

(1994) 04 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1384 of 1991

Citizen's Welfare Council and others	Vs	APPELLANT
State of Punjab and another		RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Constitution of India, 1950 — Article 366
Punjab Municipal Act, 1911 — Section 61, 62, 62(A), 62A(3), 97

Citation : AIR 1995 P&H 116

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : R.L. Batta and S.K. Pabbi, for the Appellant; D.S. Dhillon, A.A.G. and S.K. Mittal, for the Respondent

Judgement

1. The Citizens Welfare Council, S.A.S. Nagar (Mohali) along with 23 office bearers have filed this writ petition to challenge the orders by which the rate for the supply of water and sewerage cess have been enhanced. The petition is stated to have been filed in the nature of "public interest litigation."

2. Shorn off unnecessary details, the grievance in a nut-shell is that the action of the respondents in imposing the sewerage cess @ Rs. 4.00 per W.C. per month with effect from Dec. 1, 1990 and its subsequent enhancement to Rs. 10.00 and the increase of water rate from 35 ps. to Re. 1.00 with effect from Dec, 1, 1990 and the subsequent enhancement vide order dated 10 March, 1993 to Rs. 1.20 per kilo-litre is arbitrary and violative of the provisions of the Punjab Municipal Act, 1911. The action has been challenged on various grounds which shall be presently noticed.

3. The respondents contest this claim and aver that the impugned orders had been issued after proper consideration of the matter. It was necessary to revise the rates so as to meet the expenses incurred by the respondents in providing various facilities. It has also been averred that the impugned orders have been issued by the State Government in exercise of its powers under the Punjab

Municipal Act, 1911 (hereinafter referred to as "the Act") and that the action is fair, reasonable and legal.

4. Counsel for the parties have been heard. Mr. R.L. Batta, learned counsel for the petitioners, has made the following three submissions:--

(i) The impugned orders are illegal and violative of the provisions of Section 62(3) of the Act as Respondent No. 2 has imposed the taxes without inviting objection's;

(ii) The impugned orders are also violative of Section 97(2) as the impugned levy has not been imposed by the Committee but by the Government; and

(iii) Lastly, it has been contended that the sewerage cess is actually a fee. It has to be imposed on the principle of quid pro quo.

5. By referring to the additional affidavit filed on Feb. 23, 1994, learned counsel has made attempt to show that Respondent No. 2 is making a profit of almost 40 lacs by imposing the impugned sewerage cess at the rate of Rs. 10/- per W.C. On the other hand, Mr. D- S. Dhillon and Mr. S.K. Mittal, learned counsel appearing for the respondents, have contended that the orders are referable to the power of the Government u/s 62A and since the impugned cess and the water rate have been imposed by the Government, no notice was required to be issued to the petitioners or other residents of the area. For the same reasons, it has been contended that the provisions of S. 97 are not attracted. It has been further submitted that the impugned levy is in the nature of a tax and the principle of quid pro quo is not attracted. In the alternative, it has been submitted that even if the cess is assumed to be fee, the respondents are providing services and it is not necessary that there should be mathematical exactitude between the expenses incurred on the services provided to each individual and the amount paid by him. For considering the respective submissions, a brief reference may be made to the impugned orders.

6. On Nov. 30, 1990, the Government of Punjab issued an order imposing the sewerage cess @ Rs. 4/- per W.C. per month with effect from Dec. 1, 1990. A copy of this order has been produced as Annexure P. 8 with the writ petition. On the same day, the Government issued another order providing that "the rates of charges of metered water supply" shall be raised to Re. 1 per Kilo litre for residential use. Thereafter on March, 10, 1993, the Government issued instructions to various Municipalities and Corporations conveying the revised rate for water supply and sewerage. The revised tariff for water was fixed at Rs. 1.20 per kilo-litre and sewerage cess was raised to Rs. 10.00. A copy of this order has been produced, as Annexure P.18 with the writ petition. By this order, the directions were issued to the effect that the revision of water rates and sewerage charges may be implemented by each Committee/ Corporations by following the relevant provisions contained in Punjab Municipal Act, 1911 and Punjab Municipal Corporation Act, 1976". On May 8, 1993, the Executive Officer of the Notified Area Committee, S.A.S. Nagar conveyed to the Executive Engineer that the new

rates may be implemented. A copy of this order has been produced as Annexure P. 19 with the writ petition. The petitioners pray for the quashing of these orders.

7. The provisions of the Punjab Municipal Act, 1911 may be briefly noticed. Chapter V of the Act provides for the imposition of taxes. Section 61 enumerates the taxes which can be imposed. A perusal of this Section shows that an explanation was added to provide that "in this section "tax" includes any duty, cess or fee." Section 62 prescribes the procedure which a Committee has to follow before imposing any of the taxes enumerated in Section 61. It inter alia requires the Committee to pass a resolution and then "publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted." Section 62A, which was added by Punjab Act 48 of 1953, empowers the Government to "require a Committee to impose any tax mentioned in Section 61, not already imposed at such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly." Clause (2) of this provision further provides that "the State Government may require a Committee to modify the rate of any tax already imposed and thereupon the Committee shall modify the tax as required within such period as the State Government may direct." The only other provision relevant for resolving the controversy is contained in Section 97 which relates to the supply of water to connected premises. It is inter alia provided that the Committee may arrange for supplying water to the owner of any building and limit the amount of water to be supplied. In any case, where a tax has been levied no additional charges shall be made for the water to be supplied. However, in cases of Committees, where water tax has not been levied, "payment shall be made at such rate as may be fixed by the Committee with the approval of the State Government."

