

3. Facts giving rise to the present appeal are summarized hereunder:

3.1. Notice dated 22.08.2008 was issued by Kolkata Municipal Corporation¹ under Sections 238 and 271 of the Kolkata Municipal Corporation Act, 1980². The said notice was addressed to the appellant describing it as owner or occupier of premises No.30, C.R. Avenue, Kolkata. It stated that appellant had contravened Section 238 of the Act by using water supplied for domestic purpose, for purposes other than domestic; that there was no permission under Section 271 of the Act for using water supplied for domestic purposes for any other purpose; that such unauthorised use is a punishable offence under Section 610 of the Act making the appellant liable for prosecution;

¹ In short "KMC"

² In short "the Act"

and that if the said contravention is not stopped immediately, the water connection would be cut off under Section 275(1)(c) of the Act. The said notice is reproduced hereunder:

“Form No. W.S.4

THE KOLKATA MUNICIPAL CORPORATION

Water Supply Department

(Notice to desist from contravening Section 238 & 271 of C.M.C. Act, 1980)

Notice No.....018

Section/Ward....G/47

Dated.....22.08.08

To

Estate Khimji Keshawji

The Owner or Occupier of the

Premises No.30, C.R. Avenue

It has been brought to the notice of the undersigned that in contravention of the provision of Section 238 of the C.M.C. Act, of 1980 (W.B. Act LIX of 1980) the water supplied for domestic purpose in the premises no.30, C.R. Avenue, Ward No.47 is being used/and or allowed to be used for purposes other than domestic in the premises viz. Business & Office.

Please note that under the provision of Section 271 of the C.M.C. Act, 1980 no person shall, without the written permission of the Municipal Commissioner use or allow to be used water supplied for domestic purposes, for any

other purposes. Besides, the unauthorised use is a punishable offence under Section 610 of the C.M.C. Act, 1980 and you may be liable to prosecution.

The undersigned as such, require you forthwith desist from using or allowing to be used water supplied to the premises no.30, C.R. Avenue, Ward No.47 for any purpose other than domestic purpose, failing which the water connection would be cut off or the supply of water thereto would be turned off under the provision of Section 275 (1) (c) of the Act, without any further reference.

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
<i>Asst. Engineer</i>	<i>SAE, W.S./G</i>	<i>Exec.Engineer</i>
<i>Section 'G'</i>		<i>Water Supply(C)</i>

C.P.-67 – 28-10-06-5,000

Dated 22.08.2008”

3.2. It would also be relevant to state that another notice of even date was issued for contravention of Section 258 read with Section 558 of the Act calling upon the appellant to immediately remedy the fault in the supply line failing which KMC would itself carry out the repair work and recover its expenses from appellant. It further warned the appellant that

supply could be turned off or cut off under provisions of Section 275(1)(f) & (i) of the Act.

3.3. Proceedings with respect to the notice under Section 258 of the Act came to an end as repair work was carried out by appellant to the satisfaction of KMC. As such only issue which survives for consideration is the validity of notice under Section 238/271 of the Act.

3.4. The appellant preferred writ petition before the High Court registered as WP No.1414 of 2008 challenging the notice under Section 238/271 of the Act. In the said petition it was stated that appellant was owner of the said premises which comprised of ground floor and six floors. Apart from the top floor and the ground floor which was occupied by the appellant for residential purposes, rest of the floors were let out to various offices and commercial establishments. Various other

grounds were raised in the petition. However, for consideration of this appeal, following grounds raised would be relevant which are stated hereunder: -

- (i) The notice was only addressed to the owner and not to all the occupiers, details of which were available with KMC as trade licences were issued by it from time to time in favour of different occupants.
- (ii) Under Section 272(4) of the Act, which begins with a non-obstante clause, it was provided that wholesome water may be used in lieu of unfiltered water for non-domestic purposes where supply of unfiltered water is not available. It is admitted case that unfiltered water is not available in the locality where the premises in question is situate.
- (iii) The impugned notice was non-speaking as it did not give details of alleged violations; as

such no specific response could be given by the appellant.

