

(2011) 09 MAD CK 0213

In the Madras High Court

Case No : Writ Petition No's. 20434, 20435 of 2009, 304 and 10682 of 2002, 755, 7459, 8433, 33680 of 2003, 6006, 6256, 6926, 10440, 29434, 30602 of 2004, 2636, 4409, 11821, 11822, 16683, 17291, 20969, 24805, 28785, 33278, 33279, 33505 of 2005, 6471, 7824, 30290, 3

Sumanth and Company

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 — Section 6(2), 81(2)
Constitution of India, 1950 — Article 14
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 76(1)

Citation : (2011) 8 MLJ 209

Hon'ble Judges : K.K.Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : Mr. R. Thiagarajan, for Mr. S. Sundaresan W.P. Nos. 20434, 20435 of 2009, 304 of 2002, 8433 of 2003, 6006, 6256, 6926, 10440, 29434, 30602 of 2004, 4409, 11821, 11822, 33278 33279, 33505 of 2005, 6471, 7824, 30290, 34741, 34702 of 2006, 19839, 11632, 17436, 21751, 24002, 24590 of 2009, 19744, 14201, 14202, 24153, 16464, 16465 of 2010, Mr. Krishnappan, for Mr. R. Mohan W.P. Nos. 3782, 3783 of 2010, 28785 of 2005, 7884 of 2011, K. Venkatasubramanian in W.P. No. 10682 of 2002 and 755 of 2003, Mr. K.V. Babu in W.P. No. 7459 of 2003, Mr. P.B. Ramanujam in W.P. No. 33680 of 2003, Mr. M.L. Joseph in W.P. No. 2636 of 2005, Mr. G. Durairaj in W.P. No. 16683 of 2005, Mr. A.R. Karunakaran in W.P. No. 17291 of 2005, Mr. K. Dharanidharan in W.P. No. 20969 of 2005, Dr. P. Vasudevan, in W.P. No. 24805 of 2005, Mr. S. Vijay Kumar, in W. .P. No. 14670 of 2010, for the Appellant; Mr. R. Ravichandran for Respondent No. 1 in all AGP WPs., Mr. A. Navaneethakrishnan, Advocate General Assisted by Mr. L.P. Shanmugasundaram, (CMWSSB) in all W. Ps., Mr. Raja Srinivas, For CMDA in W.P. Nos. 755, 7459, 8433, 33680 of 2003 19744, 3782, 3783 of 2010 7884 of 2011, Mr. A. Kumar, For CMDA in W.P. Nos. 20434 and 20435 of 2009, 304 and 10682 of 2002, 19839, 11632, 17436, 21751, 24002, 24590 of 2009, 14670, 14201, 14202, 24153, 16464, 16465 of 2010, Mr. M. Kathikeyan, For CMDA in W.P. Nos. 6006, 6256, 6926, 10440, 29434, 30602 of 2004, 2636, 4409, 11821, 11822, 16683, 17291, 20969, 24805, 28785, 33278, 33279, 33505 of 2005, 6471, 7824, 30290, 34741, 34702 of 2006, Mr. V.

Judgement

K.K.Sasidharan, J.—The central question that arises in these writ petitions is whether the levy of infrastructure development charges by the Chennai Metropolitan Water Supply and Sewerage Board is bad in law on account of the absence of necessary co-relation between the fee collected and the service intended to be rendered or in other words "quid pro quo".

2. Since common questions of fact and law arises in these batch of writ petitions, the same are disposed of by this common order.

3. For the sake of convenience, we quote herein below the facts in W.P. No. 34702 of 2006 treating it as the lead case.

The facts:

4. The Petitioner is a builder. He is stated to be the owner of the property situated at Door No. 18/1, East Coast Road in Survey No. 205/3 Part, 4A, 5A, 8 and 10, T.S. No. 26, Block No. 42 of Thiruvanmiyur Village, Chennai-600 041. The Petitioner made an application before the Chennai Metropolitan Water Supply and Sewerage Board (hereinafter referred to as "CMWSSB") for planning permission for the purpose of construction of Additional Block of Stilt Floor plus Eleven Floors residential building with Sixty Four Dwelling Units. The application was submitted on 8 November, 2005. The Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA") by their letter dated 8 September, 2006 directed the petitioner to pay infrastructure development charges due to CMWSSB besides other charges payable to the CMDA.

