2021 INSC 659

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 6107 of 2021
(Arising from SLP (C) No 22574 of 2015)

Jalkal Vibhag Nagar Nigam & Ors. **… Appellants**

Versus

Pradeshiya Industrial and Investment Corporation & Anr. **… Respondents**

And with

Civil Appeal No 6108 of 2021
(Arising from SLP(C) No 22577 of 2015)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

This judgment has been divided into the following sections to facilitate analysis:

A Factual Background

1 By its judgment dated 7 March 2014, a Division Bench at the Lucknow Bench of the High Court of Judicature at Allahabad allowed a petition under Article 226 of the Constitution of India instituted by the first respondent and directed the appellants to refund water and sewerage taxes levied and collected under the provisions of the Uttar Pradesh Water Supply and Sewerage Act 1975[1]. In coming to the conclusion that the levy was contrary to law, the High Court relied upon a decision of this Court in **Union of India** v. **State of U.P. and others**[2].

2 The first respondent commenced construction of a building at Vibhuti Khand, Gomti Nagar, Lucknow in 1986 under the auspices of the U.P. Rajkiya Nirman Nigam Limited. Construction of the building was completed in 1991 and its possession was handed over on 31 May 1991. The building was thereafter known as 'PICUP Bhawan'. On 5 January 1995 a demand was raised by the appellants by Bill No. 12/26 for an amount of Rs. 46,63,312.50/- towards water tax for the period from October 1986 to March 1995. By its letter dated 25 January 1995, the first respondent sought a clarification on the location of the sewer and water standpost and other water pipelines; distance from PICUP Bhawan and a copy of the relevant notification or order prescribing the 'radius' under Section 55(b)(i) of the UP Water Supply and Sewerage Act.

[1] "**UP Water Supply and Sewerage Act**"
[2] (2007) 11 SCC 324

3 The bill was rectified on 28 January 1995 by which a demand of water tax for the amount of Rs.16,45,875.00/- was raised in terms of the provisions of Section 52(1). The respondent by its communication of 31 January 1995, once again, sought certain clarifications. The appellant clarified the queries and reiterated its demand. The first respondent deposited an amount of Rs. 3,46,500.00/- under protest on 15 March 1995, and a further sum of Rs. 9,41,942.77/- on 29 April 1995. On 7 September 1995 a writ petition was instituted by the first respondent under Article 226 of the Constitution of India for challenging the levy of water tax and sewerage tax on the premise that the first respondent had, during the construction of the building, not obtained any water from the pipeline laid down by the appellants within the area nor had it made a request for a fresh water connection. A challenge was raised to the validity of Sections 52(a), 55(b)(i) and 56(b) of the UP Water Supply and Sewerage Act on the ground that they are *ultra vires* the provisions of Article 265 of the Constitution. The petition was contested by the appellants, who filed a counter affidavit. By its judgment dated 7 March 2014, the Division Bench of the High Court allowed the writ petition and directed the appellants to refund the water and sewerage taxes levied and collected. The review petition against this judgment was also dismissed by the High Court by order dated 9 August 2014. On 7 August 2015, while entertaining the special leave petition and issuing notice, this Court stayed the operation of the impugned judgments of the High Court.

B Issues

4 Principally, two issues arise in these proceedings: -

(i) Whether the demand of water tax and sewerage tax is sustainable with reference to the provisions of the UP Water Supply and Sewerage Act; and

(ii) Whether the State Legislature has the legislative competence to levy the tax under the provisions of Section 52(1)(a).

5 We must note at the outset that the High Court has allowed the prayer for refund purely on the basis of a judgment of a two-judge Bench of this Court in **Union of India** v. **State of U.P.** (supra). The judgment of the High Court has been drafted in a rather casual manner which is evident from the fact that:

(i) While extracting from a portion of the judgment of this Court noted above, the High Court has neither referred to the citation nor the name of the case;

(ii) After citing the extract from the judgment, the High Court recorded the submissions of the first respondent that the law laid down in the above case "is also extended to" the first respondent and then proceeded to allow the petition in the following terms:

> "Accordingly, we dispose of the writ petition with a direction to the Jal Sansthan, Lucknow to refund the amount, which has been paid to the petitioner, if there is no legal impediment or any outstanding against the petitioner.
>
> Accordingly, writ petition is disposed of."

6 There is absolutely no discussion on the merits. There is no discussion of the basis on which the High Court accepted the contention of the first respondent

that the judgment of this Court noted earlier was applicable to the facts of the present case. The proceedings have been pending before this Court for well over six years and a remand to the High Court will only result in another round of proceedings and possibly further appeals. That apart, the decision in **Union of India** v. **State of U.P.** (supra) is of a two-judge Bench of this Court and we shall explain the judgment which contains observations that were *per incuriam* and in any event contrary to the statute. In this backdrop, at this point of time we have desisted from following the course of remanding the proceedings since the appeal has been argued fully on merits on behalf of the appellants by Mr Pradeep Kant, Senior Counsel and Ms Madhavi Divan, Additional Solicitor General, who appeared on behalf of the first respondent - the original petitioner before the High Court. Submissions have been urged before this Court both on the construction of the statute as well as on the constitutional challenge and we shall, during the course of the present judgment, deal with both aspects.

C Rival Submissions

Statutory Construction

7 Mr Pradeep Kant, Senior Counsel appearing on behalf of the appellants, has made the following submissions in relation to the construction of the statute in question, the UP Water Supply and Sewerage Act:

(i) The UP Water Supply and Sewerage Act contains provisions which can be broadly classified in four heads:

(a) establishment of the Jal Sansthan and provisions for its functions and powers in Chapters-II and III;

(b) vesting of properties, assets, liabilities and obligations and transfer of employees in Chapter- IV;

(c) taxes, fees and charges in Chapter-VI;

(d) water supply and sewerage services in Chapters-VII-VIII; and

(e) penalties and procedure, external control and miscellaneous provisions in Chapters IX to XI.

(ii) The scheme of the legislation provides for the levy, imposition, collection and realization of water tax and sewerage tax under Section 52(1);

(iii) The decision of this Court in **Union of India** v. **State of U.P.** (supra) is not an authority for the interpretation of Section 52 since in that case a service charge was levied on the railways. The challenge to the levy was raised by the railways on the ground that the Jal Sansthan was levying a tax in violation of the provisions of Article 285 of the Constitution and it was this submission which was rejected, by holding that the levy was of a service charge in the nature of a fee and not a tax; and

(iv) In the present case, the imposition is of water tax and sewerage tax which falls within the ambit of Section 52(1)(a).

