PETITIONER:
MUNICIPAL CORPORATION OF GREATER BOMBAY

Vs.

RESPONDENT:
BOMBAY TYRES INTERNATIONAL LTD. & ORS.

DATE OF JUDGMENT: 27/03/1998

BENCH:
K.T. THOMAS S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. RAJENDRA BABU. J.

C.A. 1179/94 & SLPS (C) Nos. 15507/87. 853/88 and 14587/87.

In SLPs leave granted.

In this batch of cases, the appellant is Municipal Corporation of Greater Bombay, which has made provision for Water Charges by framing appropriate Rules and Bye-laws pursuant to Section 141 and Section 169 of the Bombay Municipal Corporation Act, 1888. The scope of these provision was considered in Municipal Corporation of Greater Bombay, vs., Nagpal Printing Mills & Anr. 1988 (3) SCR, 274, by this Court and the view of the Bombay High Court that Rule III (d) (i) to be invalid and beyond the rule making power Corporation was upheld. It was made clear by this Court in the said decision that the said provisions of the Act would empower 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. It is also noticed that an estimated amount could be fixed on the basis of sound guidelines and the power given to the Commissioner to fix a gupta has no guidelines. On the basis of this decision, the High Court disposed of several matters. Challenging the correctness of those decisions these appeals have been preferred before this Court contending that the decision in Nagpal's case required reconsideration and the provision of the Municipal Corporation Act considered earlier have been relied upon to contend that the appellant has competence to frame Rule III (d) (i) while the respondents have reiterated the view expressed in Nagpal's case. On hearing this aspect, a Bench of two learned Judges referred this matter to a larger Bench for consideration on the correct scope of the provisions that were considered in Nagpal's case. Thus the matter is before us.

We do not think there is any good reason to reconsider the decision in Nagpal's case. The view taken by this Court in Nagpal's case is a plausible on and subsequently that Rule having been deleted is now replaced by a new rule. We respectfully follow the view expressed by this Court in Nagpal's case and uphold the order made by the High Court.

However, Shri S.K. Dholakia, learned Senior Advocate for the appellant submitted that at any rate this Court had not occasion to examine the scope of the quota rule, and, therefore tit need not have made the observations to the following effect:-

> "The bye-laws made in 1968 here empower the Commissioner to fix a quota. But no guideline in indicated. That is bad and unwarranted.

This aspect also need not be re-examined because subsequently by the rules framed in 1994 the definition of quota has been altered and whether this present rule answers the objections noticed by this Court in Nagpal's decision need not be examined as the new Rules are not in question before us.

The High court having allowed the petitions has directed the refund of the amounts with certain rates of interest and if those amounts have already been refunded to the parties concerned, we do not think it appropriate to allow the appellants to recover such amounts again but if, however, such amounts have not been refunded and are retained by the Corporation, such amount shall not be refunded. We are making this order being conscious of the fact that the rule had been struck down not on the ground that it was incompetent to frame such Rule but on account of clear provisions not having been framed. Further, we are not sure in the absence of investigation as to whether the respondents had included in their prices structure the amounts paid to the Corporation pursuant to the demand raised under the invalidated rules and whether the burden had been passed on to the consumers, in which event it will be wholly inequitable to allow respondents to claim such amounts back from the Corporation.

We, therefore, partly allow appeals to the limited extent to allowing the appellants to remain amounts not refunded to the respondents, at the same time making it clear that they shall not recover any amount on the basis of demands arising under the invalidated rules. In other respects, appeal stands dismissed. Ordered accordingly, No costs.

Special Leave Petition (C) 9620/95

The petitioner had claimed for refund of amount in a writ petition filed under Article 226 of the Constitution. The petitioner is running a mill and consumes water. In the writ petition filed on 20th January, 1989, the petitioner sought for refund of the amounts in respect of the consumption of for the period commencing from March 1984, ending with May 1985, September, 1979, ending with January 1978. January 1976, ending with June 1987. On the basis that water charges were recovered without authority of law as the Rules relevant thereto had been nullified by the High Court and upheld by this Court in Municipal Corporation of Greater Bombay vs. Nagpal Printing Mills., & Anr,. SCR 1988(3) 274, the petitioner contended that the Corporation was bound to refund said amounts and when such a claim had been made before the Corporation, the same had been rejected on imperishable grounds.

The learned Single Judge who disposed of the writ petition held that the petition does suffer from undue delay and consequently the claim to refund from vice of laches but in spite of such laches, relief could be granted in respect of a period prior to three years from the date of filing of the petition in respect of the charges paid from January 28, 1986 onwards and directed the Corporation to compute the

said amount and refund the same. On appeal to the Division Bench the Bombay High Court took the view that the relief granted by the learned Single Judge could not be sustained. The reasoning adopted by the High Court is that the rule was struck down by the High Court is that the rule was struck down by the Division Bench of the High Court on 16th September, 1987 which was subsequently upheld by this Court on 17th March, 1988. The application for the refund had been made on October 23. 29+ ad writ petition had been filed only on January 11. 1990, long after the last charges paid in December, 1986. In those circumstances, the Court was of the view that there were laches on the part of the petitioner in making the claim.

Attacking this finding, the learned counsel for the petitioner relied upon the decisions of this Court in Salghah Tex Company Ltd. vs. Superintended of Taxes Nowgong & Ors. etc. 1988 (2) SCR 474, and Mahabir Kishore & Ors, vs. State of Madhya Pradesh 1989 (3) SCR 596, and submitted that levy of water charges itself being illegal, the recoveries made pursuant to that provision could not be retained but refunded in which event and principles of limitation or laches would not apply. This is not a case where the provision of the rule which enabled the levy of water charges was struck down on the ground that it was incompetent out on a ground that such rule had been framed inarticulately and was not clear enough. Payments made by the petitioner should be treated as having been made by mistake but once a declaration of law had been made by the Bombay High Court on 16th September, 1987, it was open to the petitioner to claim for recoveries and the same should have been made within a reasonable time thereafter., On ascertaining what is reasonable time for claiming refund, the courts have often taken note of the period of limitation prescribed under the general Law of Limitation for filing of suits for recovery of amount due to them. In the present case also that standard adopted by the High Court is the same in ascertaining whether there has been laches on the part of the appellant in seeking relief in due time or not. The finding clearly recorded is that long after the charges had been paid and law had been declared by the Court, the writ petition has been filed and, therefore, such a refund should not be allowed. We do not think such a view taken by the High Court calls for interference under Article 136 of the Constitution. Hence we dismiss the petition.