

(1998) 03 AHC CK 0120

In the Allahabad High Court

Case No : C.M.W.P. No. 29612 of 1992, Connected with C.M.W.P. No's. 3793, 16463 and 19156 of 1992 and 7604, 17644 and 20410 of 1993

Mahalakshmi Sugar Mills Co. Ltd.

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 265, 300A
Revenue Recovery Act, 1890 — Section 3, 4, 5, 5A
Uttar Pradesh Land Revenue Act, 1901 — Section 279(1), 279(2), 294(2)
Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 — Section 3, 3(3)
Uttar Pradesh Revenue Recovery Rules, 1966 — Rule 29, 3, 4, 5, 6
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 17(4), 275, 276, 277, 278
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 243, 248, 255, 258, 259

Citation : (1999) 2 AWC 1201

Hon'ble Judges : R.R.K. Trivedi, J; R.K. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—In this bunch of writ petitions, petitioners have questioned the legality of the recovery of the amount demanded from them as collection charges at the rate of 10% of the amount sought to be recovered from them as arrears of land revenue in connection with the unpaid price of sugarcane purchased by them. In all these writ petitions question of fact and law are similar and they can be disposed of by a common judgment. Civil Misc. Writ Petition No. 29612 of 1992 shall be the leading case.

2. Facts giving rise to the writ petition are that petitioner has a unit at Iqbalpur, district Hardwar which is engaged in the manufacture and sale of crystal sugar through vacuum pan process. For manufacture of sugar the essential raw-material is sugarcane which is purchased from cane-growers from the areas reserved for it under the U. P. Sugarcane (Regulation of Supply and Purchase)

Act, 1953, (hereinafter referred to as "Act"). As the sugar is an essential commodity, the price of sugar is fixed by the Union of India under clause 3 of Sugarcane Control Order, 1963. The statutory minimum price of sugarcane is also fixed by the Government of India. Thereafter the supply and purchase of sugarcane and the payment of price is regulated by the Act and Rules framed thereunder.

3. For crushing Season 1991-92, the State of Uttar Pradesh issued an order dated 14th November, 1991 fixing price of the sugarcane (known as "State Advised Price") which was higher than the statutory minimum price fixed by the Union of India. State Government also took steps to compel petitioner to pay the aforesaid price of sugarcane, aggrieved by which petitioner through its association known as West U. P. Sugar Mills Association and other manufacturers, filed Civil Misc. Writ Petition No. 37139 of 1992. This writ petition was however, dismissed as withdrawn on 21st January, 1992 without liberty to file fresh writ petition.

4. A recovery certificate was however, issued against petitioner on 25th April, 1992 by which a demand was made to pay 366.76 lacs as cost of sugarcane price including commission and interest for period ending 15th April, 1992. Challenging this demand petitioner filed Civil Misc. Writ Petition No. 16030 of 1992. This writ petition was, however, dismissed on 11th May, 1992 by a Division Bench of this Court as non-maintainable on the ground of dismissal of Civil Misc. Writ Petition No. 33139 of 1992 as withdrawn but without liberty to file fresh writ petition. Against the judgment of this Court, petitioner filed SLP No. 7667 of 1992 and also Civil Misc. Writ Petition No. 440 of 1992 under Article 32 of the Constitution of India before the Hon'ble Supreme Court. Other petitioners also filed Special Leave Petitions. Hon'ble Supreme Court on 11th June, 1992 passed an interim order granting time to petitioner to pay the amount and simultaneously also directed to lift attachment etc. Petitioner in pursuance of the aforesaid order of the Apex Court dated 11th June, 1992 paid the entire amount due mentioned in the recovery certificate. Petitioner was, however, served with orders dated 23rd July, 1992 and 14th August, 1992 passed by the Tahsildar, Roorkee demanding the payment of 10% of Rs. 3,26,85,454.00 as recovery charges within the period mentioned in the orders. In the letter dated 14th August, 1992, it was also mentioned that if the amount is not paid within a week, 33,000 bags of sugar lying under attachment shall be auctioned. The aforesaid orders have been filed as Annexures-4 and 6 to the writ petition. Aggrieved by the aforesaid orders, petitioners have filed the present writ petitions.

5. There is a slight factual difference in two of the writ petitions of the bunch and also consequent variation in the relief claimed. The writ petitions are 20410 of 1993 and 17644 of 1993, in which the amount of collection charges at the rate of 10% has already been realised and the refund of the same has been claimed.

6. The State of Uttar Pradesh, respondent No. 1, has contested the claim of petitioner by filing counter-affidavits in some of the writ petitions only. However,

since there does not appear any substantial factual difference, these writ petitions can also be decided along with other writ petitions.

7. We have heard Sri Sudhir Chandra, learned Senior Advocate for petitioners and Sri R. P. Goyal, learned Advocate General for State of Uttar Pradesh.

8. Learned counsel for the petitioners has submitted that the demand raised by respondents to pay 10% of the amount shown in the recovery certificate as sugarcane price commission and interest, is without authority of law. Learned counsel has submitted that the recovery certificate is issued u/s 17(4) of the Act to recover the unpaid sugarcane price from the manufacturers as arrears of land revenue. The Collector of the district after receipt of the recovery certificate recovers the amount as arrears of land revenue under the provisions of U. P. Zamindari Abolition and Land Reforms Act, 1950 and the various rules framed thereunder. Learned counsel during his submissions has placed before us various provisions contained in U. P. Zamindari Abolition and Land Reforms Act and the Rules to substantiate his submissions that the demand of 10% as recovery charges is without any basis as it does not find mention either in relevant provisions contained in U. P. Zamindari Abolition and Land Reforms Act, hereinafter referred to as "Z. A. Act", or the Rules framed thereunder for realisation of the amount as arrears of land revenue. Under the Rules the costs to be charged in recovering the amount as arrears of land revenue has been prescribed and the respondents cannot recover any amount as collection charges beyond the prescribed limits. It has also been submitted that as there is no law empowering respondents to realise the collection charges to the extent of 10%, which the State is enforcing uniformly against all the recoveries it amounts to taking away the property of the citizens in violation of the provisions contained in the Constitution. It has also been submitted that now it is well-settled law that no tax, fee or any compulsory charge can be imposed by any bye-laws or rules and regulations or under the executive order, unless the Statute under which the subordinate legislation is made specifically authorises such imposition. Such fiscal power cannot be inferred in favour of the State under the general provisions. It has also been submitted that in the present case only attachment of the movable and immovable property was effected and no sale had taken place. The amount shown in the recovery certificate was undisputedly paid by the petitioner to the Cane Co-operative Societies and the recovery certificate was thereafter withdrawn. The respondents in the facts and circumstances of the case cannot claim any amount from petitioner towards collection charges except the actual costs incurred in accordance with the provisions contained in the Z.A. Act and the Rules. Learned counsel has further submitted that the collection charges to the extent of 10% of the amount mentioned in the recovery certificate were not included in the recovery certificate. It has been claimed by impugned orders and thus there was a fresh cause of action for petitioner to file present writ petition. The question involved is of a very fundamental nature and the writ petitions may not be thrown out on technical ground as non-maintainable as petitioners are being compelled to pay huge amounts as collection charges for