- (iv) The contravention of Section 275(1)(c) of the Act gives the power to the Commissioner to cut off or turn off supply of water where occupier of the premises contravenes Section 238 of the Act. It was as such submitted that without notice to various occupiers the notice itself was bad in law.
- (v) The owner (appellant) was using the water supply only for residential/domestic purposes as such there was no violation of any provision by them.
- (vi) The appellant had also filed supplementary affidavits before the writ court stating all further facts relevant to the case and also annexed the trade licences issued to various occupants, wherein it was clearly mentioned

that the water charges were being charged under Section 238(2) of the Act. This in effect permitted use of wholesome water for purposes other than domestic.

3.5. The learned Single Judge did not agree with submissions of the appellant and accordingly held the notice to be valid. It however granted liberty to the appellant to seek necessary permission for use of water in their premises for non-domestic purposes from the Municipal Commissioner under Section 239 of the Act. Such application could be filed within seven days from the date of the judgment which was to be dealt with in accordance with law by a reasoned order within four weeks of submission of such application. Further, it kept the impugned notice in abeyance till an order is passed by the Commissioner. It also granted liberty to the appellant to recover fees, which it may have to pay in seeking the permission,

from the occupiers. The operative portion of the order of the learned Single Judge is reproduced hereunder:

“...In view of the aforesaid discussion I hold that the impugned notice upon the writ petitioner No.1 is lawful and valid. In similar circumstances, another learned Single Judge of this Court in the case of Ashwin Properties Ltd. & Anr. Vs. Calcutta Municipal Corporation & Ors. Reported in 2005 (4) CHN 134 upheld similar notice upon the owners of the premises. However, in view of the fact that the writ petitioners are entitled to seek necessary permission for user of water in their premises for non domestic purposes from the Municipal Commissioner, I grant liberty to the writ petitioner to make an application in terms of Section 239 of the Act of 1980 before the Municipal Commissioner for seeking permission for user of water in the premises for non domestic purpose. In the event, such application is made within seven days from date, the Municipal Commissioner shall deal with the same in accordance with law and pass a reasoned order thereon. The Municipal Commissioner shall pass such an order within four weeks from the date of making such application for permission. In the event, an application is made within the period as stated

hereinbefore, the impugned notice dated 22nd August, 2008 under Section 238 read with Section 271 of the Act of 1980 shall remain in abeyance till an order is passed thereon by the Municipal Commissioner, as aforesaid.

I make it clear that any application for necessary permission for use of water for non domestic purposes and payment of any fees therefore by the petitioners as the owner of the premises would not stand in their way of availing of any remedy available in law to recover the same from the occupiers of the premises and the Corporation authorities shall render all necessary assistance in that regard in accordance with law.

With the aforesaid directions, the writ petition is disposed of. All interim orders stand vacated. There shall be no order as to costs...”

3.6. Aggrieved by the judgment of the learned Single Judge the appellant preferred an appeal before the Division Bench which came to be dismissed vide impugned order dated 19.11.2019.

4. We have heard learned counsel for the parties and also perused the material on record including the counter affidavit filed by KMC.

5. Before proceeding further, it would be appropriate to refer to the relevant statutory provisions from the Act. The following definitions from Section 2 of the Act which are relevant for this case are reproduced hereunder:

(21) "Corporation" means the ²[Kolkata] Municipal Corporation established under this Act;

(29) "domestic purposes", in relation to the supply of water means the purposes other than those referred to in sub-Section (2) of Section 238;

(38) "filtered water" means water intended for domestic use and tested for its potability and purity and found fit for such use;

(60) "occupier" includes any person for the time being paying or liable to pay to the

owner the rent or any portion of the rent of the land or building in respect of which the word is used or for damages on account of the occupation of such land or building, and also a rent-free tenant:

Provided that an owner living in or otherwise using his own land or building shall be deemed to be the occupier thereof,

(62) "owner" includes the person for the time being receiving the rent of any land or building or any part of any land or building, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose or as a receiver who would receive such rent if the land or building or of any part of the land or building were let to a tenant;

