

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3802 of 2009

1. Nagpur Distillers Private Limited,
Plot Nos. 2 and 3, Kamptee Road,
Nagpur-440 026, a Company registered under the
Indian Companies Act, 1956, through its
Director-Shri Jasbirsingh s/o Jagatsingh Anand,
Aged about 68 years,
R/o. 108, Shivaji Nagar, Nagpur.
2. Vidarbha Distillers, Kamptee Road,
Nagpur-440 026, a partnership firm
registered under the Indian Partnership Act, 1932,
through its Manager-Shri Manohar s/o Prataprai Assudani,
Aged about 52 years,
R/o. Mecosabagh, Nagpur.
3. Konkan Agro Marine Industries Private Limited,
Plot No.117, Wanjra Layout, Kamptee Road,
Nagpur, a Company registered under the Indian
Companies Act, 1956, through its Manager-
Shri Pandurang Narayanrao Shinde, Aged about 48 years,
R/o. East Wardhaman Nagar, Nagpur.
4. Raman Distillers Limited, Wanjra Layout,
Kamptee Road, Nagpur, a Company registered under the
Indian Companies Act, 1956, through its
Director-Shri Jasbirsingh s/o Jagatsingh Anand,
Aged about 68 years,
R/o. 108, Shivaji Nagar, Nagpur.

..... **PETITIONERS**

...V E R S U S...

1. The City of Nagpur Municipal Corporation,
having its office at Civil Lines, Nagpur.
2. The State of Maharashtra, through
Urban Development Department,
Mantralaya, Madam Cama Road, Mumbai-400 032.

..... **RESPONDENTS**

with

WRIT PETITION NO.4156 OF 2009

1. Jattewar Sabhagriha,
Plot No.9, Ishwar Nagar Chowk, Hasanbagh Road,
Nagpur, through its Proprietor Smt. Mangala Jattewar.
2. Suyog Mangal Karyalaya,
S-1, Laxmi Nagar, Nagpur – 440 022,
through its Proprietor Smt. Prabhavati Narayan Deosarkar.
3. Talmale Bandhu Sabhagriha,
Chhatrapati Nagar Chowk, Wardha Road,
Nagpur – 440 015, through its Proprietor-
Shri Vijay Natthuji Talmale
4. Mata Ansuya Sabhagriha,
256, Jagnade Chowk, Nandanwan,
Nagpur – 440 009, through its Proprietor
Shri Sanjay Madhukarrao Kale.
5. Bhojraj Lawns,
Shraddhanand Peth, S.A. Road, Nagpur – 440 022,
through its Partner Shri Venkatesh P. Buty.
6. Kamdi Sabhagriha,
Bhandara Road, Pardi, Nagpur – 440 008,
through its Proprietor Shri Mahendra Narayanrao Kamdi.
7. Ajantha Hall,
Rambagh Road, Near Baidyanath Square,
Nagpur- 440 009, through its Proprietor Shri Harish Amol Munot.
8. Shree Radhe Mangalam,
Plot No.1, Dindayalnagar, Ring Road,
Nagpur-440 022, through its Proprietor Shri Arvind Natthuji Talmale.
9. Shree Bhagwati Sabhagriha,
Renghe Nagar, Near Trimurty Nagar Chowk,
Ring Road, Nagpur 440 022,
through its Proprietor Shri Arvind Natthuji Talmale.
10. Shriram Janki Mangal Karyalaya,
252, Nandanwan Layout, Jagnade Chowk,

Nagpur – 440 009, through its Partner Shri Anil Ramchandra Atkar.

11. Mahalle Sabhagriha,
Adhyapak Nagar, Manewada Chowk,
Ring Road, Nagpur, through its
Proprietor Mrs. Asha B. Mahalle.
12. Shubham Mangal Karyalaya,
Plot No.12, Jagnade Chowk, Nandanwan,
Nagpur 440 009, through its Proprietor Smt. Jyotibai Gajanan Bagwe.
13. Smruti Sabhagriha,
Plot No.5, Sharda Chowk Old Subhedar Layout,
Nagpur 440 024, through its Proprietor-
Smt. Kusumtai Hiranmanrao Bawankule.
14. Mudliar Sabhagriha & Lawns,
894, Shantinagar, Nagpur,
through its Partners, Shri Rajendra N. Mudliar.
15. Laxmi Mangal Karyalaya,
Gorakshan Sabha Layout, Dhantoli, Nagpur,
through its Partner Shri Dilip Jagannath Makde.
16. Naivedhyam Celebration Center,
Opposite Swimming Pool, N.A. Road, Nagpur,
through its Proprietor Shri Rajendra S. Kamdar.
17. Shantidevi Sabhagriha,
21, Nandanvan Layout, Nagpur 440 009,
through its Proprietor Shri Tulsiram Shrawanji Dhore.
18. Gannayak Sabhagriha,
Plot No. 142, Nandanwan Chowk,
Opposite Shikshak Sahakari Bank, Nagpur,
through its Proprietor Shri Harish Vishnuji Trivedi.
19. Madhur Sangam Mangal Karyalaya,
370, Ganesh Nagar, House No. 737 A, Ward No. 20,
Sangam Talkies Chowk, Nagpur, through its Proprietor Smt . Kusumbai
Jawaharlal Banode.

