IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2022

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MRS.JUSTICE.N.MALA

W.P.Nos.3307 and 3308 of 2004
and W.P.(MD).4289 of 2004
and W.M.P.Nos.3861 and 3863 of 2004

Madurai East Constituency Tax Payers
Welfare Association (Regd.No.75/2003)
Rep. by its Secretary,
Madurai ...Petitioner in W.P.No.3307 of 2004

K.S.Amarlal ...Petitioner in W.P.No.3308 of 2004

1.R.K.Senthiappa Nadar & Co.
rep. by its Partner
A.Chandramohan,
S/o.S.A.Annamalai,
No.5, Ponnagaram 4th Cross Street,
Madurai- 625 016.

2.R.K.Senthiappa Nadar Firm,
rep. by its Partner,
R.Karunakaran,
S/o.Rajamani Nadar,
P.K.S.Street,
Sivakasi-626 123.

3.R.Karunakaran
4.T.Nithiyanandham Ammal

5.P.S.S.Gragaraj
6.K.A.S.S.Soundara Pandian
7.R.Rooban Chinnathambi ... Petitioners in W.P.(MD).No.4289 of 2004

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai-9.

2.The Madurai Corporation rep.
by its Commissioner,
Madurai. ... Respondents in both W.P.Nos.3307 and 3308 of 2004

Madurai Municipal Corporation,
rep. by its Commissioner,
Anna Maligai,
Madurai-625 020.
...Respondent in W.P.(MD).No.4289 of 2004

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Prayer in both W.P.Nos.3307 and 3308 of 2004: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records from the file of the 1st respondent in G.O.Ms.No.213, MA & WS (MC2) Department, dated 31.12.2003 and the resolution passed by the 2nd respondent in Resolution No.20 (item No.9) dated 25.04.2003 and quash the same.

Prayer in W.P.(MD).No.4289 of 2004: Writ Petition is filed under Article

226 of Constitution of India praying to issue a WRIT OF DECLARATION declaring that the resolution No.MPT6/26177/2000 passed by the Madurai Municipal Council on 25.04.2003, as item No.9 in their emergency meeting deciding to demand non-refundable deposits from the property owners as null and void, arbitrary, without any power, and out side the powers conferred upon the respondent Municipal Council under the provisions of Madurai City Municipal Corporation Act No.15 of 1971.

For Petitioner : Mr.K.V. Sajeev Kumar
(in both W.P.Nos.3307 and 3308 of 2004)

For Petitioners : Mr.S.Subbiah
(in W.P.(MD).No.4289 of 2004) for Mr.P.Jessi jeevapriya

For Respondents : Mr.Meera Arumugam
(in both W.P.Nos.3307 and 3308 of 2004) Additional Govt. Pleader

For R2 : Mr.P.Srinivas
(in both W.P.Nos.3307 and 3308 of 2004)

For Respondent : Mr.P.Srinivas
(in W.P.(MD).No.4289 of 2004)

ORDER

[Order of the Court was delivered by N.MALA,J.]

The Writ Petition Nos.3307 and 3308 of 2004 are filed for a Writ of Certiorari or any other appropriate writ or order in the nature of writ by calling for the records from the file of the 1st respondent in G.O.Ms.No.213, MA & WS (MC2) Department, dated 31.12.2003 and the resolution passed by the 2nd respondent in Resolution No.20 (item No.9) dated 25.04.2003 and quash the same.

2.The W.P.(MD).No.4289 of 2004 is filed for a Writ of Declaration or any other appropriate Writ or Order or Direction in the nature of the Writ declaring that the resolution No.MP/T6/26177/2000 passed by the Madurai Municipal Council on 25.04.2003, as item No.9 in their emergency meeting deciding to demand non-refundable deposits from the property owners as null and void, arbitrary, without any power, and out side the powers conferred upon the respondent Municipal Council under the provisions of Madurai City Municipal Corporation Act No.5 of 1971.

3.W.P.No.5794 of 2005 is related to service matter. Hence the same is delinked from this batch.

4.In these batch of writ petitions the common issue raised is whether the Madurai City Municipal Corporation is empowered to collect non-refundable security deposit and drainage charges for undertaking the new underground sewerage scheme in Madurai.

