

(2011) 12 AHC CK 0333

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3033 of 2002 and Civil
Miscellaneous Writ Petition No. 135 of 2005

Smt. Suneel Bajpai and Another

APPELLANT

Vs

Allahabad Jal Sansthan and Another
Anwar Ali and
Others Vs State of U.P. and Others

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 285, 289

Finance Act, 1994 — Section 65(6), 66

Sea Customs Act, 1878 — Section 20(2)

Uttar Pradesh General Clauses Act, 1904 — Section 5(1)

Uttar Pradesh Municipalities Act, 1916 — Section 269, 270, 271

Uttar Pradesh Nagar Mahapalika Water Supply Rules, 1968 — Rule 10, 11, 25, 26,
27

Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 2(2), 25(2), 30, 44,
52

Citation : (2012) 3 ADJ 156

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri Ravi Kant, Senior Advocate assisted by Shri K.P. Bajpai and Shri C.K. Parekh for the petitioners. Shri R.M. Saggi appears for the Allahabad Jal Sansthan, Allahabad.

2. The petitioners in the Writ Petition No. 3033 of 2002 are residents of Preetam Nagar Colony, Allahabad. They have challenged the notifications dated 19.11.1994 and 19.6.1999 and the consequent increase in water tax for the year 2000-01 to 2008-09. They have also prayed for writ of mandamus directing the Allahabad Jal Sansthan-respondent No. 1, to realise water tax, water charge, sewer tax, sewer charge and service charge, at the rates notified prior to the impugned notification dated 19.9.1999 and to issue fresh bills, deducting surcharge added from time to time at the end of each financial year.

3. The petitioner in Writ Petition No. 1950 of 2002 is resident of House No. 964/198, Sohbatiya Bag, Allahabad. He has also prayed for quashing the notification dated 19.11.1994 and 19.6.1999, increasing the water tax, the notice of demand dated 26.11.2001 and other consequential reliefs.

4. The petitioners in Writ Petition No. 495 of 2006 are residents of Govind Nagar Colony, Karbala, G.T. Road, Allahabad. They have prayed for quashing Clause-9 of the notification dated 19.6.1999, and the consequent bills dated 1.10.2005, and for a writ of mandamus commanding the respondents not to realise service charges/ supervision charges from the petitioner. They have also prayed for directions to the respondents not to increase water charges, sewer charges and service charges on the basis of notification dated 19.6.1999.

5. The Writ Petition No. 1950 of 2002 was allowed by this Court on 19.3.2007, on the basis of the judgment of this Court in Jagdish Prasad Sinha v. Allahabad Jal Sansthan Writ Petition No. 1950 of 2002, in which relying upon the judgments in Lucknow Grih Swami Parishad Vs. State of U.P. and others, the increased demand of water tax was quashed. The Court held that the automatic increase at the rate of 15% in the water tax vide Notifications dated 19.11.1994 and 19.6.1999, merely on the ipse dixit of the authority, could not have been determined on application of mind. The increase was illegal and thus petitioners could not be subjected to demand of water tax/ water charges at the enhanced rate pursuant to the said Government Order. The writ petition was allowed to the extent that the respondents were directed not to demand sewerage tax/ sewerage charges from the petitioner as there was no sewer line in the locality, within the radius of 100 meters from the house of the petitioner, and thus in view of the specific provisions contained in Section 52 (c) of the Act, no sewer charge could be levied. The Court had also quashed the demand of enhanced water tax/ water charges pursuant to the aforesaid notifications. The Writ Petition No. 3033 of 2002 Smt. Suneel Bajpai & Anr. v. Allahabad Jal Sansthan & Anr. was also allowed on 16.4.2007 following the judgment in Writ Petition No. 1950 of 2002.

6. The Allahabad Jal Sansthan through its General Manager v. Smt. Suneet Bajpai & ORs. filed SLP (C) No. 23727 of 2007 in which after grant of leave the SLP was converted into Civil Appeal No. 5010 of 2008, and was allowed. The matter was remanded with following observations:

Leave granted.

In the present appeals the High Court has set aside the water charges fixed under the impugned Notification on the ground that they are arbitrary. No reasons have been given in this regard.

For the aforesaid reasons we set aside the impugned judgments and remit the matters to the High Court for fresh decision in accordance with law. We request the High Court also to decide the nature of levy of water charges under the provisions of U.P. Water Supply and Sewerage Act, 1975.

The appeals are allowed with no order as to costs.

7. Learned counsel appearing for the petitioners in all the writ petitions have once again relied upon the Division Bench judgment of this Court in Lucknow Grih Swami Parishad Vs. State of U.P. and others, decided on 20.4.2000. In this judgment the High Court traced the history of the levy of water tax by resolutions of Government of India dated May 1st, 1901 and September 19th, 1916, conferring rights on the Local Self Government to impose tax, octroi and surcharge as demand for definite services, after determining actual expenses of that burden to be borne by local authorities (taxes such as water tax, scavenging tax, tax on vehicle, animals, property etc.). The resolutions observed that the fundamental principle of taxation should be limited to meet the requirements of actual expenditure and in special cases to take care of expenditure like-sinking fund, for repayment of debt or projects on large scale. There should be no unjust enrichment particularly in the matter of public law, and further the tax on public utilities should be kept as low as possible and as nearly unified as possible.

8. Dealing with contentions the Court had observed as follows:

36. Petitioners have not challenged imposition of tax on the ground of breach of any provision of Act. 1975. or the same being Invalid or ultra vires of the Constitution on any score whatsoever. None of the petitioners claim to have filed appeal u/s 54 to challenge assessment of annual value u/s 53 of the said Act. Hence, impugned Gazette Notifications cannot be said to be bad; as also held by this Court in 1970 ALJ 325, Hari Lal Arya v. Town Area Committee. In AIR 1962 SC 795. It is held that both the taxes on same commodity, if earlier or later law not repealed--shall be valid.

B. WATER CHARGES :

37. CONTENTION No. III :

(i) Jal Sansthan is under obligation u/s 69 of Act, 1975. (as also provided previously under Sections 269 to 271, Act, 1959. read with Rule 10, U. P. Nagar Mahapalika Water Supply Rules. 1968) to install "Meter" and realise charges for water consumed on actual consumption of water. See para 31 of leading writ petition as well as para 8 of supplementary rejoinder-affidavit (P. 192).

38. According to the petitioners. Jal Sansthan failed to discharge its statutory obligation u/s 59 of Act, 1975. since it failed to fix meters in large number of connections and In also resorting to impose of minimum flat rate at the rate of Rs. 360 per annum (fixed) with respect to "unmetered connections". It cannot justify realisation of enhanced water charges (50% in case of metered, and 400% in case of unmetered connections respectively). Such a "tariff of water, under Impugned Gazette Notifications, according to the petitioners, is illegal, unsound and based on no intelligible differentia and suffers from vice of unintelligible and arbitrary discrimination.