20. Asha Mangal Karyalaya,
Khare Town, Dharampeth, Nagpur 440 010,
through its Proprietor Smt. Kamlabai H. Aphale.
21. Sugandh Sabhagriha, Dharampeth,
Opposite N.M.C. Children Traffic Park, Nagpur,
through its Proprietor Shri Arvind Mahadeo Bage.
22. Shubh Mangal,
Bhagwagar Layout, Dharampeth, Nagpur - 440 010,
through its Proprietor Shri Dhananjay Gangadhar Fadnavis.
23. West Nagpur Nagrik Sangh (Shreeram Sabhagriha),
Ramnagar, Near Yoga Bhyasi Mandal,
Ramnagar to L.I.T. Road, Nagpur,
Run by Mrs. Swati Narendra Pendke, Partner Shree Enterprises.
24. Shyam Lawn,
54/5, Chhatrapati Nagar Square,
Wardha Road, Nagpur 440 015,
through its Proprietor Shri Shyamnarayan Gaurishankar Mishra.
25. Mangaldeep Community Hall,
Central Excise Colony, Wardha Road,
Chhatrapati Chowk, Nagpur,
through its Proprietor Shri Dattatraya Madhusudan Khanzode.
26. Sudhanshu Hall,
Sakkardara Telephone Exchange,
Ayodhya Nagar Road, Nagpur, through its
Proprietor Shri Vikas Sudhakar Patil.
27. Mahakalkar Sabhagriha,
53, Dattatraya Nagar, Nagpur,
through its Proprietor Shri Madhukarrao Vithobaji Mahakalkar.
28. Madhukarrao Mahakalkar Sanskrutik Sabhagriha,
Kalamna Market Road, Surya Nagar, Nagpur,
through its President Shri Madhukarrao Vithobaji Mahakalkar .
29. Akshay Bhawan Mangal Karyalaya,
498, Nehru Nagar, Nandanwan Road, Nagpur,
through its Proprietor Smt. Sakhubai N. Deshmukh.

30. Venkatesh Sabhagriha,
Plot No. 1, Sakkardara Telephone Exchange, Nagpur,
through its Proprietor Mrs. Vijaya Sudhakar Rao Baitule.
31. Pragati Sabhagriha,
Hanuman Nagar, Nagpur, through its Secretary
Shri Vinod B. Tikle, The Pragati Co-op. Housing Society Ltd.,
Nagpur.
32. Pragati Sanskrutik Bhawan,
Dighori, Umred Road , Nagpur,
Through its Secretary Shri Vinod B. Tikle,
The Pragati Co - op . Housing Society Ltd., Nagpur.
33. Pragati Bhawan,
Wardha Road, Nagpur, through its Secretary
Shri Vinod B. Tikle, The Pragati Co-op. Housing Society Ltd., Nagpur.
34. Indraprast Mangal Karyalaya,
Khamla Chowk, Nagpur,
through its Proprietor Shri Manoj Tukaramji Talmale.
35. Mrs. Pramilitai Dhomne Sabhagriha,
Swawalambi Nagar, Nagpur, through its Proprietor
Shri Vijay Balwantrao Dhomne.
36. Adarsh Mangal Karyalaya,
89, Sharda Chowk, Old Subhedar Layout,
Nagpur, through its Proprietor Shri Lalit Balwantrao Dhomne.
37. Siddheshwar Sabhagriha,
Ravi Nagar Chowk, Nagpur, through its Proprietor
Shri Sudhakar S. Zade.
38. Kala Bhawan,
South Ambazari Road, Nagpur,
through its Proprietor Shri Jiwan Daulat Patel.
39. Mahatma Fule Sanskrutik Sabhagriha,
Reshimbag Chowk, Nagpur, through its Secretary
Shri Madhaorao Gholve, Mahatma Fule Education Society.

40. Anusuya Mangal Karyalaya,
56, Perfect Layout, Ring Road, Mangalmurty Chowk,
Jaitala Crossing, Nagpur, through its Proprietor
Shri Rakesh Mukundrao Pannase.
41. Ramesh Bakde Sabhagriha,
Manewada, Nagpur, through its Proprietor
Mrs. Rekha Ghanshyam Bakde.
42. Parate Sabhagriha,
Sawarkar Chowk, Khamla Road, Nagpur,
through its Proprietor Shri Shriprakash B. ParatePETITIONERS

...V E R S U S...

1. The City of Nagpur Municipal Corporation,
having its office at Civil Lines, Nagpur.
2. The State of Maharashtra, through
Urban Development Department,
Mantralaya, Madam Cama Road, Mumbai-400 032.
..... RESPONDENTS

**with
WRIT PETITION NO.3955 OF 2009**

1. Haldiram Foods International Ltd.,
A company incorporated under the Indian Companies Act, 1956,
having its Registered Office at Small Factory Area,
Wardhman Nagar, Haldiram Factory Zone No.8,
Ward No.23, Nagpur, through its Managing Director.
2. Rajendrakumar s/o Shivkisanji Agrawal,
Aged about 50 years, Managing Director of the
Petitioner No.1, R/o. Small Factory Area,
Wardhman Nagar, Haldiram Factory Zone No.8,
Ward No.23, Nagpur.
3. Sushilkumar s/o Shivkisanji Agrawal,
Aged about 42 years,
Director of the Petitioner No.1,
R/o. Small Factory Area, Wardhman Nagar,
Haldiram Factory Zone No.8, Ward No.23.
Nagpur. PETITIONERS

...VERSUS...

1. The City of Nagpur Municipal Corporation,
having its office at Civil Lines, Nagpur.
2. The State of Maharashtra, through
Urban Development Department,
Mantralaya, Madam Cama Road,
Mumbai-400 032.

..... **RESPONDENTS**

**With
WRIT PETITION NO.5194 OF 2009**

1. Shri Ramdeobaba Sarwajanik Samiti, Nagpur.
A Public Trust-registered under the Bombay
Public Trust Act- through its Secretary-
Shri Govindlal s/o Nityanand Agrawal,
Aged about 75 years, R/o. Ramdeo Tekdi,
Gittikhadan, Katol Road,Nagpur.
2. Shri Ramdeobaba Kamla Nehru Engineering College,
through its Principal, Ramdeo Tekdi,
Gittikhadan, Katol Road,
Nagpur-440 013.

..PETITIONERS

...VERSUS...

1. The City of Nagpur Municipal Corporation,
having its office at Civil Lines, Nagpur.
2. The State of Maharashtra, through
Urban Development Department,
Mantralaya, Madam Cama Road,
Mumbai-400 032.