FACTUAL BACKDROP:

5.In the city of Madurai the volume of sewer water generated was 50.86 MLD let out from 45,000 houses and carried through the existing sewerage system. The Government vide G.O.Ms.No.119 MASWS dated 19.05.1999 accorded administrative sanction for improving the existing system with a view to prevent the draining of the sewer into the Vaigai River. The Government under the said G.O. accorded sanction for a New underground Sewerage system at an estimated cost of Rs.46.50 Crores and further permitted collection of monthly payments and the implementation of the scheme in a phased manner. The Madurai City Municipal Corporation thereafter passed various resolutions in furtherance of the scheme and one such resolution dated 25.04.2003 provided for collection of Non-refundable Security Deposit and monthly payments as shown in the table below. The said resolution was approved by the Government vide G.O.Ms.No.213 dated

31.12.2003.

Security Deposit

S.No.	Half yearly Property Tax Rs.	For Residential Area Rs.	For Residential and Commercial area Rs.	For Commercial and Industrial/other are Rs.
1.	Up to Rs.500/-	2500/-	5000/-	10,000/-
2.	From Rs.501 to Rs.1500	3500/-	7500/-	10,000/-
3.	From Rs.1501 & above	5000/-	10,000/-	10,000/-
For exempted educational institutions and other charitable institutions …... Rs.10,000/-				

Monthly Payment

Particulars	Residential Area	Commercial Area	Industries
Monthly payment to be commenced From 1.4.99	Rs.30/-	Rs.90/-	Rs.150/-
Amount to be collected after Execution of the Scheme	Rs.125/-	Rs.250/-	Rs.375/-

The Subject matter of challenge in these three writ petitions is the aforesaid resolution dated 25.04.2003 and G.O.Ms.No.213 dated 31.12.2003.

RIVAL CONTENTIONS:

6.The counsel for the petitioner primarily challenged the impugned orders on the ground that in the absence of legislative sanction, the Municipality had no power to demand monthly payments and non-refundable security deposit. The counsel further submitted that the demand made as a public contribution had no statutory sanction and hence beyond the scope of the Act. The counsel referring to the terms “Security Deposit” and “refundable” submitted that these terms in the absence of a definition do not convey any meaning and so to interpret them to mean either a fee, tax or levy is untenable.

7.The learned counsel further submitted that the public contribution would not amount to tax, cess or fee, because of the voluntary nature of the contribution. According to the learned counsel public contribution in common parlance means fund raising and in absence of any statutory sanction the said demand is beyond the scope of the Act.

8.The learned counsel for the respondents did not file a counter but relied on the reported Judgment of this Hon'ble Court in 2012 (5) MLJ 1075 and submitted that all the issues raised by the petitioners are covered by the said Judgment and therefore prayed that the writ petition be dismissed.

DISCUSSION:

9.The Corporation of Madurai proposed to implement the under ground drainage scheme within the Madurai City Municipal Corporation area under the National River Water Protection Scheme of the Central Government. Augmentation of Finance for the said scheme was proposed from different sources. The non-refundable deposit and monthly maintenance charges from the public who were beneficiaries of drainage connection both old and new was proposed for the augmentation of finance. The UGD Scheme was inevitable as the existing old sewerage system had to be upgraded and integrated with the new system in the whole of Madurai City Corporation area. The Madurai City Municipal Corporation passed a resolution dated 25.04.2003 and in item 9 of the Agenda decided to collect non-refundable deposit from existing and new drainage connection beneficiaries in accordance with the property tax and also to collect the monthly maintenance charges. The said resolution of the Municipal Corporation was placed before the Government for approval and the Government vide G.O.Ms.No.213 dated 31.12.2003, approved the said resolution and notified the same. The aforesaid resolution and the Government G.O. which are impugned in the present writ petitions were also earlier challenged in a batch of writ petitions before this Hon'ble Court. The learned Single Judge by order dated 16.12.2011 rejected the challenge and the same was taken up by way of an Appeal to the Hon'ble Division Bench in a batch of Writ Appeals and Writ Petitions and the Hon'ble Division Bench by order dated 19.06.2012 confirmed the order of the learned Single Judge.