Constitutional Challenge

8 Ms Madhavi Divan, Additional Solicitor General appearing on behalf of the first respondent, has urged a constitutional challenge to the provisions of Section 52(1)(a), Section 55(d)(a) and Section 56(b) of the UP Water Supply and Sewerage Act. Ms Divan has prefaced her submissions at the outset by stating that there is no challenge to the validity of the sewerage charges, which the first

respondent is ready and willing to pay. The challenge to the levy of a water tax has been assailed on the following submissions:

(i) The levy of a water tax under Section 52(1)(a) is not a tax on 'lands and buildings' within the meaning of Entry 49 of List II to the Seventh Schedule to the Constitution;

(ii) Essentially the charge under Section 52(1)(a) is of a fee and not a tax, which will not be subsumed under Entry 49 of List II;

(iii) Though Section 52(1)(a) seeks to impose the levy "on premises situated within the area of the Jal Sansthan", this is only to identify the territorial limit and jurisdiction. If the long title to the legislation and its provisions are considered holistically, it would be evident that the tax is not one on 'lands and buildings' within Entry 49 of List II;

(iv) The nature of a levy has to be deduced from the primary object and essential character of the legislation;

(v) The following provisions of the legislation would make it clear that the imposition is, strictly speaking, not a tax on lands and buildings within the meaning of Entry 49 of List II:

  (a) Section 56 makes a distinction between whether or not the premises are connected with water supply;

  (b) A distinction has been made by the statute between an owner and occupier which would be alien to a tax on lands and buildings under Entry 49 of List II;

(c) Section 25(2)(vi) empowers the Jal Sansthan to introduce or amend the tariff for water supply and sewerage services and to collect all taxes and charges for these services as may be prescribed;

(d) Section 44 empowers the Jal Sansthan to fix and adjust its rates of taxes and charges to enable it to meet the cost of its operations, maintenance and debt service and where practicable to achieve an economic return on its fixed assets;

(e) The collection of water tax is credited to a separate fund and Section 101(2) stipulates that the moneys shall be applied exclusively for water supply or sewerage services or both, as the case may be.

(vi) On the above grounds it has been urged that if the statute is interpreted in a holistic context, it would emerge that:

(a) Though labelled as a water tax, the levy under Section 52(1)(a) is in the nature of a fee and not a tax; and

(b) In consequence, the levy cannot be sustained under Entry 49 List II.

(vii) Entry 17 of List II provides for “water and water supplies”.

(viii) In sum and substance, the levy under Section 52(1)(a) though described as a water tax, is a fee and not a tax and though the legislature has used the nomenclature of “water tax”, the levy in effect is an exaction on water or water supply.

9 Opposing the above submissions challenging the constitutional validity of the statute, Mr Pradeep Kant, Senior Counsel urged that:

(i) The two judge Bench of this Court in **Union of India** v. **State of U.P.** (supra) has erroneously interpreted the provisions of Section 52 to be in the nature of a fee and not a tax;

(ii) In that case the levy imposed by the Jal Sansthan on the railways was a service charge for the use of water and sewerage; the levy was not in the nature of a tax, as a consequence of which this Court came to the conclusion that the immunity in Article 285 on taxing property of the Union of India was not attracted;

(iii) As a consequence, the observations of the Court to the effect that the imposition under Section 52 is in the nature of a fee are *per incuriam,* since this Court held that the levy was in the nature of a service charge and the issue did not arise for determination;

(iv) The levy of a tax under Section 52(1)(a) is on premises situated within the area of the Jal Sansthan. The expression 'premises' is defined to mean land and building. Hence, though labelled as a water tax, the levy provides for the imposition of a tax on lands and buildings within the meaning of Entry 49 of List II;

(v) Entry 17 of List II *inter alia* deals with water and water supplies, while Entry 49 of List II deals with the taxes on lands and buildings. Properly construed, the levy is not a tax on water but a tax on lands and buildings. The measure of the tax is assessable value. The tax is imposed at a rate

being a percentage of the assessable value. The incidence of the tax is on the owner and occupier;

(vi) The taxing event or the levy must be distinguished from the measure, the rate and the incidence of the tax.

10 Mr Pradeep Kant has, during the course of his submissions, relied upon a judgment of a Division Bench of the Allahabad High Court in **Raza Buland Sugar Co. Ltd.** v. **Municipal Board, Rampur**[3] and on the judgment of the Andhra Pradesh High Court in **Nizam Sugar Factory Ltd.** v. **City Municipality, Bodhan**[4].

D Analysis

11 As we assess the rival submissions, it becomes necessary at the outset to analyse the provisions of the enactment.

D.1 Statutory Provisions

12 The UP Water Supply and Sewerage Act is described by its long title as "*an Act to provide for the establishment of a Corporation, authorities and organisations for the development and regulation of water supply and sewerage services and for matters connected therewith*". Chapter I contains preliminary provisions including definitions. Significant among the definitions for the purposes of this case is the expression "premises" which is defined in Section 2 (18) to mean "any land or building". Chapter II provides for the establishment, conduct of business, functions and powers of the UP Jal Nigam. Chapter III provides for the

[3] AIR 1962 All 83
[4] AIR 1965 AP 91

establishment, conduct of business, functions and powers of the Jal Sansthan. Section 18(1) provides thus:

> "18. Establishment of Jal Sansthans.- (1) If in the opinion of the State Government, local conditions so require and it is considered necessary or expedient for the improvement of water supply and sewerage services in any area, it may constitute a body to be known as Jal Sansthan for that area."

Section 24 specifies the functions of a Jal Sansthan:

> "24. Functions of a Jal Sansthan.- The functions of a Jal Sansthan shall be as follows:
>
> (i) to plan, promote and execute schemes of and operate an efficient system of water supply;
>
> (ii) where feasible, to plan, promote and execute schemes of, and operate, sewerage, sewage treatment and disposal and treatment of trade effluents;
>
> (iii) to manage all its affairs so as to provide the people of the area within its jurisdiction with wholesome water and where feasible, efficient sewerage service;
>
> (iv) to take such other measures, as may be necessary, to ensure water supply in times of any emergency;
>
> (v) such other functions as may be entrusted to it by the State Government by notification in the Gazette."

Section 25 enunciates the powers of a Jal Sansthan:

> "25. Powers of a Jal Sansthan.-
>
> (1) Every Jal Sansthan shall, subject to the provisions of this Act, have power to do anything which may be necessary or expedient for carrying out its functions under this Act.
>
> (2) Without prejudice to the generality of the foregoing provision such powers shall include the power-
>
> (i) to exercise all powers and perform all the functions relating to water supply, sewerage and sewage disposal of the area which lies within its jurisdiction;
>
> (ii) to acquire, possess and hold lands and other property and to carry any water or sewerage works through, across, over or under any highway, road, street or place and, after

> reasonable notice, in writing to the owner or occupier, into, through, over or under any building or land;
>
> (iii) to abstract water from any natural source and dispose of waste water;
>
> (iv) to enter into contract or agreement with any person or body as the Jal Sansthan may deem necessary;
>
> (v) to adopt its own budget annually;
>
> (vi) to introduce or amend tariff for water supply and sewerage services, subject to approval of the Nigam and collect all taxes and charges for these services as may be prescribed:
>
> Provided that no decision to introduce or amend such tariff shall be taken except by a special resolution in that behalf brought after giving such notice as may be prescribed, and passed by the majority of two-thirds of the members of the Jal Sansthan;
>
> (vii) to incur expenditure and manage its own funds;
>
> (viii) to obtain loans, advances, subventions and grants from the Nigam."

13 Chapter IV deals with vesting of properties, assets, liabilities and obligations and transfer of employees. Section 33 provides for the vesting of existing water supplies and sewerage services in the Jal Sansthan upon its constitution. Section 34 envisages that the Jal Sansthan will assume the obligations of the local authority in respect of the matters to which the UP Water Supply and Sewerage Act applies. Section 34 reads as under:

> "34. Jal Sansthan to assume obligations of local authority in respect of matters to which this Act applies-
>
> All debts and obligations incurred, all contracts entered into all matters and things engaged to be done by, with or for any local body before the said date in respect of any of the functions specified in Section 24 shall be deemed to have been incurred, entered into or engaged to be done, by. with or for the Jal Sansthan, and all suits or other legal proceedings instituted or which might but for vesting and transfer under sub-section (1) of Section 33, have been

> instituted or defended by or against the local body, may be continued or instituted or defended by or against the Jal Sansthan."

