

THE MUNICIPAL CORPORATION, FARIDABAD

A

v.

MODERN SCHOOL, FARIDABAD & ORS.

(Civil Appeal No. 1555 of 2019)

FEBRUARY 08, 2019

B

[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]

Haryana Municipal Corporation Act, 1994:

ss.43, 87, 88, 177, 193, 194, 196 and 205 – Office Order dated 14.6.1999 issued by Municipal Corporation for regularisation of tubewells causing unauthorised activities of discharging of waste water into the main sewer of the Corporation – Corporation claimed user charges from the schools for discharging the water drawn from tubewell, into the sewer vested in the Corporation – The schools challenged the levy of user charges – High Court set aside the charges on the ground that such fee falls within ambit of s.88 and hence in absence of prior approval of State Government, such levy is not sustainable – On appeal, held: The user charges were not a tax or fee as contemplated u/ss. 87 or 88 – The water extracted by tubewells were discharged by the schools into the municipal drains – Therefore, Corporation was justified to levy user charges for the use of municipal drains for discharge of waste water from the tubewells.

C

D

E

Allowing the appeals, the Court

HELD: 1. In terms of Section 43 of Haryana Municipal Corporation Act, 1999, one of the obligatory functions of Corporation is construction, maintenance and cleaning of drains and drainage works and also scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted mattes. It is in exercise of such function that the Municipal Corporation has provided for the disposal of the waste water from residential, commercial and industrial areas falling within the area of Municipal Corporation into its sewer drain. [Para 14][711-A-B]

F

2. The water extracted by tubewells installed by the Schools is discharged into the Municipal drains, therefore, the

G

H

- A **Corporation is justified to levy user charges whereby, the waste water of the Schools is carried by the Municipal drains. Though, the Schools could not discharge waste water into Municipal drains without prior permission but instead of stopping the communication of private drain with the Municipal drain, the Corporation has demanded user charges which is not a tax or fee as contemplated under Section 87 or 88 of the Act, but user charges for using the Municipal services for discharge of waste water extracted by the Schools from the tubewells installed by them. [Paras 20 and 21][712-B-C]**
- B **3. The fact that the Municipal Corporation has claimed user charges is made out from the office order dated 14.06.1999. In response to notice, the Schools have agreed to regularise the discharge, but, disputed the levy subsequently on the ground that such fee cannot be charged being in contravention of Sections 87 and 88 of the Act. The documents on record leave no manner**
- C **d of doubt that the Corporation has not levied any tax or fee falling within the scope of Section 87 or 88 of the Act. The Corporation has claimed the user charges for permitting the Schools to discharge waste water into the Municipal drains which are related to the capacity to extract ground water. Such demand does not contravene any of the provisions of the Act. Therefore, the Corporation was well within its right to claim user charges for the use of Municipal drains for discharge of waste water from the tubewells installed by the Schools. [Paras 22, 23 and 24][712-D-G]**
- E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1555 of 2019.

- F From the Judgment and Order dated 21.12.2015 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 1057 of 2015 (O&M).

WITH

Civil Appeal No. 1556 of 2019.

- G B. K. Satija (for Sanjay Kumar Visen), Adv. for the Appellant.

H. L. Tiku, Sr. Adv., Ms. Yashmeet Kaur, Ashok K. Mahajan, Mohan Bhadana, Mrs. Priya Puri, Ranjay Dubey, Ms. Vineeta Meghrajani, Ankush Dewan, Advs. for the Respondents.

- H

The Judgment of the Court was delivered by A

HEMANT GUPTA, J. 1. Leave granted.