39. Jal Sansthan. thus, arbitrarily and illegally created two categories of

consumers for same privilege e.g. :--(i) Consumers "With Metered Connections" liable to pay as per actual consumption measured as per reading by meter, (ii) Consumers "without metered connections" liable to pay solely on the basis of estimated consumption (i.e., alleged minimum charges). It is against statutory mandate given u/s 59 (1) of Act, 1975.

40. Contention is without merit. It is in ignorance of Section 59 (2) of Act, 1975, which specifically confers power on a Jal Sansthan to charge cost of water on the basis "expected consumption" by providing fixed sum for a specified period. Section 59 (2) of Act, 1975-reads :

A Jal Sansthan may In lieu of charging cost of water according to volume, accept a fixed sum for specified period on the basis of expected consumption of water during that period.

(ii) Metered and unmetered connection

41. Grievance in this respect is contained in paras 22 to 28 of the leading writ petition and it is argued that minimum charges for metered connection fixed at Rs. 144 per annum : and whereas minimum charges for unmetered connection fixed at Rs. 360 are apparently arbitrary. Petitioners submitted that Jal Sansthan is under statutory obligation to fix meter and cannot create distinction between metered and unmetered connections. Tracing the history, it was submitted that distinction between the metered and unmetered connections continued up to 1930, but in 1948 under statutory enactment it became mandatory to fix a meter, but again in the year 1986 an option was given for having either metered or unmetered connection. Jal Sansthan justified such an approach in view of its stand that the Companies manufacturing meters Government Precision Instrument Factory and U. P. Instrument Limited had failed to supply meters and hence the necessity to provide unmetered connections (See para 6-- Supplementary Rejoinder-Affidavit. P. 194).

42. The argument of the petitioners has no merit in view of the provision of Act. 1975. Section 59 (2) of Act. 1975. (quoted earlier) Itself contemplates charging of water charges according to volume, except a fixed sum for a specified period on the basis of expected consumption of water. Section 61 of the Act says that Jal Sansthan "may" provide water meterRs. This word "may" clearly shows that it is not mandatory for Jal Sansthan to provide meter. Section 66 (4) of the Act, 1975, again contemplates that supply of water shall be on such terms and conditions as may be provided by bye laws. Petitioners have not filed copy of bye laws to show that there could be no unmetered connections. In Section 69 of the Act also, word "may" is used. Therefore, it is not mandatory for Jal Sansthan in law to fix meterRs. Over and above "meter" its fixation is to be regulated by bye laws. Unfortunately, no party has produced bye laws for perusal of the Court. Therefore, we find no Irregularity, in absence of relevant material on record, if Jal Sansthan provided tariff for both metered and unmetered connections. In this context provisions of Uttar Pradesh Nagar Mahapalika Water Supply Rules. 1968,

are also relevant and may be perused. According to these Rules, meter may be got fixed by the consumer himself in case meter is not provided by Jal Sansthan. Perusal of these Rules 10 and 11 shows that Jal Sansthan can legally charge both on measured and expected/estimated volume of water consumed.

CONTENTION No. IV :

43. Enhancement of water charges by 400% (i.e. 7.75 to Rs. 30 p.m.) in case of unmetered connections and 50% in case of metered connections without sound foundation is unprecedented and exorbitant. It shows unjust enrichment opposed to fair sense and against legal norms, besides being vitiated due to unreasonable discrimination and, therefore, violative of Article. 14. Constitution of India. Enhancement of water charges under Notification dated 8th March. 1986 (Annexure-2 to the leading case). Notification dated 20th August. 1994 (Annexure-5 to 1st amendment application in leading case--p 99) and Notification dated 21st August. 1996-with effect from 1st August, 1996-540-to 960 (Annexure-7 p. 169) is a fortiori and indefeasible.

44. Petitioners did not plead that Jal Sansthan had undertaken no exercise to fix "tariffs" for "water-charges" on considerations/criterion contemplated under Sections 25 (2) (vi), 44 and 59 of Act. 1975. Petitioners thus failed to lay factual foundation to enable them to press this issue. Hence it is to be presumed that Jal Sansthan must have worked out "water cost" in accordance with law. There is no material or foundation on record to test the correctness of petitioners' argument on this aspect.

45. This Court cannot, for the first time at argument stage, be called upon to ascertain whether decision to introduce or amend such tariff has been taken by passing a special resolution in that behalf after giving such notice as may be prescribed by Rules and passed by the majority of two thirds of the members of the Jal Sansthan. See-proviso to Section 25 (2) (vi) of Act, 1975. Section 2 (2) of Act, 1975. defines "prescribed" means "Rules made under this Act." Jal Sansthan submits that rules, in force prior to commencement of the Act. 1975, continue by virtue of Section 99 and that they have provided tariffs strictly in accordance with the same. In absence of relevant pleadings by the petitioners, Jal Sansthan cannot be faulted and no adverse inference can be drawn against it. Nor this Court will be justified in directing probe into its accounts and test reasonableness of the "tariff enforced from time to time. It is not permissible for this Court while exercising jurisdiction under Article 226. Constitution of India.

CONTENTION No. V :

46. Learned counsel for the petitioners submitted that in actual practice, meters even if fixed were not working and if such meters were working there was none to have the meter reading. The contention of the petitioner is that in actual practice fixing of meter was of no consequence as in majority of cases there were no meters or if meters are fixed, they are not working and further there were no meter readers. Learned counsel for the petitioners, in view of the existing state

of affairs, submitted that there was no reasonable basis for providing two different rates for metered and unmetered connections.

47. Petitioners allege Impugned "water tariff has no nexus with "actual consumption" of water. Petitioners have not laid foundation for such a plea by incorporating requisite pleadings so as to make Jal Sansthan aware of their precise grievance and thus enable it to meet the submissions effectively. Petitioners appear to have made no complaint--at least not pleaded, with reference to Rules 25 to 30. U. P. Nagar Mahapalika Water Supply Rules. 1968.

52. Incorporation of clause 12-(P. 171) providing for automatic enhancement @ 15% every year in the Notification dated 24th August. 1996 (p. 171) and Government letter dated 31st October, 1998. reduced to 7.5% subsequently-(P. 219) is per se bad.

This argument has already been repelled by a Division Bench vide judgment and order dated 31st July, 1997, in Writ Petition No. 36331 of 1996 Shri Ram Chandra Aggarwal v. State of U. P. and Another. Relevant extract of the judgment (filed as Annexure-II to supplementary counter-affidavit of respondent No. 2 in leading case-P. 254) reads :

Heard learned counsel for the petitioner.

This writ petition has been filed against the Impugned Gazette Notification dated 10.12.1994 (Annexure-5 to the writ petition). The aforesaid Notification appears to have been issued u/s 59 (1) read with Section 25 (2) of the Uttar Pradesh Water Supply and Sewerage Act. 1975. There is no dispute that this Notification has been published in the U. P. Gazette and hence it is in conformity with Section 59 of the aforesaid Act.