14 The finance and property of the Jal Sansthan are dealt with in Chapter V of the Act. Section 41 envisages that every Jal Sansthan shall have its own fund which shall be deemed to be a local fund to which shall be credited all monies received by or on behalf of the Jal Sansthan. Section 44 provides for the general principles governing the finance of the Jal Sansthan in the following terms:

> "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."

15 Chapter VI of the enactment is titled "taxes, fees and charges". The provisions of Chapter VI contained a separate delineation of taxes, charges and fees. Section 52 provides for the levy of taxes in the following terms:

> "52. Taxes leviable.- (I) For the purposes of this Act, a Jal Sansthan shall levy, on premises situated 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.
>
> (2) The taxes mentioned in sub-section (1) shall in a local area other than a city, be levied at such rate which in the case of water tax shall be not less than 6 per cent and not more than 14 per cent and in the case of sewerage tax shall be not less than 2 per cent and not more than 4 per cent of the assessed annual value of the premises as the Government may, from time to time after considering the recommendation of the Nigam, by notification in the Gazette, declare.
>
> (3) The taxes 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 per cent and not more than 12.5 per cent and in the case of sewerage tax shall not be less

than 2.5 per cent and not more than 5 per cent of the annual value of the premises determined under the Uttar Pradesh Municipal Corporations Act, 1959, as the State Government may, from time to time, after considering the recommendation of the Nigam, by notification in the Gazette, declare.

[Explanation.-For the purposes of this section-

(i) the expression "city~ shall have the meaning assigned to it in the .Uttar Pradesh Municipal Corporations Act, 1959; and

(ii) the expression "sewerage tax~shall have the same meaning as the "drainage tax~ has been assigned in the Uttar Pradesh Municipal Corporations Act, 1959.]."

Section 53 enunciates provisions for the assessment of the annual value in the following terms:

"53. Assessment of annual value.- (l) For the purposes of [sub-section (2) of] of Section 52, annual value means-
(a) in the case of railway stations, educational institutions (including their hostels and halls) factories (as defined in the Factories Act, 1948), and commercial establishments (as defined in the Uttar Pradesh Dookan Aur Vanijya Adhisthan Adhiniyam, 1956), five per cent of the market value of the premises;
(b) in the case of any other premises, 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 the annual value in the case of premises occupied by the owner himself shall be deemed to be twenty-five per cent less than the annual value otherwise determined under this section.
(2) The annual value of premises for the purposes of the levy of taxes under subsection (2) of Section 52 shall be assessed by such authority as the State Government may, by general or special order direct, and such authority may be either the Jal Sansthan itself or any other agency as may be specified in the order.

(3) Where the assessment is made by the Jal Sansthan or by any other agency the Jal Sansthan or such other agency shall follow the prescribed procedure.

> (4) Until an assessment of the annual value of premises in any local area is made by the Jal Sansthan or any other agency specified under sub-section (2) the annual value of all premises in that local area, as assessed by the local body concerned for the purposes of house tax shall be deemed to be the annual value of the premises for the purposes of this Act as well.
>
> (5) Where the annual value of premises in any local area is assessed by the Jal Sansthan or other agency specified under sub-section (2), it shall, subject to any variation therein on appeal under Section 54, be deemed to be the annual value of the premises for the purposes also of house tax levied by the local body concerned, anything contained in the law constituting such local body notwithstanding."

For the purpose of assessment of annual value of the premises, the Jal Sansthan (Assessment of Annual Value of Premises) Rules 1981 were formulated under Section 96(2)(c) of the Act. Section 54 contains provisions for an appeal against an order of assessment to the prescribed authority. Section 55 enacts restrictions on the levy of taxes. Section 55 reads as follows:

> "55. Restriction on levy of taxes.- The levy of taxes mentioned in Section 52 shall be subject to the following restrictions, namely-
>
> (a) they shall not be levied on any land exclusively used for agricultural purposes unless water is supplied by the Jal Sansthan for such purposes to that land;
>
> (b) the water tax shall not be levied 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.]
>
> (c) the sewerage tax shall not be levied on any premises-
>
> (i) of which no part is within a radius of one hundred metres from the nearest sewer of the Jal Sansthan, or

> (ii) the annual value of which does not exceed one hundred fifty rupees."

Pursuant to Section 55(b)(i), the Jal Sansthan (Radius regarding Levy of Water Tax) Rules 1993 were framed to define the 'radius' to which the authority of the Jal Sansthan extends to. Section 56 enunciates the liability for the payment of taxes in the following terms:

> "56. Liability for payment of taxes.- The taxes mentioned in Section 52 shall be recoverable-
>
> (a) in the case of premises connected with water supply or, as the case may be, with the sewer of A Jal Sansthan, from the occupier of the premises;
>
> (b) in the case of premises not so connected, from the owner of the premises."

16 As distinct from the levy of taxes, Section 59 enables the Jal Sansthan to fix the cost of water to be supplied by it according to the minimum cost to be charged in respect of each connection. In lieu of charging the cost of water according to volume, the Jal Sansthan is empowered to accept a fixed sum for a specified period on the expected consumption of water during the period. Section 59 provides as follows:

> "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."

Section 60 provides for the fixation of the cost of disposal of waste water by the Jal Sansthan. Section 61 provides for the provision of water meters and the recovery of charges for the rent of the meters according to the bye-laws. Section 62 is a provision enabling the Jal Sansthan to demand security from the consumer in connection with the supply of a meter or for the sewer connection as provided in the bye-laws. Section 63 deals with the levy of fees in the following terms:

> "63. Fees.- A Jal Sansthan may charge such fees, for connection, disconnection, reconnection of any water supply or sewer or testing or supervision or for any other service rendered or work executed or supervised as may be provided by bye-laws."

Section 64[5] contains provisions for the recovery of taxes, fees, cost of sewerage, cost of disposal of waste water, meter rent, penalty, damage or surcharge as arrears of land revenue. Chapter VII of the Act deals with water supply, of which Section 65 defines the supply of water for domestic purposes. Chapter VIII contains provisions for sewerage.

17 An overview of the provisions of the UP Water Supply and Sewerage Act would indicate that separate and distinct provisions are contained in Chapter VI for (i) taxes; (ii) fees; and (iii) charges. The levy of taxes is provided for in Section 52, the determination of the cost of water to be charged for water connections in Section 59 and the charge of fees in Section 63. Section 64 indicates that the dues of the Jal Sansthan could be in the form of a tax, fee, cost of water, cost of

[5] "64. Recovery of taxes and other sums due.- (1) Any sum due to A Jal Sansthan on account of tax, fee, cost of water, cost of disposal of waste water, the meter-rent, penalty, damage or surcharge under this Act, shall be recoverable as arrears of land revenue.

(2) Nothing in sub-section (1) shall affect the power of [the Jal] Sansthan to cut off in accordance with its bye-laws, the connection of water supply in the event of nonpayment by the consumer of any dues referred to in that sub-section."

disposal of waste water, meter rent, penalty, damage or surcharge. The following sections deal with these dues :

(i) Water tax and sewerage tax (Section 52);

(ii) Fees (Section 63);

(iii) Cost of water (Section 59);

(iv) Cost of disposal of waste water (Section 60);

(v) Meter rent (Section 61);

(vi) General penalty (Section 84); and

(vii) Surcharge or damage (Section 51)

The legislature has distinguished between the expressions “tax”, “fee”, “cost of water”, “meter rent”, “penalty”, “damage or surcharge” by providing separate provisions under the Act. In the present case, the controversy is over the liability for the payment of tax.

