HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition Nos.31128, 33714, 33690 and 33657 of 2012

Date: 22-06-2015

W.P.No.31128 of 2012

Between:

M/s. Minerva Grand, represented by its Managing
Director, Mogalrajpuram, Vijayawada and 48 others

.. Petitioners

And:

The Government of Andhra Pradesh, represented by
Its Principal Secretary, Municipal Administration &
Urban Development Department, Hyderabad and 2 others

….. Respondents

W.P.No.33714 of 2012

Between:

Sri Venkateswara Delux, Vijayawada and another

.. Petitioners

And:

The Government of Andhra Pradesh, represented by
Its Principal Secretary, Municipal Administration &
Urban Development Department, Hyderabad and 2 others

….. Respondents

W.P.No.33690 of 2012

Between:

Santosh Theatre, Represented by its Proprietor,
Ravindra Kumar, Laxminagar, Vijayawada,

.. Petitioner

And:

The Government of Andhra Pradesh, represented by
Its Principal Secretary, Municipal Administration &
Urban Development Department, Hyderabad and 2 others

..... Respondents

W.P.No.33657 of 2012

Between:

Raja Kumari Talkies, represented by its Proprietor,
Vijayawada

.. Petitioner

And:

The Government of Andhra Pradesh, represented by
Its Principal Secretary, Municipal Administration &
Urban Development Department, Hyderabad and 2 others

..... Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition Nos.31128, 33714, 33690 and 33657 of 2012

COMMON ORDER:

Since the issue involved in all these writ petitions is similar and identical, they are being disposed of by this common order.

2. All these writ petitions are filed challenging G.O.Rt.No.973 Municipal Administration & Urban Development (H1) Department, dated 21-08-2010 issued by the Government authorising the 2nd respondent-Corporation to impose solid Waste Management charges (user charges) and the consequential demand notices

issued by the respondents 2 and 3 demanding user charges from the petitioners as illegal, arbitrary and without jurisdiction and to set aside the same.

3. The case of the petitioners in all these writ petitions is that all the petitioners are doing their respective businesses by obtaining licence as required under Section 521 of the Greater Hyderabad Municipal Corporation Act, 1954 and running their businesses. The 2nd respondent Corporation is collecting licence fee and property tax from them by enhancing the same from time to time under the guise of hike in service charges. The Commissioner of the 2nd respondent placed office proposal to collect 8.12 Cr. per annum towards Solid Waste Management charges before the General Body meeting of Vijayawada Municipal Council on 06-08-2009 with Agenda No.3/134 and the Municipal Council rejected the said proposal vide Resolution No.134, dated 06-08-2009, for which the Commissioner of the 2nd respondent Corporation addressed a letter dated 17-09-2009 to the 1st respondent requesting to cancel the Council Resolution No.134, dated 06-08-2009 by invoking Section 679-A of the Greater Hyderabad Municipal Corporation Act, 1954. The Government, after issuing show cause notices to the Mayor of the 2nd respondent Corporation, issued G.O.Rt.No.973, dated 21-08-2010 cancelling Resolution No.134, dated 06-08-2009 and directing the 2nd respondent Corporation to take further necessary action for collection of the proposed amount as additional fee on account of Solid Waste Management. Thereafter, the 2nd respondent Corporation issued property tax demand notices by including user charges in the property tax demand notices itself. In view of objections and representations from several sections of people,

the Government vide Memo No.16048/H1/ 2009, dated 06-12-2010 kept the order passed through G.O.Rt.No.973, dated 21-08-2010 under abeyance. The 1st respondent issued Memo No.15787/H1/2009, dated 02-02-2011 cancelling earlier Memo No.16048/H1/2009, dated 06-12-2010 thereby giving operation to G.O.Rt.No.973, dated 21-08-2010. Aggrieved by the same, the present writ petitions are filed.

4. Though the impugned G.O. issued by the Government is challenged in these writ petitions, 1st respondent has not filed any counter, though the writ petition is of the year 2012, even when the matter is listed under the caption "for Judgment".

5. The 2nd respondent-Corporation filed its counter stating that the 1st respondent issued G.O.Rt.No.973, dated 21-08-2010 for collecting the user charges from October 2010 onwards and the Government of India has promulgated Rules under the Environment (Protection) Act, 1986, which are called the Municipal Solid Wastes (Management and Handling) Rules, 2000 and the 2nd respondent Corporation, in view of the above Rules, has undertaken primary collection of garbage from the households, temporary storage in closed bins on the streets, mechanical transportation and scientific disposal of the waste by sanitary landfill with a huge capital cost, besides recurring operation and maintenance cost; that trade licence fee has been enhanced basing on the zonal system fixed by the Government on rental basis; that though the Council rejected the Commissioner's report under CR.No.134/2009, the Mayor of the 2nd respondent Corporation reported that at that point of time, the under ground drainage works taken under Jawaharlal Nehru National Urban Renewal Mission are in rapid progress covering more than 70% of