Learned counsel for the petitioner has objection to a clause in the said Notification being clause (a) which says that in view of the rise in the prices and the rise in the construction and the maintenance costs, there shall be 15% increase in the water charges of the Jal Sansthan per year. The submission of the learned counsel for the petitioner is that the Jal Sansthan cannot pass such an order raising the water charges by 15% every year.

It is common knowledge that there has been extraordinary inflation in this country. The petitioner has not provided any data that in any year the inflation was less than 15% or that over several years the average inflation per year was less than 15%. It is common knowledge that the price of every thing has gone up in this country, including labour charges, material charges, maintenance charges, etc. the water, which has to be supplied to the citizens for drinking purpose has to be treated by some chemicals like chlorine etc. to make it fit for human consumption. It is also common knowledge that the prices of these chemicals etc. have also increased.

Thus, we find no infirmity in the impugned Notification. Petition is dismissed.

Sd. M. Katju. J.

Sd. P. K. Jain, J.

31.7.1997

53. Relevant Section 44, of Act. 1975. does not find reference and appears to have remained unnoticed by the Bench. This judgment, therefore, does not have force of a "precedent". Court decided that case primarily on facts and arguments of the case placed before it. i.e. the petitioner had failed in that case to demonstrate that average inflation was less than 15% p.a.. We are. with respect, in part agreement with the reasons contained in the judgment. We are. however, not able to persuade ourselves to agree to the conclusion. In our considered opinion, there cannot be a clause providing, in general terms, an automatic-revision/enhancement of water charges at a fixed rate every year. Such an enhancement will be mere ipse dixit of the authority conferred under law. Causes responsible for increase or decrease of "cost" being variable and fluctuating each year, their effect on "cost" factor cannot be consistent. Circumstances and factors influencing "cost". being unstable and variable in nature, the relevant factors contemplated u/s 44 of Act, 1975, in particular and otherwise prescribed in the said Act cannot be assumed to be on constant rise. Jal Sansthan is under statutory duty to work out "cost" factor and revise tariffs on actual existing data. Revision of tariff has to be real, based on actual statistics. Therefore, the exercise contemplated under the Act is always a condition precedent, before Jal Sansthan can change or amend existing tariff. It cannot be a "mechanical" feat by providing an automatic clause. Concerned authority must apply its mind and on relevant calculation alone recommend increase in tariff. Providing for an "automatic" increase is nothing but camouflaging real object of imposing tariff-co-related to actual cost factor. Automatic clause providing for mechanical revision in the impugned Notification cannot be sustained in law. The automatic clause No. 12 (in Notification dated 20th August, 1994) has been continued vide clause 12 of Notification dated 24th August, 1996, is thus held illegal.

CONTENTION No. VII :

54. Imposition of water charges. at flat rate is not in consonance with the provisions of the Act, 1975. and, therefore, arbitrary and illegal.

Argument runs contrary to Section 59 (2) of the Act. 1975, and hence without merits. Section 59 (2), Act 1975. for ready reference again reproduced :

A Jal Sansthan may in lieu of charging cost of water according to volume, accept a fixed sum for specified period on the basis of expected consumption of water during that period.

55. Argument, in the alternative is that schedule of water charges based on two different footing under Notification dated 8th March, 1986. (Annexure-2 to leading writ petition) namely. (i) metered connection on the basis of consumption as per kilo-litre rate plus meter rent, and (ii) unmetered connection on the

minimum flat rate of Rs. 360 p.a. on the basis of 10 mm. ferrule, is arbitrary as it has no logical basis or reasonable nexus. There is no basis for the argument. There is neither relevant pleading nor sufficient material on record to prove arbitrariness on the part of the respondent. Jal Sansthan can charge on the basis of expected quantity of water supplied and consumed and It is not bad in view of Section 59 (2) of Act, 1975. It is to be noted that in case the device to measure exact consumption of water, namely meter, fails then the measurement is to be done on the basis of "estimated consumption". Jal Sansthan has power to levy charges only in respect of water that has, in fact, been supplied to and consumed by the consumer and it is to be on the basis of measurement or estimated consumption depending upon the capacity of the supply line through which water is to be supplied as well as the aperture of the connecting apparatus fixed to the main (ferrule); as held in Municipal Corporation of Greater Bombay Vs. Nagpal Printing Mills and Anr, , Municipal Corporation Greater Bombay v. Nagpal Printing Mills and Another. The argument of the petitioners, contrary to the above is thus without substance.

CONTENTION No. VIII :

56. Water charges and taxes could not be enhanced and levied retrospectively. Petitioners argue that the revised rates of water charges vide impugned Notification dated 22nd October. 1982. (published in U. P. Gazette dated 8th March. 1986) could not be imposed with retrospective effect.

Section 59 (1) does not confer power to promulgate rates retrospectively. Section 59 (1), lays down that-"Jal Sansthan shall, by Notification in the Gazette, fix the cost of water to be supplied....." This expression shows "water charges" have to be fixed before actual supply of the water.

57. It is well-settled that only Legislature is competent to make a retrospective provision by legal fiction. See JT 1992 (Suppl) 83 (para 79).

Section 5(1)(b), U. P. General Clauses Act. 1904 reads :

5. Coming into operation of enactments.-(1) Where any United Provinces Act Is not expressed to come into operation on a particular day, then-

(a).....

(b) in the case of an Uttar Pradesh Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President as the case may require, is first published in the official Gazette.

58. This makes it clear that a Notification cannot be said to be effective before its publication. Hence, the "tariff in the Impugned Notifications could not be enforced/applied before the date of their Gazette publication.

59. "Tariff contained in the impugned Notifications shall be relevant and operative from the date of sale of Gazette and not earlier-as held in 1992 ALJ

1153 (DB)--Notifications in question prescribing water-charges, therefore, could not be applied with retrospective effect. To that extent these impugned Notifications (p. 95 and 166) are held to be ineffective and bad in law.

CONTENTION No. IX :

60. Consolidated bills with respect to water tax, water charges, surcharge, service charge, etc. is illegal.

This point has not been raised In the leading writ petition nor substantiated and pressed in the arguments.

C-SERVICE/SUPERVISION CHARGES:

CONTENTION No. X :

61. Jal Sansthan is not competent-in absence legal provision in law to realise service charges. There is no provision--where from Jal Sansthan may derive authority to impose service charges. (Leading Writ Pr. 29 and Pr. 34 of Writ Petition No. 6636 of 1986).

Chapter V-Property-contract, finance and accounts and audit-Sections 39 to 51 deal with financial aspects of Jal Sansthan.

Section 44 of Act. 1975. reads :

44. General principles for Jal Sansthan's Finance.--A Jal Sansthan shall from time to time so fix and adjust its rates of taxes and charges under this Act as to enable It to meet, as soon as feasible. the cost of its operations, maintenance and debt service and where practicable to achieve an economic return on its fixed assets.