18 There are two submissions which require our consideration. *First* is the challenge raised to the constitutionality of the levy under Section 52 of the UP Water Supply and Sewerage Act. Ms Divan has submitted that the levy does not constitute a tax on ‘lands and buildings’ and is thus, outside the domain of the State legislature under Article 246 of the Constitution read with Entry 49 of List II. *Second,* that the levy under Section 52(1)(a), though labelled as a water tax, is in the nature of a fee. We shall consider each of these submissions in turn.

D.2 Nature of levy under Section 52 of the UP Water Supply and Sewerage Act

19 A legislative enactment which provides for the imposition of a tax may make provisions for

(i) The levy of the tax on the basis of a taxable event;

(ii) The measure of the tax;

(iii) The rate at which the tax will be imposed;

(iv) The incidence of the tax; and

(v) Assessment, collection, recovery and other incidental provisions.

20 This characterization of the components of a tax has been described repeatedly in the decisions of this Court. The locus classicus on this point was a two judge Bench decision in **Govind Saran Ganga Saran** v. **CST**[6]. Justice RS Pathak (as the learned Chief Justice then was) held:

> "6. **The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability.** If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."
>
> (**emphasis supplied**)

[6] 1985 Supp SCC 205

21 In **Commissioner of Income Tax (Central)- I, New Delhi** v. **Vatika Township Private Limited**[7] a Constitution Bench of this Court while holding that the rate of tax is an important component of the tax regime, noted:

> "39.2. The rate at which tax, or for that matter surcharge is to be levied is an essential component of the tax regime. In *Govind Saran Ganga Saran* v. *CST* [1985 Supp SCC 205 : 1985 SCC (Tax) 447 : (1985) 155 ITR 144] , this Court, while explaining the conceptual meaning of a tax, delineated four components therein, as is clear from the following passage from the said judgment: (SCC pp. 209-10, para 6)
>
> *"6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."*
>
> It is clear from the above that the rate at which the tax is to be imposed is an essential component of tax and where the rate is not stipulated or it cannot be applied with precision, it would be difficult to tax a person. This very conceptualisation of tax was rephrased in *CIT* v. *B.C. Srinivasa Setty* [(1981) 2 SCC 460 : 1981 SCC (Tax) 119 : (1981) 128 ITR 294] , in the following manner: (SCC p. 465, para 10)
>
> *"10. … The character of computation of provisions in each case bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section."*"

[7] (2015) 1 SCC 1

22 In **Federation of Hotel and Restaurant Association of India** v. **Union of India**[8], a challenge was raised to the constitutional validity of the Expenditure Tax Act 1987 which imposed an 'expenditure tax' on persons incurring "chargeable expenditure" in a class of hotels. In that case, the petitioners argued that the Act in essence levied a tax on luxuries, which falls within Entry 62 of List II and lies outside the competence of Parliament. Rejecting this contention, the Constitution Bench, speaking through Justice MN Venkatachaliah (as the learned Chief Justice then was), observed:

> "43. **The subject of a tax is different from the measure of the levy. The measure of the tax is not determinative of its essential character or of the competence of the legislature. In *Sainik Motors* v. *State of Rajasthan* [AIR 1961 SC 1480 : (1962) 1 SCR 517] , the provisions of a State law levying a tax on passengers and goods under Entry 56 of List I were assailed on the ground that the State was, in the guise of taxing passengers and goods, in substance and reality taxing the income of the stage carriage operators or, at any rate, was taxing the "fares and freights", both outside of its powers. It was pointed out that the operators were required to pay the tax calculated at a rate related to the value of the fare and freight. Repelling the contention, Hidayatullah, J., speaking for the court said : (SCR p. 525)**
>
> ***"We do not agree that the Act, in its pith and substance, lays the tax upon income and not upon passengers and goods. Section 3, in terms, speaks of the charge of the tax 'in respect of all passengers carried and goods transported by motor vehicles', and though the measure of the tax is furnished by the amount of fare and freight charged, it does not cease to be a tax on passengers and goods."***
>
> Indeed, reference may be made to the following statement in *Encyclopaedia Britannica* (Vol. 14 p. 459) on "Luxury Tax":

[8] (1989) 3 SCC 634

> *"A different approach to luxury taxation, much less frequently found, seeks to single out the luxury component of spending on a given object rather than taxing specified goods and services as luxuries. One example of this is the Massachusetts 5 per cent tax on restaurant meal of $. 1 or more...."*
>
> (emphasis supplied)
>
> 44. The submissions of the learned Attorney General that the tax is essentially a tax on expenditure and not on luxuries or sale of goods falling within the State power, must, in our opinion, be accepted. As contended by the learned Attorney General, the distinct aspect, namely, "the expenditure" aspect of the transaction falling with the Union power must be distinguished and the legislative competence to impose a tax thereon sustained. Contention (*a*) is, in our opinion, unsubstantial and, accordingly, fails."
>
> (**emphasis supplied**)

23 In **State of West Bengal** v. **Kesoram Industries Ltd**[9] a Constitution Bench of this Court held that the measure employed for assessing a tax must not be confused with the nature of the tax. In doing so, Justice RC Lahoti (as the learned Chief Justice then was), adverted to a line of decisions in **Ralla Ram** v. **Province of East Punjab**[10], **Sainik Motors** v. **State of Rajasthan**[11], **D.G Gose & Co. (Agents) P. Ltd.** v. **State of Kerala**[12] and **Hingir Rampur Coal Co. Ltd.** v. **State of Orissa**[13]**,** and observed

> "33. […] **It has been long recognised that the measure employed for assessing a tax must not be confused with the nature of the tax. A tax has two elements : first, the person, thing or activity on which the tax is imposed, and second, the amount of tax. The amount may be measured in many ways; but a distinction between the subject-matter of a tax and the standard by which the amount of tax is measured must not be lost sight of. These are described respectively as the subject of a tax and the measure of a tax. It is true that the standard adopted as a measure of the levy**

[9] (2004) 10 SCC 201
[10] AIR 1949 FC 81
[11] AIR 1961 SC 1480
[12] (1980) 2 SCC 410
[13] AIR 1961 SC 459

> **may be indicative of the nature of the tax, but it does not necessarily determine it. The nature of the mechanism by which the tax is to be assessed is not decisive of the essential characteristic of the particular tax charged, though it may throw light on the general character of the tax**." (**emphasis supplied**)

24 A basic principle of tax jurisprudence is that the levy of a tax cannot be conflated with its measure. In the context of Section 52, the levy by the Jal Sansthan is "on premises situated within its area" meaning the area within which the Jal Sansthan exercises its jurisdiction and powers. The levy is on premises. The expression 'premises" is defined in Section 2(18) to mean "any land or building". Hence, read together with the definition of the expression "premises", the levy is squarely on lands and buildings situated within the area of the Jal Sansthan. While imposing the levy under clause (a) of Section 52(1) the legislature has provided that the levy will be on premises situated within the area of the Jal Sansthan, where the area is covered by the water supply services of the Jal Sansthan. This stipulation in clause (a) does not render the levy a fee instead of a tax. The purpose of the legislation in imposing a tax, which is prescribed as a water tax, is to enable the Jal Sansthan to finance the activities which it undertakes to plan, promote and execute schemes for and operate an efficient system of water supply. Besides the above function in Section 24(1), the Jal Sansthan has to manage its affairs to provide the people of the area within its jurisdiction with wholesale water. It is in this context that Section 25, which defines the powers of the Jal Sansthan, stipulates in sub-Section (1) that the Jal Sansthan shall have the power to do anything which may be expedient and necessary to carry out its functions under the UP Water Supply and Sewerage

