

ALLAHABAD HIGH COURT

Kendriya Nagrik Samiti, Kanpur

Vs.

Jal Sansthan

Civil Misc. Writ Petn. Nos.817, 656, 704 and 807 of 1981 and 122, 147,199 and 246 etc of 1982

(K.N. Seth and R.R. Rastogi, JJ.)

28.05.1982

JUDGEMENT

K.N. Seth, J.

1. By these petitions the petitioners have prayed for a writ, order or direction in the nature of certiorari quashing Notification No.1935/IX 2-122-79 dated March,11, 1981, issued by the State Government levying water tax and sewerage tax at 12+ per cent and 3 per cent respectively and the bills issued to the petitioners on the aforesaid basis. The petitioners have also prayed for a writ, order or direction in the nature of mandamus restraining respondent No.1 from realizing the taxes at the aforesaid rates. They have also prayed for a writ, order or direction in the nature of mandamus commanding the Nagar Mahapalika to reduce the general tax to the extent to make the total taxes i.e. general tax, water tax and sewerage tax to 25 percent of the annual letting value and respondent No.1 to reduce the rate of excess water supply.

2. For the sake of convenience writ petition No.817 of 1981 is treated as the leading case. In this petition petitioners No.1 is a registered society whose main function is to look after the interest of the citizens of Kanpur particularly their civic amenities and rights Petitioners Nos.2 to 9 are landlords and owners of the houses situate in different localities Of Kanpur.

3. Prior to the enactment of the Uttar Pradesh Water Supply and Sewerage Act, 1975, (U.P. Act No.43 of 1975) (hereinafter referred to as the Act), under which Jal Sansthans have been constituted, property tax which included a general tax, water tax and drainage tax was levied under Section 173 of the Nagar Mahapalika Adhiniyam. The general tax was levied at the rate of 17+ per cent, water tax at 6+ per cent and drainage tax at 1+ per cent of the annual value of the building or land or both. Under the Act amongst the functions entrusted to a Jal Sansthan are: (i) to plan, promote and execute schemes of and operate an efficient system

m of water supply; and (ii) to plan, promote and execute schemes of, and operate, sewerage, sewage treatment and disposal and treatment of trade effluents. Under Section 52 of the Act a Jal Sansthan is empowered to levy water tax and sewerage tax. Under the impugned notification issued by the State Government water tax has been levied at 12+ per cent and sewerage tax at 3 per cent. Respondent No.1 has also revised the tariff for excess water supply. Bills have been submitted to the petitioners at the revised rates.

4. Learned counsel for the petitioners contended that Section 52 of the Act which empowered a Jal Sansthan to levy water tax and sewerage tax, was *ultra vires* on the ground of legislative competence. It was urged that no tax can be levied or collected except by authority of law as provided by Article 265 of the Constitution and since the taxes in question do not fall within the legislative field of any of the items in List II of the Seventh Schedule, they are invalid. According to the learned counsel Entry No.17, which is the only head under which the State legislature is competent to legislate on the subject of water supply etc., is not an entry relating to tax and under the residuary Entry 66 only fee can be levied and no tax. This argument ignores Entry 49 which empowers the State legislature to impose 'taxes on lands and buildings', The subject matter of water tax is not water. Under Section 52 of the Act water tax as also sewerage tax is levied on the assessed annual value of the premises. It is in reality a tax on land and buildings though called water tax. This matter came up for consideration before this Court in *Raza Buland Sugar Co, Ltd v. Municipal Board, Rampur* 1 Dealing with Section 128(1)(x) of the U.P. Municipalities Act, which empowers a municipality to impose 'a water tax on the annual value of buildings or lands or of both', a Bench of this Court held that water tax is in substance a tax on lands and buildings. The same reasoning applies to sewerage tax. The case was taken up in appeal to the SC (*Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur*),² but the decision of this Court that water tax is covered by Entry 49 was not challenged in appeal before the Supreme Court. The same view was taken in *Nizam Sugar Factory Ltd. v. City Municipality*,³

5. It was next contended that Jal Sansthan is only a 'local authority' and not a Local Self Government body like a Municipal Board. Such a body, which lacks the character of a Local Self Government body is not competent to levy any tax. It can be done by the State, which is empowered to levy tax in exercise of its sovereign power, or by a Local Self Government body to whom the power of the Stat

e may be delegated.