6. Part-V of the Act deals with Civic Services and Chapter XVII thereof deals with water supply. Section 234 mandates that it shall be the duty of the KMC to take steps for supply of wholesome water in the entire Kolkata and also to ensure that it is available in

sufficient quantity. Section 234(1), which is relevant for our purpose is reproduced hereunder:

“234. Corporation's duty to supply water:-

(1) It shall be the duty of the Corporation to take steps from time to time—

(a) for ascertaining the sufficiency and wholesomeness of water supplied within ¹[Kolkata];

(b) for providing a supply of wholesome water in pipes to every part of ¹[Kolkata] in which there are houses, for domestic purposes of the occupants thereof, and for taking the pipes affording that supply to such point or points as will enable the houses to be connected thereto at a reasonable cost, so, however, that the Corporation shall not be required to do anything which is not practicable at a reasonable cost or to provide such a supply to any part of ¹[Kolkata] where such a supply is already available at such point or points aforesaid:

[Provided that the Corporation may, at any time, levy an annual fee at such rate as may be fixed by regulations, or as stated in the budget estimate under sub-section (3) of section 131, in this behalf, on the owner or the occupier of, or on the person liable to pay ² [property tax] on, any house to which such supply of wholesome water is made:

²[Provided further that the Corporation may levy annual fee on the basis of annual valuation of buildings or premises in a graded manner, at such rates, as may be determined by the Corporation by regulations, but such rate shall not exceed ten per cent of the annual valuation as may be so determined or separately calculated in respect of the premises or building or portion thereof.]

[Explanation I.- Supply of water shall include supply through service mains of the Corporation or through tubewell allowed to be sunk within the premises or both or procured from any other municipal source.

Explanation II.- "House" includes a building, flat as defined in the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (West Ben, Act XX of 1993), or apartment as defined in the West Bengal Apartment Ownership Act, 1972 (West Ben. Act XVI of 1972);]

(c) for providing, as far as possible, a supply of wholesome water otherwise than in pipes to every part of ¹[Kolkata] in which there are houses, for domestic purposes of the occupants thereof and to which it is not practicable to provide a supply in pipes at a reasonable cost, and in which danger to health arises from the insufficiency or unwholesomeness of the existing supply and a

public supply is required and can be provided at a reasonable cost, and for securing that such supply is available within a reasonable distance of every house in that part.

7. Section 234(A) of the Act gives a right to the owner of a building to recover fee for supply of water from the occupier thereof, who uses the same for residential purpose or otherwise. The proviso thereto further permits that amount may be apportioned in case there are more than one occupier. The aforesaid Section is reproduced hereunder:

“234A. Recovery of fee for supply of water by owner from occupier:-

The owner of a part or flat of a building for which fee for supply of water is charged may recover the entire amount of such fee from the occupier thereof who uses it for residential purpose or otherwise:

Provided that if there is more than one such occupier, the amount of fee for supply of water may be apportioned or recovered from each such occupier in such proportion as the annual value of the portion occupied by him bears to the total annual value of the building comprising such part or flat.”

8. Section 235 of the Act mandates that KMC shall provide supply of unfiltered water in Kolkata. The proviso to the said Section allows the Corporation to discontinue supply of unfiltered water where supply of wholesome water in sufficient quantity is available. The said Section is reproduced hereunder:

“235. Supply of unfiltered water.-The Corporation shall provide a supply of unfiltered water—
(a) in those parts of ¹[Kolkata] in which such water is provided at the commencement of this Act, and
(b) in such other parts of ¹[Kolkata] as it may think fit:
Provided that the Corporation may discontinue the supply of unfiltered water in any part of ¹[Kolkata] where a supply, in sufficient quantity, of wholesome water becomes available.”

9. Section 238 of the Act restricts the use of wholesome water for domestic purposes only and further provides the purposes for which wholesome water may not be used. The said Section is reproduced hereunder:

“238. Supply of water for domestic purposes not to include any supply for certain specified

purposes.-

(1) The use of wholesome water shall be for domestic purposes only.

