(1996) 11 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36523 of 1996

Kumaun Mandal Vikas Nigam Ltd.Nainital APPELLANT

Vs

State of U.P.& Anr. RESPONDENT

Date of Decision : 15-11-1996

Acts Referred:

Citation : (1996) 11 AHC CK 0052

Hon'ble Judges : Palok Basu, J and I.M.Quddusi, J

Judgement

1. This writ petition has been filed by Kumaan Mandal Vikas Nigam Limited Nainital (U. P.) through its Managing Director under agonizing circumstances. Agonizing it is because from the facts stated below it is obvious that the government is proceeding against a Corporation which is wholly maintained by the government itself. How and why such reckless executive action has been permitted, passes ones comprehension. Sri Uma Kant Uniyal, learned counsel for the petitioner is perhaps right in his arguments that if and when the district Magistrate has, in fact, issued a recovery certificate, it may not be within the prowess of the Kumaun Mandal Vikas Nigam to thwart the recovery proceeding and save themselves from being publicly humiliated. Under these circumstances the court at once requested the Advocate General to assist the court because it is already aware of the decision of the Hon''ble Supreme Court in the case of M/s. Oil and Natural Gas Commission v. Collector of Central Excise, J.T. 1999 (4) SC 158.

2. The short facts are that Kumaun Mandal Vikas Nigam Limited is said to be running a rope way. It is alleged that all the entertainment tax which should have not been paid by the corporation have been remitted within time. Therefore, for recovery of the alleged arrears, proceedings under the Public Moneys (Recovery of Dues) Act have been initiated and the entertainment tax is sought to be recovered as arrears of land revenue from the public corporation.

3. Three other petitions, which came up before this Court on earlier occasion related to recovery of electricity charges by the State Electricity Board from

Nagar Palikas and demand by Nagar Palikas for payment of property tax from the State Electricity Boards.

4. By a detailed judgment this Court had referred the matter to the State Government for adjudication, keeping in view of the directions of the Hon''ble Supreme Court.

5. It, however, transpires that necessary directions have not yet issued the State Government to the district officials particularly the District Magistrates so that such recourse to settle interse dispute between the government departments is avoided. Litigation therefrom do consume valuable time of this Court which is meant for genuine Litigation. This sort of litigation certainly cannot be termed as a genuine litigation at all.

6. Sri Rakesh Dwivedi, learned Additional Advocate General has drawn the attention of the Court to the order of a Division Bench dated 17.7.1996 in Writ Petition No. 480 of 1996 whereby dispute of similar nature demanding entertainment tax from Nagar Palika Parishad Mussoorie by the District Magistrate, Dehradoon has been referred to a Committee. The operative portion of the order in the instant petition shall be the same because ultimately the purpose to be achieved by that order dated 17.7.1996 and the one proposed by this Court is identical.

7. In the result, in view of the aforesaid discussion , it is hereby directed that the District Magistrate. Nainital will now refer the said dispute to the State Government on a representation to be made by the petitioner, Kumaun Mandal Vikas Nigam Limited Nainital, (U.P.) through its Managing Director specifying the points which are to be decided, within three weeks from today. The State Government then shall refer it for decision to the Committee, as has been directed to be formed by the aforesaid order of this Court dated 17.7.1996.

8. With the aforesaid directions the writ petition stand finally disposed of.

9. A copy of this order be furnished to the learned counsel for the parties within one week on payment of usual charges. No interim order, therefore, is necessary because the District Magistrate has at once to follow the directions contained above.

