

Before Vinod K. Sharma, J.

**THE SUKHJIT STARCH AND CHEMICALS LTD.
PHAGWARA,— *Petitioner***

versus

STATE OF PUNJAB AND OTHERS,— *Respondents*

CWP No. 19714 of 2006

3rd September, 2008

Constitution of India, 1950—Art.226—Punjab Municipal Act, 1911—Ss. 61, 62 and 62-A—Punjab General Clauses Act, 1898—S. 19—Notification dated 2nd May, 2003 issued by State of Punjab—Government increasing sewerage and water charges to more than 60 times of existing rates—No compliance of procedure as laid down under section 62 of 1911 Act—No time stipulated in notification calling upon M.C. to follow procedure as envisaged under section 62—Tax modified/enhanced straightway and ordered to be implemented with immediate effect—Notification being in violation of provisions of Section 62 and 62-A cannot be sustained—Petition allowed, notification as well as revised bills raised by M.C. for recovery of sewerage charges/water charges quashed.

Held, that though notification dated 2nd May, 2003 is said to be one issued under Section 62-A(2) of the Act but the same is worded as if the said notification has been issued under Section 62-A(3) of the Act. No time has been stipulated in the notification calling upon the Municipal Committee to follow the procedure as envisaged under Section 62 of the Act within the stipulated period. Rather the tax stands modified/enhanced straightway and the same has been ordered to be implemented with immediate effect. The notification, therefore, on the face of it is not in consonance with provisions of Section 61-A(2) of the Act. In absence of the refusal by the Municipal Committee to act in pursuance to the order there is no jurisdiction with the State Government to straightway issue notification under Section 62-A(2) of the Act. The notification, thus, being in violation of provisions of Sections 62 and 62-A of the Act cannot be sustained and consequently the bills raised

by the Municipal Council/Committee demanding enhanced sewerage charges/water charges, therefore, deserves to be quashed.

(Para 19)

S.C. Nagpal, Advocate *for the petitioner.*

N.S. Dandiwal, Vikas Mohan Gupta, Charan Jit Sharma, Harsh Aggarwal, Chander Mohan Sharma, M.K. Garg, Rajesh Kumar Girdhar, Amit Arora for Pritam Saini, Tribhawan Singla, D.D. Bansal, B.S. Sidhu, Amit Goel, R.P. Dhir, Karan Singh Malik, Kranti Dhir, K. S. Dadwal, Ddheeraj Jain, Vinod K. Kataria, Rajesh Gumber and Ashok Aneja for petitioners in connected cases.

R.L. Gupta, Addl. A.G., Punjab.

A.P. S. Mann, Advocate

J.S. Sethi, Advocate for Punjab Water Supply and Sewerage Board.

Harsimran Singh Sethi, Advocate.

Ms. Anju Sharma, Advocate for Pankaj Bhardwaj, Advocate.

Deepak Thapar, Advocate.

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(1) This order shall dispose of CWP No. 19714 of 2006 titled the Sukhjit Starch and Chemicals Ltd., Sukhjit Road, Phagwara *versus* State of Punjab and others, CWP No. 7006 of 2005 Harbinder Singh and others *Versus* State of Punjab & others, CWP No. 9656 of 2006 Kuldeep Kumar and others *Versus* State of Punjab & others, CWP No. 11287 of 2005 Ahok Joshi and others *Versus* State of Punjab & others, CWP No. 11308 of 2006 Gurbachan Singh and others *Versus* State of Punjab & another, CWP No. 12727 of 2005 Pyare Lal Joshi & others *Versus* State of Punjab & another, CWP No. 12860 of 2005 Tilak Raj and others *Versus* State of Punjab & others, CWP No. 12954 of 2005 Tarlok Chand Jain *Versus* State of Punjab & another, CWP No. 13689

