

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2008

CORAM

THE HONOURABLE MR. JUSTICE D.MURUGESAN
and
THE HONOURABLE MR. JUSTICE V.PERIYA KARUPPIAH

Writ Appeal No.2888 of 2003

Madras Metropolitan Water Supply
and Sewerage Board Official and
Employees Union, represented by its
General Secretary ... Appellant/Petitioner
Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to
Rural Development and Local
Administration Department,
Madras-600 009.

2.Madras Metropolitan Water Supply and
Sewerage Board,
rep. by its Managing Director,
Madras 600 002.

.... Respondents/Respondents

Writ Appeals under Clause 15 of Letters Patent, praying to
set aside the Order dated 29.08.1998 made in W.P.No. 13760 of 1989.
Petition filed under Article 226 of Constitution of India, to issue a
Writ of Mandamus, directing the 2nd respondent to pay Bonus as per the
provisions of the payment of Bonus Act 1965.

For Appellant : Mr.K.Shanmugakani

For Respondent No.1 : Mr.R.Thirugnanam
Spl. Govt. Pleader

For Respondent No.2 : Mrs.G.Devi

JUDGMENT

D.MURUGESAN, J.

The Writ Appeal raised the following question for
consideration:-

<https://hcservices.ecourts.gov.in/hcservices/> Whether the employees of Madras

Metropolitan Water Supply and Sewerage Board are entitled for payment of bonus under The Payment of Bonus Act, 1965?

2. The facts that give rise to the above issue in brief are as follows:-

Madras Metropolitan Water Supply and Sewerage Board Employees' Union had made a demand for bonus which was ultimately referred to the Industrial Tribunal, Chennai for adjudication. The Industrial Tribunal in turn adjudicated the dispute in I.D.No.13 of 2005 and dismissed the same on 27.07.2006 on the ground that in spite of several notices, the petitioner was not served. The very same Union filed W.P.No.13760 of 1989 seeking for a direction for payment of bonus. Among other things, the union claimed the benefit of the order of the Division Bench of this Court in W.P.No.1205 to 1210 of 1984 and 250 of 1985 dated 13.04.1989 which was subsequently reported in 1991 (II) L.L.J. 494 (Tamil Nadu Water Supply and Drainage Board Engineers Association, etc. v. State Government of T.N. And Tamil Nadu Water Supply and Drainage Board). In the said judgement, the Division Bench considered the question as to whether the Tamil Nadu Water Supply and Drainage Board, is an institution established for the purpose of profit and it is excluded as per Section 32 (v) (c) of The Payment of Bonus Act, 1965 (hereinafter referred to as "The Bonus Act"). After referring to various provisions of the said Act, the Division Bench ultimately held that the Tamil Nadu Metro Water Supply and Drainage Board is an institution established for the purpose of profit and consequently directed the provisions of the Payment of Bonus Act, 1965, to be applied to the employees of The Tamil Nadu Water Supply and Drainage Board.

3. However, the writ petition was dismissed by the impugned order dated 29.08.1998 on the ground that there exist a dispute as to whether The Madras Metro Water Supply and Sewerage Board (now known as The Chennai Metropolitan Water Supply and Sewerage Act, 1978) is a profitable organisation or not and therefore the issue has to be adjudicated under The Industrial Dispute Act, consequently with a direction to the Government to refer the matter.

4. The said order is now put in issue in this Writ Appeal.

5. Mr.K.Shanmugakani, learned counsel appearing for the Appellant would submit that both the provisions of The Tamil Nadu Water Supply and Drainage Board, 1970 and The Chennai Metropolitan Water Supply and Sewerage Act, 1978 are identical in all respects including the object for the enactment of the Board, its powers and functions, finance, accounts and audit, etc. Under similar provisions, the Division Bench had found that The Tamil Nadu Water Supply and Drainage Board cannot claim exemption under Section 32(v)(c) of The Payment of Bonus Act, on the ground that it is not an institution established for the purpose of profit, the judgement of the Division Bench were taken to the Supreme Court by the Board and those Civil Appeals Nos. 3506-12/91 were dismissed on 24.03.1998. Hence, the

common judgement of the Division Bench which was confirmed by the Supreme Court squarely applies to the case on hand and consequently, the member of the Writ Petition Union are entitled to the benefit of The Payment of Bonus Act, 1965.

