SUPREME COURT OF INDIA

Union of India

Vs.

State of U.P.

C.A.No.2549 of 2001

(A.K.Mathur and Markandey Katju JJ.)

01.11.2007

JUDGMENT

A.K. MATHUR, J.

1. This appeal is directed against the judgment dated 12.12.2000 passed by the Division Bench of the Allahabad High Court whereby the Division Bench has dismissed the writ petition filed by the appellants and upheld the recovery proceedings initiated against the appellants for the demand raised by the Jal Sansthan, Allahabad as water and sewer charges.

2. The Union of India and two others filed a writ petition before the High Court of Allahabad challenging the orders of recovery dated 1.7.1999 and 20.12.1999 issued by the Executive Engineer, Jal Sansthan, Khusru Bagh, Allahabad on account of service charges on Railway properties situated at Allahabad for the period from October, 1994 to March, 1999. The appellants also challenged the recovery certificate issued by the Tahasildar, Sadar, Allahabad for recovery of a sum of Rs.26,23,360/- from the appellant No.2 i.e. the Divisional Railway Manager, Northern Railway, Allahabad. It was alleged by the Jal Sansthan that the appellants were liable to pay the sewerage charges for 3125 seats at the rates notified under Allahabad Jal Sansthan Notification published in U.P. Gazette dated 19.11.1994. The plea of the appellants was that they were holding the property of the Central Government for which the service charges were not payable under Article 285 of the Constitution of India as such charges were in the nature of a tax. It was submitted that in view of the policy taken by the Ministry of Railways, Government of India such charges cannot be recovered as this was totally exempted but the respondent Jal Sansthan did not heed to it and they moved the Tahasildar, Sadar, Allahabad for effecting recovery. Therefore, the appellants were constrained to file the present writ petition before the High Court of Allahabad.

3. The writ petition was contested by the respondents and they filed their reply and pointed out that in view of various circulars of the Ministry of Railways, the appellants have been paying the service charges to the Jal Sansthan and in that connection it was pointed out that other Central Government Offices situated in Allahabad i.e. Telephone Department; Post Offices; Accountant General Office; Central Excise Department; Income Tax Offices were all making regular payment of service charge and sewerage charge to the Jal Sansthan, Allahabad. It was also pointed out that earlier the demand of service charges was being paid by the Railway Administration to the Allahabad Nagar

Mahapalika but with the establishment of Allahabad Jal Sansthan under the U.P. Water Supply and Sewerage Act, 1975 (herein after to be referred to as the Act) the aforesaid charges were being levied and realized by the Allahabad Jal Sansthan.

4. On the basis of these pleadings the question that came up before the Division Bench of the High Court was whether such demand raised by Allahabad Jal Sansthan for the services rendered by it to the Railway colonies was sustainable or not. The short question was whether Article 285 of the Constitution of India will exempt the Railway Administration from paying the water and sewerage charges under the Act of 1975. In this connection, reference was specially made to two decisions of this Court i.e. Union of India v. Purna Municipal Council & Ors. [(1992) 1 SCC 100] & Union of India & Anr. V. Ranchi Municipal Corporation, Ranchi & Ors. [(1996) 7 SCC 542]. There is no dispute that the bulk of water is supplied by the Jal Sansthan for maintenance of the railway platforms as well as railway colonies and the Jal Sansthan is catering to the need of maintaining the sewerage system not only at the railway stations but in the adjoining areas and also the residential quarters, offices, godowns, shades are being maintained by the Union of India through the Railways. The contention of the appellants in the writ petition was that in view of the aforesaid two decisions of this Court the question is no more res integra and the Jal Sansthan cannot charge for the supply of water and maintenance of sewerage system. In this connection, Section 184 of the Railways Act, 1989 was also referred to which lays down that the railway administration shall not be liable to pay any tax in aid of the funds of any authority unless the Central Government by notification declares the railway administration to be liable to pay the tax specified in such notification. In this connection, Clause (I) of Article 289 of the Constitution was also pressed into service. But the High Court did not dwell on this aspect in absence of the material placed in support thereof and did not permit to raise this plea.