(2) The supply of water for domestic purposes under this Act shall not be deemed to include any supply—

(a) for washing of animals kept for sale or hire, or

(b) for such trade, manufacture or business as may be determined by the Mayor-in-Council, or

(c) for fountains or swimming baths, or

(d) for watering gardens or streets, or

(e) for any ornamental or mechanical purpose, or

(f) for building purposes, or

(g) for flushing purpose other than the purpose of flushing privies in bustees, or

(h) for washing cars, carriages and [other vehicles, or

(i) to any institutional building, assembly building, business building, mercantile building, industrial building, storage building or hazardous building, referred to in sub-clause (c), sub-clause (d), sub-clause (e), sub-clause (t), sub-clause (g); sub-clause (h), or sub-clause (1), as the case may be, of clause (2) of Section 390, or to any part of any such building, other than that used as a residential building or educational building within the meaning of sub-

clause (a) or sub-clause (b), as the case may be, of clause (2) of Section 390:

Provided that in. case of emergency, wholesome water may be used for extinguishing fire.”

10. Section 271 of the Act restricts any person to use water supply for domestic purposes for any other purpose without written permission of the Commissioner. The said Section is reproduced hereunder:

“271. Water supplied for domestic purposes not to be used for non-domestic purposes.- *No person shall, without the written permission of the Municipal Commissioner, use or allow to be used water, supplied for domestic purposes, for any other purposes.”*

11. Section 272 of the Act mentions the purposes for which unfiltered water can be used. The same is reproduced hereunder:

“272. Use of unfiltered water.- *(1) Unfiltered water shall be used for the following purposes :*

(a) extinguishing of fire;

(b) street watering;

(c) flushing of drains of the Corporation, gully-pits, public privies and urinals.

(2) Unfiltered water may also be used, free of charge,

(a) for flushing privies and urinals in private premises connected with sewers;

(b) for flushing of drains in private premises;

(3) Unfiltered water shall not be used for domestic purposes or, without the written permission of the Municipal Commissioner, for any purposes other than those specified in sub-sections (1) and (2).

(4) Notwithstanding anything contained hereinbefore in this Chapter, wholesome water may be used in lieu of unfiltered water for non-domestic purposes where the supply of unfiltered water is not available for the time being.”

12. The Municipal Commissioner under Section 275 of the Act is vested with the power to cut off or turn off supply of water to premises under various conditions which are enlisted therein. Under Clause (c) of Section 275(1) of the Act, one of the conditions provided is where the occupier of the premises contravenes Section 238 of the Act. As this case does not relate to any other violation except contravention

of Section 238 of the Act, Section 275(1)(c) of the Act is reproduced hereunder:

“275. Power of Municipal Commissioner to cut off or turn off supply of water to premises:-

(1) Notwithstanding anything contained in this Act, the Municipal Commissioner may cut off the connection between any water works of the Corporation and any premises to which water is supplied from such works, or may turn off such supply, in any of the following cases, namely:

.....

(c) if the occupier of the premises contravenes section 238;”

13. The arguments advanced by the learned counsel for the appellant are summarized hereunder:

(i) The impugned notice is bad in law as it is a non-speaking notice and does not give any details of the violation. It is vague and general in nature to which no specific reply can be given.

(ii) Despite the fact that KMC was well aware of the other occupiers of 1st to 5th Floor of the building in

question, as trade licenses were already issued to such occupiers, no notice was given to them thereby vitiating the entire proceedings.

(iii) The appellant, who is the owner of the building and occupied only the ground floor and the 6th Floor had been using the water supply only for domestic purposes and not for any other purpose, as such, the notice to the appellant was liable to be discharged.

(iv) It is admitted position that there is no supply of unfiltered water in the locality where the building in question is situate and, as such, the use of wholesome water for non-domestic purposes is permitted under Section 272(4) of the Act. The impugned notice under Section 271/238 of the Act, thus stood vitiated in law.