6. Mrs.G.Devi, learned counsel appearing for the 2nd respondent Board would on the other hand submit that in view of Section 4 of the Act in question - relating to the constitution of the Board; Section 4 (A) - appointment of Chairman of the Board in special circumstances; Section 5 - relating to the functions of the Board; and Section 6 - relating to the power of Board to call for information, the Board cannot be considered as an institution established for the purpose of profit.

7. On the above back-drop of the rival contentions, the issue which we have referred to earlier has to be considered.

8. Before we delve upon the judgement of this Court reported in 1991 (II) LLJ 394 rendered in Tamil Nadu Water Supply and Drainage Board Engineers Association, etc. v. State Government of T.N. And Tamil Nadu Water Supply and Drainage Board, we are inclined to refer to the provisions of The Chennai Metro Water Supply and Sewerage Board, 1978. The Act is intended for the constitution of the Board for exclusively attending the growing needs and for planned a development and appropriate regulation of water supply and sewerage services in the Chennai Metropolitan Area.

9. The said Board is established in terms of Section 3 of the Act 28 of 1978 by a Notification issued by the Tamil Nadu Government and in terms of Section 4 of the Act, the Board consist of, the Minister in charge of the Department who shall be the Chairman of the Board; Secretary to Government in charge of the Department; Secretary to Government in charge of the Finance Department; Member Secretary, of the Chennai Metropolitan Development Authority, Commissioner Municipal Corporation of Chennai, Managing Director, Tamil Nadu Water Supply and Drainage Board, and others.

10. Section 5 relates to the functions of the Board; Section 6 relates to the power of the Board; while Chapter V, relating to the Finance, Accounts and Audit.

11. Section 31 of The Chennai Metropolitan Water Supply and Sewerage Act, 1978 reads as under:-

Board's Fund:

31. (1) The Board shall have its own fund and all receipts of the Board shall be credited thereto and all payments by the Board shall be made there from.

(2) All moneys belong to that fund may be deposited or invested-

(i) in any scheduled bank within the meaning of the Reserve Bank of India Act, 1934 (Central Act II of

1934)

(ii) in any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970 (Central Act 5 of 1970): or

(iii) in the State Bank of India as defined in the State Bank of India Act, 1955 (Central Act 23 of 1955) or its subsidiary banks as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act XXXVIII of 1959) ; or

(iv) in such securities as may be approved by the Government.

(3) The Government may, from time to time, make grants, subventions, or advances or loans to the Board for the purposes of this Act on such terms and conditions as the Government may determine.

(4) The Board may accept grants, subventions, donations and gifts from the Central or State Government or local authority, or any individual or body, whether incorporated or not, for all or any of the purposes of this Act.

(5) The Board may constitute a sinking fund, depreciation reserve fund and other funds in such manner and in such form as may be prescribed. Such funds shall be vested in such manner as may be determined by the Board with the approval of the Government.

12. Section 32 of The Chennai Metropolitan Water Supply and Sewerage Act, 1978 reads as under:-

Power of the Board to borrow and lend:

32. (1) Subject to the provisions of this Act and the regulations made thereunder and subject to such conditions as may be specified by the Government by a general or a special order issued in this behalf by them and with their previous approval, the Board may, from time to time, borrow money required for the purposes of this Act by any one or more of the members specified below:-

(a) raising loans from any bank or other financing institutions or the Life Insurance corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956); or

(b) raising loans from any corporation owned or controlled by the Central or the State Government; or

(c) raising loans from the public by issue of bonds, or debentures or stocks or otherwise in the form and manner approved by the Government:

Provided that the loans or amounts borrowed under this sub-section shall be utilized only for the purpose or purposes for which such loans or borrowings were raised or made.