..... **RESPONDENTS**

**With
WRIT PETITION NO.4746 OF 2009**

Cine Exhibitors Association,
A body registered under the provisions of Bombay Public Trust
Act, 1950, with the Charity Commissioner bearing
Registration No.152/1973/F/1688 having its office
opposite Liberty Cinema, Residency Road, Sadar,
Nagpur, through its Vice-President- Shri Prashant Rathi.

....PETITIONER

.V E R S U S...

1. Nagpur Municipal Corporation, Nagpur,
having its office at Civil Lines, Nagpur.
Through its Commissioner.
2. The State of Maharashtra, through
the Principal Secretary of Urban Development Department,
Mantralaya, Madam Cama Road,
Mumbai-32.

..... **RESPONDENTS**

Shri Atharva S. Manohar, Advocate for petitioners in W.P.Nos.3802/2009, and 4156/2009

Shri S.V.Purohit, Advocate for petitioners in W.P.Nos.3955/2009 and 5194/2009.

Shri D.V.Chauhan, Advocate for petitioner in W.P.No.4746/2009.

Shri J. B. Kasat, Advocate for respondent No.1 in W.P.Nos.3802/2009, 4156/2009, 3955/2009 and 5194/2009

Shri S. M. Puranik, Advocate for respondent no.1-in W.P.No.4746/2009.

Ms. T.H.Khan, Assistant Government Pleader for respondent no.2 in all writ petitions.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

ARGUMENTS WERE HEARD ON 16th SEPTEMBER, 2022

JUDGMENT IS PRONOUNCED ON 16th DECEMBER, 2022

JUDGMENT (Per A.S.CHANDURKAR, J.)

Since similar challenges to the City of Nagpur Corporation Assessment and Collection of Water Rate Bye-laws 2009, have been raised in these writ petitions, they have been heard together and are being decided by this common judgment.

2. Writ Petition No.3802 of 2009 has been preferred by manufacturers of country liquor/ Indian made foreign liquor while Writ Petition No.4156 of 2009

has been preferred by operators of various marriage halls in the City of Nagpur. The City of Nagpur Corporation Assessment and Collection of Water Rate Bye-laws, 1966 were framed in exercise of the powers conferred by Section 418(1) of the City of Nagpur Corporation Act, 1948 (for short, the Act of 1948) and were published in the Government Gazette on 20.04.1966. These Bye-laws were amended in the year 2000. Thereafter the said Bye-laws were again amended on 01.04.2009 (for short, the Bye-laws of 2009) superceding the earlier Bye-laws. Water charges under Clause 9 applicable to various categories of consumers came to be revised by increasing the prescribed rates. According to the petitioners, there is no power conferred under the Act of 1948 to collect water charges that are in the nature of tax/fee. Alternatively, according to the petitioners, the enhancement in the amount of water charges being exorbitant and there being no quid-pro-quo for a fee to be charged, such increase in water rates is bad in law. In this backdrop a challenge has been raised to the Bye-laws of 2009 by seeking a declaration that the same are ultra vires the provisions of the Constitution of India. A declaration has also been sought that the Nagpur Municipal Corporation (for short, the Corporation) cannot be permitted to recover water charges at higher rates as prescribed.

3. Shri Atharva Manohar, learned counsel for the petitioners in Writ Petition No.3802 of 2009 and Writ Petition No.4156 of 2009 referred to various provisions of the Act of 1948. Referring to Section 57(1)(k) of the Act of 1948

it was submitted that the said provision empowered the Corporation to provide for management and maintenance of municipal water works as well as construction and maintenance of new works. While the Corporation could impose property tax under Section 114(1)(a), under Section 114(2)(g) of the Act of 1948, tax could be imposed on a subject on which the State had power to impose in the State under the Constitution of India. Reference was made to Section 201(2) by which supply of water was required to be made upon such terms and conditions as to payment and quantity and for such period as the Corporation may prescribe in that behalf. Referring to the State list in the Seventh Schedule of the Constitution of India and especially Entries 46 to 66, it was submitted that the State itself was not competent to levy tax on supply of water. In absence of any power conferred on the Corporation to recover water charges in the form of a tax, the Bye-laws of 2009 were liable to be struck down. To substantiate the contention that there was no specific power in the Act of 1948 to levy fees towards supply of water, reference was made to the provisions of Section 9(2) of the Motor Vehicles Act, 1988, Section 41(2) of the Maharashtra Money Lending (Regulation) Act, 2014 alongwith Section 5(4) and 26 thereof as well as Section 19 of the Legal Metrology Act, 2009 to urge that in the said enactments a specific power to levy fees had been conferred. As per Section 415(18) of the Act of 1948 though there was power conferred to make bye-laws relating to water works, the same did not authorise levy of fees for the same. It was further submitted that though public notice was issued inviting objections to the bye-laws in question, it was not

indicated as to what material was considered by the General Body of the Corporation before approving the amendments to the Bye-laws of 2009. There was no meaningful right granted to the petitioners as well as the members of the public to raise appropriate objections to such increase in water charges. Section 201 of the Act of 1948 could not be relied upon for supporting the enhancement in water charges especially when there were no sufficient guidelines as to the manner in which the water charges could be hiked. The learned counsel placed reliance on the decisions in *S.R.I. Roller Mills Ltd. and etc. vs. Union of India and others* [**AIR 1992 BOM 79**], *Messrs. S.S. Miranda Ltd. Vs. The State of Bombay* [**1955 ILR (BOM) 336**] and *Tata Iron and Steel Company Ltd. and another vs. State of Bihar and others* [(**2018**) **12 SCC 107**] to urge that in absence of any power to levy tax/fee the collection of water charges was without the authority of law.