(v) As per the trade licenses issued by the KMC in favour of the occupiers of the 1st to 5th Floor of the building in question, property tax was being levied for use other than domestic and water charges were also levied for such use, as such also the impugned notice

was liable to be discharged. The use of wholesome water for purposes other than domestic was permitted and justified.

14. On the other hand, learned counsel for the respondent-KMC sought to justify the notice and submitted that as liberty had been given by the learned Single Judge to take appropriate proceedings for rectification of the lapses on the part of the appellant, this Court may not interfere with the same. The notice under Section 238/271 of the Act was valid and justified as admittedly the occupiers of 1st to 5th floor were using it for commercial/business/office purpose, which was other than residential. The learned Single Judge as also the Division Bench rightly did not interfere with the impugned notice. There is no illegality warranting interference, as such, the appeal deserves to be dismissed.

15. Having considered the submissions, we find that this appeal deserves to be allowed not on one but on many counts.

16. We have perused the notice impugned in the writ petition before the learned Single Judge. The said notice is under Section 238/271 of the Act. Section 271 of the Act prohibits use of water supply for domestic purpose for any other purpose. Section 238(2) of the Act provides for the purposes for which supply of water for domestic purposes cannot be used. Section 238(2) of the Act enlists nine categories for which supply of water for domestic purpose should not be used. It was, therefore, incumbent for the authorities to mention the specific violation in the notice under Section 238(2) of the Act and specify that supply of domestic water was being used for which purpose other than domestic. The impugned notice does not mention any reason or specific violation committed by the appellant. It is a general and a

vague notice to which apparently no answer/explanation could be given.

17. Law on the point is well settled that where a notice is vague and non-speaking, the same deserves to be quashed. Reference may be had to the following cases:

(i) Biecco Lawrie Ltd. Vs. State of West Bengal; (2009) 10 SCC 32.

(ii) K.Vinu Vs. State of Tamil Nadu; 2019 SCC Online Mad 123.

(iii) Woolcombers of India Ltd. Vs. Workers Union; (1974) 3 SCC 318.

(iv) Uma Nath Pandey Vs. State of U.P.; (2009) 12 SCC 40.

18. Under the Scheme of the Act, it was the Corporation's duty to supply water. Section 234 of the Act clearly mandates that the KMC was duty bound to ensure and take necessary steps from time to time

for ascertaining the sufficiency and wholesomeness of water supply within Kolkata. The above Section further laid down the guidelines and the procedure for levy of annual fee where water was being supplied to any building. It also carved out exceptions where no fee would be levied on supply of water.

19. The Scheme of the Act further provided two categories of water being supplied by the KMC. First is the filtered water or wholesome water which was potable also and could be used for domestic purposes and the other is unfiltered water which could be used for purposes other than domestic which are enlisted under Section 238 of the Act. The Scheme further provided under Section 271 of the Act that water supply for domestic purposes could not be used for any other purpose except domestic without written permission of the Commissioner.

20. Section 272 of the Act describes the purposes for which unfiltered water can be used, for example,

extinguishing of fire, street watering, flushing of drains of the Corporations for flushing privies and urinals in private premises, for flushing of drains in private premises. Under sub-Section 3, it is provided that unfiltered water would not be used for domestic purpose without written permission of the Commissioner or for any purpose other than those specified in sub-Sections 1 & 2. Sub-Section 4 starts with a non-obstante clause and it states that wholesome water may be used in lieu of unfiltered water for non-domestic purposes where supply of unfiltered water is not available.

21. In the present case, it is admitted position that there is no supply of unfiltered water in the locality/area where building in question is situated. As such, the filtered water or the wholesome water could be used for purposes other than domestic by the owner/occupier of the building in question. Thus,

it cannot be said that there was any violation of Section 238 or 271 of the Act.

22. The non-obstante clause in Section 272(4) of the Act clearly mentions that notwithstanding anything contained in hereinbefore in this chapter which covers Section 271 as also Section 238 of the Act as the entire scheme of water supply is covered under Chapter XVII of Part-V beginning from Section 233 right up to Section 276 of the Act. Section 272(4) of the Act would thus have overriding effect with respect to all the provisions of that chapter namely Chapter XVII of Part V of the Act.