nothing done by the State to Justify such demand. Learned counsel has further submitted that enactment of the Revenue Recovery Act, 1890 was for entirely different purpose. It is only a procedural law and it does not deal with fixing of the costs of collection charges in case of recovery of an amount as arrears of land revenue. Enabling provisions contained therein are merely to meet the contingencies where the defaulter resides or has property in a district other than in which arrears found due against him. Government Order dated 30th August, 1974 on which the reliance has been placed on behalf of the respondents cannot justify the recovery of 10% of amount as the order is wholly ultra vires and could not be issued under any provisions of Revenue Recovery Act, 1890 or the Rules framed thereunder. It is submitted that the provisions regarding costs, etc. are provided in Z. A. Act and the Rules framed thereunder but no such specific power has been conferred on State Government to fix collection charges. It is submitted that u/s 11 of Revenue Recovery Act, 1890, inserted by U. P. Amendment Rules could be made only to carry out the purposes of the Act. There is no express or implied delegation of power in favour of State for fixing the collection charges which is being recovered in all cases invariably at the flat rate of 10% even though the person concerned may have deposited the amount voluntarily. The State cannot be entitled to charge 10% of the amount as collection charges merely on receipt of the recovery certificate, which is general practice prevalent in the State. It cannot be justified even under Rule 8 of the Rules framed under the Revenue Recovery Act, 1890. In the present case, amount was paid under order of Hon''ble Supreme Court and it has not been recovered by issuing any process under the Z. A. Act or Rules. There should be some co-relation with the efforts made or the amount of labour spent by Government in effecting the recovery of the amount as arrears of land revenue demanded 10% as collection charges, which is totally lacking in the present case.

9. Referring to order dated 12th April, 1993, Annexure-6 to the Writ Petition No. 17644 of 1993, learned counsel has submitted that the recovery certificate was withdrawn by the Cane Commissioner as the entire amount was paid. However, in spite of the fact that the recovery was withdrawn, petitioner M/s. Basti Sugar Mills Company Ltd. was compelled to pay the amount of Rs. 42.65 lacs from the petitioner, in the same manner the amount had been recovered from petitioner of Writ Petition No. 20410 of 1993 to the extent of Rs. 46 lacs. It has been submitted that the aforesaid petitioners are legally entitled for the refund of the aforesaid amount or in any case respondents may be directed to adjust amount towards the sugarcane price which may be due from them in current crushing season. It has been further submitted by the learned counsel for the petitioners that as recovery certificate was withdrawn Special Leave Petitions filed before the Hon''ble Supreme Court were dismissed as not pressed on 12th July. 1993 but the legal questions were left open and nothing is pending in Supreme Court. Learned counsel for the petitioners has lastly submitted that the demand on basis of State Advised Price has been held to be illegal by this Court, against which SLP has been filed before Hon''ble Supreme Court in which no interim

order has been granted. Thus, the law as it stands now, the State Government was not legally entitled to recover any amount from petitioner on basis of the State Advised Price and for this reason also the petitioners are entitled for relief in these writ petitions. Learned counsel has placed reliance on following cases :

West U. P. Sugar Mills Association and others v. State of U. P. and others. 1997 (1) UPLBEC 540 ; Mirza Javed Murtaza v. U. P. Financial Corporation, Kanpur and another AIR 1983 All 234 ; Nirendra Kumar Bose and Another Vs. District Magistrate and Others, ; A. Venkata Subba Rao Vs. State of Andhra Pradesh, ; Bimal Chandra Banerjee v. State of Madhya Pradesh AIR 1971 SC 617 ; Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, : Ganpati Singh v. State of Ajmer and another AIR 1955 SC 188 ; Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others, ; M/s. Shree Baidyanath Ayurved Bhawan Ltd. v. State of Bihar and others JT 1996 8 SC 177.

10. Learned Advocate General, on the other hand, submitted that the present writ petitions are not legally maintainable. It is submitted that the first writ petition filed by petitioners challenging the recovery certificate on basis of the State Advised Price was dismissed as withdrawn on 21st January, 1992. The second writ petition challenging the same recovery was dismissed as not maintainable on 11th May, 1992. The third writ petition raising part of the same controversy is not legally maintainable and is liable to be dismissed. It is submitted that process of recovery starts with the issue of recovery certificate and the moment the certificate is received by Collector and he passes the order, the person from whom the public money is due becomes liable for the collection charges. In this connection, learned Advocate General submitted that the collection charges demanded is not a tax and principle of "quid pro quo" is applicable. Collection charges in fact are realised in lieu of the service rendered by the Revenue Department of the State in recovering the amount as arrears of land revenue. Revenue establishment is a huge establishment and in maintaining it the State incurs huge expenditure and the amount demanded from petitioners as collection charges is fully justified in law. Learned Advocate General has further submitted that in this connection under the Government Order dated 30th August, 1974 a distinction has been drawn between the amounts which are essentially in nature of revenue of the State and the other sums which are recoverable as arrears of land revenue under the provisions of the various Statute. It is submitted that 10% as collection charges prescribed under the Government Order dated 20th August, 1974 is applicable in respect of the dues which are recovered as arrears of land revenue on the request of the other Governments, semi-Government bodies, local authorities and also the amount sought to be recovered as arrears of land revenue under the U. P. Public Money (Recoveries) Act, 1972. The learned Advocate General has submitted that under Rule 8 (c) of U. P. Revenue Recovery Rules, 1966 the State Government was fully empowered to fix 10% of collection charges and the Government Order had been issued under the aforesaid provision and it is not correct to say that there is no