It was then submitted that even if it was assumed that water charges were in the nature of fees, there was absence of quid-pro-quo to support such levy. The State Government as well as the Corporation had no authority to charge fees on water works. The increase in the water rates was exorbitant and not commensurate with the cost of water per unit. Referring to the reply filed by the Corporation it was submitted that the charge of water was indicated to be Rs.9.94 per unit, one Unit being equal to one thousand litres. The increase in the water charges was to the extent of twenty seven times the existing water rates for beverages and five times for community halls which was highly unjustified. Referring to the tripartite agreement dated 24.03.2006 between the Government

of India through the Ministry of Urban Development, the Government of Maharashtra and the Corporation in the matter of grant of financial assistance under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), it was submitted that what was permissible was only recovery of operation and maintenance cost. The increase in water rates had no co-relation with the operation and maintenance cost incurred by the Corporation. Reference was also made to various documents indicating public/private partnership in water sector by the Corporation. The revenue from water charges being more than the actual expenses, the hike in water charges was unjustified. Attention was also invited to the statement of income and expenditure from the year 2001-02 and onwards to urge that the figures indicated therein did not support the enhancement in water charges. Referring to the decision in *Secunderabad Hyderabad Hotel Owners' Association and others Vs. Hyderabad Municipal Corporation, Hyderabad and another* [(1999) 2 SCC 274], it was submitted that in case of a regulatory fee where quid-pro-quo was not necessary, the fees charged should not be excessive. There had to be a reasonable co-relationship between the levy and the services rendered as held in *Kewal Krishan Puri and another vs. State of Punjab and another* [(1980) 1 SCC 416]. In absence of the nature of services rendered being properly indicated, the imposition of fees was unjustified as held in *The Government of Andhra Pradesh and another vs. Hindustan Machine Tools Ltd.* [(1975) 2 SCC 274]. Reference was also made to the decision in *M/s. Devi Das Gopal Krishnan, etc. vs. State of Punjab and others* [AIR 1967 SC 1895]. The

learned counsel also referred to the judgment in *Writ Petition No.4263 of 2005 (Waluj Industries Association and others vs. The State of Maharashtra and others)* with connected writ petitions decided at the Aurangabad Bench on 10.10.2008 in the matter of levying water charges at uniform rates from the industrial units engaged in the activity of manufacturing liquor and beverages. To urge that charges for supply of water ought to be viewed in the context of Article 21 of the Constitution of India, reference was made to the decision in *Narmada Bachao Andolan vs. Union of India and others [(2000) 10 SCC 664]*. By referring to the decision in *State of Uttarakhand and others vs. Kumaon Stone Crusher [(2018) 14 SCC 537]* it was submitted that disproportionate increase in the amount of water charges was not liable to be sustained. On this basis it was urged that the prayers made in the writ petitions were liable to be granted.

4. Shri J. B. Kasat, learned counsel appearing for the Corporation opposed the aforesaid submissions. He referred to various provisions of the Act of 1948 to indicate that the bye-laws as framed were neither contrary to the provisions of the Act of 1948 nor were liable to be struck down on the grounds urged by the petitioners. He referred to the affidavit in reply filed on behalf of the Corporation to urge that in view of Section 201 of the Act of 1948 in the matter of supply of water it was permissible for the Corporation to lay down terms and conditions as regards payment and quantity for the period for which such supply was made. Section 415 of the Act of 1948 empowered the Corporation to make

bye-laws for carrying out the provisions and intentions of the Act of 1948 so as to regulate the matters specified therein. Insofar as 'water works' was concerned, under Section 415(18) clause (g) terms and conditions for supply of water to lands and buildings could be prescribed by making bye-laws. In exercise of the powers conferred by Section 201(2) read with Section 415 of the Act of 1948, the City of Nagpur Corporation Assessment and Collection Rate Bye-laws, 1966 had been framed. With a view to amend the said existing bye-laws, the procedure prescribed by Section 417 of the Act of 1948 was followed. Draft bye-laws were published in the Government Gazette on 03.04.2008. Objections were invited to the same and in response four objections were received. After hearing the objectors, the Committee as constituted submitted its report to the State Government on 28.11.2008. The State Government approved the said bye-laws by its communication dated 27.01.2009. Pursuant thereto the bye-laws were published in the Government Gazette on 31.03.2009 and the same came into effect from 01.04.2009.

According to the Corporation, the expenditure incurred by the Water Works Department was found to be more than the income generated by it. There was a continuous deficit and details of the income and expenses of the Water Works Department for the years 2001-02 to 2004-05 were referred to. The Government of India in the meanwhile launched JNNURM in the Financial Year 2005-06. To be entitled to assistance under the JNNURM, it was necessary to undertake monetary reform of the levy of reasonable user charges with the

objective that the full cost of operations and maintenance or recurring cost would be collected within the next seven years. The user charges were thus required to be revised in such a manner that by the year 2012 the income received would meet the full cost of operations and maintenance of the service. The Corporation on 24.03.2006 entered into a tripartite agreement with the Central Government and State Government to enable it to receive financial assistance from them and agreed to the norms prescribed under the JNNURM. Keeping these aspects in mind coupled with the fact that there was no revision of the water rate in the bye-laws since 2000, the rates were revised while framing the new bye-laws. On the basis of estimated figure of expenses and after making calculations in a scientific method, it was found that the cost of water per unit was Rs.9.94. While doing so the interest of 80% domestic consumers including poor and middle class citizens was kept in mind alongwith the aspect of cross subsidies and internal efficiency improvement plans. After introduction of the new tariff from 01.04.2009, the projected figures for the year 2009-10 indicated a deficit of Rs.2,103 Lakhs (Rs. Two thousand one hundred three lakhs). On this basis, it was stated that despite increase in the tariff rate the Corporation was not able to recover the expenses incurred by it in providing the service from the income generated through collection of water charges at the new rates. It was denied that the increase in the water rates was exorbitant or that there was no basis for such increase. It was further stated that the water rates levied under the 2009 Water Rate Bye-laws were in the nature of a regulatory fee which did not involve the element of quid-

pro-quo. Even otherwise, there was a broad and general co-relationship between the fees collected on the basis of water rates and the totality of the expenses of the service provided. For these reasons, it was stated that the challenge raised by the petitioners was not liable to be accepted.