Aforesaid section requires Jal Sansthan to "fix and adjust" from time to time, "rates" of "taxes" and "charges" provided under Act. 1975, and confers upon Jal Sansthan power to adjust income and expenditure and adopt its own budget annually vide Section 25 (2) (v), of Act, 1975.

62. Para 32 of Writ Petition No. 6636 of 1986 reveals that certain amount towards service charges were paid by consumers without protest or objection, hence such amount cannot be claimed back by the consumeRs.

63. Sections 52 to 64 (in Chapter VI-Titled Taxes. Fees and Charges) contain no provision authorising Jal Sansthan to realise "service charges" to make good the over-all loss.

64. Sections 52 to 58, deal with tax. Section 59 and 60, deal with cost of water for "supply" and "disposal". Section 61. deal with meter rent. Section 62 and 63 refer to security and fee. Section 64 (i) specifically refers to and provides for recovery of "tax", "fee" and "cost" of water. Cost of disposal of waste water, the meter rent, penalty, damages or surcharge under the Act to be recovered as arrears of land revenue u/s 64 (2). provides for disconnection as per bye laws in

the event of nonpayment of dues. Act. 1975. nowhere talks of service charges as such. "Heads" under which any amount can be realised have been specifically enumerated. Realisation of money by enforcing a fix amount to be paid by all without rendering specific service besides water tax-water charges and other statutory heads--like meter rent, service fee. etc. is wholly illegal.

65. "Service charge" is, therefore, outside the scope of Act, 1975. Therefore, clause 7 of Government order dated 24th August. 1986 [P. 170) is without lawful authority (See P. 29-leading writ petition P. 10) and its reply (vide counter-affidavit paras 10 and 11 P. 69).

66. Petitioners vehemently argued that charging fix amount under the head "service charge" at the rate of Rs. 24 p.a. from each consumer, without rendering specific "service is against the concept of "fee" and in effect it is in the nature of "tax" contemplated under Act, 1975. without following the procedure under the said Act for imposing tax.

67. Fee to be charged on "quid pro quo" basis is universally accepted basis, as also held in 1971 ALJ 558.

68. Court in the past held (4 to 8 times) hike in fee. See Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad, , H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, Corporation of Calcutta and Another Vs. Liberty Cinema, and The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd.,

69. Even otherwise Sections 53 of Act, 1975, details out the extent in respect of which fee can be imposed by making provision in the bye laws. Bye laws has not been brought on record nor referred to by any of the parties to show violation of any of its relevant provisions. Hence, the Impugned "Notifications" providing for general "service charges" In absence of "particular service" being rendered is illegal and without authority.

Writs are liable to succeed to this extent also.

CONTENTION No. XI :

70. Shri K. B. Jindal also urged that "service charges" apart from being beyond the scheme contemplated under the Act, 1975. could not be imposed unless supply of water by Jal Sansthan was notified u/s 66. Finance Act, 1994. and provisions of service-tax will not apply. He argued that unless the service to supply water was made taxable service as defined u/s 65(6). Finance Act. no service tax could be legally charged.

71. It will be noted that in the instance case it is not "service-tax", but claimed as "service charge". Since this "service charge" is not in lieu of particular service to an individual customer, it is nothing but a "tax". Even if such an amount is to be treated as "fee" or "water charge" the same is not warranted u/s 64 of Act,

1975. This amount described as service charge must fall under "tax" or water charges" and could be levied only by issuing relevant Notification/water tariff as contemplated under Act. 1975. vide Sections 52 to 64, read with Section 25 (2) (vi), Act, 1975.

72. It will be noted that neither petitioners nor the respondents laid foundation dependant upon certain essential facts for making such arguments.

CONTENTION No. XII :

73. On behalf of the petitioners it has been argued that no Rules, bye laws or Regulations have been framed under Act. 1975 and consequently it was vehemently contended that no "water charge" or "fee" could be charged unless necessary Rule/Bye Laws were framed under the Act. 1975.

74. The respondents, however, on the other hand, submitted that old Rules, bye laws and Regulation on the subject shall be deemed to continue and could not be said to be repealed in view of "transitory provision" in Act. 1975 (i.e. Section 99). The respondents submitted that Section 99 of Act, 1975, preserved the erstwhile Rules, bye laws and Regulations framed under U. P. Municipalities Act. 1959. and that the same have not been repealed.

75. We are in agreement with the contention of the respondents. Subsection (2) of Section 99 of Act, 1975, does not take away the power of a Jal Sansthan to frame Rules and bye laws beyond September 30. 1978. The said provision merely contemplated that no Rule or bye law framed under Act, 1975, shall be made with retrospective effect, which may be made applicable prior to May 20. 1975. under Sections 96, 97 and 98 of the Act. This means that Rules. Regulations or bye laws could be made at any time, but it could not be given retrospective effect prior to a date earlier than May 20. 1975, if such Rules, Regulation and bye laws were framed after September 30. 1978.

CONTENTION No. X11I :

76. Learned counsels for the petitioners in the end attempted to demonstrate, with reference to the calculation annexed as Annexure-3 to the writ petition (P. 20 of the leading petition) that the "tariff in question is wholly unfair and unconscionable inasmuch as, according to it the cost of water becomes nil when the annual letting value of the building goes up.

77. During the course of the above argument. Court pertinently enquired the petitioners to specify the members, whose building carried annual letting value over and above Rs. 500 per annum inasmuch as only such consumers" whose buildings were assessed at Rs. 500 and above could be said to be seriously affected and such members alone could be aggrieved and justified the contention before this Court. The Court held the view that "illegality" in abstract should not receive notice and cannot be properly scrutinised. No useful purpose, hence, was going to be serviced by adjudicating an issue in vacuum. None of the petitioner's counsels could show that any of its members had building whose annual letting

value was over and above Rs. 500 per annum. In view of it, Court refuses to entertain this argument.

78. In the last, this Court invited attention of the learned counsels representing the petitioners, to the fact that several scores of persons [who were not members earlier when the petitions were filed] got enrolled as members of the petitioners' societies only to seek advantage of the interim order and rushed to this Court on that basis by filing application for impleadment. List of original members has been annexed as Annexure-4 to the leading writ petition) pp. 22 to 29 showing 209 members only. The Application No. 4791 of 1993 (filed through another counsel along with an affidavit in support of the said application) dated 8th February, 1993, contains list of 47 persons (pp. 48 to 57) to show that these people became members of the Society later and as an afterthought in order to seek benefit of the interim order. Obviously those persons were not initially aggrieved and did not care to challenge the tariff. Similar is the position in some of the other petitions also. The above fact will be borne out by perusing record of Writ Petition No. 8722 of 1986 Nagrik Kalyan Parishad Registered Society v. State of U. P. and Others. In this case list of members was initially filed as Annexure-2A. Subsequently by another list of additional members numbering 207 was filed along with Misc. Application No. 19160 of 1989 (MB)--marked as Annexure-2AAA. This shows that large number of persons, who were not initially aggrieved and did not care to approach the Court at initial stage.