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of 2005 Hem Raj Goyal and others Versus State of Punjab & others CWP No. 15763 of 2005 Pragati Sheel Naujawan Sabha Versus State of Punjab & another, CWP No. 16350 of 2005 Harkaran Singh and others Versus State of Punjab & another, CWP No. 17747 of 2006 Vinod Kumar and others Versus State of Punjab & others, CWP No. 17921 of 2005 Red Cross Sr. Citizens Day Care Versus State of Punjab & others, CWP No. 18228 of 2006 Shiv Raj and others Versus State of Punjab & another CWP No. 18853 of 2005 Surinder Kaur and others Versus State of Punjab & another, CWP No. 1901 of 2006 Ramesh Chander and others Versus State of Punjab & another CWP No. 19478 of 2005 Anil Pabbi and others Versus State of Punjab & another CWP No. 19983 of 2006 Wahid Sandhar Sugars Ltd. Versus State of Punjab & others, CWP No. 20089 of 2006 JCT Ltd. Versus State of Punjab & others, CWP No. 20194 of 2005 Ramgaria Sewa Society and another Versus State of Punjab & others, CWP No. 2674 of 2006 Hardip Singh and others Versus State of Punjab & another, CWP No. 2833-2007 Kuldip Rai others Versus State of Punjab & another, CWP No. 2843-2007 Rajesh Chopra and Anr. Versus State of Punjab & another, CWP No. 3051 of 2006 Om Parkash Aggarwal and others Versus State of Punjab & others, CWP No. 3412 of 2006 Mohan Lal Versus State of Punjab & others, CWP No. 4479 of 2006 Smt. Sarita Bhardwaj & Ors. Versus State of Punjab & others, CWP No. 4772-2007 Harvinder Singh and others Versus State of Punjab & others, CWP No. 5345 of 2006 Manjit Singh and others Versus State of Punjab & others, CWP No. 5670 of 2006 Gurmit Singh & Ors. Versus State of Punjab & another, CWP No. 5986 of 2006 Om Parkash & Others Versus State of Punjab & another, CWP No. 6064-2007 Gurpal Chand & others Versus State of Punjab & Others, CWP No. 6341-2007 Hargulal Dhawan and others Versus State of Punjab & others, CWP No. 6462 of 2006 Raghunath Dass Sharma & Ors. Versus State of Punjab & another, CWP No. 697 of 2006 Kuldip Chand & Ors. Versus State of Punjab & another, CWP No. 7651 of 2006 R.S.D. College Ferozepur City & Anr. Versus State of Punjab & others, CWP No. 8455 of 2006 Prem Parkash & Ors. Versus State of Punjab & another, CWP No. 9169 of 2005 Ghamdhur Singh & others Vs. State of Punjab and Another, CWP No. 10440 of 2005 Simsi Dhir & Ors. Versus State of Punjab & another and CWP No. 10823 of 2006 Dev Sharma and Ors. Versus State of Punjab & others,

Versus State of Punjab & another, as common questions of law and fact are involved in all these cases.

(2) For the sake of brevity, facts are being taken from CWP No. 19714 of 2006 titled the Sukhjit Starch & Chemicals Ltd. Versus State of Punjab & others.

(3) The petitioner Company registered under the Companies Act through its Joint Managing Director has challenged the constitutional validity of Notification No. 2/2/2003-3LGIV/6514 dated 2nd May, 2003 and letter dated 19th August, 2003 attached as Annexure P-5 & P-6 issued by respondent No. 1 in exercise of powers conferred under Section 62-A(2) of the Punjab Municipal Act, 1911 (hereinafter referred to as "Act") read with Section 19 of the Punjab General Clauses Act, 1898 increasing the sewerage and water charges to more than sixty times of the existing rates. The petitioners have also challenged the water and sewerage bills issued by respondent No. 3 i.e. the Municipal Council, Phagwara, The petitioner has also prayed that respondent No. 3 be directed to issue fresh bills for the period from 1st July, 2005 to 30th November, 2006 at the rates which were in force prior to issuance of impugned notification. It is also claimed that the outstanding amount be not charged with retrospective effect nor any surcharge or interest be claimed as the amount due has already been paid.

(4) The facts leading to the filing of the writ petition are that the Municipal Council Phagwara issued bills for the period commencing from 1st December, 2004 to 30th June, 2005, in the sum of Rs. 28,980. The said bill was paid by the petitioner. It is the case of petitioner that the petitioner is liable to pay sewerage charge @ 4,140 per month. The petitioner company is not taking any water supply from respondent No. 3 and is only discharging the water after treatment in the treatment plant.

(5) The bill dated 1st February, 2006 for a sum of Rs. 26,27,280 has been issued to the petitioner for the period commencing from 1st March, 2005 to 31st December, 2005 on account of hike in the sewerage charges. The copy of the bill has been attached as Annexure P-2 with the writ petition.

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(6) The petitioner filed representation on 13th February, 2006 pointing out that sewerage charges up to date i.e. 30th June, 2005 already stood paid and the bill, therefore, was wrongly sent on the basis of wrong calculation. It was claimed that the hike was unwarranted, illegal, baseless, arbitrary and without providing any further facilities or improving the existing facilities. It was claimed in the reply that the notification on the basis of which the bill dated 1st February, 2006 was sent stood stayed by the High Court.

(7) It is further the case of the petitioner that when it approached respondent No. 3, it was informed that the rates of water supply and sewerage charges have been increased in pursuance to the Notification No. 2/2/2003-3LGIV/6514, dated 2nd May, 2003 issued by the State of Punjab. The petitioner claimed that the exorbitant increase made by the respondent is arbitrary, unfair, unreasonable and same is based on irrelevant, irrational basis, thus, it is claimed that the notification deserves to be struck down.

(8) It is also the case of the petitioner that sewerage and water charges have been imposed without complying with the procedure as laid down under Section 62 of the Act.

(9) The writ petition has been opposed by the respondents by pleading that the Government of Punjab issued a notification for revision of user charges for water supply and sewerage.