authority of law under which this amount can be fixed and demanded from petitioners. Learned Advocate General has also submitted that the costs prescribed under the various rules of Z. A. Act are not collection charges. They are costs to meet the expenses for the stationery etc. in issuing various processes. The collection charges are in fact to compensate the State Government for the expenses which it incurs in maintaining the huge establishment of revenue department. It has been submitted that the recovery of the amounts as arrears of land revenue is now a regular feature and a kind of regular service rendered by the revenue department, as recovery certificates are being received in large numbers under the various Acts to recover the amounts of the banks, financial institutions and local authorities under Taxing Statute. The public funds and public monies are required to be recovered swiftly and without any delay for smooth maintenance of economy of the State. The realisation of 10% as recovery charges thus serves an important public purpose and it cannot be termed as arbitrary and in violation of Article 14. Article 265 and 300A of the Constitution of India as submitted on behalf of the petitioners. The amount due from petitioners towards sugarcane price was not deposited by them voluntarily but under the interim order of the Apex Court after the attachment was effected by the Revenue Department towards the realisation of the amount. The basis of the liability is thus the default committed by petitioners in paying the amount within the time prescribed under the Act. The recovery certificate issued is conclusive proof of the same. Learned Advocate General has further relied on the citation dated 5.5.1992 which is Annexure-2 to the counter-affidavit and the warrant of attachment dated 8th May. 1992 which is Annexure-3 to the counter-affidavit and has submitted that the amount of recovery charges was very much in question from the very beginning and as the writ petition and the Special Leave Petitions filed by petitioners have been dismissed, they are liable to pay the amount. It has also been submitted that object and the purpose for which Revenue Recovery Act. 1890, was enacted, provides sufficient guideline for fixing amount of collection charge by the Government and it has not been done in arbitrary manner in exercise of any unguided power. It has been submitted that initially the collection charges were being realised at the rate of 6-1/4% since 1953. After about 21 years it was revised by the State Government by order dated 30th August. 1974 and was raised to 10% taking into account the various factors for example increase in the pay scale of the State employees and further sharp rise in the allowances and costs of stationery. Since 1974 this Government Order has been in force but the legality of it was never questioned. The provisions of Revenue Recovery Act. 1890, as amended by U. P. State Legislature is applicable to all the recoveries where the amount is sought to be recovered as arrears of land revenue. Learned Advocate General has placed reliance on the following cases :

Avinder Singh and Others Vs. State of Punjab and Others, ; Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, ; Anand Kumar Gupta v. State of U. P. and others 1993 . (1) UPLBEC 165 and L. S.

Tripathi v. Benaras Hindu University and others 1993 (1) UPLBEC 448.

11. We have thoroughly considered the submissions of the learned counsel for the parties and in our opinion, the following questions are involved in these writ petitions which require determination by this Court:

(1) Whether the present writ petitions are not legally maintainable as earlier writ petitions challenging the recovery of the amount of sugarcane prices were dismissed as withdrawn without liberty to file fresh writ petitions ;

(2) Whether the respondent-State has authority in law to recover. 10% of the amount mentioned in the recovery certificate as collection charges :

(3) Whether the action of respondents in recovering 10% amount in question as collection charges is arbitrary and in violation of Articles 14, 265 and 300A of the Constitution of India ;

(4) Whether the State Government in exercise of the delegated authority under Rule 8 (c) of U. P. Revenue Recovery Rules, 1966, could legally fix 10% of the amount sought to be recovered as collection charges in all cases of recovery of the public dues as arrears of land revenue ;

(5) Whether the demand of the amount in question equivalent to 10% of the amount of arrears due from petitioners as price of sugarcane is otherwise justified in the facts and circumstances of the case ;

(6) Whether the State is not entitled for amount as collection charges as the entire recovery proceedings were bad in law in view of the judgment of this Court by which State advised price has been held to be illegal ;

(7) Whether the State Government is liable to refund the amount which has already been recovered as collection charges ; and

(8) To what relief, if any, petitioners are entitled in the facts and circumstances of the case.

12. As the submission of the learned Advocate General against the maintainability of the writ petition was in the nature of a preliminary objection, though raised a little late, it should be decided first. For determining this question, the impact of the orders passed by Hon"ble Supreme Court in Special Leave Petitions, has to be looked into. The first order passed was of 11th June, 1992 in SLP No. 7667 of 1992 and other connected Special Leave Petitions. Paragraphs No. 4, 5 and 6 are relevant :

"Paragraph No. 4.--In the meanwhile, petitioners seek an interlocutory intradiction of the process of recovery. On the facts and circumstances of the case, I decline any interlocutory order. But as large sums are payable some reasonable way of payment should be contemplated. It would appear that the Revenue Authorities and the Sugar Co-operatives representing cane-growers do not generally insist upon or resort to coercive measures wherever the arrears of

unpaid price is less than 15% of the total liability calculated on the basis of the "State Advised Price". (I have been taken through the list indicating the quantum of arrears in each of these cases and the percentages they bear towards total liability. In the circumstances, it appears reasonable to grant some time to the petitioners to pay such sums as, when paid, would bring down the arrears to less than 15% of the total arrears calculated on the basis of the State Advised Price. Such sum shall be paid in two equal installments, the first installment being payable within three weeks from today and the second within three weeks thereafter i.e., within six weeks from today. The balance of 15% which shall remain, shall be paid within a period of four weeks thereafter, i.e., within ten weeks from today. In effect, within a period of ten weeks from today the entire arrears should stand cleared).