Act. These powers are to *inter alia* include under clause (vi) of sub-Section (2) the collection of taxes and charges for these services as may be prescribed. These provisions indicate that the levy of tax is intended to secure adequate means of finance for the Jal Sansthan to undertake its activities. But the raising of revenue in terms of Section 52(1)(a) is in the nature of a tax. The *levy* is on premises situated within the area of the Jal Sansthan. The *measure* of the tax is the assessed annual value of the premises, annual value being assessed in the manner indicated in Section 53. The *rate* of tax in the case of a local area, other than a city, has to be not less than 6 per cent and not more than 14 per cent. In the case of the water tax in a city the rate is to be not less than 7.5 per cent and not more than 12.5 per cent. A similar provision has been incorporated in regard to the levy of a sewerage tax in Section 52(1)(b) and sub-Sections (2) and (3) provide for the measure and the rate of tax.

25 Section 55 contains restrictions on the levy of the tax set out in Section 52. Clause (a) specifies that a tax shall not be levied on land which is used exclusively for agricultural purposes unless water is supplied by the Jal Sansthan for such purpose to that land. Clause (b) of Section 55 contains two further restrictions on the levy of water tax by providing that it shall not be levied on premises: (i) not situated within the radius prescribed of the nearest stand post or other water works on which water is made available to the public by the Jal Sansthan; or (ii) whose annual value does not exceed Rs. 360 and to which no water is supplied by the Jal Sansthan. The restrictions which are imposed by Section 55 do not render the tax a fee, nor are they indicative of the tax being charged for the actual use of water. While imposing the levy in Section 52(1)(a),

the legislature has considered it appropriate to restrict the levy within the parameters which are specified in Section 55. That does not alter the fundamental nature of the levy, which is constituted as one on premises (defined to mean land and building) situated within the area of Jal Sansthan.

26 Section 56, which is a provision in relation to the *incidence* of the tax, provides that the tax mentioned in Section 52 would be recoverable:

(i) from the occupiers of the premises, in the case of premises connected with water supply or as the case may be with the sewer of a Jal Sansthan; and

(ii) from the owner of the premises, in the case of premises not connected with water supply or the sewer of the Jal Sansthan.

Section 56 is a clear indicator of the tax being in the nature of a compulsory exaction arising out of the fact that the premises comprise of land and building situated within the area of the Jal Sansthan, so long as the restrictions which are contained in Section 55 are not attracted. Section 52 and Section 56 also indicate that the intention of the legislature is to collect water tax and sewerage tax from the occupier of the premises, where the premises are connected with water supply or, as the case may be, with a sewer of the Jal Sansthan and, in case where the premises are not so connected, from the owner of the premises. Therefore, the payment of water tax and sewerage tax is regardless of whether the premises are connected with water supply or with a sewer of the Jal Sansthan. There is no exemption from the payment of water tax or sewerage tax as both the contingencies- the premises being connected with water supply (or, as the case may be, with a sewer of the Jal Sansthan) or there being no such connection- have been covered under the provisions of Section 56. So long as a

provision for water supply or a sewerage is made by the Jal Sansthan in the area covered, the occupier or the owner of the premises is liable to pay the taxes. Both the water tax as well as the sewerage tax could be consolidated for the purpose of levying, assessing and collecting them under Section 57 of the Act.

27 Chapter VI makes a clear distinction between a tax, a charge and a fee. We have already noticed the provisions of Chapter VI governing the levy and imposition of taxes. Section 59 provides for the fixation of the cost of water to be supplied by the Jal Sansthan according to its volume as well as the minimum cost to be charged in respect of each connection. The Jal Sansthan may, in lieu of charging for the cost of water according to volume, charge a fixed sum on the basis of expected consumption. A similar provision for the recovery of sewerage charges is contained in Section 60. A distinct provision is contained in Section 63 for the recovery of fees. Fees under Section 63 can be recovered for the connection, disconnection or reconnection of water supply or sewer, for testing or supervision or for any other purpose or work executed or supervised as provided in the bye-laws. The provisions of Section 63 indicate that the recovery of a fee is, broadly speaking in relation to a service which is provided.

28 The nomenclature that the legislature has ascribed to the tax does not determine either the nature of the levy or its true and essential character. The legislature may choose a label for a tax. The label however will not determine or for that matter clarify the nature of the levy. The nature of the levy has to be deduced from the nature of the tax, the provision which specifies the taxing event and, as in the case of Section 52, the unit upon which the levy is to be imposed. The legislature may choose a label for the tax based on the nature of the levy. On

the other hand, the legislature may choose a label having a relationship with the function of the authority which imposes the tax as in the present case. The tax has been labelled as the water tax or a sewerage tax simply because it is imposed by the Jal Sansthan constituted under the UP Water Supply and Sewerage Act. That does not alter the nature of the levy which in substance is a tax on lands and buildings within the meaning of Entry 49 of List II of the Seventh Schedule.

D.3 Entry 49 List II: Taxes on Lands and Buildings

29 The ambit of the expression "taxes on lands and buildings" in Entry 49 of List II has come up for consideration before the Federal Court and this Court. In **Ralla Ram** (supra) the Federal Court interpreted Item 42 of List II (the Provincial Legislative List) under Section 100 of the Government of India Act 1935. Item 42 of List II dealt with "taxes on lands and buildings, hearths and windows". In this case, a tax was imposed on the basis of annual value of buildings and lands by a Provincial legislature and the question before the Court was whether it was in substance, an income tax. The Federal Court emphasized that annual value is not necessarily actual income but only a standard by which income may be measured. The Court observed:

> "**Now once it is realised that the annual value is not necessarily actual income, but is only a standard by which income may be measured, much of the difficulty which appears on the surface is removed. In our opinion, the crucial question to be answered is whether merely because the Income-tax Act has adopted the annual value as the standard for determining the income, it must necessarily follow that, if the same standard is employed as a measure for any other tax, that tax becomes a tax on income?** If the answer to this question is to be given in the

> affirmative, then certain taxes which cannot possibly be described as income-tax must be held to be so. A case in poi-n]t is to be found in *In re a Reference under the Government of Ireland Act, 1920*: *In re s. 3 of the Finance Act (Northern Ireland), 1934* [[1986] A.C. 852.] .
>
> […]
>
> **This case demolishes the broad contention that wherever the annual value is the basis of a tax, that tax becomes a tax on income. It shows that there are other factors to be taken into consideration and that it is the essential nature of the tax charged and not the nature of the machinery which is to be looked at**."
>
> (**emphasis supplied**)

30 In a subsequent decision of the Full Bench of the Madras High Court in **V Pattabhiraman** v. **The Assistant Commissioner of Urban Land Tax, North Madras (North West) Ayanavaram**[14], the validity of the Madras Urban Land Tax Act 1966, which imposed a tax on the basis of the market value of land, was challenged on the ground that it was in substance an income tax. Following the decision in **Ralla Ram** (supra), the High Court held the law to be within the purview of Entry 49 of List II.