(10) It is the case of the respondent State that a provision was made for levying charges at flat rate for unmetered water connections as well as for metered connections. While the sewerage charges were to be levied as per connection option was also given to the consumers who were having, less than 1 Kanal plot to go in for meter connection since it was made mandatory to have a meter for a plot of 1 Kanal and above.

(11) It is also the case of the respondents that fee was being charged on account of revision of water charges and sewerage tariff as per Punjab Municipal Act, 1911. Since Section 62-A of the Act provides for procedure for imposing taxes. It was claimed that the tax here is synonym of fee, cess or duty. It was claimed that the differentiation

has to be made between tax and fee. The reference has been made to certain judgments in this context. It was also the stand of the State that element of compulsion or coerciveness is present in all kinds of imposition even in respect of fee, but the real distinction between a tax and fee lies primarily in the fact that the tax is levied as a part of common burden while a fee is a payment for special benefit or privilege. In all kinds of imposition, public interest is the basis but in a fee it is some special benefit which the individual receives and in the present case, it is the services provided by the Municipal Council, which provides basic amenities to the persons having dwelling unit. It was further claimed that fee is sort of return for consideration for services rendered. The stand of the State is that levy of fee is to be correlated to the expenses incurred by the Government in rendering services. The stand of the respondent further is that though the Constitution prohibits the imposition of tax without authority but in respect of fee the petitioners who are deriving benefits from the services rendered by the Municipal Council/Committee are liable to pay the user charges for water and sewerage. Thus, it is claimed that the revision in the user charges by notification dated 2nd May, 2003 is justified on the ground that the respondents are only charging fee and not imposing any tax as submitted by the petitioner. This plea is totally misconceived as the case set up is that tax has been imposed under Section 62-A of the Act.

(12) In CWP No. 7006 of 2005, it is claimed that before the notification to impose the revised user tariff was issued wide publicity through Munadi, distribution of pamphlets and displaying the pamphlets on all prominent places in City of Moga giving an option to the public to have metered or unmetered supply was undertaken. It was claimed that after the complaints were dealt with and after complying with Section 62 of the Act, the notification was issued. The copy of the notification dated 27th February, 2004 is placed on record as Annexure R-1, wherein it has been mentioned that the notification dated 2nd May, 2003 is kept in abeyance with immediate effect till further orders.

(13) On merits, the allegations levelled in the petition have been simply denied.

(14) The facts are not relevant as notification issued by the State Government under Section 62-A is under challenge. In order to appreciate the controversy raised in the petition, it would be appropriate to reproduce Sections 61, 62 and 62-A of the Punjab Municipal Act, which read as under :—

“61. Taxes which may be imposed.—*Subject to any general or special orders which the State Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely:—*

(a) *A tax payable by the owner of building and lands not exceeding fifteen per cent of the annual value.*

[.....]

Provided that in the case of lands and buildings occupied by tenants in perpetuity, the tax shall be payable by such tenants ;

(b) *a tax on persons practicing any profession or art or carrying on any trade or calling in the municipality ;*

Explanation.—A person in the service of the Government or person holding an office under the State Government or the Central Government or a local or other public authority shall be deemed to be practising a profession within the meaning of this sub-clause.

(c) *a tax payable by the owner, on all or any vehicles other than motor vehicles animals used for riding, draught or burden, and dogs, when such vehicles, animals used as aforesaid, and dogs are kept within the, municipality ;*

(d) *a tax, payable by the employer, on menial domestic servants ;*

- (e) *a tax, payable by the occupier of any buildings in respect of which the committee has, in exercise of the powers conferred by Sections 159 to 165 of this Act, undertaken the house scavenging :*
- (ee) *in addition to the tax imposed under clause (a), scavenging tax, payable by the occupier, on buildings and lands of such percentage of the annual value thereof as the State Government may, by notification, declare to be reasonable for providing for the collection, removal and disposal by the committee of all filth and polluted and obnoxious matter from latrines, urinals, cess-pools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such filth or polluted and obnoxious matters :*
- (f) *a tax payable by persons presenting building applications to the committee :*

Provided that a committee shall not impose any tax without the previous sanction of the State Government when—

- (i) *it consists of members less than three-fourths of whom have been elected ; or*
- (ii) *its cash balances have, at any time within the three months preceding the date of the passing of the resolution imposing the tax, fallen below Rs. 20,000 or one-tenth of the income accrued in the previous financial year whichever amount shall be less.*
- (2) *Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which State Legislature has power to impose in the State under the constitution.*
- 2(A) *Notwithstanding anything contained in this Act, on an with effect from the commencement of the Punjab*

Municipal (Amendment) Act, 2002, no octroi shall be levied, except on electricity ;

Nothing in this section shall authorize the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution :

Provided that a committee which immediately before the commencement of Constitution was lawfully levying any such tax under this section as then in force may continue to levy that tax until provision to the contrary is made Parliament.