5. In the sur-rejoinder filed on behalf of the Corporation, it has been stated that the Corporation had not taken any loan for any other purpose except for the purposes of its Water Works Department. Budget estimates had been prepared in the manner as required by Section 86(1A) of the Act of 1948 from the year 2006-07. It was then stated that 80% of water consumption was by domestic consumers. This had to be cross subsidised by the remaining 20% of water consumption. The urban water supply was mainly designed for domestic use of water and it did not permit water supply as a raw material for any industrial use. While finalising the water rates in 2007-08, the collection/recovery efficiency had been taken at 72% with progressive yearly improvements. In the absence of any objection being raised by the petitioners to the draft Bye-laws, it was clear that the petitioners had waived their right to object and hence were not entitled to challenge the said Bye-laws.

Shortly prior to hearing of the writ petition, additional affidavit has been filed by the Corporation in which it has been reiterated that the water rates had been raised only with a view to ensure that the operations and maintenance expenses of the Water Works Department are recouped by recovery of water

charges from consumers and there was no deficit. It has referred to annual operations and maintenance expenses for the Financial Year 2008-09 to 2018-19 to indicate the total income as well as the deficit therein. It is therefore stated that in comparison with the total income, there has been a deficit for all these years.

The learned counsel for the Corporation has relied upon the following decisions in support of his submissions:

1. B.S.E.Borkers' Forum, Bombay and others vs. Securities and Exchange Board of India and others [(2001) 3 SCC 482]
2. Sukhdev Singh and others vs. Bhagatram Sardar Singh Rghuvanshi and another. [(1975) 1 SCC 421]
3. Hanso Virodhak Sangh vs. Mirzapur Moti Kuresh Jamat and others. [(2008) 5 SCC 33]
4. Om Prakash and others vs. State of U.P. and others. [(2004) 3 SCC 402]
5. State of Gujarat and others vs. Akhil Gujarat Pravasi V.S.Mahamandal and others. [(2004) 5 SCC 155]
6. State of H. P. and others vs. Shivalik Agro Poly Products and others [(2004) 8 SCC 556]

6. Shri S.V.Purohit, learned counsel appearing for the petitioners in Writ Petition No.3955 of 2009 who were engaged in the business of manufacture and sale of food items as well as Writ Petition No. 5194 of 2009 preferred by petitioners who were running an un-aided education institution besides adopting the submissions made by Shri Atharva Manohar, learned counsel, in addition submitted that in the Bye-laws of 2000 the water rates applicable to the petitioner engaged in manufacture, sale of food items and which also operated an

amusement park was Rs.12/- per unit. In the Bye-laws of 2009 the water rates were increased by almost ten times to Rs.100/- per unit for the food industry and Rs.540/- per unit for amusement parks. The increase was highly exorbitant without there being any justification for such increase. It was submitted that the college established by the petitioner in Writ Petition No.5194 of 2009 was an un-aided Engineering College. While amending the Bye-laws in the year 2009, Government aided colleges were placed in Tariff Code 9(c) while un-aided colleges were placed in Tariff Code 9(d). The water rates prescribed for consumption above 80 units under Tariff Code 9(c) was Rs.20/- per unit while that under Tariff Code 9(d) was Rs.100/- per unit. It was submitted that this differentiation had no nexus whatsoever especially in the backdrop of the fact that colleges receiving aid and those not receiving aid were rendering similar services and imparting education. Realising the aforesaid, Bye-laws of 2009 were again amended by virtue of the Water Rate (Amendment) Bye-laws, 2010. Notification was published by the Urban Development Department on 08.09.2010. Schools and colleges irrespective of receiving grant-in-aid were clubbed together and were placed in Tariff Code 9(C-2). As a result, from 08.09.2010 un-aided schools and colleges were also placed in the similar slab of Rs.20/- per unit. In this backdrop, it was submitted that the amendment to the Bye-laws of 2009 as made by the Bye-laws of 2010 ought to be given retrospective effect. There was no justification for charging Rs.100/- per unit for the period from 01.04.2009 to 07.09.2010. It was urged that since the amendment was effected after realising that all schools and

colleges were required to be clubbed together irrespective of they receiving grant-in-aid or otherwise, the amendment was curative in nature. It was for the general good of all un-aided institutions. Since the mistake that had occurred under the Bye-laws of 2009 was being corrected, there was no justification on the part of the Corporation to demand water rates in accordance with the Bye-laws of 2009 at the higher rate till they were amended on 08.09.2010. In this regard, the learned counsel referred to the decisions in *Ghanshyam Mishra and Sons Private Limited through the authorised signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and others* [(2021) 9 SCC 657], *Commissioner of Income Tax Kolkata-III vs. Alom Extrusions Limited* [(2010) 1 SCC 489], *Government of India and others vs. Indian Tobacco Association* [(2005) 7 SCC 396], *Allied Motors (P.) LTD. VS. Commissioner of Income-tax Delhi* [AIR 1997 SC 1361], *Krishi Upaj Mandi Samiti and ors. vs. Orient Paper & Industries Ltd.* [(1995) 1 SCC 655], *Indian Mica Micanite Industries vs. The State of Bihar and others* [AIR 1971 SC 1182] and *A.P.Pollution Control Board vs. M. V. Nayudu and others* [(2001) 2 SCC 62]. It was further urged that despite specific assertions and grounds XIII to XVI raised in Writ Petition No.5194 of 2009, there was no reply filed by the Corporation opposing the said averments. Since it was not the object of the Corporation to generate revenue by recovering high water rates, there was no justification on the part of the Corporation in not granting benefit to the petitioners of the amendment as effected in the Bye-laws in 2010. Despite making various representations, no cognizance of the same was taken by the Corporation.

It was thus submitted that besides quashing the increase in the water rates as prescribed by the Bye-laws of 2009, the petitioners be held not liable to pay water rates at Rs.100/- per unit from 01.04.2009 to 07.09.2010.

