(2002) 01 AHC CK 0182

In the Allahabad High Court

Case No : C.M.W.P. No. 816 of 1996

Hazi Nasirullah and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 52(2)

Citation : (2002) 2 AWC 1075 : (2002) 2 UPLBEC 1143

Hon'ble Judges : S.K. Sen, C.J;R.K. Agrawal, J

Bench : Division Bench

Advocate : C.K. Parekh, for the Appellant; K.B. Mathur and Ranvijai Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Sen, C.J.—By means of the present writ petition, Hazi Nasirullah and Zaida Bibi have approached this Court under Article 226 of the Constitution of India seeking a writ, order or direction in the nature of certiorari quashing the bill notice dated 8.11.1996 filed as Annexure-7 to the writ petition. They further seek a writ, order or direction in the nature of certiorari quashing the notification dated 24th November, 1994/1st December, 1994 and declaring it as ultra vires and arbitrary particularly Clauses 4, 5 (1) and 7 of the said notification.

2. We have heard Sri C. K. Parekh, learned counsel for the petitioners, Sri K.B. Mathur, learned counsel for the Jal Nigam, respondent No. 3 and Sri Ranvijat Singh, learned standing counsel representing respondent No. 1.

3. Briefly stated, the facts giving rise to the present writ petition are as follows :

"The petitioners claim themselves to be the owner and residents of premises No. K-55/54 Rajapura, Varanasi. The premises in question is being assessed to municipal taxes. Jal Sansthan, Varanasi is levying water tax and sewerage tax in accordance with the provisions of the Uttar Pradesh Water Supply and Sewerage Act, 1975 (hereinafter referred to as the Act). According to the petitioners, Jal

Sansthan, Varanasi, had sent the hills for the years 1995-96 and 1996-97 wherein irrespective of the annual value of the house determined by the Nagar Nigam, Varanasi, the water tax and sewerage tax have been increased by about 15 per cent of the previous year charges."

4. Learned counsel for the petitioners submitted that u/s 52 (2) of the Act, the minimum and maximum rate of water tax and sewerage tax which can be charged, has been fixed. The said sub-section provides for levying water tax not less than 6 per cent and not more than 14 per cent ; whereas sewerage tax shall not be less than 2 per cent and not more than 4 per cent of the assessed annual value of the premises as the State Government may declare by Notification in the Gazette. According to him the water tax and sewerage tax have been increased by 15 per cent every year, which is not permissible under law and is contrary to the mandate given u/s 52 (2(of the Act. He further submitted that the notification dated 24th November. 1994/lst December, 1994, which permits the increase of water tax and sewerage tax by 15 per cent every year is contrary to the provisions of Section 52 (2) of the Act and is ultra vires.

5. Sri Mathur, learned counsel for Jal Nigam submitted that the clause in the aforesaid notification permitting increase by 15 per cent every year has been upheld by this Court in Court Misc. Writ Petition No. 36331 of 1996. Ram Chandra Agarwal v. State of U. P. and Anr. decided on 31st July 1997 and therefore, the bills issued by Jal Sanslhan do not call for any interference.

6. Learned counsel for the petitioners has not made any submission with regard to the increase in water-charges by 15 per cent every year in terms of the aforesaid notification, but has only confined his arguments with regard to increase in water tax and sewerage tax by 15 per cent every year.

7. Section 52 of the Act provides for taxes, which can be levied by Jal Sansthan. Sub-section (a) of Section 52 of the Act empowers the Jal Sansthan to levy water tax ; whereas Sub-section (b) of Section 52 of the Act empowers the Jal Sansthan to levy sewerage tax. However, Subsection (2) of Section 52 of the Act prescribed minimum and maximum limit at which water tax and sewerage tax can be levied. Sub-section (2) of Section 52 of the Act is reproduced below :

"(2) The taxes mentioned in Sub-section (1) shall be levied at such rate which in the case of water tax shall be not less than 6 per cent and not more than 14 per cent and in the case of sewerage tax shall be not less than 2 per cent and not more than 4 per cent of the assessed annual value of the premises as the Government may, from time to time after considering the recommendation of the Nigam, by notification in the Gazette, declare."

8. From a bare reading of Subsection (2) of Section 52 of the Act reproduced above, it is absolutely clear that water tax cannot be more than 14 per cent of the assessed annual value of the premises and likewise sewerage tax cannot be more than 4 per cent of the assessed annual value of the premises. Thus, the respondent Jal Sansthan cannot increase water tax by 15 per cent every year

and sewerage tax by 4 per cent every year. The decision relied upon by Sri Mathur in the case of Ram Chandra Agrawal (supra) considered the case of increase in water charges by 15 per cent every year as provided by Notification dated 24.11.1994. This notification has been issued in exercise of powers u/s 59 of the Act. fixing the rate of water charges as also providing for increase in water charges. It has nothing to do with the fixing of rate of water tax and sewerage tax. The decision of this Court in the case of Ram Chandra Agrawal (supra) will be of no help to the respondents, as this Court had only upheld the increase of water charges by 15 per cent every year under the aforesaid notification. This Court was not called upon to consider the question as to whether water tax and sewerage tax can be increased by 15 per cent every year or not in view of Sub-section (2) of Section 52 of the Act.

9. In view of the foregoing discussions, the bills issued by the Jal Sansthan, the copy of the which have been filed as Annexures-6 to 9 to the writ petition, which imposes water tax and sewerage tax by increasing it by 15 per cent every year cannot be sustained and are hereby set aside. Accordingly, we direct the respondent No. 2 to correct the bills and supply fresh bills to the petitioners in accordance with law.

10. With these observations, the writ petition succeeds and is allowed.