the 2nd respondent Corporation area and that the said work will be finished by December 2010; that most of Corporators are of the opinion that the proposed levy of user charges under Solid Waste management may be taken up only after total completion of under ground drainage works; that the tariff proposed by the Commissioner needs a re-look into the suggested slabs so as to provide relief to poorer and unaffordable sections of populations of Vijayawada City and that the 2nd respondent Corporation has decided to levy and collect user charges of solid waste management from December, 2010 onwards and requested the Government to re-examine the issue and cancel the said show cause notice to enable the Council of the 2nd respondent to consider and approval of user charges on its own; that the trade licence fee is meant only for regulation of the trade with regard to periodical inspection made by various functionaries of public health staff to control littering, traffic congestion, occupation of footpath by articles belonging into shop etc., but does not include user charges and the conservancy tax, which is only small fraction of the property tax, is only meant for road sweeping, drain cleaning and dispose of the waste by dumping in a place where the people may not object and left to the natural Bio degradation process, but the present system is after formation of Municipal Solid Waste Management Handling Rules, it is obligatory on the part of local body not only to collect the waste from the houses, streets, open areas etc., but also transport through mechanization to reduce human handling to the minimum by public health workers and to scientifically process the Biodegradable component of Municipal Solid Waste and to dispose the inorganic waste by sanitary landfill to avoid pollution of ground water, surface water, air and finally to reduce the green house gases i.e. methane, carbon dioxide to avoid global warming; that the Government issued impugned G.O. authorising the 2nd respondent to take all necessary action for collection of proposed amount as additional fee on account of Solid Waste Management and cancelled the resolution in exercise of powers conferred under Section 679-A (1) of the Greater Hyderabad Municipal Corporation Act, 1954 and accordingly, the 2nd respondent Corporation issued notices for collection of user charges for the specific purpose; that to meet additional expenditure, the Government authorised the Corporation to collect additional fee towards user charges in compliance of Solid Waste Management Rules, which is a mandate; that the conservancy tax is for lifting garbage on the streets from residential areas and for lifting the same to the outskirts of the city in dumping yard, for which purpose the Corporation is collecting conservancy charges under Section 199 of the Act; that the 74th amendment to the Constitution of India incorporating Article 243-W may not be related to the present issue where the formation of Solid Waste Management Handling Rules in the year 2000 by an expert committee consists of mainly Environmentalists, Engineers, Public Health specialists with a view to protect the environment and prevent global warming and this particular issue does not come under purview of the autonomy or devolution of powers or implementation of schemes etc; that in spite of several warnings, the Hoteliers and Lodgers dumping their garbage everyday along the canal bunds and throwing into canals and polluting the water; that in spite of several measures taken by the Corporation by cleaning the canals and canal bunds every Saturday under green mission, the Corporation is not able to cope-up the situation and prevent such nuisance and that it is a policy matter taken by the Government on the resolution of the

Corporation after considering all the above aspects and issued G.O. in favour of the 2nd respondent Corporation and the 2nd respondent Corporation sought for dismissal of the writ petition.

7. Heard Sri Velivela Srinivasa Rao, learned counsel for the petitioner, learned Assistant Government Pleader for the 1st respondent and the learned standing counsel for the 2nd respondent.

8. Learned counsel for the petitioners submits that the 2nd respondent authority issued demand notices for collection of bulk garbage charges without any authority of law and that G.O.Rt.No.973, dated 21-08-2010 issued by the Government is without jurisdiction and without any basis and the same is without sanction of law. He submits that collection of any amount or tax must be authorised by law not by way of executive order by issuance of impugned G.O. He further contends that the 1st respondent has no power or authority to issue the impugned G.O. for collection of amount without any sanction of law and that unless any provision is made in the Greater Hyderabad Municipal Corporation Act, 1954, the issuance of impugned G.O. is illegal, arbitrary and without jurisdiction. In support of his contentions, the learned counsel for the petitioners relied on **Laxmi Lodge, Old Beet Bazar, Warangal and others v. Government of A.P., Municipal Administration Department and another**[1] and the order dated 17-03-2011 in W.P.No.3916 of 2007 and the order dated 01-08-2014 in W.P.No.26565 of 2006 rendered by this Court.

9. On the other hand, learned standing counsel for the 2nd respondent Corporation submits that since the Corporation is incurring huge amounts for collection of garbage, mechanical

transportation and disposal of solid waste management, the Government of India has promulgated Rules under the Environment (Protection) Act, 1986, which are called Municipal Solid Wastes (Management and Handling) Rules, 2000 and the same was adopted by the States and that the 2nd respondent Corporation has undertaken primary collection of garbage from households, transportation and disposal of the same and that since the 2nd respondent Corporation is incurring huge amounts, the conservancy tax amount at the time of collecting property tax is not sufficient as it is very nominal amount. He further contends that though the Municipal Council rejected the proposal of collecting additional amount by way of resolution, the Government thought it fit to collect the same. As such, the Government issued the impugned G.O. cancelling the resolution passed by the Municipal Council. He further contends that Article 243 of the Constitution of India empowers the Government to issue Government Order.

