

(2009) 11 AHC CK 0270

Allahabad High Court

Case No: None

Arvind Kumar

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Nov. 20, 2009

Citation: (2010) 2 AWC 1285

Hon'ble Judges: Virendra Singh, J; Sunil Ambwani, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Sunil Ambwani and Virendra Singh, JJ.

Heard Shri S.A. Gilani, learned Counsel for the petitioner. Learned standing counsel appears for the State respondents.

2. This writ petition is directed against an ex parte report dated 1.1.1994, the orders dated 31.1.1995, passed by the State Government for recovering the financial loss caused by Shri Arvind Kumar--the petitioner in this writ petition while he was working as Officiating Chairman of the Nagar Palika Parishad, Chandpur ; the letter dated 26.8.1996 of the District Magistrate, Bijnor and recovery certificate dated 3.10.1996 for recovering Rs. 18,574 from the petitioner as surcharge for the loss caused to the Nagar Palika Parishad of the house tax and water tax, on account of the orders passed by the petitioner Under Sections 173A and 291 of the U.P. Nagar Palika Adhiniyam.

3. Brief facts, giving rise to this writ petition, are that the petitioner was elected as the Member of the Municipal Board Chandpur, district Bijnor in 1988. He was elected as Vice Chairman in 1989, and officiated as Chairman in the years 1992-93, when the Chairman was removed. A Tax Committee of five members was constituted by the Board for making assessment of taxes w.e.f. 1.4.1991. The committee revised taxes, including the house tax and water tax after providing opportunity to the aggrieved persons. A notice dated 14.6.1990, was sent to one Shri Shahid inviting objections in respect of revision of taxes

on the five shops owned by him. Shri Shahid filed objections on 16.6.1990 stating that one of the five shops has been sold by him, and thus only four shops be assessed. The committee decided to assess the house tax and water tax only on four shops and decided to make separate assessment for one Smt. Madhu Gupta in respect of the shop purchased by her from Shri Shahid. The rate of assessment was the same. The assessment in respect of one shop of Smt. Madhu Gupta was drawn separately.

4. One of the members of the Parishad, Shri Mehtab Hussain, also a member of the Tax Committee, made a complaint against the petitioner. The copy of the complaint was not given to him. The Executive Officer, in his report, on the complaint, recorded that shop No. 299(5) purchased by Smt. Madhu wife of Shri Anil Kumar in the year 1992 was assessed to water tax of Rs. 80 at the annual value of Rs. 800. The house tax has not been determined. One of the shops, in which the muneem sits, has been taken on rent. Shri Anil Kumar is the brother of Shri Arvind Kumar. Shri Anil Kumar has constructed one sahan, two offices, a varandah, a toilet and a store room situate on the main road, of which the annual value should be assessed at Rs. 18,000 and accordingly the water tax at Rs. 1,800 at 10% and house tax at Rs. 900 at 5% was payable.

5. The State Government on this report, by its order dated 31.1.1995 directed the District Magistrate to recover the loss caused by the petitioner to Nagar Palika Parishad.

6. Shri S.A. Gilani, learned Counsel for the petitioner submits that the petitioner was not the authority to make assessment of house tax and water tax. A five-member committee was constituted for that purpose. The complainant Shri Mehtab Hussain was one of the member of the Committee. No notice of the complaint, and report was given to the petitioner, nor any opportunity was given to him to explain the allegations made against him. He submits that the entire proceedings are bad in law, being violative of principles of natural justice and that in any case, the petitioner as the officiating Chairman of Nagar Palika Parishad cannot be held liable for any loss caused to the Nagar Palika Parishad in respect of wrong or incorrect assessment of the taxes.

7. In the counter-affidavit of Mohd. Zissan, Assistant Tax Superintendent, Nagar Palika Parishad, Chandpur, district Bijnor, it is stated in paragraph 7 that the petitioner never asked for a copy of the complaint. The enquiry was conducted by Additional District Magistrate (Revenue), and the petitioner was fully aware of the enquiry. He had knowledge of the proceedings but did not file the writ petition within time, The petitioner was officiating as Chairman and had control over the Committee, of the institution. Paras 7, 9 and 13 of the counter-affidavit are quoted as follows :

7. That the content of paras 12 and 13 of the writ petition are not admitted and are denied. In reply thereof it is submitted that the copy of complaint has never been asked for from the petitioner. An inquiry was conducted by the Additional District Magistrate (Revenue) and the petitioner was fully aware about the inquiry. It is wrong to say that the inquiry was conducted ex parte.

9. That the contents of para 17 of the writ petition are not admitted and are denied. In reply thereof it is submitted that he had knowledge of the proceedings and had not filed the writ petition within the time. The reason given by him is not sufficient and this writ petition may be dismissed on this ground alone.

13. That the contents of para 24 of the writ petition are incorrect and in reply it is stated that the petitioner being the Chairman and has authority and control over all the Committee of the Institution, he is responsible for all the arbitrary action done by the Committee.

8. The averments in the counter-affidavit of Mohd. Zissan, Assistant Tax Superintendent, Nagar Palika Parishad, Chandpur, district Bijnor, clearly establish that the petitioner was not supplied with a copy of the complaint and was not associated with the enquiry. The enquiry report does not rely upon any material to show petitioner"s direct or indirect connection with the assessment of the tax in question. The entire proceedings were taken behind the back of the petitioner. The order of recovery, therefore, is clearly violative of principles of natural justice.

9. The writ petition is allowed. The orders dated 26.8.1996, passed by the State Government to recover the loss caused to Nagar Palika Parishad, Chandpur from the petitioner and the recovery certificate dated 3.10.1996 are consequently quashed.