IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) LPA No. 1052 of 2015 (O&M)

The Municipal Corporation, Faridabad

.... APPELLANT

Versus

A. Pee Jay School, Faridabad and another

.... RESPONDENTS

(2) LPA No. 1057 of 2015 (O&M)

The Municipal Corporation, Faridabad

.... APPELLANT

Versus

Modern School, Faridabad and others

.... RESPONDENTS

DATE OF DECISION : 21.12.2015

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. Mohnish Sharma, Advocate,
for the appellant (in both the LPAs)
Mr. H.L. Tikku, Senior Advocate, with
Mr. Sumeet Goel and Mr. Yashmeet, Advocates,
for respondent No.1 (in LPA No. 1052 of 2015)
Mr. Shailendra Jain, Senior Advocate, with
Mr. Gaurav Aggarwal, Advocate,
for respondent No.1 (in LPA No. 1057 of 2015)
Mr. Mohak Bhadana, Advocate,
for respondent No.3 (in LPA No. 1057 of 2015)

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SATISH KUMAR MITTAL, J. (Oral)

This order shall dispose of these two intra-court appeals under

Clause X of the Letters Patent filed by the Municipal Corporation, Faridabad, against a common order dated 19.02.2015 passed by the learned Single Judge, whereby two separate writ petitions (CWP Nos. 15293 and 16337 of 2002) filed by A. Pee Jay School, Faridabad (respondent No.1 in LPA No. 1052 of 2015) and three other Schools (respondents No.1 to 3 in LPA No. 1057 of 2015) were allowed with costs of ₹ 10,000/- each. Resultantly, the demand notices issued by the appellant Corporation imposing 'user charges/composition fees' upon the respondent schools for operation of the tube-wells installed by them in their respective schools were set aside; and the appellant Corporation was directed to refund the amounts, which were collected by it from the respondent schools, with interest at the rate of 9% per annum.

Learned counsel for the appellant Corporation tried to justify the imposition of 'user charges/composition fees' under Section 87 (1) of the Haryana Municipal Corporation Act, 1994 (hereinafter referred to as `the Act'). A bare reading of this provision reveals that certain taxes can by levied by a Corporation. But there is no provision to levy 'user charges/composition fees'. However, sub-section (2) of Section 87 of the Act provides that subject to the prior approval of the Government, the Corporation may for the purposes of the Act, in addition to the taxes specified in sub-section (1), levy taxes under certain heads. The imposition of 'user charges/composition fees' cannot be said to have fallen under those heads. Even if the same falls under the residue clause, the tax can be levied only after obtaining prior approval of the State Government, which admittedly was not obtained in the instant case.

Learned counsel for the appellant Corporation further tried to justify the imposition of 'user charges/composition fees' under Section 88 of the Act, which reads as under :-

> ***"88. Fees that may be charged by the Corporation** – (1) Subject to the prior approval of the Government, the Corporation may in the manner prescribed levy a fee with regard to the following :-*
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> *(i) a fee on advertisements other than advertisements in the newspapers;*
> *(ii) a fee on building applications;*
> *(iii) development fee for providing and maintaining civic amenities in certain areas;*
> *(iv) a fee with regard to lighting;*
> *(v) a fee with regard to a scavenging;*
> *(vi) a fee in the nature of costs for providing internal services in a building scheme or town planning schemes;*
> *(vii) any other fee as deemed fit by the Corporation for services rendered.*
>
> *(2) The rates at which and the conditions subject to which the fees as laid down in sub-section (1), may be levied by the Corporation, would be decided by the Government."*

Section 88 of the Act clearly provides that before prescribing the fees with regard to the items mentioned in this provision, prior approval of the Government is mandatory. The learned Single Judge found that the `user charges/composition fee' was levied upon the respondent schools on the basis of resolution of the appellant Corporation, without obtaining prior approval of the State Government. It was further held that only on the basis of such a resolution, without seeking prior approval of the State Government, no recovery can be effected from the respondent schools. Thus, the imposition of levy was held to be bad in law without appropriate sanction from the Government.

Learned counsel for the appellant Corporation has conceded that while imposing levy on the tube-well under Section 88 of the Act, no prior approval of the State Government was sought. It has also been conceded that till date, there is no approval from the appropriate Government. In view of this conceded position, we are of the opinion that the learned Single Judge has rightly held that the imposition of levy was bad in law without appropriate sanction from the Government, because the provision of Section 88 of the Act is clear that levy can be imposed only subject to prior approval of the Government. We do not find any illegality in the finding recorded by the learned Single Judge that levy of `user charges/composition fee' was bad in law without appropriate sanction from the Government.

Learned counsel for the appellant Corporation submits there was no justification to impose costs of ₹ 10,000/- on the appellant Corporation in each case. After hearing learned counsel for the parties on this aspect of the matter, we find substance in this submission. Accordingly, the imposition of costs is deleted.

In view of the above, with the aforesaid modification in the impugned order deleting the costs of ₹ 10,000/- on the appellant Corporation in each case, both these appeals are dismissed.

(SATISH KUMAR MITTAL)
JUDGE

December 21, 2015 **(SHEKHER DHAWAN)**
ndj **JUDGE**