(1957) 03 AHC CK 0008

In the Allahabad High Court

Case No : Civ. Miscellaneous App. No. 14 of 1955

The Municipal Board APPELLANT

Vs

The State of UP RESPONDENT

Date of Decision : 26-03-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Electricity (Duty) Act, 1952 — Section 2, 3
Uttar Pradesh Municipalities Act, 1916 — Section 129, 7, 7(1)(J)

Citation : (1957) 27 AWR 466

Hon'ble Judges : V.D. Bhargava, J;Singh, J

Bench : Division Bench

Advocate : Sarvsri Niamatullah, R.N. Shukla and Inayatullah, for the Appellant; B.K. Dhaon and B.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

Singh, J.—This is a petition under Article 226 of the Constitution directed against the State of UP and the Electric Inspector to Government of UP for the issue of a writ of mandamus restraining them for demanding and collecting from the Petitioner any duty on energy consumed by the Petitioner for certain purposes.

2. It appears that the Municipal Board, Unnao, the Petitioner obtained a licence under the Indian Electricity Act, 1910, to supply energy within an area of supply in the town of Unnao. The Municipal Board thus became a licensee and supplied electricity to the consumers it also consumed electricity for its own purpose such as running of water works, street lighting and for light and fans in their own offices. Under the U.P. Electricity (Duty) Act, 1952 (hereinafter referred to as the Act) a duty of 25 per cent is paid on the amount payable to the licensee by the consumers on account of the energy consumed by the consumers. The Act has defined a licensee and a consumer. In Section 2 of the Act, the definition of consumer is as follows:

(d) ''Consumer'' means a person, other than a licensee, who is supplied with energy

(i) by a licensee:

(ii) by a Board; or

(iii) by the State Government or Central Government." Section 3 provides for the levy of the duty under the Act and it is as follows:

There shall be levied for, and paid to the State Government, on the energy consumed by a consumer, a duty (hereinafter referred to as the "electricity duty") computed at 25 per cent, of the rate charged ''therefor by a licensee, by the Board of Government referred to in Sub-clause (ii) or (iii) of Clause (d) of Section 2:...

Explanation: (1) For the purposes of levy and payment of electricity duty, the energy consumed by a licensee or Board in or upon premises used by it for its own commercial or residential purposes shall be deemed to be energy paid for and consumed by a consumer;...

3. The provisions of Section 3 clearly indicate that the duty will be payable only by a consumer and not by a licensee. There is, how ever, an explanation which engrafts an, exception to the general provisions of nonpayment of duty under the Act by the licensee. This exception refers to the energy consumed by a licensee or Board in or upon premises used by it for its own commercial or residential purposes. Any energy consumed by the licensee for any of these two purposes, namely, for its own commercial purposes or residential purposes, shall be subject to payment of duty under the Act The Petitioner has been treated, for the purposes of running water works installation as a ''consumer'' within the meaning of this explanation. The contention of the Petitioner, on the other hand, is that the water works and other purposes, for which electricity is being consumed by the petitions, are not covered by the explanation and as such no duty is payable The payment of duty with regard to street lighting and energy consumed in the offices is no longer in dispute in this petition and the only point at issue now is whether the energy consumed by the Petitioner for the purposes of running the water works installed by the Municipal Board was liable to payment of duty under the Act.

4. The question rests entirely on the interpretation which has to be out on the words ''commercial purposes'' used in the explanation. Under the definitions given in the Act, a licensee cannot be a consumer. A licensee is something very different from a consumer, so that if we apply this definition to Unnao Municipal Board, it can, in no circumstances, be a consumer except, under the explanation, in certain matters. If there fore, the running of the water works by the Petitioner is for commercial purposes, any electricity consumed by the Petitioner-licensee for this purposes shall also be liable to payment of duty under the Act.

5. The argument of the opposite-parties is that the Municipal Board has no statutory duty to perform in running the water works and it is being done for

commercial purposes. The learned Counsel for the Petitioner has referred to Sections 7(1)(J) and 129(b) of the U.P. Municipalities Act, Section 7(1)(J) is as follows:

providing a sufficient supply of pure and whole-some water where the health of the inhabitants is endangered by the insufficiency or unwholesomeness of the existing supply, guarding from pollution water used for human consumption and preventing polluted water from being so used.

6. A perusal of the provisions of Section 7(i)(j) clearly shows that it is one of the duties of a Municipal Board to provide sufficient supply of pure and wholesome water at places where there is insufficiency of wholesome water and it is also the duty of a Municipal Board to guard from pollution, water used for human consumption. In para, 6 of the affidavit, the Petitioner has mentioned that the water formerly available to the inhabitants residing within the Municipal limits of Unnao for human consumption, was generally unwholesome and was not free from pollution and endangered the health of the inhabitants. This assertion made in the affidavit has not been controverted by the opposite-parties. It was, therefore, the duty of the Municipal Board to make provision for the supply of clean and wholesome water and, if in so doing the Municipal Board has constructed water works for the supply of water, it has performed only its statutory duty. The next question, which arises for determination, is whether this undertaking was for commercial purposes. The word ''commercial'' according to the Oxford Dictionary, means, ''viewed as a matter of profit and loss''. The word ''purposes'' means, ''object which is in view or for which is made;'' ''aim'' ''an end.'' The words ''commercial purposes'' would, therefore, cover an undertaking the object of which is to make a profit out of the undertaking. It is the aim and not the effect which has to be taken into consideration. The crux of the matter is whether it was the object or the aim of the Municipal Board to make a profit out of the water works undertaking. Section 129(b) of the U.P. Municipalities Act relating to water tax is as follows:

that the tax is imposed solely with the object of defraying the expenses connected with construction, maintenance, extension or improvement of municipal water works and that all money derived therefrom shall be expended solely on the aforesaid object

7. These restrictions contained in Section 129 indicate that a Municipal Board is not entitled to run a water works on a profit basis. The main object of realising taxes for the water supply is to defray the expenses of running the water works. Such an object can not, therefore, be said to be commercial and the Municipal Board cannot be said to be running the water works for commercial purposes. There is, therefore, No. force in the contention raised on behalf of the opposite parties that the water works installed by the Petitioner was for commercial purposes or could be deemed to be one for commercial purposes The electricity consumed in running the water works was not, therefore, covered by the exception incorporated in Explanation (1) to Section 3 of the Act.

8. No other point has been pressed in arguments.

9. As the opposite-parties are not entitled to demand and collect duty in respect of the energy consumed for working the water works installation under the Act, the Petitioner is entitled to the writ prayed for.

10. The petition is, therefore, allowed and (sic) opposite-parties are directed not to demand or collect duty under the U.P. Electricity(Duty) Act, 1952, from the Petitioner in respect of energy consumed by them for the purpose of running the water works The Petitioner shall get its costs from the opposite-party. Only one set of costs shall be taxed.