10. The impugned G.O.Rt.No.973, dated 21-08-2010 provides for collection of charges towards transportation and disposal of garbage. This Court, in similar circumstances in **Laxmi Lodge, Old Beet Bazar, Warangal and others v. Government of A.P., Municipal Administration Department and another** (1 supra) held that none of the provisions of the Greater Hyderabad Municipal Corporation Act, 1954 contemplate or empower the Commissioner to levy and collect any amounts towards administrative charges for lifting, transporting and dumping the waste in dumping yards and that when such power is not vested in the Corporation the notices issued by the Corporation raising a demand towards administrative charges is illegal and without jurisdiction. The above judgement has been followed by this Court

in W.P.No.3916 of 2007 vide order dated 17-03-2011 and in W.P.No.26565 of 2006 vide order dated 01-08-2014. Learned standing counsel for the 2nd respondent Corporation has not brought to notice any rule or provision of the Greater Hyderabad Municipal Corporation Act, 1954 authorising the 1st respondent to issue the present impugned G.O. and authorising the 2nd respondent Corporation to collect garbage charges.

Article 243W of the Constitution of India reads as follows:

> "Powers, authority and responsibilities of Municipalities, etc., - Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow –
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> a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to -
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> i) the preparation of plans for economic development and social justice;
>
> ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
>
> b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

11. The Article referred to above is only enabling provision as held by the Apex Court and also the Full Bench of this Court in **Ranga Reddy District Sarpanches' Association and others v. Government of A.P. and others**[2] that unless the Legislature of State enacts the law, the same cannot be enforced. As contended by the learned counsel for the petitioners the impugned G.O. cannot be issued under any enabling provision. More so, Article 243 states that subject to provisions of the Constitution, the Legislature of a State may, by law, endow the Municipalities with

such powers and authority as may be necessary and the present G.O. issued by the 1st respondent is not law made by the State Legislature. I am unable to understand as to how such G.Os. are issued without having any authority or law. The Apex Court in Civil Appeal No.8137 of 2003 has opined that Article 243-G of the Constitution of India is only an enabling provision and not a substantive provision, which enables the Legislature of a State to endow the Panchayats with certain powers. Hence, the Legislature of a State is not bound to endow the Panchayats with the powers referred to Article 243-G and it is in its discretion to do so or not, as such, the question of violation of Article 243-G of the Constitution of India does not arise. The Apex Court in the above Civil Appeal held as follows:

> "……In our opinion, this provision is only an enabling provision, it enables the Legislature of a State to endow the Panchayats with certain powers. Hence, Legislature of a State is not bound to endow the Panchayats with the powers referred to Article 243-G, and it is in its discretion to do so or not. At any event, there is no mention of the public distribution system in Article 243-G of the Constitution. Thus, it is evident that the High Court has taken a view that the provision of Article 243-G is merely an enabling provision and it is not a source of legislation. This view seems to be in consonance with the law laid down by this Court in U.P. Gram Panchayat Adhikari Sangh & Ors. V. Daya Ram Saroj & Ors. (2007) 2 SCC 138, wherein an observation has been made that Article 243-G is an enabling provision as it enables the Panchayts to function as institutions of self-government. Further, this Court noted that such law may contain certain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider conditions and to make laws accordingly. It is also open to the State to eliminate or modify the same."

> Therefore, it is apparent that Article 243-G read with Eleventh Schedule is not a source of legislative power, and it is only an enabling provision that empowers a State to endow functions and devolve powers and responsibilities to local bodies by enacting relevant laws. The local bodies can only implement the schemes entrusted to them by the State"

The facts in the present case and the facts in **Laxmi Lodge, Old Beet Bazar, Warangal and others v. Government of A.P., Municipal Administration Department and another** (1 supra) relied on by the learned counsel for the petitioners are almost similar and identical, except to the extent of issuance of present G.O. by the 1st respondent. When this Court has already held that the Greater Hyderabad Municipal Corporation Act does not have any power for collection of charges, issuance of impugned G.O. cannot make any difference, if the Government thinks it fit that it is a serious matter to collect the charges towards waste management, it is for the State Legislature to enact a law authorising the Corporation for collection of such charges, but not by way of executive order issued under Article 162 of the Constitution of India.

12. In view of above facts and circumstances, the impugned G.O. issued by the 1st respondent is without jurisdiction and without authority of law, and thus, the same is liable to be set aside.

Accordingly, the G.O.Rt.No.973, Municipal Administration & Urban Development (H1) Department, dated 21-08-2010 issued by the 1st respondent is set aside and the writ petitions are accordingly allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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A. RAJASHEKER REDDY, J

Date: 22-06-2015

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[1] 2003 (1) ALT 30

[2] 2004 (2) Andhra Legal Decisions 1 (LB)