8. These are all the provisions to which counsel for the parties have made a reference.

9. A perusal of the above provisions shows that in Chapter V of the Act, the normal definition of tax has been enlarged so as to include any duty, cess or even fee. Still further, the procedure laid down u/s 62 has to be followed and a notice has to be published so as to make it known that the Committee proposes to impose a tax. According to Section 97, in case where the water tax has been levied, each consumer pays the tax at the prescribed rate. However, in a case where tax has not been levied, the Committee can fix the rate with the approval of the State Government.

10. What is the position in the present case?

11. A perusal of the record clearly shows that the sewerage cess which by virtue of the provision in Section 61 has to be construed as a tax was levied by the State Government. There was no proposal of Respondent No. 2 to levy any such cess. Similarly, the water rate, it appears had been initially fixed at 0.35 ps. per Kilo-litre. On Nov. 30, 1990, the Government had ordered that it shall be raised

to Re. 1.00 per Kilo-litre with effect from Dec. 1, 1990. However, in the year 1993, the order dated March 10, 1993 , (Annexure P. 18) was issued by the Government by which the water rate was enhanced from Re. 0.35 ps. to Re. 1.20 per Kilo-litre. By the same order, the sewerage charges were raised to Rs. 10.00 per W.C. All these orders have been passed by the State Government. Neither any tax has been imposed by the Committee nor the rates have been enhanced by it. The Committee has merely carried out the orders of the Government. In view of this factual position, when the Committee was not imposing any tax, the procedure prescribed u/s 62 was not required to be followed. The procedure contained in Section 62 is applicable only in a case where the Committee proposes to impose any tax contemplated u/s 61. Such is not the position in the present case. Accordingly, the contention raised on behalf of the petitioners cannot be accepted.

12. Mr. Batta, however, contends that even while issuing the order dated March 10, 1993, the State Government had directed the Committees to follow the prescribed procedure. On behalf of the respondents, it has been pointed out that such instructions are issued only by way of abundant caution. In spite of being asked, the learned counsel for the petitioners has not been able to point out any provision laying down the procedure which may have to be followed by a Committee when the tax has been imposed or enhanced by the State Government. In such a situation, it cannot be held that the impugned orders suffer from any infirmity.

13. Mr. Batta submits that the prescribed procedure under S. 62 has to be followed even in a case where the Government levies a tax. This contention is concluded against the petitioners and is wholly lacking in merit. Reference in this behalf may be made to the decision of a Division Bench of an earlier decision in *Sh. Krishan Kumar Sanan v. The Punjab State* (1972) 74 PLR 149, "where it was held that by virtue of the provision of sub-section (3) of Section 62A of the Act, necessity of complying with the procedure for the imposition of tax has been dispensed with and the procedure of Section 62 was meant for the Municipal Committee and not for the State Government exercising power under sub-section (3) of Section 62A of the Act. "In view of this authoritative pronouncement, the contention cannot be accepted.

14. It was then contended that the action is violative of Section 62 of the Act inasmuch as the impugned water rate and sewerage cess have been imposed by the Government and not by the Committee. The contention has to be merely noticed to be rejected. u/s 62A of the Act, the Government can take appropriate steps for imposing a tax. The Government's competence to do so has already been sustained by this Court in *Piara Lal's case* (supra). In a case where the Government itself imposes a tax or enhances the rate already fixed, the question of the Committee referring the matter to the Government for seeking its approval cannot arise.

15. The theory of "quid pro quo" does not have even the remotest application to

the facts of the present case. On the petitioners' own showing the sewerage cess and water are taxed. If it is so, as the petitioners themselves allege, the question of rendering services cannot arise. A tax is a compulsory exaction from the citizen and its validity is not judged on the basis of the services provided by the authority. Even if it is assumed to be fee, it is apparent that Respondent No. 2 is providing various services to the residents of the SAS Nagar. Mathematical exactitude in such cases is no longer required. After the decision of their Lordships of the Supreme Court in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, the matter has been clarified in a series of decisions. These were considered by a Full Bench of this Court in *M/s. Subhash Chander Kamlesh Kumar Vs. State of Punjab and others*. The following observations are relevant (at pp. 279 and 280 of AIR):--

"The said observations are distinguishable on the facts of that case. The correct statement of law is that the view of *quid pro quo* has undergone a transformation. The true test for a valid fee is whether the primary and essential purpose is to render specific services to specified area or class, it being of no consequence that the State may ultimately and indirectly benefit by it. *Quid pro quo* is not always a *sine qua non* of a valid fee and what is required to be shown is that by and large there is *quid pro quo*. The correlation-ship between services expected is of a general character and a broad, reasonable and casual relationship is enough to satisfy the requirement of law. The payer of the fee represents collectively the class of persons i.e. users of the market, including growers and those engaged in business to whom the benefit directly intended by the establishment of a regulated market and not the actual individual i.e., the trader. If there is *quid pro quo* in the sense explained above for such a class of persons, the test of valid fee is satisfied."

16. In view of the above, the contention raised on behalf of the petitioners cannot be accepted.

17. Accordingly, there is no merit in this petition. It is dismissed. However, in the circumstances of the case, there will be no order as to costs.

18. Petition dismissed.