

PETITIONER:
MUNICIPAL CORPORATION OF GREATER BOMBAY

Vs.

RESPONDENT:
NAGPAL PRINTING MILLS & ANR.

DATE OF JUDGMENT 17/03/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1009 1988 SCR (3) 274
1988 SCC (2) 466 JT 1988 (2) 11
1988 SCALE (1) 625

ACT:

Bombay Municipal Corporation Act, 1888: ss. 169, 276, 277 and 461/Water Charges and Sewerage & Waste Removal Rules, 1976: Rule III(d)(i)-Water-Supply of-Determination of water charges-Corporation empowered to levy charge only in respect of water actually supplied and consumed-Rule III(d)(i) containing no methodology for measuring water supplied-Held beyond rule making power of Corporation.

HEADNOTE:

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Section 169 of the Bombay Municipal Corporation Act, 1888 empowers the Standing Committee to make rules to charge for the supply of water and by such rules to determine the water charges in lieu of water tax based on a measurement or estimated measurement of the quantity of water supplied. Section 276 provides for fixing of meters for measurement of water supplied and maintaining the instruments in proper order. Bye-laws framed under s. 461 in 1968 empowered the Commissioner to fix a quota. Rule III(d)(i) of the Water Charges and Sewerage and Waste Removal Rules framed in exercise of the powers given by ss. 169 and 276 of the Act which became effective in 1976 provided for charging for the shortfall between the quota and the recorded consumption in respect of industries for which a quota has been fixed.

The respondents were being charged for water upto June, 1977 on the basis of their actual consumption. In July, 1977 they were sought to be billed for the difference between the charges on the quota basis under the said rule and the actual consumption basis, which was objected to by the respondents. The writ petition filed by them in the High Court was rejected by a single Judge.

In appeal before the Division Bench it was contended that the Rule III(d)(i) of the Rules was ultra vires the rule-making power of the Standing Committee of the Corporation being inconsistent with s. 169 of the Act. The High Court held that s. 169 empowers the Corporation to levy charge only in respect of the water that has in fact been supplied 274

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to and consumed by the consumer and it is to be levied on

the basis of measurement or estimated measurement, and struck down the rule.

Dismissing the special leave petition filed by the Municipal Corporation,

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HELD: There being no methodology in Rule III(d)(i) of the Water Charges Rules for measuring the actual water supplied, that rule is beyond the powers of the Corporation. The High Court, was, therefore, right in striking it down. [278H; 279A]

The Corporation cannot estimate and charge on the basis of water it makes available for use by a consumer. The supply referred to in s. 169 of the Act, is a supply which is, in fact, supplied to the consumer and consumed by it. It is only that supply which can be measured. Where the measuring device has failed to record the correct consumption it might be estimated. But that must be on sound guidelines otherwise it would be arbitrary and mere ipse dixit of the authorities concerned. [278D-E]

The by-laws made in 1968 empowering the Commissioner to fix a quota do not indicate any guidelines. That is bad and unwarranted. [278E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 13154 of 1987.

From the Judgment and order dated 16.9.1987 of the Bombay High Court in Appeal No. 425 of 1981.

R.P. Bhatt and D.N. Mishra for the Petitioner.

Shri Narain and Mrs. M. Karanjawala for the Respondents.

The following Judgment of the Court was delivered by
SABYASACHI MUKHARJI, J. This petition for leave to appeal under Article 136 of the Constitution is directed against the Judgment and order of the Division Bench of the High Court of Bombay, dated September 16, 1987. The respondents were in the business of dyeing and printing at Industrial Estate, Kandivali, Bombay. They had originally an 1/2 inch water connection in their premises. In 1971 they had applied to the Municipal Corporation of Greater Bombay, for a larger
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water connection. In 1975 they were given an 1 1/2 inch connection. It appears that on 24th September, 1975, according to the Corporation, it fixed a water quota for the respondents in the figure of 27,18,000 litres per month. This was, however, disputed by the respondents. But the High Court proceeded upon the basis that this was the water quota fixed for them.

Water Charges and Sewerage and Waste Removal Rules of the Greater Bombay became effective from 1st April, 1976. These Rules were framed in exercise of the powers given by sections 169 and 276 of the Bombay Municipal Corporation Act, 1888 (hereinafter called 'the Act'). Rule III(d)(i) provides as follows:

"(d)(i) In case of industries for which a quota of water has been fixed, if the recorded or computed consumption falls short of 9/10th of the quota of water for any month, a consumption equal to 9/10th of the quota of water shall be charged. "

It appears, upto June, 1977 water charge bills were sent to the respondents on the basis of their actual consumption. In July, 1977 the respondents received

supplementary bills for the difference between the charge on the quota basis under the said rule and the actual consumption basis. This was objected to by the respondents. The respondents contended that though they had kept their taps open for the full 24 hours of the day, water was not available to make up anywhere near the quantity of the quota. The respondents asserted that the Corporation had agreed to verify this. The Corporation threatened to cut off the respondents' water supply. The respondents filed a writ petition in the High Court of Bombay to restrain the Corporation from doing so.