Explanation :—In this section “tax” includes any duty, cess or fee.

- 62. Procedure to impose taxes :—**(1) *A committee may, at a special meeting pass a resolution to propose the imposition of any tax under Section 61.*
- (2) *such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment to be adopted.*
- (3) *Any inhabitant objecting to the proposed tax, within thirty days from the publication of the said notice, submit his objection in writing to the committee ; and the committee shall at a special meeting take his objection into consideration.*
- (4) *if the committee decides to amend its proposals or any of them, it shall publish amended proposals along with a notice indicating that they are modification of those previously published for objection.*
- (5) *Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3).*

- (6) *When the committee has finally settled its proposals it shall, if the proposed tax falls under clauses (b) to (f) sub-section (1) of section 61 direct that the tax to be imposed, and shall forward a copy of its order to the effect through the Deputy Commissioner. to the State Government and if the proposed tax falls under any other provision it shall submit its proposals together with the objection if any made in connection therewith to the Deputy Commissioner.*
- (7) *If the proposed tax falls under clause (a) sub-section (1) of Section 61, the Deputy Commissioner, after considering the objections received under sections (3) and (5) may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the State Government a copy of the proposals and his order of sanction ; and if the tax falls under sub-section (2) of section 61, Deputy Commissioner shall submit the proposals and objections with his recommendations to the State Government.*
- (8) *The State Government on receiving proposals for taxation under sub-section (2) may sanction or refuse to sanction the same or return them to the committee for further consideration.*
- (9) [—]
- (10) (a) *When a copy of order under sub-sections (6) and (7) has been received, or*
- (b) *when a proposal has been sanctioned under sub-section (8) the State Government shall notify the*

imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than one month from the date of notification, on which the tax shall come into force.

- (11) *A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July, or on the first day of October in any year and if it comes into force on any other than the first day of the year by which it is leviable shall the leviable by the quarter till the first day of such year then next ensuing.*
- (12) *A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.*

62-A. Power of Government in taxation :—*(1) The State Government may, by special or general order notified in the official Gazette, require a Committee to impose any tax mentioned in section 61, not already imposed are such rate and within such period as may be specified in the notification and the Committee shall thereupon act accordingly.*

- (2) *The State Government may require a Committee to modify the rate of any tax already imposed and thereupon the Committee shall modify the tax as required within such period as the State Government may direct.*
- (3) *If the Committee fails to carry out any order passed under sub-section (1) or (2) the State Government may by a suitable order notified in the official Gazette impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the Committee as if the proposal was sanctioned in accordance with the procedure contained in section 62."*

(15) The impugned notification reads as under :—

“In partial modification of the Notification No. 2/56/94-3LGIII/8768, dated 29th July, 1994, the Governor of Punjab, in exercise of the powers conferred under Section 62A(2) of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911) read with Section 19 of the Punjab General Clauses Act, 1898 and all other powers enabling him in this behalf is pleased to rationalize the user charges/tax and direct all the Municipal Council and Nagar Panchayats in the State of Punjab to implement the revised water supply and sewerage tariff with immediate effect, as under :—

*(A) USER CHARGES FOR UN-METER CONNECTIONS
(DOMESTIC)*

| Plot Size | Rate per Connection per Month (in Rs.) Financial Year | | | | |
|---|--|---------|---------|---------|---------|
| | 2003-04 | 2004-05 | 2005-06 | 2006-07 | 2007-08 |
| Above 5 Marla | 50.00 | 55.00 | 60.00 | 70.00 | 100.00 |
| Above 5 Marla and up to 10 Marla | 75.00 | 80.00 | 90.00 | 100.00 | 105.00 |
| Above 10 Marla but less than 1 Kanal | 100.00 | 110.00 | 120.00 | 130.00 | 140.00 |

1 Kanal ONLY METERED CONNECTIONS
and above

**(B) USER CHARGES FOR METERED CONNECTIONS
(DOMESTIC)**

| Financial Year | Rate (Rs. per Kilo Litre) Per Month |
|----------------|--|
| 2003-04 | 2.00 |
| 2004-05 | 2.60 |
| 2005-06 | 3.20 |
| 2006-07 | 3.50 |
| 2007-08 | 3.80 |

Note :

- * Meter shall be arranged and installed by consumer at his own cost after proper testing and seal by the concerned local body. Cost of testing and seal with also be born by the consumer.
- * In case of defect in water meter, the first bill shall be issued on average basis of the last three bills and thereafter if meter is not got repaired by beneficiary at his own cost the rate shall be three times the average charges.
- * Even consumers less than 1 Kanal plot size have option to go on for metered connection.