<https://hcservices.ecourts.gov.in/hcservices/> (2) Subject to the provisions of this Act and to

such conditions and limitations as may be specified, the Board may out of its funds grant loans and advances, on such terms and conditions as it may determine to any local authority for any development scheme.

(3) the Government may guarantee in such manner as they think fit, the repayment of the principal and interest of any loan proposed to be raised by the Board under Sub Section (1):

Provided that the government shall, so long as any such guarantees are in force, lay before both Houses of the Legislature in every year during the Budget session, a statement of the guarantees, if any, given during the current year and an up-to-date account of the total sums, if any, which have been paid out of the Consolidated Fund of the State by reason of any such guarantees or paid into the said Fund towards re-payment of any money so paid out.

13. The question is, as to whether, on the basis of the provisions of Section 32(v)(c) of the Bonus Act, Chennai Metropolitan Water Supply and Sewerage Board is an institution established not for profit and consequently exempted from the provisions of payment of the Bonus Act. The bone of contentions of the Employees Union is that in as much as the very same dispute was earlier raised, argued and decided in respect of The Tamil Nadu Water Supply and Drainage Board and the Division Bench held that The Tamil Nadu Water Supply and Drainage Board cannot claim exemption under Section 32(v)(c) of the Bonus Act and on the very same parameteria provisions, the employees of The Chennai Metropolitan Water Supply and Sewerage Board are also entitled to payment of bonus.

14. There is no controversy that claim of the Union is resisted by the Board solely on the ground that the Board is exempted under Section 32(v)(c) of The Payment of Bonus Act and not on any other grounds. Keeping the above contention in mind, let us refer to the judgement rendered by this Court in 1991 (II) L.L.J. 494 (Tamil Nadu Water Supply and Drainage Board Engineers Association, etc. v. State Government of T.N. and Tamil Nadu Water Supply and Drainage Board). Prior to the establishment of The Chennai Metropolitan Water Supply and Sewerage Act, 1978, the Government of Tamil Nadu established The Tamil Nadu Water Supply and Drainage Board, by Act IV of 1971 viz., The Tamil Nadu Water Supply and Drainage Board Act, 1970 to provide for the establishment of Water Supply and Drainage Board and the regulation and development of drinking water and drainage in the State of Tamil Nadu. As it was felt by the Government that a similar Board should be set up exclusively to attend the growing needs and planned development and appropriate regulation of water supply and sewerage services in the Chennai Metropolitan Area, the Chennai Metropolitan Water Supply and Sewerage Act, 1978 was enacted. The object behind both the Acts are one and the same.

15. Section 32 of The Payment of Bonus Act, 1965, reads as
<https://hcservices.ecourts.gov.in/hcservices>

under:-

"32. Act not apply to certain classes of employees - Nothing in this Act shall apply to-

.....

(v) employees employed by-

.....

(c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;

16. The Division Bench on an earlier occasion, while considering the issue as to whether the employees of The Tamil Nadu Water Supply and Drainage Board are entitled to payment of bonus following the issue raised by the Board that the Tamil Nadu Water Supply and Drainage Board is not an institution which could claim exemption under Section 32 (v) (c) of the Payment of Bonus Act held in the affirmative. The Division Bench considered the various provisions of The Tamil Nadu Water Supply and Drainage Board Act, 1970 and ultimately, rejected the claim of exemption under Section 32 (v) (c) of The Payment of Bonus Act, 1965. The Division Bench considered Section 34 of The Payment of Bonus Act, 1965, relating to The Bonus Formula. It also considered the provisions of Section 34 and 35 of The Tamil Nadu Water Supply and Drainage Board Act, 1970, relating to sanction of loans and grants to the Board by the State Government for the purpose of the Act and Section 36 relating to the Power of the Board to borrow and lend subject to the provisions of the Act and the rules made thereunder. Applying the above said provisions, the Division Bench rejected the contention that the Board is exempted under the provisions of Section 32 (v) (c) of The Payment of Bonus Act by holding that that Board is an institution established not for the purpose of profit.