79. In view of the foregoing discussion, these writ petitions are allowed in part as indicated below :

(i) "Service charge" or automatic enhancement clause-cannot be imposed and Jal Sansthan shall not realise it under impugned Notification from the petitioners in future, i.e., after the date of this judgment.

(ii) Amount paid by the consumers (including the petitioners) as "service charges" or otherwise against Bills of the Jal Sansthan without protest in the past, before this Judgment, will not be refunded by the Jal Sansthan. Consumers (including petitioners) shall pay according to their Bills ignoring automatic clause and without service charges (i.e. past arrears) voluntarily or on receiving corrected/revised Bills to be issued within four months of the date of this judgment as the case may be. No interest will be charged on arrears.

(iii) Aggrieved consumer may challenge, if so advised, the water tariff by filing an appeal u/s 30 and/or Section 54, U. P. Water Supply and Sewerage Act, 1975 in accordance with law with respect to future Bill pertaining to period after 1st April, 2000. The appeal, if any, shall be decided on merit by concerned Jal Nigam in accordance with law, preferably within six months of receipt of the appeal without being prejudiced or influenced in any manner, by this judgment.

80. Writ petitions fail with regard to the other reliefs. In peculiar facts and circumstances of the present case including the fact that Jal Sansthan is to render public service, we direct the parties to bear their own costs.

9. Shri Ravi Kant appearing for the petitioner has relied upon the reasons given in the judgment, quoted as above, in support of his submissions. He reiterates that the enhancement at the rate of 7 1/2% each year by the Notification dated 19.6.1999, is arbitrary and without any basis. The Jal Sansthan is obliged to install meters and if meters have not been installed, there should be some scientific basis of fixing the assumed consumption. Shri Ravi Kant submits that each of the Jal Nigams must ascertain the cost of water. There cannot be any unified charges for cost of water on assumed basis through out the State of U.P.

10. Shri Ravi Kant also submits that no material has been placed to determine the cost of water, which makes increase of water tax arbitrary. He submits that sewer facility have not yet been provided in the district of Allahabad. The sewer lines are now being laid under Jawahar Lal Nehru Urban Renewal Mission, from the grants given by the Central Government. The Jal Sansthan has not incurred any expenses to charge sewer tax. He also submits that there is no basis to levy service charge as no services are provided by Jal Nigam to the citizens. The water charges are being levied arbitrarily with no scientific basis of working out the costs of supply of water.

11. Shri R.M. Saggi appearing for Allahabad Jal Sansthan has raised objections to the maintainability of the writ petition without first approaching the Jal Nigam. He submits that Section 30 of the U.P. Water Supply and Sewerages Act, 1975, provides for settlement of disputes with consumerRs. The petitioners have alternative remedy of raising disputes to be decided by the Jal Nigam. The petitioners have not raised any such disputes nor made any grievance in the Jal Nigam before approaching this Court. he has relied upon paragraph 23 to 37 of the counter affidavit to support the statutory tariff fixed by Allahabad Jal Sansthan.

12. Shri Saggi submits that by Notification dated 19th June, 1999 the Allahabad Jal Sansthan, Allahabad has notified the rates of water charges u/s 25 (2) (6) and Section 60 (1) (2) of the U.P. Water Supply and Sewerages Act, 1975 after seeking approval of the U.P. Jal Nigam u/s 15 (2) (8). The cost of water has been linked to the annual value of the building and the size of the water connection. For residential use, the value of the water has been fixed 2.50 per kl.ltr. and where supply is not metered, the value is calculated in accordance of the table for working out the cost of water as follows:-

Sl. No.

Annual Value of the property

Size of the water connection

15

20

25

1

2

3

4

5

1

360

280

720

1080

2

361 2000

900

1080

1200

3

2001 3500

1080

1200

1680

4

3501 5000

1200

1680

2010

5

5000

1680

1800

2400

13. The Notification dated 19.6.1999 also provided for fixing cost of water in respect of properties, which have been subjected to house tax and for which the annual value has not been fixed. It provides for separate charges for industrial purposes, restraunts, cinemas, commercial establishments, and local bodies such as Cantonment Board and for municipal purposes. For metered supply, the rates have been fixed according to the size of the water connection. The meter rent is also fixed according to the size of the water connection and that development fee is prescribed for houses, which are of two story or more than two story. Clause 9 of the Notification provides that there will be 7.5% increase in the cost of water each year beginning from 1st April, 2000. By Government Order dated 10th July, 2006 the State Government after considering the representations from general public, provided that the increase of water tax at 7.5% per year be reduced to 5% and that where increase has been made for atleast three times, no increase shall be made for a period of 10 yearRs.

14. Shri Saggi has provided the details of income and expenditure, and the liabilities of the Jal Kal Vibhag, Nagar Nigam, Allahabad. He submits that after the Allahabad Jal Sansthan has merged with Nagar Nigam, it is known as Jal Kal Vibhab, Nagar Nigam, Allahabad. Separate grants are given to Jal Kal Vibhag. The details of income and expenditure from the year 2004-05 to 2010-11 as well as liabilities (in lacs) are given as follows:-

Jal Kal Vibhag Nagar Nigam Allahabad

Details of Income From Year 2004-05 to 2010-11 (In Lacs)

2004-05

2005-06

2006-07

2007-08

2008-09

2009-10

2010-11

1

Water Tax

115.34

143.60

118.17

151.05

301.39

470.93

619.16

2

Sewer TAx/ Sewer Charge

88.95

119.02

69.93

92.68

57.69

83.51

80.37

3

Excess Water Charge

1450.90

1524.21

1544.83

1728.14

1761.36

1750.53

1800.51

4

Meter Rent

0.02

0.00

0.00

0.01

0.00

0.00

0.00

5

Service Charge

31.44

24.46

19.25

21.56

15.81

26.19

23.49

6

Other

224.17

298.98

61.28

63.41

42.69

80.20

106.18

Total

1910.82

2110.27

1813.46

2056.85

2178.94

2411.36

2629.71

Jal Kal Vibhag Nagar Nigam Allahabad

Details of Expenditure From Year 2004-05 to 2010-11 (In Lacs)

2004-05

2005-06

2006-07

2007-08

200809

2009-10

2010-11

1

Establishment

955.14

965.32

1032.45

1136.51

1220.10

1743.93

1956.82

2

Office Expense

10.49

15.35

12.10

20.26

16.33

14.50

12.17

3

Supply

338.58

381.08

360.39

454.29

435.32

489.22

458.46

4

General Repairing

111.44

78.00

71.98

59.69

64.85

79.36

61.62

5

Electricity (With Adjustment)

10.36

10.36

22.36

88.45

34.12

21.30

41.89

6

Capital & Others

406.54

463.15

225.42

205.91

167.11

176.69

102.89

7

Other (With Nagar Nigam Adjustment)