| Plot Size | Rate per Connection per Month (in Rs.) Financial Year | | | | |
|---|--|---------|---------|---------|---------|
| | 2003-04 | 2004-05 | 2005-06 | 2006-07 | 2007-08 |
| Up to 5 Marla | 50.00 | 55.00 | 60.00 | 70.00 | 100.00 |
| Above 5 Marla and up to 10 Marla | 75.00 | 80.00 | 90.00 | 100.00 | 105.00 |

| | | | | | |
|---|--------|--------|--------|--------|--------|
| Above 10 Marla but less than 1 Kanal | 100.00 | 110.00 | 120.00 | 130.00 | 140.00 |
|---|--------|--------|--------|--------|--------|

1 Kanal and EQUAL TO WATER CHARGES
above

For own EQUAL TO WATER CHARGES OF METERED SUPPLY
sources of water supply

(D) COMMERCIAL AND INDUSTRIAL CONNECTIONS :

For institutional commercial and industrial connection, only rates as metered connections shall be charged and sanctioned as per note under (B) and rates will be double the above rates for water supply (Table A and B) and sewerage (Table C).

(E) FOR YELLOW CARD HOLDERS :

The rates shall be 50% of normal rates applicable up to 5 marla house.

(F) MINIMUM LEVEL OF GUARANTEE :

Local Bodies will ensure the quality of water and minimum duration of supply. Billing and collection be privatized in a phased manner. To ensure guarantee of standard of services computerization of bills, preparation of website, showing hours of supply, status of complaints is etc. be also introduced. Standby source of power should also be added in addition to existing source."

(16) Mr. S.C. Nagpal, learned counsel appearing on behalf of the petitioner has challenged the imposition of water and sewerage charges primarily on the ground that before imposing the said sewerage and water charges procedure as envisaged under the Act has not been followed. The contention of the learned counsel for the petitioner is

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that Section 61 of the Punjab Municipal Act gives power to the State Government to impose taxes as detailed thereunder, Section 61 (ee) reads as under :—

“(ee) in addition to the tax imposed under clause (a), scavenging tax, payable by the occupier, on buildings and lands of such percentage of the annual value thereof as the State Government may, by notification, declare to be reasonable for providing for the collection, removal and disposal by the committee of all filth and polluted and obnoxious matter from latrines, urinals, cess-pools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such filth or polluted and obnoxious matters ;”

(17) The contention of the learned counsel for the petitioner is that procedure for imposing the tax under Section 61 is given under Section 62 of the Act, which provides that before imposing a tax committee has to pass resolution proposing the imposition of tax. The resolution, thus, passed is required to be published which should give detail of class of persons and description of the property proposed to be taxed, amount of tax to be imposed and the system of assessment to be adopted. The inhabitant who wishes to oppose the proposed tax, is to be given an opportunity to file objections in writing which are required to be considered at a special meeting. In case any modification is proposed the same is again required to be published. Again an opportunity is required to be given to raise objections to the proposed amendment. It is thereafter that it was permissible for the committee to impose tax.

(18) Under Section 62-A of the Act power is also given to the State Government with regard to taxation. Section 62-A as reproduced above, stipulates that the State Government can by way of special or general order duly notified in the official gazette can ask the Municipal Committee to impose any tax mentioned in Section 61 of the Act, which is not already imposed and on issuance of such order the committee

is thereafter required to act accordingly i.e. to follow the procedure laid down under Section 62 of the Act. The power is also given to the State Government to require a committee to modify the rate of any tax already imposed and the committee shall thereafter modify the tax as required within such period as the State Government may direct. Section 62-A(2) of the Act, therefore, envisages that a period has to be specified within which the Committee is required to modify the rate of any tax already imposed. This again has to be done in accordance with Section 62 of the Act. However, the Committee is required to undertake the exercise within the period stipulated by the State Government. It is only on the failure of the Committee to act as per the directions of the Government that power is given to the State Government to issue suitable order duly notified in the official gazette and the notification so issued is to operate as if it were resolution duly passed by the Committee and as if the proposal were sanctioned in accordance with law i.e. procedure contained in Section 62 of the Act.

(19) In the present case, it may be noticed that though notification Annexure P-5 is said to be one issued under Section 62-A(2) of the Act but the same is worded as if the said notification has been issued under Section 62-A(3) of the Act. No time has been stipulated in the notification calling upon the Municipal Committee to follow the procedure as envisaged under Section 62 of the Act within the stipulated period. Rather the tax stands modified/enhanced straightway and the same has been ordered to be implemented with immediate effect. The notification, therefore, on the face of it is not in consonance with provisions of Section 61-A(2) of the Act. In absence of the refusal by the Municipal Committee to act in pursuance to the order there is no jurisdiction with the State Government to straightway issue notification under Section 62-A(2) of the Act. The notification Annexure P-5, thus, being in violation of provisions of Section 62 and 62-A of the Act cannot be sustained and consequently the bills raised by the Municipal Council/Committee demanding enhanced sewerage charges/water charges, therefore, deserves to be quashed. This view, being taken by this Court, finds support from the Division Bench Judgment of this Court

in the case of **M/s Naranjan Dass Doomra Rice and General Mills versus State of Punjab (1)**, wherein the Division Bench of this Court has been pleased to lay down as under :—