5. As against this, it was contended on behalf of the respondents that the writ petitioner- appellants herein were paying its predecessors the amount for water and sewerage charges and there was no reason why they should discontinue the payment for the same. However, it was contended by the appellants that merely because they were paying the charges that does not become law or a vested right accrued in favour of the respondents to continue with the charges.

6. It was contended by the Jal Sansthan that the so called water and sewer charges is not a tax and it is a fee for the services rendered by the Jal Sansthan. Hence the exemption granted to the property of the Union from the State taxation under Article 285 of the Constitution has no relevance to the present case as the property of the Union of India was not being subjected to any tax. It was only a fee which has been charged for the services rendered and this has been the practice which is prevalent since long as other departments of the Central Government have been paying the same. In this background, the Division Bench of the High Court after exhaustively dealing with several cases on the subject came to the conclusion that in view of the provisions of the Act of 1975 and with reference to Article 285 and Article 289 of the Constitution of India, consumption charges on water or such services which are rendered under the statutory obligation for which the Jal Sansthan is to maintain its own funds is a fee and not tax. Hence, the writ petitioners were liable to pay such charges and they must honour the bills which have been served upon them. It was also observed that the appellants have been uninterruptedly paying such bills as a contractual obligation. It was also pointed out that the railway is not being charged with any tax but what is being charged is a fee for the service rendered by the Jal Sansthan. Aggrieved against this order passed by the Division Bench of the High Court, the present appeal was filed by the appellants.

7. We have heard learned counsel for the parties and perused the record. One thing is very clear from the facts, namely, that the Jal Sansthan which has been established under the Act of 1975, has taken over certain duties of the Municipality i.e. supply of water and maintenance of sewer. It is also not in dispute that prior to this, the railways were paying for the services like water and sewer to the then Municipality and likewise other departments of the Central Government are also paying the same charges. Therefore, the question is whether the service charges like supply of water and sewerage can be said to be a tax on the properties of the Railways.

8. Article 285 exempts the property of the Union from State taxation. Article 285 of the Constitution reads as under :

285. Exemption of property of the Union from State taxation.- (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

9. From a perusal of Article 285 it is clear that no property of the Union of India shall be subject to tax imposed by the State, save as Parliament may otherwise provide. The question is whether the charges for supply of water and maintenance of sewerage is in the nature of a tax or a fee for the services rendered by the Jal Sansthan. There is a distinction between a tax and a fee, and hence one has to see the nature of the levy whether it is in the nature of tax or whether it is in the nature of fee for the services rendered by any instrumentality of the State like the Jal Sansthan. There is no two opinion in the matter that so far as supply of water and maintenance of sewerage is concerned, the Jal Sansthan is to maintain it and it is they who bear all the expenses for the maintenance of sewerage and supply of water. It has to create its own funds and therefore, levy under the Act is a must. In order to supply water and maintain sewerage system, the Jal Sansthan has to incur the expenditure for the same. It is in fact a service which is being rendered by the Jal Sansthan to the Railways, and the Railways cannot take this service from the Jal Sansthan without paying the charges for the same. Though the expression tax has been used in the Act of 1975 but in fact it is in the nature of a fee for the services rendered by the Jal Sansthan. What is contemplated under Article 285 is taxation on the property of the Union. In our opinion the Jal Sansthan is not charging any tax on the property of the Union; what is being charged is a fee for services rendered to the Union through the Railways. Therefore, it is a plain and simple charge for service rendered by the Jal Sansthan for which the Jal Sansthan has to maintain staff for regular supply of water as well as for sewerage system of the effluent discharge by the railway over their platform or from their staff quarters. It is in the nature of a fee for service rendered and not any tax on the property of the Railways.