2. The present appeals are directed against an order passed by the Division Bench of High Court of Punjab & Haryana on 21.12.2015 whereby intra-court appeals against common order dated 19.02.2015 passed by the learned Single Judge in the two writ petitions filed by the respondents were dismissed. B

3. The respondents were allotted the land for the purpose of the School by the Haryana Urban Development Authority, Faridabad on leasehold basis. The allotment letter issued to DAV College Managing Committee dated 02.05.1986 has been filed as an additional document before this court. C

4. The Municipal Corporation issued an office order on 14.06.1999 for regularisation of tubewells causing unauthorized activities of discharging of the waste water into the main sewer of the Corporation. It was decided that all private tubewell owners who have installed tubewells within the area of Municipal Corporation shall use water for domestic or industrial purposes and that water shall not be sold or used for commercial purposes. The charges were decided to be levied as per the diameter of tubewells and that such tubewells have to be registered with the Central Ground Water Board Authority. D

5. In terms of such office order, notice was served upon the Schools - writ petitioners before the High Court on 05.05.2000 to the effect that tubewell has been installed without prior approval of the Municipal Corporation, therefore, information was sought in the prescribed format failing which tubewell connection was to be disconnected. In response to such notice, M/s Modern School communicated as under:- F

“1. That this educational institution has installed tubewell of 2” dia for the school and hostel students and agriculture purpose which is a subject of +2 stage education, in the year 1999.

2. That this tubewell is installed to fulfil the required demand of the school as the supply of the corporation is irregular and insufficient to meet out the requirement of the school. However, we have already registered this connection with the Central Ground Water Board (copy enclosed). G

H

- A 3. In the year 1999 we got a water and sewer connection sanctioned in the name of the school by your department after completion of the building.”
6. Another notice was served upon the Schools on 23.10.2000 communicating that the Schools are discharging water into property vested in the Municipal Corporation, therefore, the Schools have to pay user charges for the operation of the tubewell installed privately. The notice is as under:-
- “You have installed a tubewell of 2” dia within your premises. You are using the water and discharging it into property vested in the Municipal Corporation. The House of this corporation has approved the levy of user charges/composition fees for the operation of the tubewell installed privately at the rate of Rs.3016/- per month.
- C You are therefore, directed to deposit a sum of Rs. 66352/- as user charges for the period from January, 1999 to 10/2000 within 15 days from the date of issue of this notice, failing which necessary action as per law would be taken.
- D You are also directed to produce the copy of registration certificate duly attested, issued by the officer appointed by the Central Ground Water Board for the installation and operation of the private tubewell within the limit of Municipal Corporation, Faridabad.”
- E 7. In the writ petitions filed, the challenge is to an office order issued by the Municipal Corporation on 14.6.1999, inter-alia, on the ground that the Schools have been granted the sewerage and water connections but the water facility is provided through a pipeline of the diameter of half an inch. With the growing number of school activities and for the purpose of proper maintenance of greenery and lawns, and on account of failure of the Municipal Corporation to provide more water, it has installed tubewells after obtaining registration from the Central Ground Water Authority under Section 3(3) of the Environment (Protection) Act, 1986. Such tubewells provide water for the purpose of drinking and toilet purposes, besides maintenance of lawns and greenery in the schools.
- F 8. The Schools have challenged the claim of user charges on the ground that Section 87 of the Act¹ provides for levy of taxes whereas, Corporation is empowered to levy fee including development fee for
- G H ¹ The Haryana Municipal Corporation Act, 1994

providing and maintaining civic amenities in certain areas in terms of A
Section 88 of the Act but after the prior approval of the State Government.
Since no approval has been sought from the State Government, therefore,
the levy of the user charges is not tenable.

9. The Corporation in its written statement in the writ petition B
explained that the water charges are in respect of the water supplied through pipeline maintained by the Corporation whereas the user charges have been levied on the tubewell installed by the Schools as waste water is discharged into the sewer of the Municipal Corporation. Thus, Corporation is competent to levy user charges for the use of Municipal drain for the flow of waste water.

10. The High Court has set aside the charges solely on the ground C
that such fee is falling within the ambit of Section 88 of the Act, therefore, in the absence of prior approval of the State Government, such levy is not sustainable.

11. Learned counsel for the appellant argued that user charges so D
claimed are neither a tax nor fee as contemplated by Section 87 or 88 of the Act but are charges for discharge of waste water into the Municipal sewer line which falls within the scope of Section 205 of the Act. It is contended that the basis of the judgment of the High Court is patently not sustainable.

12. On the other hand, Mr. H.L. Tiku, learned senior counsel for E
the Schools argued that the amount claimed is on extraction of the water as the charge is as per the diameter of the tubewell, therefore, it is a fee falling within the ambit of Section 88 of the Act. Therefore, same could not be imposed without prior approval of the State Government.