“6. *Having given our thoughtful consideration to the respective arguments of the learned counsel advanced at the bar, we are of the view that the arguments of the learned counsel for the petitioner must prevail. A combined reading of Section 62-A(1) and 62-A(3) of the Act leaves no manner of doubt that Section 62-A(1) of the Act empowers the State Government to issue notification' requiring a Municipal Committee to impose a tax. Section 62-A(1) of the Act does not authorize the State Government to impose any tax at all. Such power is vested in the State Government under Section 62-A(3) of the Act and that too only if the Committee fails to carry out the order of the State Government. The only interpretation, in our view, which can be placed upon the whole of section 62-A of the Act is that the State Government under sub-section (1) of Section 62-A of the Act can by a special or general order notify in the Official Gazette requiring a Municipal Committee to impose a tax so mentioned in Section 61 of the Act, which tax, of course, has already not been imposed at a rate and within a particular period to be specified in the notification. Upon the issuance of the notification, the Committee is enjoined to act accordingly. Sub-Section (2) of Section 62-A of the Act contemplates the vesting of the powers in the State Government to require a committee to modify the rate of tax which has already been imposed and the Municipal Committee again is under legal obligation to modify the tax as required with in such period as the State Government may direct. If the Municipal Committee fails to comply with the orders or directions issued by the State Government under sub-section (2) of section 62-A of the Act, the State Government has got all the powers to issue a suitable order notifying in the*

Official gazette the imposition or notification of the tax. If the State Government issues such an order as is contemplated under sub-section (3) of Section 61-A of the Act, the order so passed would operate as if it was a resolution duly passed by a Municipal Committee and as if the proposal was sanctioned in accordance with the procedure contained in Section 62 of the Act meaning thereby that the procedure contained in section 62 of the Act would also stand dispensed with. In other words, it is obligatory for the State Government within the meaning of Section 62-A(1) of the Act, in the first instance, requiring a Municipal Committee to impose a tax and that the State Government has got no powers under the provisions of sub-Section (1) to (3) of Section 62-A of the Act to issue a notification directly requiring a Municipal Committee to impose a tax. Even the notification Annexure P.2 does not make any reference that the same has been issued under the provisions of sub-section (1) of Section 62-A of the Act exercising independent powers. Compliance of sub-section 62-A(1) of the Act is mandatory. This Court is disinclined to agree with the argument of Mr. Mattewal, learned Advocate General, Punjab, that the State Government has got independent power to issue necessary orders under Section 62-A(1) of the Act directing a Municipal Committee to impose a tax. On the other hand, notification (Annexure P. 2 does not specify whether it has been issued under sub-Section (1) or sub-section (3) of section 62-A of the Act. Neither the language nor the spirit of the entire Section 62-A of the Act can throw even the slightest hint that the State Government has got independent powers, to directly impose a tax. If the argument of Mr. Mattewal is to be accepted, this Court would be reading something more in the statute which is not there meaning thereby that the Court would be doing violence to the language of the whole of the section.

8. *This lead us to deal with the only other argument of Mr. Mattewal learned Advocate General, that the defect in the issuance of notification stood cured under section 62(12) of the Act. Mr. Mattewal has placed firm reliance on a Division Bench judgment reported as **Krishan Chand versus Municipal Committee, Sangat, 1986 RRR 260 (P&H) : 1986(1) LRS (Pb.) 635**, in order to contend that once a notification was issued, it was conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. In order to appreciate whether **Krishan Chand and others case (supra)** is applicable to the facts of the instant case or not, it is necessary for us to deal with the factual background of the afore-referred case and the provisions of the law which were sought to be interpreted by the Bench. The facts of the case before and the provisions of the law which were sought to be interpreted by the bench were that the Municipal Committee after passing a resolution that house-tax be imposed with effect from 1st April, 1976 sent the same to the State Government for publication in the Government Gazette. The notification under Section 62(10) of Punjab Municipal Act, 1911, was issued on 9th April, 1976 without specifying the date of imposition of house-tax. The omission of the non-mentioning of the date was rectified at a later stage by issuance of corrigendum on 20th October, 1976 providing that the house-tax will come into effect from 1st July, 1976. It was contended before the Bench that the State Government was not only to notify regarding the imposition of tax but the date from which the tax would come into force. The argument was that the tax would come into effect from a date of not less than one month from the date of the notification which was mandatory and the imposition of house-tax on 20th October, 1976 with effect from 1st July, 1976 was contrary to law and, therefore, could not be enforced. The Division Bench after discussing the case-law held that the infirmities in the procedure for the imposition of the house-*