23. The appellant had annexed copy of the trade licenses issued to the occupiers of 1st to 5th floor, copy of the same are attached as part of the supplementary affidavit (**Annexure P-8**). The fee and charges under various Sections of the Act are mentioned in the trade license. Rs.1,000/- was being charged as fee under Section 199 of the Act which refers to a certificate of

enlistment for profession trade and calling. Further fee/charges have also been levied under Section 307 of the Act which is for levy of fee for drainage and sewerage services. Thereafter, fee/charges have been levied under Section 435 of the Act where premises are to be used for non-residential purposes. The next fee/charge is under Section 238(2) of the Act for use of water.

24. From the above, it is clear that trade license was issued for use of the premises by the licensees for purposes other than non-residential and necessary levy for fee under various heads including water charges was also made. In such fact situation, it could not be alleged by the KMC that there was any violation of Section 271 or 238 of the Act where specific license has been issued for use of the premise for other than residential purpose and moreover where there was no supply of unfiltered water in the area/locality. The occupiers would, therefore, be well within their rights

to use water supply for domestic purpose for any other purpose in view of Section 272(4) of the Act.

25. KMC was fully conscious and aware of the occupiers of all the seven floors of the building in question i.e. the ground floor plus six floors. They were also aware that the appellant, who is the owner of the building was occupying the ground floor and the 6th Floor. KMC had issued trade licenses to all the occupiers of the 1st to 5th Floor. The statute primarily lays down the liability on the occupier of the building to pay water charges. It was therefore mandatory for the Corporation to first give notice to the occupiers and make an attempt to recover the charges from them. It is only upon failure to recover dues, if any, from the occupiers that the demand could be raised against the owner. In the present case, KMC having failed to initiate any proceedings against the occupiers committed serious error in initiating the proceedings only against the owner.

26. There is one more reason why notice to the occupier was essential. The notice mentioned that in case water supply for domestic purpose was being used for any other purpose other than domestic, under Section 275(1)(c) of the Act, the water supply could be cut off or turned off. Section 275(1)(c) of the Act, which is already reproduced above clearly refers to occupier of the premises contravening Section 238 of the Act. Therefore, notice ought to have been addressed to the occupier in the first place before cutting off the connection or turning off the supply.

27. Perusal of the counter affidavit filed by the Corporation before this Court and also from the specific stand taken by the Corporation before the High Court, it is apparent that KMC admits that there is no supply of unfiltered water in the area. Once that is the fact situation coupled with demand of charges on water for purposes other than domestic as per the

trade license, the impugned notice cannot be sustained.

28. The High Court committed error by not relying upon the non-obstante clause in sub-Section 4 of Section 272 of the Act as it would have overriding effect over anything contained in that chapter i.e. Chapter XVII. Section 272(4) of the Act, therefore, would have overriding effect over and above Sections 238 and 271 of the Act, once, it is admitted position that there was no supply of unfiltered water. The use of wholesome water for purposes other than domestic cannot be held to be violative of any of the provisions and all the more when the trade license permitted use of the same.

29. Section 271 of the Act prohibits any person from using water supply for domestic purposes for any other purpose without the written permission of the Commissioner. Here, we find that the trade license which is issued by the KMC actually permitted use of

water supply whether filtered or unfiltered. Further in the absence of any supply of unfiltered water, the wholesome water could be used for non-domestic purposes.

30. For all the reasons recorded above, the Appeal deserves to be allowed. The impugned judgment and orders passed by the Division Bench of the High Court and the learned Single Judge are set aside.

31. The writ petition succeeds and is allowed. The impugned notices therein are hereby quashed.

32. Pending applications, if any, stand disposed of.

33. KMC would be at liberty to initiate such proceedings as may be permitted in law afresh.

.....**J.**
(B.R. GAVAI)

.....**J.**
(VIKRAM NATH)

NEW DELHI
JULY 05, 2023