5. Since the demand for payment of development charges were on account of the amended provisions of the Chennai Metropolitan Water Supply and Sewerage Board Act, the Petitioner challenged the validity of Section 6(2)(xii-a) and 81(2) (jj) of the said Act.

6. The amended Act was challenged mainly on the ground that the infrastructure development has nothing to do with the individual promoters. It was the further contention of the Petitioners that the levy was essentially in the nature of a tax though styled as a "fee". According to the Petitioners, there is no quid pro quo for the demand of infrastructure development charges and as such, the levy is arbitrary and is nothing but a colourable exercise of power.

7. The CMWSSB in their counter affidavit filed originally justified the collection of infrastructure development charges. According to CMWSSB, the Board has spent considerable amount for providing infrastructural facilities required by the developers and as such the development charges were rightly levied. It was their further contention that multistoried and special buildings are the structures

responsible for the discharge of sewerage at single point to public sewer system in huge quantity and are not in proportion to the capacity of designed sewers. At the same time, the demand for supply of water to such premises at single point has suddenly increased. The Board cannot anticipate any such development so as to provide the infrastructure facilities in advance leading to dead investments. Therefore, considering the total expenditure required for providing infrastructural facilities and to maintain the water supply and sewage system, the Act was amended authorising the Board to collect infrastructure development charges.

8. The Division Bench speaking through His Lordship Mr. Justice P. Sathasivam, (as His Lordship then was), opined that CMWSSB is charging the infrastructure development charges only for the service rendered and to strengthen and maintain the water supply and sewerage infrastructure and as such, the levy is fully justified. Accordingly, the writ petitions were dismissed.

9. The unsuccessful writ Petitioners challenged the order before the Supreme Court in Civil Appeal Nos. 1079 of 2009 etc. batch. The Supreme Court negatived the contentions raised by the Petitioners regarding delegation of power and upheld the validity of Section 81(2)(jj) of the Chennai Metropolitan Water Supply and Sewerage Board Act, though for different reasons.

10. The Supreme Court thereafter considered the question of quid pro quo. The Supreme Court found that State or the CMWSSB did not state on what basis the rate of Rs. 64/- per square meter was fixed. There were no records to indicate the amount spent towards services to be rendered to the multistoried and special buildings. The only contention originally taken was to the effect that the Board has to spend considerable amount for over all development of the water supply and sewerage system. The Supreme Court observed that in case it is a fee, the principle of quid pro quo would apply. The Supreme Court after extracting the leading decisions on the point including the judgement reported in Jindal Stainless Ltd. and Another Vs. State of Haryana and Others, ., remitted the matter to this Court with a direction to implead the State of Tamil Nadu as a party. The parties were given liberty to produce materials before this Court to substantiate their respective contentions.

11. Subsequent to the remand, the CMWSSB and the State of Tamil Nadu filed separate counter affidavits justifying the imposition of infrastructure development charges. The Board as well as the State in their respective counter affidavits through facts and figures explained the total expenditure incurred towards improvement of the existing water supply and sewage system and to maintain the system. The details of percentage of collection of infrastructure development charges were also given. The State justified the levy by pointing out that less than 2.5% of the actual amount spent by the CMWSSB for providing these facilities alone were collected from the builders.

12. The Petitioners filed a reply affidavit wherein it is stated that the details given by the Board indicates only the over all expenditure and it has nothing to do with

the special services rendered to the builders of multistoried and special buildings.

Submissions:

13. The learned Senior Counsel for the Petitioners in W.P. No. 20434 of 2009 and other connected writ petitions contended that the levy is illegal and unjust, as it is against only a class of builders. The CMWSSB is responsible for providing water and sewage facilities. These facilities are provided generally for common benefit and as such the decision to collect fee from the promoters of special and multistoried buildings is liable to be quashed as violative of Article 14 of the Constitution of India. The Respondents miserably failed to prove the special benefits to those class of builders. Therefore they are not entitled to collect the infrastructure development charges. The learned Senior Counsel for the Petitioners in W.P. No. 3782 of 2010 etc., batch of cases advanced similar contentions. According to the learned Senior Counsel, the fee is per se discriminatory and the collection lacks the element of quid pro quo.. The learned Advocate General by placing reliance on the audited accounts of the CMWSSB contended that the special and multistoried buildings account for the major development and as such CMWSSB has been spending considerable amount to provide infrastructural facilities to these buildings. The CMWSSB has also been spending substantial amount for maintaining the water and sewage system and the major buildings like the Petitioners are the actual beneficiaries. Therefore CMWSSB has rightly made a provision to collect a percentage of the cost from these builders. According to the learned Advocate General, the collection of fee when compared to the benefits appears to be very negligible.