6. In order to judge the merit of the argument we may refer to the authority under which bodies like Municipal Boards, District Boards etc. are created as also the relevant provisions of the Act. Entry 5 of List II of the Seventh Schedule empowers the State Legislature to legislate on the subject of 'Local Government, that is to say, the constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, Mining Settlement Authorities and other local authorities for the purpose of Local Self Government or village administration. Local authorities are placed on the same footing as Municipal Corporations, Improvement Trusts etc. for the purpose of Local Self Government or village administration. It is universally accepted that such self governing units must have resources for their own administration and for implementing the duties cast on them. There are only two methods by which money can be made available to such units. One is for the State to make grants and the other is to authorize them to raise funds by levying fees and taxes. It is the second method which is normally followed. Legislatures in India generally invest these local self governing units with powers of taxation.

7. A Jal Sansthan is a Local Self Govt. body like Municipal Corporation as is evident from the provisions of the Act itself. Jal Sansthan as defined in Section 2(9) of the Act "means a local authority constituted by the State Government under Section 18 to perform its functions under this Act in one or more local areas." The expression 'local authority' has been defined in Section 3(31) of the General Clauses Act to mean "Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund." That expression is defined in the Uttar Pradesh General Clauses Act under Section 4(25) as follows:-

" 'Local authority' shall mean a Municipal Board or Nagar Mahapalika, Notified Area Committee, Town Area Committee, Zila Parishad, Cantonment Board, Kshettra Samiti, Gaon Sabha or any other authority constituted for the purpose of Local Self Government or village administration or legally entitled to or entrusted by the State Government with the control or management of municipal or local fund:"

It is thus obvious that Jal Sansthan, which is a local authority constituted by the State Government under Section 18 to perform its functions under the Act, is to be treated at par with Municipal Corporation etc. for the purpose of Local Self Government.

8. Other provisions in the Act lend support to this conclusion. Jal Sansthans are constituted under Section 18 of the Act. It is a body corporate having perpetual succession and a common seal. By subsection (5) of Section 18 it is deemed to be a local authority. Section 20 of the Act provides for the constitution of Jal Sansthan. Its Chairman is the Nagar Pramukh of the Nagar Mahapalika (ex officio), and its members are:-

- "(a) a General Manager, to be appointed by the Nigam with the approval of the State Government who shall be a qualified engineer having administrative experience and experience of water supply and sewerage works.
- (b) a Joint Director of Medical and Health Services to be nominated by the Director of Medical and Health Services, Uttar Pradesh;
- (c) three Sabhasads of the Nagar Mahapalika nominated by the State Government;
- (d) two representatives of the Nigam;
- (e) the Director of Local Bodies, Uttar Pradesh;
- (f) The Mukhya Nagar Adhikari of the Nagar Mahapalika".

Section 24 of the Act lays down the functions of a Jal Sansthan which are:-

- "(i) to plan, promote and execute schemes of and operate an efficient system of water supply;
- (ii) where feasible, to plan, promote and execute schemes of, and operate. sewerage, sewage treatment and disposal and treatment of trade effluents ;
- (iii) to manage all its affairs so as to provide the people of the area within its Jurisdiction with wholesome water and where feasible, efficient sewerage service;
- (iv) to take such other measures, as may be necessary, to ensure water supply in times of any emergency;
- (v) such other functions as may be entrusted to it by the State Government by notification in the Gazette."

Section 25 enumerates the powers of a Jal Sansthan, By Section 41 it is provided that every Jal Sansthan shall have its own fund which shall be deemed to be a Local fund and to which shall be credited all moneys received by or on behalf of the Jal Sansthan. The functions entrusted to a Jal Sansthan are similar in nature to the functions entrusted to like Municipal Corporations, District Boards, Town Areas etc. The functions entrusted to these Bodies are principally the functions of the State. The State cannot successfully discharge all its functions and consequently it became inevitable to delegate some of its functions to other instrumentalities which were created for that purpose and power was conferred on such self governing units to raise resources to carry out their obligations.