13. Before we discuss the respective contentions of the parties, F
the following provisions of the Act would be relevant to appreciate the arguments of the learned counsel for the parties:-

“43. **Obligatory functions of Corporation.** — It shall be G
incumbent on the Corporation to make adequate provisions, by any means or measures which it may lawfully use or take, for each of the following matters, namely:-

(a) the construction, maintenance and cleaning of drains and drainage works and of public latrines, urinals and similar conveniences;

H

A (b) the construction and maintenance of works and means for providing supply of water for public and private purposes;

 (c) the scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters;

B

xxx xxx xxx

177. **Supply of water to connected premises.** — (1) The Commissioner may, on application by the owner of any building, arrange for supplying water from the nearest main to such building for domestic purposes in such quantities as he deems reasonable,

C

and may at any time limit the amount of water to be supplied whenever he considers necessary.

(2) Apart from the charges for the domestic supply at rates as may be fixed by the Government, additional charges will be payable for the following supplies of water:-

D (a) for animals or for washing vehicles where such animals or vehicles are kept for sale or hire;

 (b) for any trade, manufacture or business;

E (c) for fountains, swimming baths, or for any ornamental or mechanical purposes;

 (d) for gardens or for purposes of irrigation;

 (e) for watering roads and paths;

 (f) for building purposes.

F

xxx xxx xxx

193. **Public drains etc. to vest in Corporation.**— (1) All public drains, all drains in, along side or under any public street, and all sewage disposal works whether constructed out of the Corporation Fund or otherwise, and all works, materials and things pertaining thereto which are situated in the Municipal area shall vest in the Corporation.

(2) All public and other drains which are vested in the Corporation are hereafter in this Act referred to as Corporation drains.

H

(3) For the purposes of enlarging, deepening or otherwise repairing or maintaining any such drain or sewage disposal work so much of the sub-soil pertaining thereto as may be necessary for the said purposes shall also be deemed to vest in the Corporation. A

(4) All drains and ventilation shafts, pipes and all appliances and fittings connected with the drains works constructed, erected or set up out of the Corporation Fund in or upon premises not belonging to the Corporation, whether – B

(a) before or after the commencement of this Act; and

(b) for the use of the owner or occupier of such premises or not, shall unless the Corporation has otherwise determined, or does at any time otherwise determine, vest and be deemed always to have vested in the Corporation. C

194. Control of drain and sewage disposal works. -- (1) All Corporation drains, all sewage disposal works and works materials and things appertaining thereto shall be under the control of the Commissioner. D

(2) The Commissioner shall maintain and keep in repair all municipal drains and sewage disposal works and when authorised by the Corporation in this behalf, shall construct as many new drains and sewage disposal works as may from time to time be necessary for effectual drainage and sewage disposal. E

195. Certain matters not to be passed into municipal drains. — No person shall throw, empty or turn into any Corporation drain or into any drain communicating with a Corporation drain – F

(a) any matter likely to injure the drain or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents; or

(b) any chemical, refuse or waste steam, or any liquid of a temperature higher than forty-five degrees Celsius being refuse or steam which, or a liquid which when so heated, is, either alone or in combination with the contents of the drain, dangerous or the cause of nuisance, or prejudicial to health; or G

(c) any dangerous petroleum.

- A Explanation. – In this section the expression “dangerous petroleum” has the same meaning as is assigned in the Petroleum Act, 1934 (Central Act 30 of 1934).
- B 196. **Application by owners and occupiers to drain into municipal drain** - (1) Subject to such conditions as may be prescribed by bye-laws made in this behalf, the owner or occupier of any premises having a private drain, or the owner of any private drain within the Municipal area may apply to the Commissioner to have his drain made to communicate with the drains and thereby to discharge foul water and surface water from those premises or that private drain:
- C Provided that nothing in this sub-section shall entitle any person –
(a) to discharge directly or indirectly into any Corporation drain-
(i) any trade effluent from any trade premises, except in accordance with bye-laws made in this behalf; or
- D (ii) any liquid or other matter the discharge of which into Corporation drains is prohibited by or under this Act or any other law; or
(b) where separate Corporation drains are provided for foul water and for surface water to discharge directly or indirectly: -
(i) foul water into a drain provided for surface water; or
(ii) except with the permission of the Commissioner, surface water into drain provided for foul water; or
(c) to have his drains made to communicate directly with a storm water overflow drain.
- F

xxx xxx xxx

- G 205. **Connection with water works and drains not to be made without permission.**— Without the written permission of Commissioner, no person shall for any purpose whatsoever, at any time make or cause to be made any connection or communication with any drain referred to in section 194 or any water-works, constructed or maintained by, or vested in the Corporation.”