Paragraph No. 5.--In the meantime, while the attachment of the immovable properties of the petitioners, wherever effected, shall subsist, no steps, however, shall be taken by the Authorities to bring the attached properties for sale except where defaults are committed by the petitioners in the matter of compliance with the scheme of payments indicated in para 4 hereinbefore. The attachment of movable properties, other than the stocks of sugar shall be lifted immediately. Similarly, the attachment of the Bank accounts of the petitioners shall also be lifted immediately. However, the attachment of sugar stocks shall be limited to the value of the arrears payable by the sugar manufacturers and attachment in respect of the excess shall be lifted. The attached sugar bags shall be released from time to time against proportionate payments by manufacturer as a measure of convenience.

Paragraph No. 6.--These arrangements shall be without prejudice to all the rights and contentions of both the parties."

The aforesaid Special Leave Petitions and the writ petitions were disposed of on 12th July, 1993 by the following order :

"Shri Kapil Sibal, learned senior counsel for the petitioners submits that in view of the fact that recovery certificates have been withdrawn, it is not necessary for the petitioners to pursue these petitions. However, he submits that the legal question involved be left open. We think, we should accept this submission. These petitions are accordingly dismissed as withdrawn without a pronouncement on the questions of law."

13. There is no dispute about the legal position submitted by the learned Advocate General that once the writ petition is dismissed as withdrawn or otherwise without liberty to file a fresh writ petition, the second writ petition involving same controversy cannot be filed by the petitioners. For resolving this legal question, it has to be seen whether the controversy which is subject-matter of consideration in the present writ petition, was under consideration of this Court or Hon"ble Supreme Court. From perusal of the orders of the Hon"ble Supreme Court, it is clear that the respondents were restrained from selling the

properties of the petitioners which were attached during recovery proceedings and petitioners were granted time to pay the amount due from them as shown in the recovery certificate. It is not disputed before us that the amount mentioned in the recovery certificate was paid by petitioners within the time allowed by Hon''ble Supreme Court. It is also not disputed that the recovery certificate issued against petitioners were withdrawn thereafter by the Sugarcane Commissioner and Special Leave Petitions were dismissed leaving legal questions undecided. The collection charges have been demanded from petitioners thereafter. In our opinion, the impugned orders passed by Tahsildar requiring petitioners to pay the collection charges gave rise to a fresh cause of action to them to file present writ petition. In Writ Petition No. 17644 of 1993 a copy of the order dated 12th April. 1993 passed by Cane Commissioner. Uttar Pradesh, withdrawing recovery certificate has been filed as Annexure-6 and factual averments in this respect have been made in paragraph No. 18 of the writ petition. However, this fact has not been disputed in counter-affidavit filed on behalf of State. The effect of the order of the Hon''ble Supreme Court dated 11th June. 1992 was that no sale or auction of any property attached could be done, as the dues were paid within time allowed. The question is whether in these facts and circumstances petitioners can be saddled with the liability to pay 10% of the amount sought to be recovered from them as arrears of land revenue, as collection charges. It is altogether a new controversy which was not under consideration before this Court or the Apex Court. The question involved in these writ petitions is very important and of fundamental nature. For this reason also, in our opinion, the controversy raised in these writ petitions may be decided on merits in the interest of justice. There is yet another aspect which deserves to be taken into account. A Division Bench of this Court in case of *Mirza Javed Murtaza v. U. P. Financial Corporation, Kanpur* and another (supra), held that recovery certificate u/s 3 of U. P. Public Moneys (Recovery of Dues) Act, cannot include the collection charge as the costs of the collection proceedings could not be known. The relevant paragraph No. 16 of the judgment of the Division Bench is being reproduced hereunder :

"Section 3 of the U. P. Public Moneys (Recovery of Dues) Act. 1972, enables recovery of certain dues as arrears of land revenue. It provides inter alia that where any person is party to an agreement relating to a loan given to him by the Corporation by way of financial assistance the Managing Director of the Corporation may send a certificate to the Collector mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue. The Collector on receiving the certificate shall, proceed to recover the amount stated therein as an arrear of land revenue. Sub-section (3) of Section 3 of the said Act provides that no suit for the recovery of any sum due as aforesaid shall lie in the civil court against any person referred to in sub-section (1). Rule 284 of the U. P. Zamindari Abolition and Land Reforms Rules deals with the sale of land and other immovable property for recovery of dues as arrears of land revenue. Sub-rule (2)

of Rule 284 reads as under :

"(2) When immovable property other than the land is put up for sale, a charge shall be levied upon such amount not exceeding the total sum due for recovery as may be realised by the sale at the rate of three naye paise per rupee of the sale proceeds, fractions of a rupee being excluded."

The costs of the collection proceedings obviously are not known when the certificate is sent to the Collector by the Managing Director of the Corporation asking the Collector to recover certain sum from the debtor as an arrears of land revenue. He can merely ask the Collector that the sum mentioned in the certificate be recovered together with costs of the proceedings. What would be the actual costs of the proceedings would naturally be ascertained when the costs are actually incurred. This is also clear from Rule 284 (2) of the U. P. Zamindari Abolition and Land Reforms Rules which says that a charge shall be levied for recovery upon such amount not exceeding the total sum due for recovery as may be realised by the sale at the rate of 3 naye paise per rupee of the sale proceeds. So the charge can be levied only when the sale of the property actually takes place. The amount of Rs. 19,127.17 as collection charges included in the sum of Rs. 2,10,398.94 as also the amount of Rs. 21,039.94 towards the collection charges mentioned in the notice (Annexure-14) could not, therefore, be legally claimed from the petitioner. The impugned notice (Annexure-14) is bad in law and is, therefore, liable to be quashed."

14. Thus, from the view expressed by the Division Bench of this Court in the above cases, it is clear that the collection charges could not be mentioned in the recovery certificate or in any other notice. They could be assessed only after the amount was recovered. In view of the above legal position, the cost of recovery proceedings or in other words collection charges may be demanded after recovery of the amount by sale or otherwise and not before. Thus, in view of the reasons stated above, the preliminary objection raised by the learned Advocate General cannot be accepted and writ petitions are being decided on merits.