Concept of fee:

14. The fee unlike a tax rests on the principle of equivalence. The levy of fee must have a corresponding relation with the service provided by the statutory or other authorities. This distinguishing or rather essential feature differentiates fee from tax. Though providing service is a condition precedent for levy of fee, the failure on the part of the authority to extend equal service matching the collection would not make the fee bad.

15. The Petitioners have no case that the impugned Act and the Regulations made there under are ultravires the powers of the Legislature of the State of Tamil Nadu. The challenge is confined to the question regarding absence of special benefits to the Petitioners.

Analysis:

16. The question raised by the Petitioners should be considered in the light of the observation made by the Supreme Court in the order of remand.

17. The counter affidavit earlier filed by the CMWSSB does not contain materials justifying the levy of fee. This made by the Honourable Supreme Court to remit the matter so as to enable the State and CMWSSB to produce materials to meet the challenge on levy of fee.

18. The counter affidavit filed by the State of Tamil Nadu contains details of the amount spent for providing the water supply and sewage facilities to the builders and the actual amount spent for maintaining the very system. According to the State, the burden of liability of the expenditure totally incurred by the CMWSSB is shared by the promoters/developers of special and multistoried buildings and it represents only 2.5% on an average of total expenditure.

19. The following table appended to the counter affidavit gives the details of the amount spent by the Board and the amount collected by way of infrastructure development charges.

Sl. No

Year

Annual expenditure incurred towards improvements to existing water supply and sewerage infrastructure facilities (Rs. in crores)

Infrastructure development charges collected from the developers of Multistoried building and special building (Rs. in crores)

Balance amount of expenditure incurred (less infrastructure Development Charges collected) (Rs.incrores)

Source of funds to meet out the balance incurred expenditure

Percentage on collection of infrastructure Development charges to incurred expenditure on schemes (in %)

1.

1997-

1998

142.09

0.21

141.88

World

Bank,

Commercial

Banks,

L.I.C.,

Hudco

OECD.

Government,
TNUDF,
JNNURM,
etc.

0.15

2.

1998-

1999

257.17

3.38

253.79

1.32

3.

1999-

2000

278.08

2.92

275.16

1.06

4.

2000-

2001

258.57

5.14

253.43

1.99

5.

2001-

2002

154.25

4.29
149.96
2.79
6.
2002-
2003
126.11
8.21
117.9
6.52
7.
2003-
2004
703.53
8.97
694.56
1.28
8.
2004-
2005
445.4
7.27
438.13
1.64
9.
2005-
2006
154.08
5.92
148.16

3.85
10.
2006-
2007
136.29
6.08
130.21
4.47
11.
2007-
2008
156.71
6.61
150.1
4.22
12.
2008-
2009
173.61
8.62
164.99
4.97
13.
2009-
2010
118.53
9.9
108.63
8.36
14.

Total

3104.42

77.52

3026.9

2.5

20. The Government as well as CMWSSB in their respective counter affidavits dealt with in extenso the amount spent for keeping the system in order for the purpose of providing water connection to the multistoried and special buildings and to maintain the service system. The Board had set up two desalination plants of 100 MLD capacity each to augment and meet the ever increasing demand for water supply. The maintenance of water and sewerage projects would involve considerable expenditure. Therefore on a consideration of the actual expenditure required for providing the facilities as well as to maintain the same, a flat rate of Rs. 64/- per square metre was fixed as infrastructure Development charges to be collected from the builders of Multistoried and Special buildings.

21. Before considering the issue of quid pro quo, the background facts culminated in making the amendment to the Chennai Metropolitan Water Supply and Sewerage Board Act authorising the Board to levy the infrastructure charges should also be taken note of.