67.97

94.74

89.19

81.77

81.77

44.27

44.27

Total

1900.52

2008.00

1813.89

2046.88

2019.60

2569.27

2678.12

Percentage (Increased)

26.21

33.35

20.46

35.93

34.12

70.62

77.85

Liabilities:

1. Estab 700.00 Lacs

2. Electricity 6200.00 Lacs

3. Maintenance 500.00 Lacs

15. Shri R.M. Saggi informs the Court that potable water is supplied to the citizens of Allahabad by fetching million liters of water daily from river Yamuna and 137 million liters from various tube wells. For efficient supply of water the Jal Kal Vibhag is divided into 25 zones. Each zone is headed by an Executive

Engineer. The rising cost of commodities such as electricity and chemicals etc. has increased the expenditure every year. The increase is to the extent of 77.85% in the year 2010-11, as compared to the year 2004-05, compared to which the annual increase of water charges imposed by Jal Nigam was only 7.5%, which was subsequently reduced to 5%.

16. In Lucknow Grih Swami Parishad Vs. State of U.P. and others, decided on 20.4.2000 the High Court had partly allowed the writ petitions holding that the service charge and automatic enhancement clause of the cost of water was not sustainable in law. For the remaining reliefs namely to declare the imposition of water tax as ultra vires of the Constitution, the fixation of the cost of water on the unmetered connection, the increase in the tariff, the imposition of water charges at flat rate, the consolidation of the bills with respect to water tax, water charges, surcharge and service charge and the unfairness of the tariff was not accepted by the Court. The Division Bench of the Court had relied upon Lucknow Grih Swami Parishad's case (Supra) in allowing the writ petitions and quashing the increase of demand of water tax. The Supreme Court allowed the SLP and has remanded the matter for fresh decision in accordance with law. The Supreme Court also directed the High Court to decide the nature of levy of water charges under the provisions of U.P. Water Supply and Sewerages Act, 1975.

17. The U.P. Water Supply and Sewerages Act, 1975 (U.P. Act of 1975) was enacted to provide for establishment of a corporation, authorities and organizations for the development and regulation of water supply and sewerage service and for matters connected therewith. Section 3 and 4 provides for establishment and constitution of a Corporation for the State of U.P. It is named as U.P. Jal Nigam. Section 18 and 19 provides for establishment of Jal Sansthan for the improvement of water supply and sewerages service in any area. Section 52 to 58 in Chapter VI provides for levy of tax (S.52); assessment of annual value (S.53); appeal against assessment (S.54); restriction on levy of tax (S.55); liability for payment of tax (S.56); consolidation of tax (S.57); cost of water (S.59); cost of disposal of waste water (S.60); meter rent (S.61); security (S.62); fees (S.63); and recovery of taxes and other sums due (S.64).

18. The Act provides for water supply in Chapter VI. The definition of supply of water for domestic purposes (S.65); supply of water at Jal Sansthan (S.66); and other provisions are contained after Section 73. The rights and regulations and prohibitions relating to sewerage are contained in Chapter VIII. Section 74 provides for right of owner or occupier to obtain sewer connection. Section 75 gives authority to Jal Nigam to require owner to sewer connection; Section 76 provides for prohibition of constructions with sewer; Section 77 provides for prohibition of construction of building without sewer; Section 78 provides for power to affix shaft etc. for ventilation of sewer cess pool. The power to examine and test sewer etc. believed to be defective is provided in Section 79. The prohibition to do certain acts, which may obstruct, break, injure, close or shut off sewer lines and the power of entry and survey are provided in Sections 80 and

81 of the Act. The penalties and procedures is provided u/s 83 to 88 and the power to make Rules is given in Section 96.

19. The Water Supply and Sewerages Act, 1975 provides for an exhaustive scheme, which also give the power to the Jal Nigam u/s 15 (2) (viii), to approve tax for water supply and sewerages services applicable to respective local areas comprised within the jurisdiction of Jal Sansthan, and such local bodies as have entered into an agreement with the Nigam u/s 46. Section 25 (2) (vi) provides for introduction or amendment of tariff for water supply and sewerages service subject to approval of the Nigam and to collect all taxes and charges for these services as may be prescribed. The proviso to Section 25 (2) (vi), provides that no decision to introduce or amend such tariff shall be taken except by a special resolution in that behalf brought after giving such notices as may be prescribed, and passed by the majority of two-thirds of the members of the Jal Sansthan.

20. Section 59 providing for cost of water is quoted as below:

59. Cost of water-(1) A Jal Sansthan shall, by notification in the Gazette, fix the cost of water to be supplied by it according to its volume, and also the minimum cost to be charged in respect of each connection.

(2) A Jal Sansthan may, in lieu of charging the cost of water according to volume, accept a fixed sum for a specified period on the basis of expected consumption of water during that period.

21. The scheme of the U.P. Act of 1975 authorises Jal Nigam of the State of U.P. to exercise all powers and holding of the function relating to water supply, sewerage and sewerage disposal of the area, which lies within its jurisdiction.

22. The charging section u/s 52 provides that Jal Sansthan shall levy on premises situate within its area- (a) where the area is covered by the water supply services of Jal Sansthan, a water tax; and (b) where the area is covered by the sewerage services of Jal Sansthan, a sewerage tax. Sub-section (2) provides that the taxes in a local area other than a city, to be levied at such rate which are not less than 6% and not more than 14%, and in case of sewerage tax not less than 2% and not more than 4% of the assessed annual value of the premises as the government may from time to time after considering the recommendations of the Nigam declare by notification in the gazette. Sub-section (3) provides that the tax mentioned in sub-section (1) shall in a city be levied at such rate, which in the case of water tax shall not be less than 7.5% and not more than 12.5% and in the case of sewerage tax shall not be less than 2.5% and not more than 5% of the annual value of the premises determined under the U.P. Municipal Corporations Act, 1959 as the State Government may from time to time after considering the recommendation of the Nigam declare by notification in the Gazette. The assessment and annual value is provided u/s 53 for railway station, educational institution (including their hostels and halls), factories and commercial establishments. The annual value means 5% of the market value of the premises and in case of other premises under sub-section 1

(b) the gross annual rent for which such premises are actually let or where the premises are not let, the gross annual rent for which the premises might reasonably be expected to be let provided that annual value for self occupied houses by the owner shall be deemed to be 25% less than the annual value otherwise determined under the Section. The authority to assess annual value under sub-section (2) is to be given by the State Government by any general or special order to either Jal Sansthan or any other agency, which may be specified in the order after following the prescribed procedure. Until such assessment of the annual value of the premises as assessed by the local body is concerned for the purposes of house tax shall be deemed to be the annual value of the premises for the purposes of the Act. An appeal is provided u/s 54 to the Prescribed Authority, which means any authority u/s 2 (20) appointed by the State Government by notification in the gazette.