Question No. 6 :

15. Learned counsel for the petitioners has also questioned the legality of the demand of 10% as collection charges on basis of the judgment of the learned single Judge of this Court in case of West V. P. Sugar Mills Association and others v. State of U. P. and others (supra), and has submitted that as State Advised Price has been held to be illegal, petitioners could not be compelled to pay collection charges. However, this submission, in our opinion, has no substance. In the present writ petition the dispute is regarding the State Advised Price of the crushing season 1991-92. The dispute about which raised earlier, went up to Hon"ble Supreme Court but the writ petitions as well as Special Leave Petitions were dismissed. Thus, the subsequent judgment given by this Court cannot reopen the controversy challenging the State Advised Price relating to year 1991-92. Hon"ble Court in its order dated 11th June, 1992 clearly mentioned

that the writ petitions arise out of the dispute between cane growers in Uttar Pradesh and certain sugar manufacturers in regard to the quantum and mode of payment of price for sugarcane. The dispute is in the context of price fixation by the State, styled as State Advised Price. Though Hon''ble Supreme Court left the legal question involved, open but subsequent judgment of this Court could not effect the finality attached to the earlier orders of this Court and the Apex Court and the amount already realised as sugarcane price on basis of the State Advised Price. The judgment could only have the prospective effect. Further the judgment is still subjudice as SLP is pending. The fact that no interim order has been given, does not change this legal position. Thus, the petitioners are not entitled for any benefit on basis of the judgment of learned single Judge.

Question Nos, 2, 3 and 4 :

16. All these questions can be decided together as they relate to the power of the State to recover collection charges at the rate of 10% of the amount shown in the recovery certificate. On behalf of the petitioners, it has been submitted that there is no law under which such a demand could be made from petitioners. The respondents, on the other hand, have placed reliance on the Government Order dated 30th August, 1974 issued under Rule 8 (c) of U. P. Revenue Recovery Rules, 1966 framed under the Revenue Recovery Act, 1890. The question for determination is as to whether the Government Order dated 30th August, 1974 fixing 10% as collection charge could be issued under the Act and the Rules framed thereunder. The law is well-settled that the power to tax or levy any compulsory charge cannot be inferred from mere generality of the provisions contained in enabling enactment. Hon''ble Supreme Court in case of Ahmedabad Urban Development Authority v. Sharad Kumar Jayanti Kumar Pasawalla and others (supra), has held that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. Such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. Delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. Paragraph Nos. 6 and 7 of the Judgment of Hon''ble Supreme Court are being reproduced below for convenience :

"After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. The facts and

circumstances in the case of District Council of the Jowai Autonomous Distt., Jowai and Others Vs. Dwet Singh Rymbai etc., , are entirely different. The exercise of powers by the Autonomous Jantia Hills Districts are controlled by the constitutional provisions and to the special facts of the case, this Court has indicated that the realisation of just fee for a specific purpose by the autonomous district was justified and such power was implied. The said decision cannot be made applicable to the facts of this case or the same should not be held to have laid down any legal proposition that in the matters of imposition of tax or fees, the question of necessary intendment may be looked into when there is no express provision for imposition of fee or tax. The other decision in Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others, , also deals with the exercise of incidental and consequential power in the field of administrative law and the same does not deal with the power of imposing tax and fee.

The High Court has referred to the decisions of this Court in The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, ; Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another, and Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, . It has been consistently held by this Court that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used. We are, therefore, unable to accept the contention of Mr. Goswami. Accordingly, there is no occasion to interfere with the impugned decision of the High Court. The appeal therefore, falls and is dismissed with no order as to costs."

In view of the aforesaid observations of Hon"ble Supreme Court, it is necessary to consider the various provisions of the Revenue Recovery Act, 1890, as amended by State of Uttar Pradesh in 1965. The object and purpose for which this enactment was brought in the Statute book and Rules framed thereunder particularly Rule 8 (c) has to be examined to see whether the delegated authority acted within the parameters provided in the Act in issuing the Government Order dated 30th August, 1974.

17. Section 3 of Revenue Recovery Act, 1890 provides that where an arrear of land revenue or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter being or having properly in a district other than that in which the arrears accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating, the name of the defaulter and such other particulars as may be necessary for his identification, and the amount payable by him and the account on which it is due. Then it further provides that the Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district. Section 4 provides remedy available to person denying liability to pay

amount recovered under the provision of Section 3. Section 5 has been substituted by U. P. Amendment Act which provides that where any sum is recoverable as an arrears of land revenue by any public officer other than a Collector or by any local authority, such officer or authority may send to the Collector of the district in which the officer of that office or authority is situate or of any other district in Uttar Pradesh where the defaulter is or has property, a certificate in such form as may be prescribed by rules made in this behalf. Then it further provides that the Collector shall, on receipt of the certificate under sub-section (1), proceed to recover the amount stated therein as if the sum were payable to himself. Section 5A which has also been inserted by U. P. Act XI of 1965 provides that where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, and the defaulter is or has property in a district outside Uttar Pradesh, the Collector of the district in which the office of that officer or authority is situate may, on the request of the officer or authority, send a certificate of the amount to be recovered to the Collector of the district where the defaulter is or has property under the foregoing provisions of this Act, as if the sum were payable to himself. Section 6 provides about the property liable to sale under the Act. Section 7 provides for saving of Local Laws relating to recovery of land revenue. Section 8 relates to recovery in India of certain public demands arising beyond India. Section 9 provides for recovery in India of land revenue accruing in Burma. Section 10 provides duty of Collector to remit moneys collected in certain cases. Section 11 which has been inserted by U. P. Act No. XI of 1965, empowers State Government to frame rules for carrying out the purposes of the Act. Thus, from a close scrutiny of the provisions contained in Revenue Recovery Act, 1890, it is clear that the object and purpose behind enacting the Act was to enable the Collector of other district to recover the amount from a defaulter in respect of the dues which accrued against him in the district from which the recovery certificate has been sent to him.

There is no specific provision in any of the sections empowering the State Government to frame rules fixing collection charges. Sections 5 and 5A substituted and inserted by U. P. Act No. XI of 1965, also appear for the same purpose. Section 11 inserted by U. P. amendment confers authority on the State Government to frame Rules to carry out the purpose of the Act.