22. Earlier there was a requirement to obtain No Objection Certificate from the CMWSSB for the purpose of obtaining planning permission from the CMDA. The Board on receipt of such applications from the builders would assess and evaluate the expenses necessary for providing water supply and sewerage connection. The infrastructural facilities already provided would not be sufficient to meet the fresh demand on account of developments and therefore, naturally the Board has to collect the charges. This process of calculation and giving no objection certificate resulted in considerable delay. Because of this, the builders were not in a position to get the plan approved at the earliest point of time. Accordingly, with a view to minimise the delay in sanctioning the building plan, the system of providing no objection certificate was dispensed with and alternatively with a view to bear the expenditure uniformly by all the promoters of Multistoried and Special Buildings proportionate to the area of construction, the Legislature has amended the Act.

23. The details furnished by the Government as well as the Board and referred to in the earlier paragraphs of this order would show that considering the facilities provided to the builders, only a negligible percentage is collected from them by way of fees.

24. The City of Madras is expanding its territorial jurisdiction. There is a proposal to include the neighbouring municipalities also with the Chennai Corporation.

Mansions and Bungalows have now given away for apartments. Because of the non availability of land for construction of houses and small apartments, multistoried buildings and special buildings have come up. But the infrastructural facilities made by the Board remain the same. In order to cope up with the new demand and with an idea to provide better services to all the apartments, the Board was compelled to take measures to strengthen the existing system, while taking simultaneous measures to expand the system. This involves heavy expenditure and in fact considerable amount was raised by way of loan from the World Bank. The Board was expected to give uninterrupted supply of water to the consumers. The sewage system should also be maintained in good condition. The builders have to bear only the proportionate cost in maintaining the system. This cost is ultimately borne only by the purchasers of apartments.

25. The collection of fee in a matter like this cannot be measured by mathematical precision. It is not possible for the Board to come up with a table to show the actual expenditure incurred for giving water/sewerage connection to a special or multistoried building in comparison with the amount collected from the builder. This can be calculated only by measuring the total service rendered to the builders. Co-relation between the demand and the service can only be general in nature in a subject like water supply and sewerage.

26. The Petitioners cannot be heard to say that the quantum of fees should be assessed on mathematical exactitude.

27. The Government as well as the Board justified the levy of fee with proper materials. The expenditure is shared by all the major builders. It is common knowledge that the requirement of water for residential houses and the residential apartments are not the same. The Petitioners are builders of multi-storied and special buildings. Each residential complex would contain large number of residential units and all these units would need water connection as well as sewage facilities. When the requirement of water and sewage facility is increasing day by day, naturally the existing facilities would not be sufficient. While maintaining the existing service, simultaneous action must also be taken to provide better facilities. Necessarily, the CMWSSB has to spend money to meet the requirements. The Petitioners are contributing only a negligible amount, compared to the facilities which they are enjoying.

28. The Petitioners have projected a case that the demand is essentially in the nature of a tax. The averments as contained in the counter affidavit filed originally to the effect that necessary planning was done with a view to provide facilities upto the year 2021 created an impression that the attempt was to realise the said amount by collecting fees from the builders like the Petitioners. The said apprehension has no basis. The detailed expenditure statement produced by CMWSSB shows that considerable amount has already been spent for providing the facilities as well as to maintain the same and the same would be the case in the years to come on account of the proposal of medium and large scale promoters in the field of construction to launch more and more new

housing projects.

Illustrative cases

29. The Constitution Bench of the Supreme Court in *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, explained the conceptual difference between a tax and fee thus:

9.....there is no generic difference between a tax and a fee and both are different forms in which the taxing power of a State manifests itself. Our Constitution, however, has made a distinction between a tax and a fee for legislative purposes and while there are various entries in the three lists with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards fees which could be levied in respect of every one of the matters that are included therein. A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purposes to meet the general expenses of the State without reference to any special benefit to be conferred upon the payers of the tax. The taxes collected are all merged in the general revenue of the State to be applied for general public purposes. Thus, tax is a common burden and the only return which the taxpayer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payments are demanded. Thus in fees there is always an element of quid pro quo which is absent in a tax. Two elements are thus essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart or specifically appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purposes....

30. In *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, the Supreme Court while indicating the essential features of fee observed that it is not possible to prove in every case that the fees collected is approximate to the expenses.