9. To provide water supply services and sewerage services amongst others form part of the duties of the Mahapalikas. Municipal Boards and other such bodies. A body or authority performing these duties must be held to be constituted for the purpose of Local Self Government. Prior to the enforcement of the Act the functions now entrusted to a Jal Sansthan were discharged by a Mahapalika which is indisputably Local Self Government body. A local authority like a Jal Sansthan would not be different in character when discharging the same functions.

10. As stated earlier, such self-governing units must have resources to carry out the functions entrusted to them and for that purpose they are clothed with authority to levy fees and taxes. In fact it is inherent in a Local Self Government body since it is the agency or instrumentality of the State. Section 52 of the Act, which empowers a Jal Sansthan to levy the taxes specified therein, cannot therefore, be said to be constitutionally invalid.

11. Validity of Section 52 was also challenged on the ground of excessive delegation. It was urged that no guidelines have been provided by the legislature. The argument is wholly untenable. After referring to earlier decisions on the subject, Wanchoo, C.J., in the *Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills, Delhi 4* delivering the majority judgment observed as follows (at p. 1244):

"A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential l

egislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."

Dealing with the form of guidance the learned Chief Justice observed (p. 1244)

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"It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. The guidance may take the form of providing maximum rates of tax up to which a local body may be given the discretion to make its choice or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a watchdog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are fixed by local bodies, whatever may be the method employed for this purpose- provided it is effective- it may be said that there is guidance for the purpose of fixation of rates of

taxation."

Hidayatullah, J., who gave a concurring judgment, observed (at p. 1253):

"The doctrine that Parliament cannot delegate its powers, therefore, must be understood in a limited way. It only means that the legislature must not efface itself but must give the legislative sanction to the imposition of the tax and must keep the control in its own hands. There is no specific provision in the Constitution which says that the Parliament cannot delegate to certain specified instrumentalities the power to effectuate its own will. The question always is whether the legislative will has been exercised or not. Once it is established that the legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. If the delegate acts contrary to the wishes of the legislature the legislature can undo what the delegate has done."

In the light of these observations we may examine the provisions of Section 52 of the Act. The opening words of the section 'for the purposes of this Act' give a clear direction about the object of the tax. Jal Sansthan is empowered to raise resources by way of tax for carrying out the purposes of the Act. It cannot be done for any other purpose unconnected with the Act. The limit to which tax may be levied has also been specified by providing that the water tax and sewerage tax may be levied on the assessed annual value of the premises. The source of revenue is thus clearly indicated. A further safeguard has been provided by laying down that the recommendations of the Nigam has to be considered by the Government before notifying the levy of taxes. Reasonableness of the tax has also been ensured by fixing the maximum limits. In our opinion all the tests laid down by the SC in the case of the Municipal Corporation of Delhi (supra) are fully satisfied.

12. We may at this stage refer to the recent decision of the SC in *Avinder Singh v. State of Punjab*, 5 In that case Section 90 of the Punjab Municipal Corporation Act came for consideration. After analyzing that provision the SC observed (at p. 328):

"Thus, the impugned provision contains a severe restriction that the taxati

on livable by the Corporation, or by the Government acting for the Corporation, shall be geared wholly to the goals Of the Act. The fiscal policy of Section 90 is manifest. No tax under guise of Section 90(2)(b) can be charged if the purposes of the Act do not require or sanction it. The expression 'purposes of this Act' is pregnant with meaning. It sets a ceiling on the total Quantum that may be collected. It canalizes the objects for which the fiscal levies may be spent. It brings into focus the functions, obligatory or optional, of the municipal bodies and the raising of resources necessary for discharging those functions- nothing more, nothing else."

13. The power of the legislature to tax may be delegated to any of its instrumentalities, It is not necessary that the instrumentality must be a Local Self Govt. body as contended by Sri Jagdish Swarop. Assuming for the moment that a Jal Sansthan is not a Local Self Government body still the delegation to it of power to tax must be upheld as valid. In *Banarsi Das Bhanot v. State of Madhya Pradesh*,⁶ the SC observed that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like In the *Corporation of Calcutta v. Liberty Cinema*,⁷ it was held that the fixation of the rates of taxes is not of the essence of legislative power of taxation and the fixation of rates of taxes may be legitimately left by a statute to a nonlegislative authority. In the case of the Municipal Corporation of Delhi (supra) the judgment of Hidayatullah, J. indicates that the delegation can be to any chosen instrumentality. Shah, J., who gave the dissenting judgment, also observed that power to make subsidiary or ancillary legislation may however be entrusted by the legislature to another body of its choice, provided there is enunciation of policy, principles, or standards either expressly or by implication for the guidance of the delegate in that behalf. In *M/s. Sitaram Bishambhar Dayal v. State of U. P.*,⁸ (at p. 1169) Hegde

, J. observed:-

"It is true that the power to fix the rate of a tax is a legislative power but if the legislature lays down the legislative policy and provides the necessary guidelines, that power can be delegated to the executive."