17. Coming to The Chennai Metropolitan Water Supply and Sewerage Act, 1978, the provisions under Chapter-V, relate to Finance, Accounts and Audit. Section 31(1) of the Act in question is parameteria to Section 34(1) of The Tamil Nadu Water Supply and Drainage Board Act; likewise Section 34(3) of the Act in question is parameteria to the provisions of Section 34(2) The Tamil Nadu Water Supply and Drainage Board Act; and Section 31(4) of the Act in question is parameteria to Section 35 of the The Tamil Nadu Water Supply and Drainage Board Act; and Section 32 of the Act in question is parameteria to Section 36 of The Tamil Nadu Water Supply and Drainage Board Act.

18. On consideration of the provisions of The Tamil Nadu Water Supply and Drainage Board Act, the Division Bench held thus:-

"We have no manner of doubt that the respondent-Board has been established to serve the public interest by ensuring better amenities of life and raising the standard of living of the community as a whole. Learned single Judge has referred to the functions of the Board and its powers and rightly held

that the purpose behind the functions of the Board is to provide protected drinking water supply and drainage facilities, but this also cannot be disputed that the Board has got its own assets and liabilities, that it has got its method of recovery of the cost of the scheme, making investment and constituting its funds by "all moneys received by or on behalf of the Board....., all proceeds of land or any other kind of property sold by the Board, all charges, all interest, profits and other moneys accruing to the Board and all moneys and receipts", deposited into the public accounts of the Government under such detailed head of accounts as may be prescribed or in the Reserve Bank of India, State Bank of India or any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It has thus a scheme of profit and loss. It shall earn profit in some year and lose in another year. Thus, in its commercial activities of sort, it has got a capital structure of profit, liabilities and labour force to care for. We see reason to hold in accordance with the rule indicated by the Supreme Court in the case of Workmen, T.T. Devasthanams Vs. Management (1980 LIC 389) that the Board is an institution designed for profit in the limited sense that when the Government's Department found it difficult to run such projects departmentally, they decided to create a Board and transferred the projects to ensure that there was proper service to the community at large on the one hand and on the other, there was no pressure on the meagre revenue and other resources of the State.

Applying the test as above, we have no hesitation in holding that the learned Single Judge has fallen in error in holding that the respondent-Board is an institution established not for purposes of profit. Employees of the Board qualifying for bonus under the Act, in our opinion are entitled to minimum amount of bonus and/or such amount computed in accordance with law upon the surplus in the accounting year."

19. The Division Bench has also referred to the Judgement of the Supreme Court in Housing Board of Haryana v. Haryana Housing Board Employees' Union and other 1996 (1) SCC 95 and others wherein it has been held that the Haryana Housing Board is not entitled to the statutory exemption from the Act under Section 32 of The Payment of Bonus Act, 1965 on the ground that it was a local authority.

20. Questioning the above findings rendered by the Division Bench, The Tamil Nadu Water Supply and Drainage Board, went on appeal

before the Supreme Court in Civil Appeal(s) Nos.3506-12/91 and the same were dismissed on 24.03.1998 by the following orders:-

"It is not in dispute that the appellant has been paying though not in the name of bonus every year either in the name of ex-gratia payment or under some other name. No doubt Mr.Krishnamurthy, learned counsel appearing for the appellant-Board, argued at length to persuade us to hold that the appellant-Board will come under the exempted category under Section 32(v)(c) of the Act. However, we are unable to persuade ourselves to take a different view from the one taken by the High Court on the facts as found by it. We are satisfied that the judgement of the High Court does not call for any interference. The appeals fail and are accordingly dismissed with no order as to costs."