7. In reply, Shri J.B.Kasat, learned counsel appearing for the Corporation opposed the aforesaid submissions. According to him, there was no question of any mistake being rectified by the Corporation. In view of various representations received after the Bye-laws were amended in 2009, the Corporation re-considered the matter and thereafter proceeded to modify the Bye-laws of 2009 by clubbing schools and colleges together irrespective of aid being received by them. Since the Bye-laws were suitably amended, there was no question of the petitioners not being liable to pay water rate at Rs.100/- per unit from 01.04.2009 till the same were amended by the Bye-laws of 2010. Reference in that regard was made to Resolution No.417 dated 28.07.2009 and Resolution No.51 dated 05.02.2010 passed by the Corporation. After due deliberations, the Tariff Code under the Bye-laws of 2009 came to be modified. The learned counsel in support of his submissions placed reliance on the judgment of the Constitution Bench *Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited [(2015) 1 SCC 1]*. It was thus submitted that no retrospective effect could be given to the amendment of the Bye-laws of 2010 and the petitioners were liable to pay the water rates initially in accordance with the Bye-laws of 2009 from 01.04.2009 and onwards and thereafter in accordance with the Bye-laws of 2010

from 08.09.2010.

Shri D.V.Chauhan, learned counsel for the petitioners in Writ Petition No.4746 of 2009 adopted the arguments as made in the other writ petitions. Shri S.M.Puranik, learned counsel appearing for the Corporation adopted the arguments of Shri J.B.Kasat, learned counsel.

8. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents placed on record. For considering the challenge as raised to the levy of water charges by the Corporation on the premise that the Corporation was not empowered under the Act of 1948 to levy charges in the nature of tax while undertaking supply of water, it would be necessary to refer to relevant statutory provisions of the Act of 1948. Under Section 57(1)(k) it is incumbent upon the Corporation to make adequate provisions for the management and maintenance of all municipal water works as well as the construction and maintenance of new works and means for providing sufficient supply of suitable water for public and private purpose. Section 114(1) (a) authorises the Corporation to impose property taxes while Section 114(2)(g) stipulates that in addition to taxes mentioned in sub-section (1), the Corporation can with the previous approval of the State Government impose any other tax which the State has power to impose in the State under the Constitution excluding the taxes on professions, trades, callings and employments. As per Section 115-1A(1) as amended by Maharashtra Act No. X of 2010 property taxes leviable on

lands and buildings in the city include water tax, water benefit tax, general tax amongst other things.

Under Chapter XVI of the Act of 1948 provisions pertaining to water have been enumerated. While Section 200 refers to general powers of the Corporation in the matter of supplying water, Section 201(2) permits supply of water to be made upon such terms and conditions as to payment and quantity for such period as the Corporation may prescribe in that behalf. It is thus clear from Section 201(2) that the Corporation is empowered to lay down such terms and conditions as regards payment and quantity on the supply of water. To achieve this object, bye-laws can be framed under Section 415. Section 415(18)(a) refers to water works while clause (g) thereof refers to the terms and conditions of supply of water to lands and buildings and the provision of meters. The Bye-laws are required to be approved by the State Government for being enforced thereafter. It is in exercise of this power that the Urban Development Department has approved the “City of Nagpur Corporation Assessment and Collection Bye-laws 2009”. It is under these Bye-laws that the rates for supply of water dependent upon the category of users and quantity supplied has been prescribed.

Under the State list in the Seventh Schedule, Entry 5 relates to local government including Municipal Corporation. Entry 17 pertains to water supply and Entry 66 is with regard to fees in respect of any of the matters in the State list excluding the fees taken in any Court.

9. From the aforesaid statutory provisions, it becomes clear that the Corporation under the Act of 1948 has the statutory authority to supply water upon such terms and conditions as it may prescribe. These terms and conditions have been prescribed by framing bye-laws which have been approved by the State Government. The Act of 1948 and especially Section 201(2) read with Section 415 (18)(g) does empower the Corporation to levy water rates on its supply. In the light of these statutory provisions empowering the Corporation to levy water rates, the ratio of the decisions in *S.R.I. Roller Mills Pvt. Ltd. and Messers S.S. Miranda Ltd. (supra)* is not attracted in the present case. Similarly, the delegation by the State on the Corporation to make bye-laws is also evident as contemplated in *M/s. Devi Das Gopal Krishnan (supra)*.

For considering the nature of this impost coupled with the aspect as to whether the said impost is in the nature of a fee or not, reference can be made to the observations of the Hon'ble Supreme Court in *Shivalik Agro Poly Products and others (supra)*, a decision by the Bench of three learned Judges. In paragraphs 14 and 15 thereof it has been observed as under:

“14. In a recent judgment rendered in B.S.E. Broker's Forum v. Securities and Exchange Board of India 2001 (3) SCC 482 by a Bench of three learned Judges, the challenge levelled against the registration fee levied by the Securities and Exchange Board of India on stock-brokers came up for consideration. The Bench after review of a number of earlier decisions, including Constitution Bench decision in Shirur Mutt case took note of the fact that in determining whether a levy is a fee or not, emphasis must be on whether its primary and essential purpose is to render

specific services to a specified area or a class and if in that process it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. After examination of the relevant Act and the Regulations, the Court held that since the amount collected under the levy account in the said case was being spent by the Board on various activities of the stock and securities market with which the petitioners are directly connected, the fact that the entire benefit of the levy does not accrue to the contributors i.e. the petitioners, would not make the levy invalid.”

“15. It will be thus seen that the statement of law made in Shirur Mutt case regarding the attributes of fee has undergone a sea change. The consistent view now is that there is no generic difference between a tax and a fee which are both compulsory exaction of money by public authorities. The co-relationship between the levy and the services rendered should be one of general character and not of mathematical exactitude. Further, the broad and general co-relationship between the totality of the fee on the one hand and the totality of the expenses of the services on the other, will be sufficient to justify the levy. The levy will not fail only on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services rendered by them. The true test being the comprehensive level of the value of the totality of the services set off against the totality of the receipts. The character of the fee is thus established. The vagaries in its distribution amongst the class do not detract from the concept of a fee as such.”

