IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

Date of decision: 19.02.2015
(1) CWP No.15293 of 2002 (O&M)

A. Pee Jay School, Sector 15, Faridabad

....Petitioner

Versus

The State of Haryana and another

...Respondents

(2) CWP No.16337 of 2002 (O&M)

Modern School, Sector 17, Faridabad and others

....Petitioners

Versus

The State of Haryana and another

...Respondents

CORAM: Hon'ble Mr. Justice K. Kannan

Present: Mr. Shailender Jain, Sr. Advocate with
Ms. Manu Chaudhary, Advocate for the petitioner (s).

Mr. Mohnish Sharma, Advocate for respondent No.2.

*****

K. Kannan, J. (Oral)

Both the writ petitions are at the instance of schools run within Faridabad Municipal Corporation Limits. They have installed bore wells in the respective two premises to augment their own water resources. They are paying water and sewerage charges to the Corporation for the facilities which they enjoy. The petitioners would claim that the charges levied are also being paid regularly.

The dispute has arisen by virtue of the fact that the school which has obtained due permission from H.U.D.A. as well as the Central Ground Authority for taping additional water through the bore well have not however taken permission from the Municipal Corporation for such installations. The Corporation therefore, imposed the additional levy through the impugned notices turning them to be 'levy of users charges/composition charges' for the operation of the tube wells installed at the rate of ₹1920/- per month, the rates levied depending on the diameter of the tube wells. The levies are attempted to be made respectively from the time when the installations have been made. Consequently as against the petitioners in CWP No.15293 of 2002, the demand has been from January, 1990 up to the date when the demand was issued in October 2000 and in CWP No.16337 of 2002, the demand has been from January, 1999 up to the date when the demand was issued in October 2000.

The challenge by the petitioners is on the ground that Chapter VIII of the Haryana Municipal Corporation Act, 1994 is the only repository for any levy that is possible by the Corporation. Section 87 deals with imposition of taxes for building and lands or profession, trades, calling and employments or for taxes on vehicles or development taxes. Section 88 provides for charges that could be levied that include charge for development fee, for providing or maintaining civic amenities in certain areas and fee with regard to scavenging. The petitioners conferred that if a fee must be levied it must have *quid pro quo* and such a levy could be made under Section

88 only subject to the approval of the Government is that Section begins as under "Subject to the prior approval of the Government, the Corporation may in the manner prescribed levy a fee with regard to the following:-" The counsel's argument is that if the additional levy was tenable at all, it could not have been merely by a resolution of the Corporation but it must have secured the sanction of the Government. There is no such sanction which the Corporation has obtained.

I would find that the source of power for the Corporation to levy the charge for tube well connection depending on the diameter of the tube for flushing out water from underground could be seen as available through Section 88 of the Act. It provides for facilities of sewerage for the water that is consumed and let of as sullage or waste water. However, if this additional levy of sewerage charges for availing the water provided by the Corporation to the individual consumers could be justified even for persons who have their own private installations for pumping out water from underground without any aid from the municipal corporation, it ought to have a sanction from the Government both for the levy and for the rate of such collection. A fee, unlike tax is a *quid pro quo* for the service rendered. If the service of the corporation to be limited only to allowing the water pumped out after use, either as sullage or as waste water by the sewerage facilities which the corporation provides then the rate has to be worked out on some basis to show this additional burden on the facilities of the municipal corporation operates and how additional expenses are incurred to justify the levy.

I find that the State Municipal Corporation has not made any attempt to justify the order other than their plea that the levy has been made on the basis of resolution of the corporation. This is not sufficient to justify the levy as contemplated under Section 88 of the Municipal Corporation Act. The impugned levies are therefore, incompetent and they are quashed.

The counsel appearing on behalf of State would also have an argument that there is an alternative remedy by way of appeal and writ remedy is not appropriate. The case has been admitted and brought for hearing after nearly thirteen years. There is a provision of appeal under Section 138 and the petitioners have exhausted the same. The alternative remedy, if at all ought to mean a provision for a revision under Section 140. I will not find this provision as barring a writ petition especially when I find that the imposition of levy was bad in law without appropriate sanction from the Government. The limitation of the restriction of jurisdiction of the High Court is self-imposed I will not use it against the petitioners when the case is brought for consideration on merits after more than a decade.

Both writ petitions are allowed with costs of ₹10,000/- each. Whatever amounts have been collected by the respondents from the petitioners are liable to be refunded along with interest at the rate of 9% per annum from the Corporation. The payment shall be made within four weeks from the date of receipt of copy of this order order.

February 19, 2015 (**K. Kannan**)
Manoj Bhutani **Judge**