tax stood cured by the provisions of section 62(12) of the Act as also section 37 of the Act and that the tax imposed warrants no interference in writ proceedings. Reliance was placed by the Division Bench upon another case M/s. Jagir Singh, Mohinder Singh versus State of Punjab, 1983(2) RCR (Crl.) 1 (P&H) : AIR 1983 Punjab and Haryana 315, wherein a notification pertaining to the enhancement of licence fee was questioned on the ground of violation of the provisions of sub-section (10) of Section 62 of the Act as it did not specify a date of not less than one month from the date of the notification from which tax was to come into force. The Single Bench held in M/s. Jagir Singh Mohinder Singh's case (supra) that the notification was not invalid in view of the provisions of section 37 of the Act. In other words, in both the cases, i.e. one before the Division Bench Kishan Chand and others (supra) and Single Bench as well i.e. M/s Jagir Singh, Mohinder Singh (supra), the basic infirmities in the notifications were that the precise date of not less than one month was not specified in the notification from which the tax was to come into force. It was held in both the decided cases that such like infirmities stood cured in view of section 62(12) of the Act. In the present case, as has been seen above, the questions involved are altogether different and it could not be successfully maintained that infirmities regarding the dates etc. such -which can be said to be cured under Section 62(12) of the Act.

“If there had been any infirmity in the notification under section 62-A(1) of the Act, the position might have been different but herein the Municipal Committee was never given any opportunity to impose a tax within the meaning and ambit of Section 62-A(1) of the Act. Section 62 does not vest in the State Government any power of direct taxation. It deals with the procedure which a Committee has to follow before imposing the tax and after dealing

with the procedure it is laid down in sub-sections (10) of section 62 of the Act that when a copy of the order under sub-sections (6) and (7) of section 62 of the Act has been received and when a proposal has been sanctioned under sub-sections (8) of the Act, the State Government will notify the imposition of tax in accordance with such order or proposal and shall in the notification, specify a date not less than one month from the date of notification on which the tax shall come into force. Sub-section (12) of Section 62 of the Act envisages that a notification on the imposition of tax under the Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. While interpreting sub-sections (10) and (12) of section 62 of the Act it was held in the aforementioned judicial pronouncements that if there was any defect in the notification, the same stood cured on account of sub-section (12) of Section 62 of the Act. Section 62 of the Act does not deal with the power of taxation but only deals with the procedure whereas section 62-A of the Act deals with the power of the Government regarding imposition of tax and to exercise power conferred under section 62-A of the Act, the well defined procedure has to be followed which, in our view, is mandatory. In other words it can easily be held that whenever power of imposing tax within meaning of section 62-A is to be exercised by the State Government, the entire procedure laid down in Section 62-A(1) is not followed it cannot be held on the basis of analogy of Section 62(12) of the Act that defect in the notification stands cured. In view thereof, the judicial pronouncements quoted above by the learned Advocate General, Punjab, have got no application to the facts of the instant case."

(20) The Division Bench of this Court in the case **Shri Krishan Kumar Sanan and others versus The Punjab State and another (2)** has again taken the same view referred to above. The Hon'ble Division

Bench in the case of **Shri Krishan Kumar Sanan and others versus The Punjab State and another** (*Supra*) has been pleased to lay down as under :—

“In case of failure of a Municipal Committee to impose tax upon its residents under Section 61 of the Act, it is entirely in the discretion of the State Government, on the facts and circumstances of the case, to take action under sub-section (1) of Section 62-A if it deems necessary to do so. Its judgment of the situation necessitating the taking of that action is being and conclusive not only on a Municipal Committee but also upon those rendered liable to pay the tax proposed to be imposed. There is no doubt that if tax is to be imposed under Section 61 of the Act by a Municipal Committee, the procedure pertaining to the issue of notices and inviting of objections from those, who are to be made liable to pay tax, has to be gone through. By virtue of the above under-lined portion of sub-section (3) of Section 62-A of the Act, there has been dispensed with the necessity of complying with the procedure devised by Section 62 of the Act. That procedure is meant for a Municipal Committee and not for the State Government, when the latter exercise its power for imposition of tax by a notification issued under sub-section (3) of Section 62-A of the Act. As the Legislature has done away with the necessity of pursuing the course of procedure in case the tax is sought to be imposed by the State Government, no exception could be taken to the notification on the ground that in case the tax is imposed by a resolution of a Municipal Committee that procedure has to be followed and that the same has been rendered unnecessary, when it is to be imposed by the State Government under sub-section (3) of Section 62-A of the Act. It is in pursuance of the existence of power by virtue of sub-section (3) of Section 62-A of the Act that the necessity for pursuing the course of procedure as enjoined for respondent No. 2 has been

done away with. In support of his contention, Shri Awasthy relied on the judgment of the Allahabad High Court in Om Parkash Sharma and others versus State of Uttar Pradesh. The question raised in that case was that it was as much obligatory on the State Government as on a Municipal Committee to comply with the procedure pertaining to the imposition of tax under Section 130-A of the U.P. Municipalities Act, 1916 corresponding to Section 62-A of the Punjab Municipal Act, 1911, Section 130A(3) of the U.P. Act runs as follows :—

“If the Board fails to carry out the order passed under sub-section (1) or (2), the State Government may pass suitable order imposing or modifying the tax and thereupon the order of the State Government shall operate as if it had been a resolution duly passed by the Board.”