31 In **Ajoy Kumar Mukherjee** v. **Local Board of Barpeta**[15], a Constitution Bench of this Court upheld the validity of an annual tax levied by local boards upon lands used for holding markets created under the Assam Local Self-Government Act 1953. Justice KN Wanchoo, speaking for the Constitution Bench, observed that:

> "4. … It is well-settled that the entries in the three legislative lists have to be interpreted in their widest amplitude and therefore if a tax can reasonably be held to be a tax on land it will come within Entry 49. Further it is equally well-settled that tax on land may be based on the annual value of the land and

[14] AIR 1971 Mad 61 (FB)
[15] AIR 1965 SC 1561

would still be a tax on land and would not be beyond the competence of the State legislature on the ground that it is a tax on income: (see *Ralla Ram* v. *Province of East Punjab* [(1948) FCR 207] . **It follows therefore that the use to which the land is put can be taken into account in imposing a tax on it within the meaning of Entry 49 of List II, for the annual value of land which can certainly be taken into account in imposing a tax for the purpose of this entry would necessarily depend upon the use to which the land is put.** It is in the light of this settled proposition that we have to examine the scheme of Section 62 of the Act, which imposes the tax under challenge.
[…]

6. […] This will again show that the tax provided by Section 52(2) is a tax for the use of the land and it is not a tax on the market as such, for the income from the market in the shape of tolls, rents and other dues is not liable to tax under Section 52 and is different from tax. **The scheme of Section 62 therefore shows that whenever any land is used for the purpose of holding a market, the owner, occupier or farmer of that land has to pay a certain tax for its use as such. But there is no tax on any transaction that may take place within the market. Further the amount of tax depends upon the area of the land on which market is held and the importance of the market subject to a maximum fixed by the State Government. We have therefore no hesitation in coming to the conclusion on a consideration of the scheme of Section 52 of the Act that the tax provided therein is a tax on land, though its incidence depends upon the use of the land as a market. Further as we have already indicated Section 62(2) which uses the words "impose an annual tax thereon" clearly shows that the word "thereon" refers to any land for which a licence is issued for use as a market and not to the word "market". Thus the tax in the present case being on land would clearly be within the competence of the State legislature. The contention of the appellant that the State legislature was not competent to impose this tax because there is no provision in List II of the Seventh Schedule for imposing a tax on markets as such must therefore fail**."

(**emphasis supplied**)

Thus, the Court reaffirmed the principle that the use to which the land has been put can be taken into account in imposing a tax which is within the meaning of Entry 49 of List II.

32 In **Assistant Commissioner of Urban Land Tax** v. **Buckingham and Carnatic Co. Ltd. Etc.**[16] a Constitution Bench held that for the purpose of levying a tax under Entry 49 of List II, the State legislature may adopt the annual or capital value of the lands and buildings for determining the incidence of the tax. Justice V Ramaswami (I) observed:

> "4. The first question to be considered in these appeals is whether the Madras Legislature was competent to enact the legislation under Entry 49 of List II of Schedule VII of the Constitution which reads: "Taxes on lands and buildings". It was argued on behalf of the petitioners that the impugned Act fell under Schedule VII, List I, Entry 86, that is "Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies."
>
> […]
>
> In our opinion there is no conflict between Entry 86 of List I and Entry 49 of List II. The basis of taxation under the two entries is quite distinct. As regards Entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of individuals and companies on the valuation date. […]
>
> **But Entry 49 of List II, contemplates a levy of tax on lands and buildings on both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the**

[16] (1969) 2 SCC 55

> **lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping**. The two taxes are entirely different in their basic concept and fall on different subject-matters."
>
> (**emphasis supplied**)

33 Another case in which the interpretation of Entry 49 of List II came up for consideration before a Constitution Bench of this Court is **Union of India** v. **HS Dhillon**[17]. In that case, the appeal arose from a judgment of the Punjab and Haryana High Court holding that Section 24 of the Finance Act 1969 insofar as it amended the relevant provisions of the Wealth Tax Act 1957 was beyond the legislative competence of Parliament. The High Court held that the Wealth Tax Act as amended was *ultra vires* the Constitution insofar as it included the capital value of agricultural land for the purposes of computing net wealth. The majority (4:1) of the High Court had also held that the law was not one with respect to Entry 49 of List II. Chief Justice SM Sikri in the course of the judgment of the Constitution Bench of this Court enunciated the essential elements of a tax under Entry 49 of List II by observing that

> "74. The requisites of a tax under Entry 49, List II, may be summarised thus:
>
> (1) It must be a tax on units, that is lands and buildings separately as units.
>
> (2) The tax cannot be a tax on totality, i.e., it is not a composite tax on the value of all lands and buildings.
>
> (3) The tax is not concerned with the division of interest in the building or land. In other words, it is not concerned whether one person owns or occupies it or two or more persons own or occupy it."

[17] AIR 1972 SC 1061

In other words, it was held that the tax under Entry 49 of List II "is not a personal tax but a tax on property". Consequently, the wealth tax imposed under the Wealth Tax Act was held to be distinct from a tax under Entry 49 of List II.

34 A Bench of three learned judges of this Court in **Goodricke Group Limited** v. **State of WB**[18] considered the validity of the levy of an education cess on rural employment by the West Bengal Taxation Laws (Second Amendment) Act 1989. The levy of the rural employment cess was annually imposed on a tea estate at the rate of 12 paise for each kilogram of green tea leaves produced in the State. The issue was whether the levy was a tax on lands and buildings within the meaning of Entry 49 of List II. After adverting to the above decisions, Justice BP Jeevan Reddy speaking for the three judge Bench came to the following conclusion:

> "20. It is thus clear from the aforesaid decisions that merely because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and buildings — indeed there can be no such standardisation. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been adopted hitherto. The legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same, i.e., within the four corners of the particular entry, no objection can be taken to the method adopted. In the cases before us, the cess is no doubt calculated on the basis of the yield — for every kilogram of tea leaves produced in a tea estate, a particular cess is levied. But that is a well-accepted mode of levy of tax on land. The tax is upon the land — upon the "tea estate" which is classified as a separate category, as a separate unit, for the purpose of levy and assessment of the said cess quantified on the basis of the quantum of produce of the tea estate. It cannot be characterised as a tax on production for that reason. As pointed out in *Moopil*

[18] 1995 Suppl. (1) SCC 707

> *Nair* [(1961) 3 SCR 77 : AIR 1961 SC 552] — "a tax on land is assessed on the actual or potential productivity of the land sought to be taxed". There cannot be uniform levy unrelated to the quality, character or income/yield of the land. Any such levy has been held to be arbitrary and discriminatory."

35 During the course of his submissions, Mr Pradeep Kant has also relied on the decision of the High Court of Allahabad in **Raza Buland Sugar Co. Ltd.** v. **Municipal Board, Rampur**[19] and the decision of the High Court of Andhra Pradesh in **Nizam Sugar Factory Ltd.** v. **City Municipality, Bodhan**[20]. In both these decisions, the question before the High Courts was whether a water tax imposed on the annual value of lands and buildings by the Municipality was within the competence of the State legislature. The High Courts, referring to the pith and substance doctrine, observed that though the tax was named as 'water tax', it was not levied on the production of water or on the quantity of water supplied and consumed, but instead was a tax on land and buildings falling under Entry 49 of List II.