23. The water tax is not to be levied u/s 55 (a) on any land exclusively used for agricultural purposes, unless water is supplied by the Jal Sansthan for such purposes to that land; and under sub-section (b) on any premises, (i) of which no part is situate within the radius prescribed from the nearest stand-post or other waterworks at which water is made available to the public by the Jal Sansthan; or (ii) the annual value of which does not exceed rupees three hundred and sixty, and to which no water is supplied by the Jal Sansthan. Similarly u/s 55 (c) the sewerage tax shall not be levied on any premises (i) of which no part is within a radius of one hundred meters from the nearest sewer of the Jal sansthan; or (ii) the annual value of which does not exceed one hundred fifty rupees. The tax u/s 52 is to be realized u/s 56 (1) (a) in the case of premises connected with water supply from the occupier of the premises; and (b) in the case of premises not so connected, from the owner of the premises. Section 57 provides for consolidation of two taxes as mentioned in Section 52 namely the water tax and sewerage tax.

24. In the present writ petition as in the case of Lucknow Grih Swami Parishad the detailed facts with regard to situation of the properties, the annual value etc. have not been given nor there is any challenge to the levy of water tax or the sewerage tax. The reliefs are confined to the increase of the water tax, water charges, sewer tax, sewer charges and service charges by notification dated 19.6.1999 and to issue fresh bill deducting surcharge also, which was added from time to time at the end of each financial year.

25. We do not find that the petitioner has made any averments with regard to annual value of their buildings, the increase thereof and the consequent increase in the water tax. The statutory levy of water tax, which may be collected and contributed to the common fund for increasing the infrastructure is not under challenge. The justification of the water tax, linked with the annual value of the building has also not been challenged. We, therefore, do not find it necessary to consider the grievance of the increase of water tax, which is necessary to be levied for raising the infrastructure, defined under the heading "water works", u/

s 2 (32) and which includes water channel (including stream, lake, spring, river or canal, well, pump, galleries, reservoir, cistern tank), duct, whether covered or open, treatment units sluice, supply main, culvert, engine, water-truck, hydrants, stand-pipe, conduit and machinery, land, building or other things for supplying or used for supplying water or for protecting sources of water supply or for treatment of water. The infrastructure for supply of water also includes the system for providing water to a community in meeting its requirements given under the heading "Water Supply" u/s 2 (31) for meeting its requirements for drinking and other domestic use, industry, recreation and various public uses.

26. Water is the essence of life. There is only 3% fresh water found on earth of which only 1% is potable water. The resources of potable (suitable for drinking) water supply, has to be preserved for the future of the mankind. The clean and safe drinking water to be provided to the increasing population, estimated at 1200 million people in India, is a challenge, which requires the civic authorities to work tirelessly. The water pumped from rivers, lakes, ponds and other water reservoirs including water pumped by bore wells from underground water sources cannot be supplied unless it is cleaned by chemicals with the prescribed scientific methods. The water tax is charged for establishing, maintaining and increasing the capacity of the infrastructure for supply of potable water, and the cost of water includes maintenance of the water reservoirs, and the cost of cleaning of water by chemicals. The water works maintained by the Jal Sansthan and ultimately supervised by the Jal Nigam have to bear the cost of supply of potable water to the general public.

27. The statutory scheme of the supply of potable water under the U.P. Act of 1975, as other Acts in the country provides for the supply of clean and safe drinking water through water pipes of various sizes. It is ideal to provide water of which the cost can be measured by installing a meter at the entry point of the facility. The legislature, however, was aware of the fact, that taking into account the magnitude of the task of providing safe and clean drinking water to the general public, the water supply may not always be possible through a metered supply, and thus Section 59 (1) provided the Jal Sansthan to fix cost of water by notification in the gazette to be supplied by it according to its volume, and also the minimum cost to be charged in respect of each connection; sub-section (2) provides that Jal Sansthan may in lieu of charging cost of water according to volume, exceed a fixed sum for specified period on the basis of expected consumption of water during that period. Wherever a metered supply is given, Section 61 provides for charging meter rent and the charge to the cost of water to be worked out through meter reading. The Jal Sansthan is authorized u/s 63 to charge fees for connection, disconnection or re-connection of any water supply or sewer or testing or supervision or for any other services rendered or works executed or supervised as may be provided by bye-laws.

28. In Union of India (UOI) and Others Vs. State of U.P. and Others, while considering the challenge by Union of India and two others to the orders of

recovery issued by the Executive Engineer, Jal Sansthan, Khusroo Bag, Allahabad on account of service charges on railway properties situate in Allahabad, it was held that Art. 285 of the Constitution of India provides that no property of the Union of India shall be subjected to tax imposed by the State saved as Parliament may otherwise provide charges for supply of water and maintenance of sewerage in the nature of tax or fee for services rendered by Jal Sansthan. There is distinction between tax and fee and hence one has to see nature of the levy, whether it is a tax or whether it is in the nature of fees for the services rendered by any instrument of the State like the Jal Sansthan. The Supreme Court held in paragraphs 9, 10, 21, 22 and 23 as follows:

9. From a perusal of Article 285 it is clear that no property of the Union of India shall be subject to tax imposed by the State, save as Parliament may otherwise provide. The question is whether "the charges for" supply of water and maintenance of sewerage is in the nature of a tax or a fee for the services rendered by the Jal Sansthan. There is a distinction between a tax and a fee, and hence one has to see the nature of the levy whether it is in the nature of tax or whether it is in the nature of fee for the services rendered by any instrumentality of the State like the Jal Sansthan. There is no two opinion in the matter that so far as supply of water and maintenance of sewerage is concerned, the Jal Sansthan is to maintain it and it is they who bear all the expenses for the maintenance of sewerage and supply of water. It has to create its own funds and therefore, levy under the Act is a must. In order to supply water and maintain sewerage system, the Jal Sansthan has to incur the expenditure for the same. It is in fact a service which is being rendered by the Jal Sansthan to the Railways, and the Railways cannot take this service from the Jal Sansthan without paying the charges for the same. Though the expression tax has been used in the Act of 1975 but in fact it is in the nature of a fee for the services rendered by the Jal Sansthan. What is contemplated under Article 285 is taxation on the property of the Union. In our opinion the Jal Sansthan is not charging any tax on the property of the Union; what is being charged is a fee for services rendered to the Union through the Railways. Therefore, it is a plain and simple charge for service rendered by the Jal Sansthan for which the Jal Sansthan has to maintain staff for regular supply of water as well as for sewerage system of the effluent discharge by the railway over their platform or from their staff quarters. It is in the nature of a fee for service rendered and not any tax on the property of the Railways.