Once the legislative policy is indicated and proper guidelines have been provided, the matters of details can be delegated to any instrumentality of the State including the executive. If that be so, the delegation to a Jal Sansthan cannot be struck down on the ground that it is only a local authority.

14. It was next contended that by virtue of entry 49 the Nagar Mahapalika is empowered to levy property tax on the annual value of the buildings or land. Jal Sansthan, which operates in the same area, could not be validly empowered to levy tax on the annual value of the buildings or land or both as that would amount to double taxation. The argument is misconceived. Under Section 173 of the Nagar Mahapalika Adhiniyam the Mahapalika is empowered to levy property tax on buildings and lands in the city. The property taxes are enumerated as (a) a general tax; (b) a water tax; (c) a drainage tax; and (d) a conservancy tax. With the enforcement of the Act by virtue of Section 33 of the Act all the existing water supply services and the existing sewerage services, sewage works and sewage farms including all plants, machineries, water works, pumping stations etc. vest and stand transferred to the Jal Sansthan and are subject to its control. The Nagar Mahapalika is now no longer concerned with water supply services and sewerage services. These services are now provided by the Jal Sansthan. Since the Jal Sansthans are now entrusted with these services they have been empowered to levy taxes in respect thereof and the Nagar Mahapalika are not now competent to levy water tax and sewerage tax. It, therefore, cannot be successfully contended that there is any double taxation though the general tax imposed by the Mahapalika and water tax and sewerage tax imposed by the Jal Sansthan fall under the legislative field of taxation on lands and buildings' and are levied on the annual value of the buildings or land or both. They do not suffer from the vice of double taxation. Moreover as observed by the SC in the case of Avinder Singh (supra) "there is nothing in Article 265 of the Constitution from which one can spin out the constitutional vice called double taxation..... If on the same subject matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist." Earlier the SC in *Mathra Parshad v. State of Punjab*, 9 held that there was no illegality in the East Punjab General Sales Tax Act and the Punjab Tobacco Vend Fees Act. both of which provide for the levy of tax on the sale of manufactured tobacco, being simultaneously in force or in the simultaneous levy of both the taxes. In *Kamta Prasad Aggarwal v. Executive Officer, Ballabgarh* 10 the question arose whether levy of

a professional tax on a graded scale by the State of Haryana barred a Panchayat Samiti from levying a similar professional tax under the Punjab Panchayat Samities and Zila Parishads Act and, whether Article 276 of the Constitution was contravened. The SC observed as follows:-

"The power of the State to levy tax is derived from Entry 60 of List II in the Seventh Schedule of the Constitution. The entry speaks of taxes on professions, trade, callings and employments. The State Legislature may also by law confer similar authority on a Municipality, District Board, Local Board or other local authority."

A similar question came up for consideration before a Full Bench of the Punjab and Haryana High Court in *Megha Singh and Co. v. State of Punjab*, 11 The question in that case was relating to the validity of imposition of tax on the sale of country liquor by Panchayat Samitis which was also taxed under the Punjab General Sales Tax Act. The validity of the imposition was upheld on the reasoning that the legislature is competent to enact two laws providing for two taxes of the same kind though for different purposes. By one law, the legislature may itself impose and levy a tax to go into the consolidated fund of the State, and by another law it may authorize a local authority to impose and levy another tax of the same kind to augment the local authority's revenues. On the principles set out in the aforesaid cases it must be held that imposition of water tax and sewerage tax by the Jal Sansthan on the annual value of the premises situate within its area is perfectly valid.