36 In view of the above decisions, there can be no manner of doubt that the levy which is imposed under Section 52 is a tax on lands and buildings situated within the area of the Jal Sansthan for the purpose of imposing the tax. The tax is imposed on premises which fall within the territorial area of the Jal Sansthan. The expression 'premises' is defined to mean land and building. The tax is on lands and buildings. The nomenclature of the tax does not indicate its true character and substance. Nor does the fact that the law enables the Jal Sansthan to levy the tax render it a tax on water. The charging section indicates in unambiguous terms that it is a tax on lands and buildings. The legislature has introduced

[19] AIR 1962 All 83
[20] AIR 1965 AP 91

certain restrictions in Section 55 *inter alia* stipulating in clause (a) that for land which is exclusively used for agricultural purposes, the tax shall not be levied unless water is supplied by the Jal Sansthan for such purposes to the land and in clause (b) stipulating that

(i) the premises should be situated within the prescribed radius from the nearest stand-post or other waterworks at which the water is made available to the public; and

(ii) the annual value of which does not exceed Rs. 360 and to which no water has been supplied by the Jal Sansthan.

These restrictions do not detract from the nature of the levy nor would the liability which is imposed on the owner and occupier be anything other than a tax on lands and building within the meaning of Entry 49 of List II. The water tax and sewerage tax are taxes levied in order to augment the finances of the Jal Sansthan for the purpose of meeting the cost of its operation, maintenance and services, so as to achieve an economic return on its fixed assets. The collection is ultimately for providing water supply and sewerage in the area of the Jal Sansthan, even if it may not be provided to the particular premises. The tax is imposed on an occupier or owner of the building or land falling within the area of the Jal Sansthan irrespective of whether a connection of water supply or sewerage has been obtained to the land or building. In another words, the basis for the levy of the taxes is on the *location* of premises within the area of the Jal Sansthan as notified by the State Government. Since the respondent's premises are located within the area of the appellant's authority, the respondent is liable to

pay the water tax as well as the sewerage tax as the owner and occupier of the premises.

37 Ms Divan has also submitted that the levy under Section 52 is in consonance with Entry 17 of List II, instead of Entry 49 of List II. Entry 17 of List II provides for "water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I". Extending this argument, Ms Divan submitted that it is a fee for the supply of water, and no fee can be levied when water is not supplied.

38 We do not find any merit in this submission. Long years ago in 1958, this Court in **M.P.V. Sundararamier & Co.** v. **State of AP**[21] held that the Constitution makes a differentiation between the subject matter of the legislation, and the tax in relation to the said subject matter in the Union, State and Concurrent List in the Seventh Schedule. Justice TL Venkatarama Aiyar, speaking for the majority (4:1), observed that :

> "51. In List I, Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of these two groups of Entries shows that while the main subject of legislation figures in the first group, a tax in relation thereto is separately mentioned in the second. Thus, Entry 22 in List I is "Railways", and Entry 89 is "Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights". If Entry 22 is to be construed as involving taxes to be imposed, then Entry 89 would be superfluous. Entry 41 mentions "Trade and commerce with foreign countries; import and export across customs frontiers". If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is "Duties of customs including export duties" would be wholly redundant. Entries 43 and 44 relate to incorporation, regulation and

[21] 1958 SCR 1422

> winding up of corporations. Entry 85 provides separately for corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18, for example, is "Land" and Entry 45 is "Land revenue". Entry 23 is "Regulation of mines" and Entry 50 is "Taxes on mineral rights". **The above analysis — and it is not exhaustive of the Entries in the Lists — leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence.** And this distinction is also manifest in the language of Article 248, clauses (1) and (2) and of Entry 97 in List I of the Constitution. Construing Entry 42 in the light of the above scheme, it is difficult to resist the conclusion that the power of Parliament to legislate on inter-State trade and commerce under Entry 42 does not include a power to impose a tax on sales in the course of such trade and commerce.
>
> […]
>
> 55. To sum up: (*1*) Entry 54 is successor to Entry 48 in the Government of India Act, and it would be legitimate to construe it as including tax on inter State sales, unless there is anything repugnant to it in the Constitution, and there is none such. (***2*) Under the scheme of the entries in the Lists, taxation is regarded as a distinct matter and is separately set out.** (*3*) Article 286(2) proceeds on the basis that it is the States that have the power to enact laws imposing tax on inter-State sales. It is a fair inference to draw from these considerations that under Entry 54 in List II the States are competent to enact laws imposing tax on inter-State sales." (**emphasis supplied**)

39 The interpretation of the scheme of the entries laid down in **Sundararamier** (supra) has been followed by this Court in **Goodricke** (supra), **Corporation of Calcutta** v. **Liberty Cinema**[22]; **Jindal Stainless Ltd.** v. **State of Haryana**[23] and other decisions.

[22] AIR 1965 SC 1107
[23] AIR 2016 SC 5617

40 As explained above, the levy under Section 52 falls squarely under the ambit of Entry 49 of List II as it is in the nature of a tax and not a fee. Thus, the applicability of Entry 17, which is a non-taxing entry, does not arise in this case.

D.4 Tax and fee

41 Ms Divan's submission that the tax which is imposed in Section 52(1)(a) is truly speaking a fee is premised on the argument that a true tax on lands and buildings under Entry 49 of List II

(i) should be agnostic as between owners and occupiers;

(ii) should make no differentiation between those who do and do not consume water; and

(iii) should contain no provision for a separate fund into which the revenue of the Jal Sansthan is earmarked.

42 The distinction between a tax and fee has substantially been effaced in the development of our constitutional jurisprudence. At one time, it was possible for courts to assume that there is a distinction between a tax and a fee: a tax being in the nature of a compulsory exaction while a fee is for a service rendered. This differentiation, based on the element of a quid pro quo in the case of a fee and its absence in the case of a tax, has gradually, yet steadily, been obliterated to the point where it lacks any practical or constitutional significance. For one thing, the payment of a charge or a fee may not be truly voluntary and the charge may be imposed simply on a class to whom the service is made available. For another, the service may not be provided directly to a person as distinguished from a general service which is provided to the members of a group or class of which that person is a part. Moreover, as the law has progressed, it has come to be

recognized that there need not be any exact correlation between the expenditure which is incurred in providing a service and the amount which is realized by the State. The distinction that while a tax is a compulsory exaction, a fee constitutes a voluntary payment for services rendered does not hold good. As in the case of a tax, so also in the case of a fee, the exaction may not be truly of a voluntary nature. Similarly, the element of a service may not be totally absent in a given case in the context of a provision which imposes a tax.

43 The gradual obliteration of the distinction between a tax and a fee on a conceptual level has been the subject matter of several decisions of this Court.

44 In **Southern Pharmaceuticals and Chemicals, Trichur** v. **State of Kerala**[24] Justice AP Sen speaking for the Court held:

> "24. The distinction between a "tax" and a "fee" is well settled. The question came up for consideration for the first time in this Court in the *Commissioner, H.R.E., Madras* v. *Lakshmindra Thirtha Swamiar of Shirur Mutt* [AIR 1954 SC 282 : 1954 SCR 1005 : 1954 SCJ 335].
> […]
>
> 25. "Fees" are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted on service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. **It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is**

[24] (1981) 4 SCC 391

not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax. We may, in this connection, refer with profit to the observations of Seervai in his *Constitutional Law, to* the effect: [HM Seervai Constitutional Law of India, 2nd Edn, Vol. 2, p 1252, para 2239]

"It is submitted that as recognised by Mukherjea, J. himself, the fact that the collections are not merged in the consolidated fund, is not conclusive, though that fact may enable a court to say that very important feature of a fee was present. But the attention of the Supreme Court does not appear to have been called to Article 266 which requires that all revenues of the Union of India and the States must go into their respective consolidated funds and all other public moneys must go into the respective public accounts of the Union and the States. It is submitted that if the services rendered are not by a separate body like the Charity Commissioner, but by a government department, the character of the imposition would not change because under Article 266 the moneys collected for the services must be credited to the consolidated fund. It may be mentioned that the element of quid pro quo is not necessarily absent in every tax."