10. From the aforesaid it can be seen that the difference between a tax and a fee has now considerably watered down since both result in compulsory exaction of money for public purpose as observed in *Tata Iron and Steel Company Ltd. and*

another (supra). What is however required is a broad co-relationship between the levy and the services rendered. This co-relationship has to be of a general nature and not of mathematical exactitude. It has been also held that the levy would not fail only on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services rendered. The test of co-relation has to be reckoned at the aggregate level and not at the individual level. Keeping these vital aspects in mind, the challenge as raised to the increase in the water rates insofar as it is applicable to community halls to the extent of five times and to beverages which increase is to the extent of twenty-seven times can be considered.

11. According to the petitioners, hike in the water rates is arbitrary and without there being any quid-pro-quo. Assuming that the Corporation is empowered under Section 201(2) of the Act of 1948 to levy water rates, the same should be of a nominal nature and not for the purposes of generating revenue. In this regard, what is required to be noted is that in the Bye-laws of 2009 various categories of users have been earmarked. It has been asserted by the Corporation that 80% of water consumers are domestic users. The water rates have been fixed dependent upon the category of users. Under Tariff Code 9 (a) when water is supplied by meters to residential units, there is no charge levied for consumption upto 8 units. The water rates gradually increase depending upon the units consumed and when the same exceeds 80 units, the tariff is Rs.15/- per unit.

Under Tariff Code 9(b) which is applicable for partially residential units, the water consumption upto 8 units does not require any payment and when the consumption exceeds 80 units the tariff is Rs.18/- per unit. Under Tariff Code 9(c) which is applicable for institutions such as charity hospitals, public institutes like government aided schools and colleges, etc. the rates prescribed upto 15 units is Rs.15/- per unit and when the consumption exceeds 80 units the tariff charge at Rs.20/- per unit. Tariff Code 9(e) comprises of two parts; namely Commercial-1 and Commercial-2. In Commercial-1 private hospitals, community halls, industries, etc. are included. For consumption upto 15 units the tariff is Rs.25/- per unit. When the consumption exceeds 80 units, the tariff charged at Rs.100/- per unit. In Commercial-2 ice factories, beverage industries as well as pharmaceutical manufacturing units amongst others are included. Here, consumption upto 15 units is charged at Rs.60/- per unit and when the consumption exceeds 80 units, the tariff is Rs.540/- per unit. There are other categories in the said Tariff Code with which we are presently not concerned.

According to the petitioners, the tariff for Commercial-2 which is Rs.540/- per unit when the consumption exceeds 80 units as compared with other rates under the Tariff Code is on an extremely higher side.

12. It is seen that the Government of India launched JNNURM in the Financial Year 2005-06. The object of the said Mission was aimed at creating economical, productive, efficient, equitable and responsive Cities. To enable an

Urban Local Body to be eligible for grant of assistance under the JNNURM, the Government of India required eligible Cities to undertake a mandatory reform of the levy of reasonable user charges by Urban Local Bodies with the objective that the full cost of operation and maintenance or recurring cost was collected within a period of seven years. Thus, Urban Local Bodies were required to revise user charges in such a manner that by 2012 income from user charges of a particular service would result in recovery of full cost of operation and maintenance of that service. For participating in the JNNURM, the Corporation entered into a tripartite agreement with the Central Government and the State Government on 24.03.2006. In that regard, a proposal was submitted by the Executive Engineer to the Corporation so as to revise the relevant figures to bring it in tune with the prescribed norms. There had been no revision of water rates since 2000 and there was a continuous deficit in that regard. After considering the relevant data by taking year 2006-07 as the base year, the process of framing new Bye-laws was undertaken. Considering the expenditure incurred in 2006-07 insofar as water works is concerned, it was estimated that the expenditure for 2007-08 would be Rs.122.57 Crores. It is on that basis that necessary calculations were made and the cost of water per unit came to Rs.9.94. It is thereafter that the new tariff came to be introduced from 01.04.2009. According to the Corporation, as per projected figures for 2009-10, the total expenses were Rs.14,584/- Lakhs while the total recovery was Rs.12,481/- Lakhs. This resulted in a deficit of Rs.2,103/-Lakhs. According to the Corporation, despite increase in the tariff, it was not in a position

to recover the expenses incurred in providing necessary services.

13. It is asserted by the Corporation that 80% water consumption is by domestic consumers and this consumption is required to be cross subsidised by the remaining 20% water consumers. To achieve this figure of cross subsidisation within the tariff structure, higher charges on known domestic users as well as certain category of domestic users was adopted. Similarly, keeping the objective of water consumption in line, the premium user of water was charged at a higher rate. From the material placed on record by the Corporation, it is indicated that it makes payment to the Irrigation Department for 540 million litres of water per day from 2006-07. After the process of purification of aforesaid water, the Corporation on an average gets 510 million litres of purified water everyday out of which the billed volume of water is 276 million litres a day. It is on this basis that the water rates have been fixed. Water is required to be supplied to 80% for domestic consumers at a rate below the cost of water. Thus with a view to meet the necessary expenses, the rates have been prescribed in the Tariff Code. The budget estimates that have been prepared are in compliance with the provisions of Section 86 of the Act of 1948. Insofar as 'debt services' are concerned, the same pertained to repayment of loan taken by the Corporation for augmentation of water supply schemes and interest paid on such loan. According to the Corporation, it has not taken any loan for any other purpose except for its Water Works Department.