The learned Single Judge of the High Court found no substance in the case of the respondents. Rule nisi was, therefore, discharged. The respondents went up in appeal before the Division Bench.

It was contended that the said rule was ultra vires the rule-making power of the Standing Committee of the Corporation being inconsistent with section 169 of the Act. It was further urged that the Corporation was, in the meanwhile, not justified in charging on the basis of the quota because it was in no position to supply the quantity of water fixed. It was also urged that the said rule did not provide any guideline in respect of the industries to which it was to be applied and as to how the quota was to be fixed. Section 169 of the Act provides as follows:

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"169.(1) Notwithstanding anything contained in section A 128, the Standing Committee shall, from time to time, make such rules as shall be necessary for supply of water and for charging for the supply of water and for any fittings, fixtures or services rendered by the Corporation under Chapter X and shall by such rules determine-

(i) X X X

(ii) a water charge in lieu of a water tax, based on a measurement of estimated measurement of the quantity of water supplied; . . ."

Sections 276 and 277 provide as follows:

"276.(1) Where water is supplied by measurement, the Commissioner may either provide a meter and charge the consumer for the same such rent as shall from time to time be prescribed in this behalf by the standing committee, or may permit the consumer to provide a meter of his own of such size, material and description as the Commissioner shall approve for this purpose:

(Provided that if such consumer is an occupier of any premises, he shall not be provided with a meter or permitted to provide himself with a meter of his own, unless he complies with such conditions as may be prescribed by the Commissioner).

(2) The Commissioner shall at all times keep all meters and other instruments for measuring water, let by him for hire to any person, in proper order for correctly registering the supply of water, and in default of his so doing such person shall not be liable to pay rent for the same during such time as such default continues.

277. Where water is supplied by measurement, the register of the meter or other instrument for measuring water shall be prima facie evidence of the quantity consumed."

It may be mentioned that section 461 of the Act empowers the Corporation to make byelaws, not inconsistent with the Act, for regulating all matters and things connected with the supply and use of

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water. It further appears that by an amendment in 1968, byelaws framed under section 461(a) and (b) empower regulating all matters and things connected with the supply and use of water, and is defined to mean maximum quantity of water any consumer or class of consumers is entitled to receive. It is to be fixed by the Municipal Corporation by order on the basis of an assessment of the requirement. It further stipulates that no consumer in respect of whom an order has been made, may consume water in excess of such quantity.

The High Court held that the rule was framed, in terms, in exercise of the powers given by sections 169 and 276. Section 169 specifically empowers the Standing Committee to make rules to charge for the supply of water and by such rules to determine the water charges "based on a measurement or estimated measurement of the quantity of water supplied." The High Court has emphasised the past tense of the word "supply", which is important and refers to something already done. We are in agreement with the High Court's view that it empowers the Corporation to levy charge only in respect of water that has in fact been supplied to and consumed by the consumer and it is to be levied on the basis of measurement or estimated measurement. This has been conferred by the terms of Section 277 of the Act. It is only that supply which can be measured. Where the measuring device has failed to record the correct consumption, it may be estimated. But that must be on sound guidelines otherwise it would be arbitrary and mere ipse dixit of the authorities concerned. The bye-laws made in 1968 here empower the Commissioner to fix a quota. But no guideline is indicated. That is bad and unwarranted.

It appears that the supply referred to in Section 169 of the Act, is a supply which is, in fact, supplied to the consumer and consumed by it. It is only that supply which can be measured. We are in agreement with the High Court that where the measuring device has failed to record the correct consumption, it may be estimated. The circumstances in which the measuring device could be said to have failed, the modes of estimation in such circumstances are provided for by rule III(a), (b) and (c) of the Water Charges Rules. The Corporation can not estimate and charge on the basis of water it makes available for use by a consumer. There is no warrant for such a construction.

Therefore, there being no methodology in Rule III (d)(i) of the Water Charges Rules for measuring the actual water supply, that rule is beyond the powers of the Corporation. The High Court was, there

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fore, right in striking down the Rule III(d)(i) of the said Rules as effective from 1st April, 1976. If there is no supply, the question of measurement cannot arise by estimate or otherwise.

There is no ground to interfere. The petition, therefore, fails and is dismissed.

P.S.S.

Petition dismissed.

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