Our attention has been drawn to the observations in *Kewal Krishan Puri* v. *State of Punjab* [(1980) 1 SCC 416, 425 : (1979) 3 SCR 1217, 1230] : (SCC p. 425, para 8)

"The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee."

To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs 2 per every hundred rupees to Rs 3. There was no material

> **placed to justify the increase in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation**."
>
> (**emphasis supplied**)

45 In **Municipal Corporation of Delhi** v. **Mohd. Yasin**[25], Justice O Chinnappa Reddy, while speaking for two judge Bench of this Court, referred to the decision in **Southern Pharmaceuticals** (supra) and observed:

> "9. What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefitted does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad co-relationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

[25] (1983) 3 SCC 229

46 In **Sreenivasa General Traders and Others** v. **State of Andhra Pradesh**[26], a three judge Bench of this Court held:

> "32. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. 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 service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the *Shirur Mutt case* [(1980) 1 SCC 416 : AIR 1980 SC 1008 : (1979) 3 SCR 1217] was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax: *Constitutional Law of India* by H.M. Seervai, Vol. 2, 2nd Edn., p. 1252, paras 22, 39."

(See also in this context, the decision in **Sirsilk Ltd.** v. **Textile Committee**[27]).

47 In view of this consistent line of authority, it emerges that the practical and even constitutional, distinction between a tax and fee has been weathered down. As in the case of a tax, a fee may also involve a compulsory exaction. A fee may involve an element of compulsion and its proceeds may form a part of the Consolidated Fund. Similarly, the element of a *quid pro quo* is not necessarily absent in the case of every tax. In the present case, the tax has been imposed by

[26] (1983) 4 SCC 353
[27] 1989 Supp. (1) SCC 168

the legislature in Section 52 on premises situated within the area of the Jal Sansthan. The proceeds of the tax are intended to constitute revenue available to the Jal Sansthan to carry out its mandatory obligations and functions under the statute of making water and sewerage facilities available in the area under its jurisdiction. The levy is imposed by virtue of the presence of the premises within the area of the jurisdiction of the Jal Sansthan. The water tax is levied so long as the Jal Sansthan has provided a stand post or waterworks within a stipulated radius of the premises through which water has been made available to the public by the Jal Sansthan. The levy of the tax does not depend upon the actual consumption of water by the owner or occupier upon whom the tax is levied. Unlike the charge under Section 59 which is towards the cost of water to be supplied by the Jal Sansthan according to its volume or, in lieu thereof on a fixed sum, the tax under Section 52 is a compulsory exaction. Where the premises are connected with water supply, the tax is levied on the occupier of the premises. On the other hand, where the premises are not so connected, it is the owner of the premises who bears the tax. The levy under Section 52 (1) is hence a tax and not a fee. Moreover, for the reasons that we have indicated above, it is a tax on lands and buildings within the meaning of Entry 49 of List II.

D.5 The 'Railways' judgment

48 The High Court in the present case has relied on the decision of a two judge Bench of this Court in **Union of India** v. **State of U.P.** (supra) in support of its decision to order a refund of the taxes collected by the appellants. In that case, the writ petition which was filed by the Union of India before the High Court challenged certain orders for the recovery of service charges on railway properties issued by the Jal Sansthan, Allahabad. The Jal Sansthan had directed the recovery of a sum of money towards sewerage charges for 3125 "seats" from the Divisional Railway Manager of the Northern Railway at Allahabad. The levy was sought to be challenged on the ground that the Railways were holding the property of the Central Government for which service charges were not payable under Article 285 of the Constitution as such charges were in the nature of a tax. The bulk of the water was supplied by the Jal Sansthan for maintenance of the railway platforms as well as railway colonies. The Jal Sansthan was catering to the need of maintaining the sewerage system not only at the railway stations but in the adjoining areas as well as the residential quarters, offices, gardens, and sheds maintained by the Union of India through the railways. The Division Bench of the High Court dismissed the writ petition challenging the levy. It must be noted that it was contended by the Union of India that the levy of service charge was in the nature of a tax and hence fell within the ambit of Article 285 of the Constitution. On the other hand, the Jal Sansthan contended that the water and sewerage charges did not constitute a tax but were a fee for services rendered by the Jal Sansthan to which Article 285 had no application. In that context, Justice AK Mathur speaking for a two judge Bench of this Court observed:

> "10. 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 are no two opinions 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 discharged by the railway over their platforms 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."

The above observations make it clear that what was being charged in that case were charges for the supply of water and maintenance of sewerage. This was held to be plain and simple a charge for service rendered by the Jal Sansthan. As a consequence, Article 285 of the Constitution had no application on the ground that what is prohibited by Article 285 is taxation on the property of the Union of

India, but it does not prohibit a charge of a fee on account of a service rendered by local bodies or an instrumentality of the State, such as the supply of water or the maintenance of sewerage. This Court ruled that the charge would be in the nature of a fee and not a tax. Having drawn the above conclusion, the Court in the concluding paragraph of the decision adverted to Section 52 and held thus:

> "23. 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."

In the above extract, the two judge Bench held that Section 52 "states that the Jal Sansthan can levy tax, fee and charge for water supply and for sewerage services" and though the charge was termed as a tax, in substance it is a fee for the supply of water. There is an evident error in the above observations. Section 52 is contained in Chapter VI which is titled "taxes, fees and charges". The

observations in paragraph 23 quoted above indicate that the title of Chapter VI was conflated with the nature of the provision which is contained in Section 52. Section 52 provides for the levy of taxes and not for fees or charges for which there are distinct provisions in Chapter VI. The observations of the Court that though the charges are loosely termed as tax, it is in substance a fee, is *per incuriam* and in any event not reflective of a correct reading of the provisions of the statute. As we have indicated above in Section D.1, the statute contains distinct provisions for the levy of taxes and for the imposition of charges and the recovery of fees. The levy under Section 52 is a tax *simplicitor* and cannot be regarded either as a charge or a fee for a service rendered. To that extent, the observations in paragraph 23 of the decision in **Union of India** v. **State of U.P.** (supra) would have to be and are accordingly overruled.

E Conclusion

49 For the above reasons, we are of the view that there is no merit in the challenge raised in the writ proceedings before the High Court of Judicature at Allahabad. We reject the constitutional challenge to the validity of Sections 52 (1)(a), Section 55(b)(1) and Section 56 of the UP Water Supply and Sewerage Act. The appeals shall accordingly stand allowed and the judgment of the High Court of Judicature at Allahabad at its Lucknow Bench dated 7 March 2014 shall stand set aside. The writ petition filed by the first respondent shall in consequence stand dismissed. The appellants shall be entitled to recover the balance of the dues remaining to be recovered in pursuance of the notice of

demand, together with interest at the rate of 9 per cent per annum. In the circumstances of the case, there shall be no order as to costs.

50 Pending application(s), if any, stand disposed of.

…..……..J.
[Dr Dhananjaya Y Chandrachud]

…..……..J.
[Vikram Nath]

…..……..J.
[BV Nagarathna]

New Delhi;
October 22, 2021.