10. The distinction has to be kept in mind between a tax and a fee. Exemption under Article 285 is on the levy of any tax on the property of the Union by the State, and exemption is not for charges for the services rendered by the State or its instrumentality which in reality amounts to a fee. In this connection, a reference was made to the decision of this Court in re Sea Customs Act (1878), S.20(2) [AIR 1963 SC 1760]. This was a case in which a reference was made by the President of India with regard to levy of custom and excise duties on the State under Article 289 of the

Constitution of India wherein Sinha, CJ, Gajendragadkar, Wanchoo and Shah,JJ answered the question at paragraph 31 as follows :

(31) For the reasons given above, it must be held that the immunity granted to the States in respect of Union Taxation does not extend to duties of customs including export duties or duties of excise. The answer to the three questions referred to us must, therefore, be in the negative.

11. But a contrary view was taken by S.K.Das, Sarkar and Das Gupta,JJ. They concluded in paragraph 71 as follows:

(71) For the reasons given above our opinion is that the answers to the three questions referred to this court must be in the affirmative and against the stand taken by the Union.

12. Hidayatullah, J. answering the question in paragraph 121, held as follows :

(121) My answers to the questions are:

(1) The provisions of the Art. 289 of the Constitution preclude the Union from imposing or authorizing the imposition of, customs duties on the import or export of the property of a State used for purpose other than those specified in cl. (2) of that Article, if the imposition is to raise revenue but not to regulate external trade.

(2) The provisions of Art. 289 of the Constitution of India preclude the Union from imposing, or authorizing the imposition of excise duties on the production or manufacture in India of the property of a State used for purposes other than those specified in cl.(2) of that Article.

13. Ayyangar,J. has also expressed a separate opinion concurring with the Chief Justice. This decision on reference of the President of India only dealt with the question of Article 289 of the Constitution and we are not concerned in the present case with the effect of Article 289 which is, so far as the present controversy is concerned, of no useful assistance.

14. Learned counsel for the appellant has relied on the decision of this Court in Union of India v Purna Municipal Council (supra). In this case, the Railways challenged the notice of demand issued by Purna Municipal Council claiming Rs.28,400/- by way of service charges due for the period from 1954 to 1960. The Union of India made a reference to Article 285 of the Constitution of India read with Section 135 of the Indian Railways Act, 1890. It is not clear from this decision whether the service charge demanded by the Purna Municipal Council was in reality a tax on the property of the Union or a charge for some service rendered, rather the decision proceeded on the assumption that it was a tax and not a fee. The Court disposed of the matter holding as follows:

The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ and direction asked for in favour of the Union of India restraining the respondent council from raising demands on the railway in regard to service charges. We make it clear that the rights of the local authority as flowing under Section 135 of the Indian Railways Act, 1890 stand preserved in the event of the Central Government moving into the matter, if not already moved. In the circumstances of the case, however, there will be no order as to costs.

15. From this it is not clear whether the impugned demand was a charge for some service rendered, such as that which is involved in the present case with regard to water supply or with regard to sewerage. As already pointed out, what is prohibited by Article 285 is taxation on the property of the Railways and it does not prohibit charge of a fee on account of some service rendered by the local bodies or instrumentality of the State like supply of water or maintenance of sewerage. Such a charge would be in the nature of a fee and not a tax.

16. The other decision which has been heavily relied on by the appellants in Ranchi Municipal Corporation, Ranchi & Ors. (supra). In this case, their Lordships merely followed the decision in Purna Municipal Council (supra) and disposed of the matter. Again the question is what was the nature of the demand raised by the State against the Railways. In this case, their Lordships after following the judgment in Purna Municipal Council (supra) observed as follows :

Therefore, it cannot be construed that there is any contract between the Union of India and the Municipality. In view of the fact that the Municipality has no right to demand service charges from the Union of India, the demand made by the Municipality is clearly ultra vires its power. It is true that earlier WP No.2844 of 1992 was filed and was dismissed by the High Court and the special leave was refused by this Court on the ground of gross delay.

