SUPREME COURT OF INDIA

Allahabad Development Authority

Vs.

Sabia Khan

C.A.No.4351 of 2004

(S.B. Sinha and Dalveer Bhandari JJ.)

11.07.2006

JUDGMENT

S.B. SINHA, J.

C.A.Nos. 4351/2004, 4352/2004, 4402-4403/2004, 4389/2004, 4391/2004, 4392/2004, 4394/2004, 4397/2004, 4393/2004.

These appeals are directed against the common judgment and order dated 1.7.2003 passed by the Division Bench of the Allahabad High Court in the writ petitions filed by the respondents herein questioning the legality/validity of the following rates/charges levied by the first appellant herein namely:

(1) Water Charges

(2) Malwa Charges

(3) Sub-Division Charges

(4) Development Charges

(5) Open space charges

In the writ petitions filed before the High Court only the first appellant herein and its Zonal officers were impleaded as parties. The State of Uttar Pradesh and even the U.P. Jal Sansthan, another statutory body constituted under the provisions of U.P. Water Supply & Sewage Act, 1975 were not impleaded therein as parties.

The Division Bench of the High Court allowed the writ petitions primiarily on the premises that the Court can take `judical Cognizance' of certain facts, stating "we may notice that in relation to the water charges it was opined that as water is supplied by the U.P. Jal Sansthan, constiuted under the U.P. Water Supply & Sewage Act, 1975, the first appellant herein has no water works of its own."

It was pointed out before us that the water charges are collected by the first appellant herein and the sums so collected are handed over to the Jal Sansthan, the details whereof are stated in Annexure A-1 to the rejoinder affidavit filed by the appellant to the counter affidavit of the respondents. The High Court did not apply its mind to this aspect of the matter at all.

Similarly without applying its mind to all aspects of the matter relating to applicability of the charge/fee, the High Court proceeded to hold that the same was impermissible in law without arriving at a finding that the petitioners therein have not been keeping the building materails on the land of the authority or on a public street or public place.

In a given case, therefore, the High Court could have struck down the levy on arriving at a finding of fact that levying of such fee was not jusitified but the High Court should not have proceeded on the basis that all the applicants would be keeping the building materials on their own lands or on private lands. The High Court, furthermore, applied a wrong test in opining:

"It is well known that in U.P., and perhaps in many other States, whenever a person applies for sanction of a map for constructing a building or room the authorities demand bribe, otherwise the map will not be sanctioned and all kinds of hyper technical objections are raised. It is common knowledge that almost every Municipality or local authority in the country has fixed a rate of this bribe for sanctioning a map. One has to pay a hefty sum of money to the Municipality or Development authority officials if one wishes to get a map sanctioned for constructing a building or room, and if one does not pay this amount the map will not be sanctioned come that may. How long the citizens of this country will tolerate this scandalous state of affairs is anyone guess. The times has now come when it has become the duty of the Court to intervene in this disgraceful state of affairs and voice its protest. The judiciary has to speak out of behalf of the people in such matters and bring them out to the notice of the people at the helm of the affairs."

While dealing with constitutionality and/or applicability/legality of a Statute and/or the rules and regulations framed thereunder, the power of judicial review is limited.

The High Court in our poinion ought to have applied its mind having regard to the well settled principle in regard thereto and as laid down by this Court in various decisions. In any view of the matter, the said finding could not have been arrived at by the High Court in absence of the State of Uttar Pradesh as a party in the writ petition.

We are, therefore, of the opinion that the impugned judgment cannot be sustained. In our opinion the High Court should consider the writ petitions filed by the respondents and other connected matters, if any, applying the relevant principles applicable therefor.

The impugned judgments are, therefore, set aside. The appeals are allowed and the matters are remitted to the High Court for consideration of the matters afresh.

Keeping in view the peculiar facts and cirucmstances of this case and having regard to the contentions raised at the Bar that the levies imposed by the appellant No.1 are illegal, we would request the High Court to consider the desirability of disposing of the matters as expeditiously as possible and preferably within a period of four months from the date of communications of this order.

It goes without saying that the State of Uttar Pradesh and the U.P. Jal Sansthan shall be impleaded as parties. Mr. Markandaya, learned senior counsel appearing on behalf of the State of Uttar Pradesh states before us that the State of U.P. shall appear before the High Court. A notice be sent by the High Court to Jal Sansthan. We may furthermore observe that this court has not applied its mind to the rival contentions of the parties and all the contentions of the parties shall remain open before the High Court.

C.A. Nos. 4399/2004, 4401/2004, 7511/2004, 7512/2004, 7513/2004, 5455/2005, 5151/2005.

In view of our judgment in Allahabad Development Authority and Anr. v. Sabia Khan and Anr., Civil Appeal No. 4351/2004, the interim orders passed in these appeals cannot be sustained and are set aside accordingly. The appeals are allowed. However, it would be open to the High Court to consider the matter afresh.