H

14. In terms of Section 43, one of the obligatory functions of Corporation is- construction, maintenance and cleaning of drains and drainage works and also scavenging, removal and disposal of filth, rubbish and other obnoxious or polluted matters. It is in exercise of such function that the Municipal Corporation has provided for the disposal of the waste water from residential, commercial and industrial areas falling within the area of Municipal Corporation into its sewer drain.

A

15. Chapter XII of the Act relates to Water Supply, Draining and Sewage disposal. Section 177 provides for water supply to the premises. Admittedly, such water supply is being provided by the Corporation to the Schools in question. The grievance of the Schools is that such supply is not adequate to meet the demand, inter alia, on account of increase of the functions of the Schools and to maintain the lawns etc. Such water connection provided to the premises of the Schools is within the scope of Section 177 of the Act as reproduced above. In terms of Section 177(2) the Corporation can claim additional charges at the rates fixed by the Government.

B

16. In terms of Section 193, all public drains, all drains in, alongside or under any public street, and all sewage disposal works whether constructed out of the Corporation Fund or otherwise, and all works, materials vest in the Corporation. As per Section 194, all sewage disposal works and works materials are under the control of the Commissioner who is required to maintain and repair all Municipal drains and sewage disposal works. The Commissioner is also obliged to construct as many new drains and sewage disposal works as may be necessary from time to time for effectual drainage and sewage disposal.

C

17. Section 196 enjoins the duty on the owners and occupiers having a private drain within the Municipal area to communicate with the drains of the Municipal Corporation for the purpose of discharge of foul water and surface water from their premises or that private drain. For such discharge, sub-section (2) of Section 196 creates an obligation to give a notice of proposal to connect the private drain with the Municipal drain.

D

18. Section 205 of the Act creates a bar on any person to make or cause to be made any connection or communication with any drain referred to in Section 194 or any water works constructed or maintained by, or vested in the Corporation.

E

F

G

H

- A 19. We find that the High Court has misdirected itself when it held that the user charges claimed by the Corporation for discharge of waste water into the sewer lines of the Municipal Corporation is a fee within the meaning of Section 88 of the Act.
- B 20. The water extracted by tubewells installed by the Schools is discharged into the Municipal drains, therefore, the Corporation is justified to levy user charges whereby, the waste water of the Schools is carried by the Municipal drains.
- C 21. Though, the Schools could not discharge waste water into Municipal drains without prior permission but instead of stopping the communication of private drain with the Municipal drain, the Corporation has demanded user charges which is not a tax or fee as contemplated under Section 87 or 88 of the Act but user charges for using the Municipal services for discharge of waste water extracted by the Schools from the tubewells installed by them.
- D 22. The fact that the Municipal Corporation has claimed user charges is made out from the office order dated 14.06.1999. In response to notice, the Schools have agreed to regularise the discharge, but, disputed the levy subsequently on the ground that such fee cannot be charged being in contravention of Sections 87 and 88 of the Act.
- E 23. The documents on record leave no manner of doubt that the Corporation has not levied any tax or fee falling within the scope of Section 87 or 88 of the Act. The Corporation has claimed the user charges for permitting the Schools to discharge waste water into the Municipal drains which are related to the capacity to extract ground water.
- F 24. We do not find that such demand contravenes any of the provisions of the Act. Therefore, the Corporation was well within its right to claim user charges for the use of Municipal drains for discharge of waste water from the tubewells installed by the Schools.
- G 25. Consequently, the appeals are allowed. The Order passed by the Division Bench of the High Court dated 21.12.2015 and the Order dated 19.02.2015 of learned Single Judge are set aside and the Writ Petitions are dismissed.