It was also observed at paragraph 5 as follows :

It is now settled law that the summary dismissal does not constitute res judicata for deciding the controversy. Moreover, this being a recurring liability which is ultra vires the power, earlier summary dismissal of the case does not operate as a res judicata.

17. Therefore, from the perusal of these two decisions what emerges is that no property of the Union of India can be subjected to State taxation, but these decisions do not deal with a charge for services rendered by any State or an instrumentality of the State. In this connection, our attention was invited to a decision of this Court in New Delhi Municipal Council v. State of Punjab & Ors. [(1997) 7 SCC 339]. This was also a case where Articles 289, 246(4), 245(1) and 1(2), 3(b) and 285 came up for consideration. As per the majority it was held that levy of property tax on such lands / buildings which are not used or occupied for the purpose of any trade or business carried on by the State Government with profit motive was invalid and incompetent by virtue of Article 289(1). But if the levy is on lands/ buildings used or occupied for any trade or business carried on by or on behalf of the State Governments, then by virtue of Article 289(2), the levy would be valid. It was also observed that it was for the authorities under the enactments to determine with notice to the affected State Governments, which land or building is used or occupied for the purposes of any trade or business carried on by or on behalf of the State Government. As against this, the minority view was that the States are entitled to exemption from levy of property tax on their lands/ buildings situated within NCT including those occupied for trade or business purposes. This case also does not throw any light on the question whether the services which are being given by the State Government or its instrumentality or the local bodies like supply of water and maintenance of sewerage will have the exemption under Article 285 of the Constitution ? This was also a case with regard to levy on the property of the State. So far as we are concerned in the present case, there is no levy on the property of the Union of India. Therefore, this case also does not provide us any useful assistance. As against this, our attention was invited to a subsequent decision of this Court in Municipal Corporation, Amritsar v. Senior Superintendent of Post Offices, Amritsar Division & Anr. [(2004) 3 SCC 92]. In this case, their Lordships were directly dealing with charges for the water supply, street light,

drainage services being rendered to P & T Departments buildings situated within the Municipal limits. In that context, their Lordships held as follows :

The demand so made was with regard to the services rendered to the respondents Department, like water supply, street-lighting, drainage and approach roads to the land and buildings. In the counter, the respondents averred that they are paying for the services rendered by the appellant Corporation by way of water and sewerage charges and power charges separately. It is also categorically averred that no other specific services are being provided to the respondents for which the tax in the shape of service charges can be levied and realized from the respondents. There is no provision in the Municipal Corporation Act for levying service charges. The only provision is by way of tax.

Undisputedly, the appellant Corporation is collecting the tax from general public for water supply, street-lighting and approach roads etc. Thus, the tax was sought to be imposed in the garb of service charges. The interplay of the constitutional and legal provisions being well cut and well defined, it was clearly not within the competence of the Corporation to impose tax on the property of the Union of India, the same being violative of Article 285(1) of the Constitution.

18. In this case, what is clear is that in fact the P & T Department was paying for water supply and sewerage separately and it was over and above that some service charges were levied under the garb of service charges which was exempted by the Constitution. In the present case, what is being charged is in fact water supply and sewerage. Therefore, so far as this part is concerned, it is affirmed by this Court in the aforesaid decision. But what is not accepted was that over and above the charges for supply of water and sewerage and power charges, the Municipal Corporation was levying service charges which were not contemplated under the Municipal Corporation Act for levying such service charges. Therefore, indirectly so far as demand for water supply, sewerage was concerned, it was accepted by the P & T Department and they were paying the same to the Municipal Corporation.