10. The distinction has to be kept in mind between a tax and a fee. Exemption under Article 285 is on the levy of any tax on the property of the Union by the State, and exemption is not for charges for the services rendered by the State or its instrumentality which in reality amounts to a fee. In this connection, a reference was made to the decision of this Court in *Re : Sea Customs Act (1878)*, S.20(2) [AIR 1963 SC 1760]. This was a case in which a reference was made by the President of India with regard to levy of custom and excise duties on the State under Article 289 of the Constitution of India wherein Sinha, CJ., Gajendragadkar, Wanchoo and Shah, JJ. answered the question at paragraph 31

as follows :

(31) For the reasons given above, it must be held that the immunity granted to the States in respect of Union Taxation does not extend to duties of customs including export duties or duties of excise. The answer to the three questions referred to us must, therefore, be in the negative.

21. A reference was also made to another decision of this Court in *Karya Palak Engineer, C.P.W.D., Bikaner Vs. Rajasthan Taxation Board, Ajmer and Others*, In this case, a three Judge Bench held that Article 285 which contemplates exemption of Union property from State tax, does not extent to exemption from levy of indirect tax. In this case, the question was exemption of sales tax in a works contract for erection of barbed wire. CPWD in terms of the contract supplied the construction materials after purchasing the same on payment of consideration and was adjusting the value of the materials in the final bills of the contractor. The question was whether there was immunity for the property of the Union from the State taxation under Article 285. Their Lordships held that from the case law it is clear that the Union is not exempted from the levy of indirect tax under Article 285. Their Lordships after examining the decision in *Re : Sea Customs Act (1878), S.20(2)* (supra) in reference by a nine Judge Bench observed that Article 285 is a mandate and not indirect tax such as sales tax. Their Lordships concluded with reference to sales tax which reads as follows :

We may in this connection contrast sales tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore, though both excise duty and sales tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the fact of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax.

22. The aforesaid decision came up for consideration in *New Delhi Municipal Council* (supra). Their Lordships concluded at paragraph 16 as follows :

From the above judgment of this Court, it is clear that the Union is not exempted from the levy of indirect tax under Article 285 of the Constitution. The above discussion also shows that reliance placed on the judgment of this Court in the case of *New Delhi Municipal Council* by one of the learned counsel for the appellants is wholly misconceived and is opposed to his contention with reference to Article 285 of the Constitution.

23. Though these observations were in reference to Sales Tax Act but the reasoning equally applies in this case also. In this case what is being charged is for service rendered by the Jal Sansthan i.e. an instrumentality of the State under the Act of 1975. Section 52 of the Act states that the Jal Sansthan can levy tax, fee and charge for water supply and for sewerage services rendered by it as water tax and sewerage tax at the rates mentioned therein. Though the charge was loosely termed as "tax" but as already mentioned before,

nomenclature is not important. In substance what is being charged is fee for the supply of water as well as maintenance of the sewerage system. Therefore, in our opinion, such service charges are a fee and cannot be said to be hit by Article 285 of the Constitution. In this context it is to be made clear that what is exempted by Article 285 is a tax on the property of the Union of India but not a charge for services which are being rendered in the nature of water supply, for maintenance of sewerage system. Therefore, in our opinion, the view taken by the Division Bench of the Allahabad High Court is correct that the charge is a fee, being service charges for supply of water and maintenance of sewerage system, which cannot be said to be tax on the property of the Union. Hence it is not violative of the provisions of Article 285 of the Constitution.

29. The above decision impliedly overrules the Division Bench judgment of this Court in Lucknow Grih Swami Parishad (Supra) to the levy of service charge. We, therefore, do not find any substance in the submission of learned counsel for the petitioner that the Jal Nigam cannot levy service charge on supply of water.

30. So far as cost of water supply is concerned, from the material supplied by learned counsel appearing for Jal Nigam Vibhab, Nagar Nigam, Allahabad, which represents the erstwhile Jal Sansthan, Allahabad, after its merger with Nagar Nigam, Allahabad that whereas the income for the year 2010-11 including the tax, water charges and service charges was Rs. 2629.71 lacs, the expenditure of the year 2010-11 including establishment supply of water, electricity and other was Rs. 2678.12 lacs. These figures do not take into account the outstanding liabilities of establishment of Rs. 700 lacs; electricity bills of Rs. 6200 lacs and the outstanding maintenance charges of Rs. 500 lacs. The cost of supply of water to the citizens of Allahabad, without taking into account the outstanding liabilities, barely meets the cost of infrastructure, establishment and the supply of water with all its financial components. The Jal Kal Vibhag of Nagar Nigam has to take into account the free supply of safe and clean drinking water free to all the houses paying less than Rs. 360/-per month as house tax. It is also required to supply water to general public at public places, schools, government hospitals and for public utility services.

31. In Lucknow Grih Swami Parishad case that the State Government and the U.P. Jal Nigam did not provide the details of working out the cost of water. In this case also the Jal Kal Vibhag of Nagar Nigam, Allahabad has not given these details still from whatever material is provided, we are of the opinion that the cost of water fixed by the State Government as compared to the expenses on infrastructure, establishment and the cost of supply of water including cost of cleaning the water by chemicals and maintenance is much less as compared to the income from collections of water tax, water charges, service charge, repairs, etc. and thus in case the petitioner insist on working out the exact cost of water provided to them, they will have to pay much more than what is being paid now.

32. We do not find any fault in the exercise of powers by the State Government in fixing the cost of water taking into account the expenditure, which in our

opinion shortsighted approach and does not take into consideration the improvement and maintenance of water channels and reservoirs, exploration of new sources of potable water, research in supply of clean water, and cost of resolving environmental issues.

33. The petitioners' grievance of increasing the cost of water at the flat rate of 15% per year has been substantially mitigated by the Notification dated 19th June, 1999 providing for the increase cost of water on flat rate across the board at 7.5% w.e.f. 1st April, 2000 and thereafter by a Government Order dated 18th July, 2006 by which the increase at flat rates, across the board has been reduced from 7.5% to 5% to the effect that the first increase be made w.e.f. 1.4.2007 and with a further condition that after three increases the cost of water should not be increased for a period of 10 years. We find that the State Government has not acted prudently in pegging the cost of water, after five increases of 5% every year for a period of 10 years. The State Government could not have anticipated the cost of maintaining the water channels and water reservoirs free of environmental degradation, increase in the demand of supply of safe and clean drinking water by the increase in population, management of water resources and the cost of increase of infrastructure. When the statute has given powers to the State Government to fix cost of water to be supplied to the general public, the State Government should not have adopted a retrograde and doubtful economic policy in fixing costs for a period of 10 years. In fact such a policy denies the citizens of the State with safe and clean drinking water for the next decade, as U.P. Jal Nigam will not be left with sufficient funds of research development, management and increase of infrastructure. The price of any commodity has to be commensurate with the costs incurred. The decisions taken by the present government, in the fact situation of a case should not bind the government, which may be elected in future. The Act mandates that the State Government will in future make effort for creating and maintaining infrastructure for a more safe and clean potable drinking water, of which the cost has to be borne by the general public as consumers.

34. All the writ petitions are consequently dismissed.