18. The State of Uttar Pradesh framed Rules known as Uttar Pradesh Revenue Recovery Rules, 1966 u/s 11(1) of the Revenue Recovery Act, 1890. It contains 9 rules. Rules 3, 4, 5, 6 and 7 deal with the mode of remittance of Government dues, Maintenance or register for recovery certificates issued by Collector, Form of recovery certificate for recovery of arrears as arrears of land revenue. Procedure for sending the letter of request u/s 5A of the Act for recovery of arrears as arrears of land revenue and Maintenance of register of recovery certificate received by the Collector. Rule 8 provides for Procedure of remittance or Government dues and disposal of cost of processes used for their recovery. Rule 6 is very relevant for determining the question which is being reproduced

below :

Rule 8. Procedure of remittance of Government dues and disposal of cost of processes used for their recovery.--As soon as any amount is recovered it shall be deposited into the Government treasury or remitted to the authority concerned, as the case may be, in the manner required in the recovery certificate subject to the following provisions :

(a) the commission on remittances by money order upto Rs. 25 or the commission, if any, on remittances by Bank Draft or Remittance Transfer Receipt shall be debited to the contract contingencies of the remitter ;

(b) the cost recovered on account of any process used in the recovery of the amount of the certificate shall be deposited into the Government treasury under the relevant receipt head of the budget as if such cost has accrued in the district in which the recovery has been made, and

(c) the collection, if any, required to be charged under any orders of Government shall, unless otherwise provided, be deducted from the amount recovered under the certificate and deposited into the Government treasury under the relevant receipt head of the budget.

Rule 9 provides for sending of intimation about the amount deposited into Government treasury.

19. From perusal of Rule 8 (b) and (c) it is clear that it makes distinction between cost recovered on account of any process used in the recovery of the amount of the certificate and the collection charges, if any, required to be charged under any order of Government. The Government order dated 30th August, 1974 has been issued under clause (c) of Rule 8 fixing 10% as collection charges to be charged in recovering the amount from defaulter as arrears of land revenue. The Act is silent about the cost or collection charges. Even Sections 5, 5A and 11 which were substituted and inserted by U. P. Amendment Act in the Principal Act, do not contain any provision with regard to costs of recovery or the collection charges. It cannot be denied that the recovery of the amount from the defaulter as arrears of land revenue shall incur some costs but it is difficult to trace authority on the part of the State Government to frame Rule 8 in nature of clauses (b) and (c) drawing distinction between costs of recovery and over and above that a collection charge to be recovered from the defaulter. The learned Advocate General in order to justify the imposition of 10% as collection charge, has invited our attention towards the maintenance of the revenue department and expenses borne by the State in maintaining such big establishment. It could not be disputed that for recovery of the amount from defaulter as arrears of land revenue some agency is required but the real question is whether the State Government could fix 10% of the amount shown in the recovery certificate as collection charges, over and above the costs of the processes issued. The collection charge at the rate of 10% of the amount is realised from the defaulter invariably once recovery certificate is received by Collector. Learned Advocate

General did not dispute that the collection charges realised cannot be termed as tax and they are against the services rendered by the State while collecting the amount from the defaulter. The question is whether the State Government could legally fix a flat rate of 10% of the amount sought to be recovered as collection charges over and above the cost of processes issued without providing for any method or mode for determining the actual cost or expenses incurred in recovery of the amount? in our opinion, such kind of compulsory exaction of money from the defaulter cannot be Justified under any of the provisions of the Act. u/s 11, the State Government could frame Rules for carrying out the purposes of the Act. We have examined above the purpose and object of the Act which is essentially to meet the situation whether the defaulter is or has property in a district, other than the district in which the arrears or dues have accrued against him. The provisions are basically enabling provisions to meet the aforesaid contingency. The State Government while framing Rules could provide incidental provisions for realisation of the costs actually incurred in recovery of the amount from the defaulter which could be Justified on basis of the steps taken and the amount of efforts made or labour spent. The most serious and objectionable aspect of the matter is that the respondents claim 10% of the amount shown in the certificate as collection charges merely on receipt of the recovery certificate as it is a tax or compulsory levy. It is claimed that this practice is prevalent in the State since long and it should not be disturbed. However, if an illegal practice, has no valid source of authority either under the Constitution or any other law, it cannot be allowed to continue by Court merely on the ground of its continuance since long. Ours is a welfare State and entire functioning is under Rule of Law and it cannot be permitted to impose such compulsory exaction of the money for the services rendered which has no correlation with the amount of labour spent or the efforts made. Such compulsory exaction of the money can only be in case of tax or levy imposed by or under authority of a Statutes and not by an executive order. Thus, in our considered opinion, Rule 8 (c) and the Government Order dated 30th August, 1974 are illegal and ultra vires of the authority of State Government.

20. The U. P. Zamindari Abolition and Land Reforms Act and the Rules framed thereunder contain exhaustive provisions for collection of the land revenue. Chapter X of the U. P. Zamindari Abolition and Land Reforms Act deals with the land revenue. Section 275 to 294 of Chapter X under the sub-heading "Collection of land revenue", contain provisions regarding collection. Section 275 of the Act says that the State Government may make such arrangements and employ such agency for the collection of land revenue as it may deem fit. Sections 276. 277 and 278 contained provisions for collection of land revenue through the Land Management Committee. Section 279 provides for various processes which could be issued for recovery of arrears of land revenue, under clauses (a) to (g). Section 280 provides that Tahsildar may issue a writ of demand and citation to appear. Section 281 provides for arrest and detention. Section 282 deals with the attachment and sale of movable property. Section 284 deals with the attachment, lease and sale of holding. Section 286 provides power to proceed

against interest of defaulter in other immovable property. Section 286A provides for appointment of receiver. Section 287 provides recovery of arrears paid by a person appointed u/s 276. Section 287A provides for payment under protest and filing a suit for challenging recovery. Section 288 provides for applying provisions of the Z. A. Act to the arrears due at the commencement of the Act. Section 292 provides for payment of rent or other dues in respect of attached land. Section 293 of the Act, applies the provisions contained in Chapters IX and X of U. P. Land Revenue Act, 1901 to the recovery proceedings. Section 294 of the Act empowers State Government to make rules for the purposes of carrying into effect the provisions of Chapter X. Clause (ee) of Section 294 (2) of the Act provides for making Rules regarding costs to be recovered in respect of the processes mentioned in sub-section (1) of Section 279. Clause (ee) of Section 294 (2) reads as under :

"the costs to be recovered in respect of the processes mentioned in sub-section (1) of Section 279."