10.The learned counsel for the petitioners has filed written arguments raising 52 points in support of his challenge to the said impugned orders. The learned counsel in the written arguments admits that normally the common Judgment of the Hon'ble Division Bench has to be followed, but according to him if certain aspects which were earlier not brought to the notice of the Court are brought to the notice of the Court for persuading the Court to take a different view, the same could be agitated. We have gone through the entire written arguments of the petitioners counsel and we find that all the issues raised therein except the one that would be specifically referred to in this order were raised before the Hon'ble Division Bench in one form or other and the Hon'ble Division Bench on consideration of the said contentions confirmed the order of the learned Single Judge, thereby rejecting the challenge to the impugned resolution and the G.O.

11.Judicial discipline and decorum requires to be maintained by a Co-ordinate Bench while dealing with issues covered by an earlier Co-ordinate Bench. Keeping the same in mind we approach the issue raised by the present petitioners. As already stated majority of the points raised are covered by the order of the Hon'ble Division Bench dated 19.06.2012. Therefore we will not replicate the Judgment of the Hon'ble Division bench and as laid down by the Hon'ble Supreme Court in the case of Sandhya Educational Society Vs. Union of India reported in 2014 (7) SCC 701, a Co-ordinate Bench has to respect the orders passed by another Co-ordinate Bench and cannot on mere assumptions refer the matter for consideration by a larger Bench. We are therefore not inclined to permit the petitioner to re-agitate the issues covered by the Hon'ble Division Bench order.

12.From the written arguments of the petitioners we find that couple of points were not raised in the manner now raised. Though the approach to the issue is different, the issue in our view remains the same and hence the finding would remain the same as that of the Hon'ble Division Bench. We would therefore confine the discussion to the said issue only.

13.The learned counsel for the petitioner relied on the Doctrine of *Sub silentio* to submit that the issue now raised was not raised before the Hon'ble Division Bench and therefore there is no impediment for considering the same. The learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh and another Vs. Synthetics and Chemical Limited and another reported in 1991 (4) SCC 139 to support his submission. In our view there is no quarrel on the legal principles of the Rule of sub silentio. In the Judgment relied on by the learned counsel in paragraph No.41 it is stated as follows:

> *41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point*

of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B.Shama Rao v. Union Territory of Pondicherry it was observed,' it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable *limits is inimical to the growth of law.*

14.In our considered view the Rule of Sub silentio will not arise in the present case. As already stated the grounds on which the issue is raised is different but the issue is the same (i.e.) whether the Madurai City Municipal Corporation (MCMC) has power to demand non-refundable security deposit and monthly maintenance. The petitioners contention is that the public contribution which is contemplated under the G.O. for the collection of non-refundable security deposit is out side the scope, powers and limitations of the said act. The petitioners argument is that there is no provision in the Madurai City Municipal Corporation Act (MCMC Act) for collection of public contribution in the form of non-refundable security deposit and monthly maintenance and hence the said demand does not have any statutory sanction. The learned counsel refers to Section 170 of the Madurai City Municipal Corporation Act (MCMC Act) to contend that the said provision relates to the Municipal fund and it does not cover the demand under public contribution. To understand and appreciate the petitioners contention, it would be relevant to extract Section 170 of the Madurai City Municipal

Corporation Act (MCMC Act), which is given under chapter VI relating to finance and is as follows:

> ***170.Definition of Municipal Fund***.-- *All moneys received by the corporation shall constitute a fund which shall be called the municipal fund and shall be applied and disposed of in accordance with the provisions of this Act or other laws.*

15.A bare reading of the said provision makes it clear that the said provision is expansive as it covers all monies received by the Corporation. The source of money is not restricted to a particular mode or manner. As the receipts of funds is not restricted to any particular source under Section 170, the contention of the petitioner to the contrary cannot be accepted. The provisions of the Madurai City Municipal Corporation Act (MCMC Act) relating to public drainage in Sections 207, 208, 209, 210, 211, 212, 213, 214 and 215 provide for vesting, maintenance, control, connection of public and private drains and the manner and method in which the particular provisions have to be operated. Under the said provisions power is given to the Municipal Corporation to provide and maintain the public drainage system, Section 207 of the said Act is very relevant for the present purpose. Section 207 reads as follows:

__207.Vesting of drains in Corporation.--__ All public drains, pipes and drainage works existing at the date of commencement of this Act or afterwards made at the cost of the Corporation or otherwise, and all works, materials and things as pertaining thereto shall vest in the corporation.