15. The imposition of water tax and sewerage tax at 12+ per cent and 3 per cent respectively was assailed on the ground that these two taxes together with general tax exceed the limit of 25 per cent prescribed under Section 173 of the Nagar Mahapalika Adhiniyam. It was urged that since a limit on property tax was prescribed under the Adhiniyam, water and sewerage taxes could be fixed at such rate which together with the general tax did not exceed the limit of 25 per cent. We find no merit in the contention. The limitation placed under the Adhiniyam would not apply to taxes levied by Jal Sansthan which is a separate and distinct local entity constituted under a different Act. The taxes imposed under the Act and the general tax imposed under the Adhiniyam are levied to be utilised for different purposes under two different Acts. The validity of tax imposed under one Act cannot be tested with reference to the provisions of the other Act.

16. The rates prescribed for water tax and sewerage tax has been assailed on the ground of unreasonableness. No material has been placed on record to enable this Court to judge the reasonableness of the rates of the impugned taxes. The only assertion made in this connection is that the Jal Sansthan has not put forward any reason for enhancing the water tax from 6+ per cent to 12+ per cent and sewerage tax from 1+ per cent to 3 per cent. In the counter-affidavit filed on behalf of the Jal Sansthan it has been averred that the Jal Sansthan has made enormous expenditure on the development of water supply and sewerage system of densely populated city of Kanpur. It has to meet the ever increasing requirements of the public. Various schemes are being implemented vigorously. To meet the expenses under various heads it had become necessary in Public interest to prescribe the present rates. The reasons for prescribing the present rates were put forward in the recommendation submitted to the Government which after considering then issued the impugned notification.

17. The test for judging the reasonableness of a tax was pointed out by Hidayatullah, J. in the case of the Municipal Corporation of Delhi, AIR 1968 SC 1232 at p. 1254 as follows:-

"The delegation to the Municipal Corporation of the power to levy taxes and fees is for the purpose of its own duties under the Act. The power must be reasonably exercised for attainment of those purposes. These purposes include supply of water, running of transport services, lighting of streets and their maintenance, conservancy, establishment of hospitals and so on. The inter-relation of taxes with expenditure has to be maintained. This relation must be reasonable."

The rule of byelaws laid down in *Kruse v. Johnson*. 12 was approved and it was observed that to render a tax unreasonable it must be a clearly exorbitant tax which goes so high as to be extortionate. There is no material before us which may justify us to pronounce the impugned taxes as exorbitant or extortionate. Similarly, no material has been brought to our notice to persuade us to hold that the rate at which excess water supply is charged is excessive or arbitrary. If the petitioners are aggrieved by any order of assessment, the remedy lies by way of appeal under Section 54 of the Act.

18. Another grievance put forward by the petitioners is that even in respect of premises or part of premises which are in occupation of the tenants the impugned taxes are being realized from the owners. It has been alleged that names of occupiers are mentioned in the assessment register of the Nagar Mahapalika but instead of submitting the bills to the occupiers, the taxes are being realized from the owners on the threat of disconnection. In the counter-affidavit filed on behalf of the Jal Sansthan the stand taken is that primarily the tax is levied on the premises under Section 56 of the Act and it is recoverable from the 'occupier' which term as defined in Section 2(16) includes a owner who is in occupation of the premises. It has been averred that the tax is being realized from the persons whose names are recorded over the property as occupiers whether they be the owners or not and unless due information is furnished to the Jal Sansthan about transfer of occupation to another person, the bills are issued to the persons whose names are recorded in the records available with the Jal Sansthan. Except for making a vague and general statement the petitioners have not furnished particulars of premises which are in occupation of the tenants. In the absence of any information that a particular property is occupied by a tenant, the only course for the Jal Sansthan is to submit the bills to the owner of the premises and realize the amount from him.

19. In our opinion the petitions lack merits and are consequently dismissed with costs.

Petitions dismissed.

Cases Referred.

1. AIR 1962 All 83
2. AIR 1965 SC 895
3. AIR 1965 And Pra 91
4. AIR 1968 SC 1232
5. AIR 1979 SC 321
6. AIR 1958 SC 909
7. AIR 1965 SC 1107
8. AIR 1972 SC 1168
9. AIR 1962 SC 745

10. AIR 1974 SC 685
11. AIR 1977 Pun and Hary 297
12. (1898-2 QB 91)