21. The issue raised in this Writ Appeal is whether The Chennai Metropolitan Water Supply and Sewerage Act, 1978 could be exempted from payment of the Bonus in terms of Section 32 of The Payment of Bonus Act, 1965. The similar question had already been decided against the Board in the case of Tamil Nadu Water Supply and Drainage Board. Therefore, in our considered opinion the ratio laid down in the judgement rendered in that case would be squarely applicable to the present case on hand. Accordingly, the point is answered against the Board and in favour of the Writ Petitioner Union. It is held that The Chennai Metropolitan Water Supply and Sewerage Board cannot claim exemption under Section 32(v)(c) of The Payment of Bonus Act. In view of our findings, the employees of The Chennai Metropolitan Water Supply and Sewerage Board are entitled to the Bonus in accordance with law. The writ Appeal succeeds accordingly.

22. In fine, the Writ Appeal is allowed and the order dated 29.08.1998 made in W.P.No. 13760 of 1989 is set aside. No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

kmk
To.

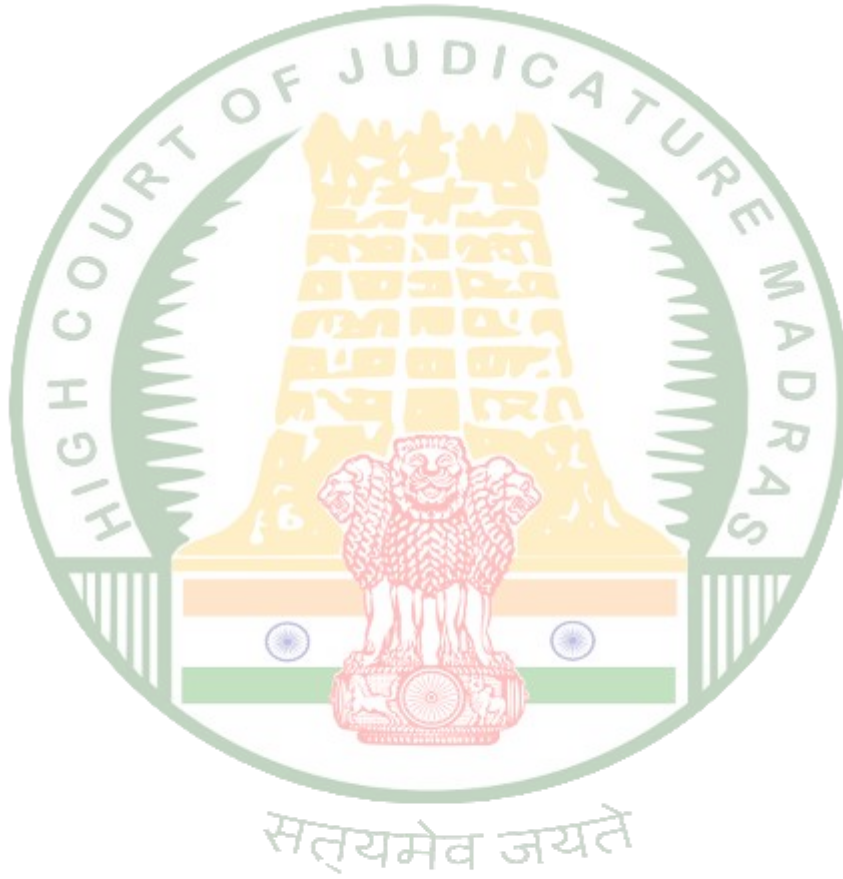
1. The Secretary to Government
of TamilNadu,
Rural Development and Local
Administration Department,
Fort, St. George, Chennai-9.

2.The Managing Director,
Madras Metropolitan Water
Supply and Sewerage Board,
Madras -2.

1 cc to Government Pleader SR.No.60745

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