16.The said provision makes it clear that the execution of drainage works can be made either at the cost of the Corporation or otherwise. Therefore there is absolutely no bar to the Corporation from raising funds by way of public contribution. It is also pertinent to note here that all the provisions referred to above give ample power to the Corporation to mulct the expense on the beneficiaries of the drainage system. Therefore in the light of the said provisions it is futile to contend that the Madurai City Municipal Corporation has no powers to raise funds by way of public contribution. Apart from the provisions of Section 170 and other provisions referred to above, We would also like to refer to the Judgment of the learned Single Judge in order dated 16.12.2011, which was confirmed by the Hon'ble Division Bench in order dated 19.06.2012. The learned Judge on a conspectus of the entire materials placed before him categorically held that the Corporation council after the passing of G.O.Ms.No.213 dated 31.12.2003 held a meeting on 30.06.2009 and passed a resolution No.709 and amended the by-law 63A, after noting that the work relating to laying down underground drainage was completed as per the order of the State Government in the G.O. Amended herein. The learned Judge after referring to the amended by-law further stated that the by-laws were validly published and the notification was also issued in the Official gazette. The learned Judge on facts found that the Corporation had passed valid byelaws. The learned Judge also found that the Corporation under byelaw Nos.63 and 63a was seized of the power to levy drainage charges including demand of non-refundable deposit and after the completion of the project was entitled to claim monthly maintenance charges. In fact, the learned Judge though found that the writ petitions were liable to be dismissed on the technical ground of failure to challenge the byelaws, nevertheless discussed the case on merits and passed the order affirming the impugned G.O. and the resolution.

17.The Hon'ble Division bench referring to various provisions of the Madurai City Municipal Corporation Act (MCMC Act) and the constitutional provisions confirmed the order of the learned Single Judge. As far as the challenge to the impugned orders on the grounds of legislative sanction and the nature of levy is concerned, we are of the firm view that the same is covered by the Judgment of the Co-ordinate Bench dated 19.06.2012 and we find no reason to interfere with the same.

18.On the basis of the above discussion, we are of the view that the challenge to the impugned G.O. and the resolution as lacking statutory recognition/sanction is untenable and once Madurai City Municipal Corporation Act (MCMC Act) is found to have amended its byelaws to provide for collection of monthly maintenance charges and non-refundable security deposit, the contentions raised cannot be countenanced. That the Madurai City Municipal Corporation has the power to make a bye laws cannot be disputed as Section 433 of the Madurai City Municipal Corporation Act (MCMC Act) deals with the Power of the council to make bye laws. Therefore the contention of the petitioners has no merits and the same is rejected.

19.Before parting with this case, we would like to remind the petitioners of the fundamental duties enjoined on every citizen under the constitution in Part IV A. Fundamental duties in 51 g reads as follows:

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

20.Ar 51 (g) enjoins that it is the duty of every citizen to protect and improve the national environment, forests, lakes, rivers and wild life. The decision of the Madurai City Municipal Corporation to implement the underground drainage system was because of the initiative of the Government of India under the National River Conservation Program (NRCP) of the Department of Environment and Forest, Government of India. The Program was aimed at preventing the pollution of the Vaigai River from excess sewerage being drained into it. The Rivers and the Forests are national wealth and it is the duty of every citizen to contribute to the protection and improvement of the same. Therefore even assuming that public contribution is voluntary in nature, it is the fundamental duty of every citizen to join hands with Government and ensure that such schemes which are aimed at Protection of environment and natural resources like rivers are implemented in letter and spirit. It is to be noted that Public contribution is only a miniscule portion of the funding for the project.

21.If we have the right to criticize the Government for its inaction in providing basic infrastructure so also we have the duty to comply with the legally permissible demands for implementing the infrastructural schemes floated by the Government which are in larger public interest. If we aspire to become a developed country, we should contribute to the development and not complain. As President John F Kennedy said "Ask not what your country has done for you ask what you have done for your country." The petitioners as dutiful citizens are bound to pay the security deposit which was rightly held by the Hon'ble Co-ordinate Bench to be a fee and not tax.

22.For all the said reasons we find no merits in the writ petition and the same deserves to be dismissed.

23.Accordingly, the Writ Petitions stand dismissed. However, there shall be no order as to costs. Consequently, WMPs are closed.

(S.S.S.R.J.,) (N.M.J.,)
14.10.2022

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Index : Yes/No

Internet : Yes/No
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To

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