22.....Fees, on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of quid pro quo which is absent in a tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain individuals. But in order that the collections made by the Government can rank as fees, there must be co-relation between the levy imposed and the expenses incurred by the State

for the purpose of rendering such services. This can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services. Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be ear-marked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes.....

31. In *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, the Supreme Court while indicating the true test to determine the character of levy said:

9..... It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax payer and the public authority there is no option to the taxpayer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co-relation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee Legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case.....

32. In *Sri Krishna Das Vs. Town Area Committee, Chirgaon*, , the Supreme Court while considering the legislative competency of the State to levy the fee and its power to delegate the same to the local authority observed that quid pro quo between a tax payer and the authority need not be understood in mathematical equivalence. The relevant observation reads thus:

23. Under the Indian Constitution the State Government's power to levy a tax is not identical with that of its power to levy a fee. While the powers to levy taxes is conferred on the State legislatures by the various entries in List II, in it there is Entry 66 relating to fees, empowering the State Government to levy fees "in respect of any of the matters in this list, but not including fees taken in any court". The result is that each State legislature has the power, to levy fees, which is co-extensive with its powers to legislate with respect to substantive matters and it may levy a fee with reference to the services that would be rendered by the State under such law. The State may also delegate such a power to a local authority. When a levy or an imposition is questioned, the court has to inquire into its real nature inasmuch as though an imposition is labelled as a fee, in reality it may not be a fee but a tax, and vice versa. The question to be determined is whether the power to levy the tax or fee is conferred on that authority and if it falls beyond, to declare it ultra vires.

24. We have seen that a fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. Where, however, the service is indistinguishable from the public services and forms part of the latter it is necessary to inquire what is the primary object of the levy and the essential purpose which it is intended to achieve. While there is no quid pro quo between a tax payer and the authority in case of a tax, there is a necessary co-relation between fee collected and the service intended to be rendered. of course the quid pro quo need not be understood in mathematical equivalence but only in a fair correspondence between the two. A broad co-relationship is all that is necessary.

33. In *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, , the Supreme Court observed that in the matter of levy of fee and the corresponding services, it will be impossible to have an exact co relationship. The observation reads thus:

11..... before any levy can be upheld as a fee, it must be shown that the levy has reasonable co-relationship with the services rendered by the Government. In other words the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact co-relationship. The co-relationship expected is one of a general character and not as of arithmetical exactitude.

34. In *H.H. Sudhundra Thirtha Swamiar Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore*, the challenge was to the levy of fee u/s 76(1) of the Madras Hindu Religious Endowments Act, 1951. The Supreme Court held that the fee does not cease to be a fee merely because there was no direct relation to the actual service rendered. The Supreme Court observed:

18.....A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering service of a particular type, correlation between the expenditure incurred by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may.

35. In *D.C. and Gen. Mills Company, Ltd., v. Chief Com., Delhi* 1970 (2) SCC 172, the Supreme Court having found that 60% of the amount of licence fee which were being realised by the authorities under the Factories Act was actually spent on services rendered to the factory owners, upheld the validity of levy.

36. In *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, , the Constitutional Bench of the Supreme Court in the context of levy of fee held that the nature of relationship expected is one of general category and it is essentially a question of fact.

37. In *Jindal Stainless Ltd. and Another Vs. State of Haryana and Others*, , the Supreme Court observed that the levy of fee has to be broadly proportional. The observation reads thus:

42. A tax can be progressive. However, a fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is the foundation of a compensatory tax as well as a fee, the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services, which costs in turn become the basis of reimbursement/recompense for the provider of the services/facilities. Compensatory tax is based on the principle of "pay for the value". It is a sub-class of "a fee"

38. The Supreme Court in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, observed that, "If the special service rendered is

distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefiting the specified class or area, the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee"

Conclusion:

39. There is an element of quid pro quo involved in the subject levy though the assessment was not on the basis of arithmetical exactitude. It was only for the purpose of providing and maintaining the water and sewage facilities, the Act was amended resulting in the levy of infrastructure development charges. The levy being proportional to the service rendered, cannot be characterised as a tax in disguise. We do not therefore find any merit in the contentions raised on behalf of the Petitioners.

40. In the upshot, we dismiss the writ petitions and uphold the levy of infrastructure development charges by CMWSSB. Consequently the connected Mps are closed. No costs.