19. Our attention was invited to another decision of this Court in Sona Chandi Oal Committee & Ors. V. State of Maharashtra [(2005) 2 SCC 345]. In this case, the question was whether levy of inspection fee for renewal of moneylenders licence was valid or not. Their Lordships held that fee charged is regulatory in nature to further the objects of the Act and it has nexus with services rendered to moneylenders. However, it was observed that service to be rendered is not a condition precedent and there should be reasonable relationship between levy of fee and services rendered and in that context, their Lordships affirmed the validity of levy of fee under the Bombay Money-Lenders Act, 1946.

20. Our attention was also invited to a decision of this Court in Vijayalashmi Rice Mill & Ors. V. Commercial Tax Officers, Palakol & Ors. [(2006) 6 SCC 763]. In this case, their Lordships considered the distinction between fee, cesses and taxes. Their Lordships held that ordinarily a tax generates general revenue not for any service rendered. However, the nomenclature is not important. Sometimes a tax may be in reality a fee, depending upon its nature. It was observed that the earlier concept of fee has undergone a sea change and rendering of some specific service to a particular payer of fee is no longer considered necessary to sustain the levy of fee provided there is a broad and general correlationship between the totality of the fee imposed and the totality of the expenses on the service rendered. This discussion makes it clear that the distinction between a tax and a fee remains, even though the concept of a fee has undergone a sea change.

21. A reference was also made to another decision of this Court in Karya Palak Engineer, CPWD, Bikaner v. Rajasthan Taxation Board, Ajmer & Ors. [(2004) 7 SCC 195]. In this case, a three Judge Bench held that Article 285 which contemplates exemption of Union property from State tax, does not extent to exemption from levy of indirect tax. In this case, the question was exemption of sales tax in a works contract for erection of barbed wire. CPWD in terms of the contract supplied the construction materials after purchasing the same on payment of consideration and was adjusting the value of the materials in the final bills of the contractor. The question was whether there was immunity for the property of the Union from the State taxation under Article 285. Their Lordships held that from the case law it is clear that the Union is not exempted from the levy of indirect tax under Article 285. Their Lordships after examining the decision in re Sea Customs Act (1878) S.20(2) (supra) in reference by a nine Judge Bench observed that Article 285 is a mandate and not indirect tax such as sales tax. Their Lordships concluded with reference to sales tax which reads as follows :

We may in this connection contrast sales tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore, though both excise duty and sales tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the fact of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax.

22. The aforesaid decision came up consideration in New Delhi Municipal Council (supra). Their Lordships concluded at paragraph 16 as follows :

From the above judgment of this Court, it is clear that the Union is not exempted from the levy of indirect tax under Article 285 of the Constitution. The above discussion also shows that reliance placed on the judgment of this Court in the case of New Delhi Municipal Council by one of the learned counsel for the appellants is wholly
misconceived and is opposed to his contention with reference to Article 285 of the Constitution.

23. Though these observations were in reference to Sales Tax Act but the reasoning equally applies in this case also. In this case what is being charged is for service rendered by the Jal Sansthan i.e. an instrumentality of the State under the Act of 1975. Section 52 of the Act states that the Jal Sansthan can levy tax, fee and charge for water supply and for sewerage services rendered by it as water tax and sewerage tax at the rates mentioned therein. Though the charge was loosely termed as tax but as already mentioned before, nomenclature is not important. In substance what is being charged is fee for the supply of water as well as maintenance of the sewerage system. Therefore, in our opinion, such service charges are a fee and cannot be said to be hit by Article 285 of the Constitution. In this context it is to be made clear that what is exempted by Article 285 is a tax on the property of the Union of India but not a charge for services which are being rendered in the nature of water supply, for maintenance of sewerage system. Therefore, in our opinion, the view taken by the Division Bench of the Allahabad High Court is correct that the charge is a fee, being service charges for supply of water and maintenance of sewerage system, which cannot be said to be tax on the property of the Union. Hence it is not violative of the provisions of Article 285 of the Constitution.

24. As a result of our above discussion, we do not find any merit in this appeal and the same is dismissed. There will be no order as to costs.