14. It is thus seen from the material on record that all relevant aspects have been taken into consideration while determining the water rates for various categories of users. The fact that 80% of water is supplied to domestic consumers and the expenses in that regard are required to be cross subsidised by levying water charges proportionately on the remaining 20% consumers cannot be said to be an unreasonable basis for fixing the water rates. After considering the objectives to be achieved under the JNNURM Mission and also with a view to reduce the deficit as far as possible, the Bye-laws have been amended in 2009 from 01.04.2009. We find that all relevant data available has been taken into consideration while determining the water rates as applicable. Viewed from the principles laid down in *Kewal Krishan Puri* (supra) the water rates collected have been shown to have been utilised for said purpose alone and not for any other purpose. Larger public interest in view of the fact that domestic consumers constitute 80% of total population receiving water supply has been kept in kind. The relevant figures taken into consideration are pursuant to the budget estimates relatable to Section 86(1A) of the Act of 1948. This Court cannot act as a Cost Accountant to minutely verify each figure with mathematical precision. Once it is shown that there is a broad co-relation between the levy as made and the services provided, the same would be sufficient to negative the challenge that there has been an arbitrary increase in the amount of water rates. It also cannot be ignored that when public notice was issued by the Corporation inviting objections to the proposed amendment of the Bye-laws of 2009, the petitioners had not responded

to the public notice by raising any objection. It is indicated from the record that there were only four objections received which were duly considered by the Corporation. We therefore find that the challenge as raised by the petitioners to the increase in water rates as being disproportionate and highly excessive cannot succeed. The Corporation has demonstrated the fair manner in which it has taken into consideration all relevant aspects before amending the Bye-laws in 2009 and enhancing the water rates. The larger perspective has been kept in mind coupled with the objectives to be achieved under JNNURM. The said challenge as raised therefore cannot succeed. The decision in *Waluj Industries Association* (supra) indicates that challenge was raised to levy of water charges at uniform rate from industrial units engaged in manufacturing liquor and beverages. The Court held that as regards water used in manufacturing activity as raw material, higher rates could be charged whereas for water used for allied activities, water rates could be paid at normal charges. While admitting the writ petition on 09.12.2009 liberty was granted to petitioners to make a representation in that regard to the Corporation. However, there is no further material on record in that regard to indicate that such representation was in fact made.

15. Coming to the challenge raised on behalf of the petitioners in Writ Petition No.5194 of 2009 to the recovery as sought for the period from 01.04.2009 to 08.09.2010 at the rate Rs.100/- per unit it can be seen that relief has been sought on the premise that the imposition of the rate of water per unit at Rs.100/-

in the Bye-laws of 2009 was by way of a mistake which was subsequently corrected by amending the bye-laws in the year 2010. In this regard, it is to be noted that in the bye-laws amended in the year 2009 un-aided educational institutions like the petitioner were placed in Tariff Code 9(d) applicable to un-aided schools and colleges. The rate fixed was Rs.100/- per unit when water above 80 units was supplied. Insofar as aided schools and colleges are concerned, the same were placed in Tariff Code 9(c) and the rate of water supplied above 80 units was Rs.20/- per unit. It is seen that various representations came to be made in that regard and after considering the same the Bye-laws of 2009 were amended in the year 2010. In the said bye-laws insofar as institutional consumers of water were considered, they were divided into two parts. Schools and colleges irrespective of they receiving grant-in-aid or not were placed in Tariff Code 9(C-2) Institution-B. Various representations were made by the petitioner from 03.05.2010 and onwards seeking reduction in the rate of water per unit. Thereafter on the bye-laws being amended request for recovering water charges as per the amended Bye-laws of 2010 was made but the said request has not been acceded to by the Corporation. It is therefore required to be considered as to whether the amendment of the year 2010 can be treated to be a curative amendment so as to hold that even though for the period from 01.04.2009 to 08.09.2010 the rate prescribed was Rs.100/- per unit, the petitioner would still be liable to pay charges for the said period at the amended rate for supply of water at Rs.20/- per unit.

Reliance was placed by the learned counsel for the petitioners on the decision in *Ghanshyam Mishra and sons (P) Ltd.* (supra) to urge that if a statute is of a curative nature or clarificatory in nature, it would be retrospective in nature. Similarly, if the amendment supplies an obvious omission in a former statute, the doctrine of relation back would be applicable. Reference was also made to the decision in *Alom Extrusions Ltd* (supra) in that regard. It was urged that rectification of a mistake by amending a provision would have retrospective effect as held in *Indian Tobacco Association* (supra).

16. We find from the material placed on record that there is no basis whatsoever to hold that the prescription of the rate of water at Rs.100/- per unit for un-aided schools and colleges in the Bye-laws of 2009 was by way of a mistake since the rate applicable for aided schools and colleges for supply of water was Rs.20/- per unit. On the issue being raised by the affected parties, the matter was re-considered by the Corporation and thereafter the Bye-laws of 2009 came to be amended. Besides reducing the rate of water for un-aided schools and colleges and bringing those institutions at par with aided institutions, there are other amendments also made to the Bye-laws of 2009. Bye-law Nos.2, 6, 8 and 56 alongwith Bye-law No.9 have been modified. These modifications appear to have been undertaken pursuant to various representations received from the affected parties and after due deliberations in the General Body of the Corporation. It is not a case of simple correction of a mistake but it is a conscious decision taken to

club educational institutions together irrespective of the fact whether they were receiving grant-in-aid or not. It was also urged by the petitioners that since the figure of Rs.100/- per unit was substituted by the figure Rs.20/- per unit by amending the Bye-laws, the demand at the rate of Rs.100/- per unit for the relevant period was not justified. As stated above, there is no material on record to hold that placing educational institutions together irrespective of they receiving grant-in-aid or not is an exercise of substitution. Same is the result of modification of the Bye-laws of 2009 which was a considered decision acting upon representations as received and deliberations as undertaken by the Corporation. Resolution No.417 dated 28.07.2009 and thereafter Resolution No.51 dated 05.02.2010 clearly indicate that such exercise was undertaken after considering the objections received by the Corporation.

We therefore hold that the amendment to the bye-laws carried out in the year 2010 cannot be said to be a result of rectification of an earlier mistake or curative in nature so as to entitle the petitioners to seek a declaration that for the period from 01.04.2009 to 08.09.2010 the water rate at Rs.20/- per unit for an educational institution which was un-aided is liable to be paid. The declaration as sought by the petitioners cannot be granted.

17. Hence for aforesaid reasons we do not find that the petitioners are entitled for the reliefs sought by them in the writ petitions. The Bye-laws of 2009 are not liable to be set aside on the grounds urged by the petitioners nor can

retrospective effect be given to the Bye-laws of 2010 as urged. All the writ petitions stand dismissed. Rule is discharged with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..