Sub-section (1) of Section 279 in Clauses (a) to (g) provide for various processes for recovery of the arrears of land revenue. Section 279 of the Act is being reproduced below :

"279. Procedure for recovery of an arrear of land revenue.--(1) An arrear of land revenue may be recovered by any one or more of the following processes :

- (a) by serving a writ of demand or a citation to appear on any defaulter ;
- (b) by arrest and detention of his person :
- (c) by attachment and sale of his movable property including produce ;
- (d) by attachment of the holding in respect of which the arrears is due;
- (e) (by lease or sale) of the holding in respect of which the arrear is due:
- (f) by attachment and sale of other immovable property of the defaulter ; and
- (g) by appointing a receiver of any property, movable or immovable of the defaulter.

(2) The costs of any of the processes mentioned in sub-section (1) shall be added to and be recoverable in the same manner as the arrear of land revenue."

From Section 279 (2) and Clause (ee) of Section 294 of the Act it is clear that the State Government could make rules regarding costs incurred by the agency employed to recover the amount as arrears of land revenue. Chapter X of U. P. Z. A. and L. R. Rules, 1952, deals with the land revenue. Section "D" of Chapter X of Rules of 1952 deals with the Collections. Section "E" provides for coercive processes. Rule 243 provides that the fee charged for the issue of a writ of demand or citation to appear shall be rupees two. This fee shall be added to the arrears to which the writ of citation is issued and shall be included in the amount specified therein. Rule 248 provides that the fee levied for a warrant of arrest in

Z. A. Forms 70 shall be rupees five. Rule 265 provides the fee of 75 naye paise to be levied for a warrant of attachment in case of movable property. Rule 258 provides for the costs of every sale of movable property at the rate of six naye paise in the rupee, calculated on the amount of the arrears, including the charge on account of the warrant of attachment, which may be realised by the sale. Rule 259 provides for levy of fee if the sale officer goes to any place to conduct a sale and no sale takes place, the fees chargeable to meet the costs of his deputation which is to be realised at the rate of 50 naye paise in case of amount of recovery does not exceed Rs. 50. One rupee when the amount does not exceed Rs. 1,000 and in case the amount exceeds Rs. 1,000 three rupees. Rules 261 to 277 deal with the recovery of the amount by taking custody of live-stock and other movable property. Rule 284 provides for costs in case of sale of immovable property. Sub-rule (2) provides when immovable property other than the land is put up for sale, a charge shall be levied upon such amount not exceeding the total sum due for recovery as may be realised by the sale at the rate of (three naye paise) per rupee of the sale proceeds. Sub-rule (3) of Rule 284 provides for the costs when the sale officer goes to any place to conduct a sale but no sale takes place. Rule 286-1 reads as under :

"All processes shall be served or executed and sales conducted by the persons employed to do so for the recovery of arrears of land revenue payable to Government and suitable cost shall be levied from the defaulter or deducted from the proceeds of sales."

Thus, from perusal of the provisions contained in U. P. Z, A. and L. R. Act and the Rules of 1952 it is clear that there is no provision to realise any amount as collection charge over and above the costs prescribed thereunder for various processes. Thus, huge amount demanded by the respondents from petitioner as collection charge could also not be justified under any of the provisions of the Z. A. Act or the Z.A. Rules. If the collection charge demanded from the defaulter is to compensate the State Government for the services rendered by revenue department which is used as agency u/s 275 of Z.A. Act to recover such amount, there should be some co-relation with the amount demanded and the service rendered. This amount demanded against a particular service cannot be based on assumption or imagination. Some method ought to have prescribed to assess the actual cost incurred. Thus the amount demanded as collection charges from petitioner cannot be justified either under the provisions of the Revenue Recovery Act 1890 U. P. Z. A. and L. R. Act. 1950. No other provision has been placed before us in this regard. The validity of the Government Order dated 30th August, 1974 has already been examined by us and it could not stand scrutiny of its validity under the provisions of Revenue Recovery Act. 1890.

21. Learned Advocate General relied on in case of Avinder Singh v. State of Punjab (supra) where Hon"ble Supreme Court justified validity of tax on foreign liquor with reference to Section 90 of the Punjab Municipal Corporation Act which conferred authority on the State Government for levy of tax on Indian made

foreign liquor. However, in the present case, as already mentioned above, there is no provision in the Act conferring specific or implied power on the State Government to enact a Rule in the nature of Rule 8 (c) contemplating the imposition of collection charges at the rate of 10% of the amount mentioned in the said Act. No provision in the Act could be referred to contain guidelines for enacting such a provision, which in effect imposes a compulsory levy in all cases of recovery of the amount as arrears of land revenue. The view expressed by Avinder Singh's case, thus is clearly distinguishable and does not help respondents. The collection charge at the rate of 10% on basis of the Government Order dated 30th August, 1974 is being charged merely on receipt of the recovery certificate by Collector irrespective of the steps taken for recovery of the amount. Once the recovery certificate is issued the amount at the rate of 10% of the amount sought to be recovered is added and recovered as a compulsory charge which has taken more or less a shape of tax or compulsory levy, which is wholly unjustified and is in clear violation of the provisions contained in Articles 265 and 300A of the Constitution. Hon"ble Supreme Court in case of B. C. Banerjee u. State of M. P. (supra), clearly said that no tax can be imposed by any bye-laws or rules and regulations under the Statute under which the subordinate legislation made unless specifically authorised the imposition, even if it is assumed that the power to tax can be delegated to the executive to pass all the statutory powers conferred by the Statute cannot be transgressed by rule making authority, a rule making power has no plenary power. U has to act within the limits of the power granted to it.

22. Another case relied on by the learned Advocate General is a Division Bench Judgment of this Court in case of Trijugi Narain Tewari and Others Vs. Gorakhpur Kshetriya Gramin Bank and Another, . However, this judgment too is not of any help to the respondent as Division Bench in the aforesaid case was considering the realisation of 10% as collection charges under the provisions of U. P. Agricultural Credit Act, 1973, hereinafter referred to as "Act". u/s 11 (a) of aforesaid Act recovery certificate is sent to Collector for realisation of the agricultural loan as arrears of land revenue. Rule 29 of the Rules framed under the aforesaid Act specifically provides for charging 10% of the amount shown in the recovery certificate as collection charges. Thus, the view expressed by the Division Bench was based on a specific rule. Thus, the fact of Trijugi Narain's case, are entirely different and distinguishable.