(21) Mr. Ram Lal Gupta, learned Addl. A.G., Punjab vehemently contended that the notification impugned is in fact an order issued under Section 62-A(2) of the Act, which falls within the jurisdiction of the State Government and, therefore, cannot be a subject matter of challenge.

(22) The contention of the learned Addl. Advocate General was that the order as envisaged under Section 62-A(2) of the Act is required to be issued by way of notification and that is what has been done by directing the Municipal Committee to enhance sewerage and water taxes and it was thereafter for the Municipal Committees to have taken steps to impose the tax in accordance with law. This plea of the learned Addl. A. G. is totally misconceived. Though the notification mentions that the powers under Section 62-A(2) of the Act are being exercised but the reading of the notification shows that it has been issued in exercise of powers under Section 62-A(3), as no time is stipulated calling upon the Municipal Committee to impose the revised tax. It is also not the case of the respondents that after issuance of impugned notification any steps have been taken by Municipal Committee to impose the tax, rather bills have been issued as per directions contained in the notification.

(23) The learned counsel appearing on behalf of the Municipal Council, Moga, however contended that the Municipal Council, Moga in fact issued pamphlet with regard to the notification issued by the State Government and called for objections from the parties. The contention, therefore, was that the sewerage/water charges imposed by the Municipal Council, Moga are in consonance with the provisions of Section 62 of the Act. However, this plea also cannot be accepted as nothing has been placed on record showing that any resolution was passed by the Municipal Council, Moga nor any documents have been placed on record showing that the resolution was thereafter adopted. Rather in the written statement a plea was taken that in fact this is a fee being imposed. This plea is liable to be rejected straightway as for imposition of fee, it was incumbent upon the Municipal Council to have shown as to what additional services are sought to be provided and principle of *quid pro quo* was required to be followed.

(24) In CWP No. 4772 of 2007 Mr. A.P.S. Mann, learned counsel appearing on behalf of the Municipal Council, Faridkot contended that proper procedure has been followed. He has made reference to Annexure R-4/3 showing that special resolution was passed. However, the reading of the said resolution again shows that there is no application of mind by the Municipal Council nor any objections have been invited as envisaged under Section 62 of the Act nor any objections were considered by the Municipal Council, Faridkot before imposing the tax rather resolution was passed stipulating therein that the notification issued by the State Government be implemented. This cannot be said to be the compliance with the provisions of Section 62 of the Act, as reproduced above.

(25) Mr. A.P.S. Mann, learned counsel appearing on behalf of the Municipal Council, Faridkot has also placed reliance on the judgement of this Court in the case of **Citizens' Welfare Council, S.A.S. Nagar versus State of Punjab (3)**, to contend that the impugned notification cannot be faulted with. However, the authority relied upon by the learned counsel for the petitioner is of no consequence. In the said judgment this Court merely held that theory of '*quid pro quo*' is not

applicable to taxes. The said judgment is not with regard to the interpretation of provisions of Section 62-A(2) but of Section 62-A(3) of the Act and, thus, is not relevant to the present case. It is not in dispute that on failure of the Municipal Council/Committee to comply with the order issued under Section 62-A(2) of the Act, the State Government has power to issue notification under Section 62-A(3) of the Act. In the present case, the stage of issuance of any notification under Section 62-A(3) has not arisen. The impugned notification is also not in consonance with the provision of Section 62-A(2) of the Act.

(26) For the reasons stated above, these writ petitions are allowed. The notification Annexure P-5 as well as revised bills raised for recovery of sewerage and water charges in pursuance to the notification Annexure P-5, are hereby ordered to be quashed.

R.N.R.

Before Ashutosh Mohunta & Rajan Gupta, JJ.

DR. A.C. JULKA & OTHERS,—Petitioners

versus

PANJAB UNIVERSITY AND OTHERS,—Respondents

CWP No. 8025 of 2007

31st October, 2008

Constitution of India, 1950—Art. 226—Punjab Reorganization Act, 1966-S.-72—Panjab University Act, 1947-S.31—UGC recommending increase in age of superannuation—Syndicate of PU adopting recommendation of UGC & passing a resolution to implement same—Central Government refusing to accept resolution passed by Senate of University—State of Punjab & Central Government meeting funding requirement of Panjab University—After enactment of Reorganization Act PU acquiring character of an Inter-State body corporate & cannot be termed as a Central University—Merely because appropriate Government for purposes of Panjab University Act is Central Government and as approval of