(1998) 05 AHC CK 0101

In the Allahabad High Court

Case No : C.M.W.P. No''s. 266, 293 and 527 (Tax) of 1983

Madan Lal Gupta and others — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 20-05-1998

Acts Referred:

Constitution of India, 1950 — Article 243E, 243U, 265, 276

Citation : (1999) 1 AWC 647

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : N. Lal, for the Appellant;

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—These matters, before the Court, have been pending for the last fifteen years. The issue is whether the erstwhile Town Area, Bisauli, now a Municipality, could prescribe taxes on trades, professions and callings and could discriminate between professional persons by levying taxes on some and leaving others out. Further were the taxes to be confined only, to the limit of Rs. 260 as prescribed in the Constitution of India, as it stood then by virtue of Article 276.

2. Counsel for the petitioners has submitted that the procedure and the manner in which taxes had been processed were irregular and illegal. These taxes have been assailed on the ground that'' there was no publication inviting objections on the taxes proposed to be levied. General notices to tax in context have been appended to the writ petition. The Court has not been benefited with notices specifically issued to persons or individuals, intended to be taxed. What has been appended to the petition are objections by certain persons through a lawyer impugning the notice which was issued and cautioning the Municipality that a suit will be filed on the assessments, if made.

3. Answering the petition, the State respondents have filed a counter-affidavit sworn by a clerk. One fact pleaded by the petitioners is accepted by the

respondents that the local body concerned, the municipality, was superseded and was without elected members. On the matter relating to allegations of the petitioners that there was no adequate publicity of notices, the contention is that announcement of the proposed tax was published in a newspaper with local circulation in ''Urdu'' known as MARDAN. The petitioners resist this proposition on the ground that this paper has no circulation within the local limits of the area and that more widely circulated daily newspapers were available for publication but the respondents did not publish the notices in such newspapers. It is submitted that the State respondents chase publications which had no substantial circulation in the eyes of law and this is not adequate publicity.

4. The Court is not going into all these issues which have been raised by the petitioners or as submitted by the respondents.

5. Plainly, the question is of local self Government. It is no use relegating the matter of circumstances fifteen years ago for examination afresh as much has changed in the context of local self Government. The Constitution of India, has been amended and the scene, as was seen during the supersession of local Government has given way to elected representatives participating in local Government.

6. The principle to tax is enshrined in Article 265 of the Constitution. It says "No tax shall be levied or collected except by authority of law." A superseded local body without elected members may be a corporation sole, but it is not a local Government in democracy to take decisions for the people it represents. To realise fresh taxes in contrast to prescribing afresh, are two different matters. Fresh taxes can be sanctioned only by elected representatives. A superseded local body can only levy such taxes which the elected representatives left for it. Thus, in the present context whatsoever had been done by an authority which happens to be a fictitious corporate body without it''s ordained players is not local Government but a caretaker which cannot nor ought to take major policy decisions.

7. Today with amendments incorporated in the Constitution of India, local self Government with elected representatives is the basic feature of the Constitution. In this regard Chapter IX and Chapter IX-A on "The Panchayats" and "The Municipalities" is significant. No local self Government institution can remain without elected representatives beyond a duration of six months. In this regard Article 243E and Article 243U in the context of Panchayats or Municipalities is to be taken note of.

8. Municipal Board. Bisauli. admittedly, at the time the impugned taxes were imposed was without elected representatives with an Administrator substituting for local self Government. Administrators of superseded municipalities or city corporations cannot Impose fresh taxes. They will have to administer with what the elected representatives gave them.

9. The petition succeeds with the observations of the Court as above.

10. Allowed with costs.