23. Learned Advocate General tried to justify the distinction between the costs of the process and collection charge as contemplated in clauses (b) and (c) of Rule 8 of U. P. Revenue Recovery Rules, 1966. A perusal of the Government Order dated 30th August. 1974 shows that for fixing 10% of the amount sought to be recovered as collection charges. State Government took into account the enhancement in pay scale of the government employees including dearness allowance and further revision of the pay scale and also increase in other allowances and the cost of the stationery. Thus, if the Government Order takes into account the salary of the staff as well as cost of the stationery for fixing

10% as collection charges. The alleged distinction becomes non-existent. There appears no justification to charge costs of process issued and collection charges separately. Thus, it is apparent on the face of it that the exercise on the part of the State Government in framing Rule 8 (c) of Rules of 1966 and in issuing Government Order dated 30th August, 1974 was illegal having no source of authority under the provision contained in the Act.

Question No. 5 :

Now lastly it has to be seen whether the demand made by the respondents from petitioner as collection charge can be otherwise justified in the facts and circumstances of the case. There is no factual dispute between petitioner and the respondents regarding process issued and steps taken. As the facts on record disclosed, steps may have been taken by issuing writ of demand and citation to appear which followed issue of warrants of attachment for movable and immovable properties. In giving effect to the aforesaid two processes at various levels services of officers and officials may also have been employed. However, the respondents have not given any break up of the amount to justify the huge amount claimed by them from petitioner as collection charges. Even if one day salary of each officer and other employees for giving effect to the aforesaid process is taken into account, then also the amount demanded as collection charges cannot be Justified, Learned Advocate General tried to Justify the demand of collection charges on the ground that the basis of such demand is the default committed and coercive steps employed by the revenue department create a kind of compulsion against the defaulter to yield and to pay the amount due from him which belong to public at large. However, in our opinion, for realising huge amount as collection charge, there must be some co-relation with the services rendered. In such cases no service is rendered to the defaulter. In fact service is rendered to the creditor which may be Bank, financial institution, semi-Government Department or the local authority, which is saved from payment of Court fee and other expenses in pursuing a long drawn and time consuming litigation. This by itself is a very valuable service to the creditor. However, the defaulter cannot be made liable to pay huge amount like a cost of the suit which in effect amounts to imposition of penalty for which he is not given any opportunity of hearing. We do not find any justification for the amount demanded by the respondents from petitioner as collection charge otherwise also.

Question No. 7 :

24. The next question for determination is as to whether the petitioner from whom the amount as collection charge has already been realised, are entitled for the refund of the same. The petitioners of the two writ petitions mentioned above have also prayed in alternative that the amount may be directed to be adjusted in the sugarcane price of the current crushing season. Learned counsel for the petitioner has placed reliance in case of *M/s Shree Baidyanath Ayurved Bhawan Ltd. v. State of Bihar and others* (supra), and has submitted that as the realisation of the amount as collection charge was wholly illegal, the petitioners

are entitled for the refund of the amount. Reliance has also been placed in case of *Salonah Tea Company Ltd. v. Superintendent of Taxes, Nowgong and others* (supra). Hon"ble Supreme Court in paragraph No. 14 held as under :

"We agree that normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the Court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claims or which is of such nature for which there is no probable explanation or which will cause any injury either to respondent or any third party."

25. In the present case, petitioner have directly approached this Court under Article 226 of the Constitution and they are legally entitled for the refund of the amount illegally realised from them without any authority of law. Similarly in case of *M/s. Shree Baidyanath Ayurved Bhawan Pvt. Ltd. v. State of Bihar and others* (supra). Hon"ble Supreme Court in paragraph No. 9 observed as under :

"It cannot be forgotten that this Court had held the levy in respect of which the refund was claimed to be bad in law. This Court's Judgment clearly contemplated consequential refund but made no order in that behalf, leaving it to the writ petitioners to approach their State Governments. The refund application made by the appellants accordingly was rejected, and that without giving any reasons. Even in the counter filed by the respondent-State to the writ petition, it is difficult to read any defence other than the defence that the writ petition was not maintainable and that it was barred by limitation and a reiteration of the stand which had been rejected by this Court."

In the present case also, the realisation of the amount has been found to be bad in law. Thus, as held by Hon"ble Supreme Court in the aforesaid two cases, the petitioners are found entitled for refund of the amount. However, we leave it open to the petitioners of Writ Petition No. 20410 of 1993 and Writ Petition No. 17644 of 1993 to settle the mode of refund with the respondents which may either of the two alternatives pressed by the petitioners. So far this Court is concerned, suffice it to say that the petitioners will be entitled for the refund of the amount under this Judgment.

26. Now the last question for consideration is about the relief which may be granted to petitioner in the present writ petitions. We have observed earlier that the State is entitled for being suitably compensated for the efforts made in realising the amount. However, in absence of the necessary details, it is difficult for this Court to assess any amount which may be directed to be paid by petitioner to the State Government as collection charges. Therefore, though respondents will not be entitled to claim the amount at the rate of 10% under the impugned orders under the writ of demand and citation served on petitioner, however, State shall be entitled to enter into a fresh exercise and determine suitable amount in accordance with law which may be realised from the

petitioner as cost of process issued against it.

27. For the reasons stated above, the writ petition is allowed. The impugned orders dated 23rd July, 1992. Annexure-4 and order dated 14th August, 1992 are quashed. The respondents are directed not to take coercive action for realisation of the alleged collection charge from petitioners. They will redetermine the costs of recovery, if any, according to the processes issued. In determining this amount, they shall also afford opportunity to petitioners.

(b) The amount already realised shall be refunded to the petitioners in the terms mentioned above.

(c) This order shall govern all the writ petitions.

(d) It is also made clear that this Judgment shall not effect the recovery of amount as collection charges by State in other cases prior to this judgment except the two cases mentioned above.

There will be, however, no order as to costs.