'WP.No.20876 of 2021' shall be referred to as 'I WP' and 'WP.No.20881 of 2021' shall be referred to as 'II WP'.

3. In I WP, 'Chennai Metropolitan Water Supply and Sewerage Board' ['CMWSSB'] is the sole respondent and in II WP, Chennai Corporation is the sole respondent. For the sake of further convenience, 'sole respondent in I WP' shall be referred to as 'CMWSSB' and 'sole respondent in II WP' shall be referred to as 'MC' denoting Madras Corporation which was erstwhile name of Chennai Corporation.

4. Mr.Manoj Menon, learned counsel representing counsel on record for the writ petitioner who is before this Virtual Court submits that the petitioner is a club, it is one of the oldest social/cultural clubs, it is functioning at New No.28, Club Road, Chetpet, Chenani 600 031. Writ petitioner-club has metro water connection service vide Service No.08/107/07981/000 by CMWSSB. Writ petitioner-club property is assessed to property tax vide ID No.08-107-07981-000 by MC.

5. Prayers in I WP and II WP are to waive the demand qua water and sewerage tax/charges and property tax respectively (inter-alia by considering the representations which the writ petitioner has sent). In I WP, the representation is dated 14.09.2021 (which is at page No.13 of typed set of papers) and in II WP, the representation is dated 13.09.2021 (which is at page No.12 of typed set of papers).

6. Learned counsel for writ petitioner notwithstanding very many averments and very many grounds raised in the writ affidavit filed in support of captioned I WP and II WP submitted that the writ petitioner-club activities were shut from 21.03.2020 to 03.09.2020 and thereafter from 25.04.2021 to 27.08.2021 owing to the Government directives in the wake of Corona Virus Pandemic and consequent lock down which are collectively referred to as 'COVID 19 situation'.

7. In I WP, Mr.P.K.Paneerselvam, learned standing counsel for CMWSSB accepts notice on behalf of the sole respondent. In II WP, Ms.S.Vaitheeswari, learned standing counsel for MC accepts notice on behalf of the sole respondent.

8. Learned standing counsel for CMWSSB and learned standing counsel for MC in one voice submitted that the activities being shut is a common phenomena and it is not something unique to the writ petitioner club. Both the learned standing counsel also submit that this by itself cannot became a ground to waive water and sewerage taxes/charges and property tax. There is no difficulty in accepting this proposition.

9. In I WP, learned standing counsel points out that while arrears as of now is over Rs.13,00,000/- (Rupees Thirteen Lakhs only) barely a sum of Rs.2,00,000/- (Rupees Two Lakhs only) has been paid. Interestingly, in the representation in I WP i.e., representation dated 14.09.2021, writ petitioner by its own volition has averred that it has paid a huge sum of Rs.12.3 Lakhs as licence fee to the State Government merely to keep alive its liquor licence. Therefore in the considered view of this Court, request for waiver of CMWSSB taxes/charges does not prima facie find favour in a writ petition i.e., in writ jurisdiction. To be noted, a similar averment has been made in the representation in II WP i.e., representation dated 13.09.2021. Relevant paragraphs in the representations in both the writ petitions are the penultimate paragraphs and the same read as follows:

Penultimate paragraph of I WP:

> 'That apart, notwithstanding closure of the facility, the club was constrained to pay a sum of Rs.12.30 Lakhs as licence fee to the State Government to keep alive the liquor license. Inspite of the above constraints, with great difficulty we have paid a sum of Rs.2,00,000/- on 14.09.2021.'

Penultimate paragraph of II WP:

> 'That apart, notwithstanding closure of the facility, the club was constrained to pay a sum of Rs.12.30 Lakhs as licence fee to the State Government

to keep alive the liquor license. Inspite of the above constraints, with great difficulty we have paid a sum of Rs.5,00,000/- on 04.09.2021.'

10. To be noted, in II WP learned standing counsel submits that the property tax dues are in excess of 5 lakhs which the writ petitioner says has been paid as part payment.

11. Law is well settled that taxation is very different from fee and there is no quid pro quo. This Court, owing to the narrative thus far is not inclined to accede to the prayer of writ petitioner in I WP and II WP. The sequitur is both the Writ Petitions are dismissed.

12. If the respondent in both the captioned main writ petitions namely CMWSSB and MC choose to consider the representations sent by the writ petitioner, it will be well open to CMWSSB and MC to consider the same and it is made clear that this dismissal order will not come in the way. Consequently, connected miscellaneous petitions are dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mk/nsa

To

1.The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
1, Pumping Station Road,
Chintadripet,
Chennai – 600 031.

2.The Commissioner,
Chennai Corporation,
Ripon Building,
Chennai.

+2ccs to Mr.K.Kulandaivelu, Advocate Sr No.50607, 50608

W.P.Nos.20876 and 20881 of 2021
and
W.M.P.Nos.22147 and 22143 of 2021

RLD (CO)
NSK (12/10/2021)