

IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA.

Civil Writ Petition No.357 of 2009.

Date of decision : 30.4.2010.

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H.P. University, Shimla. ... ..Petitioner

Versus

The Municipal Corporation Shimla ... ..Respondent

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*Coram:*

The Hon'ble Mr. Justice Dev Darshan Sud, J.  
The Hon'ble Mr. Justice Kuldip Singh, J.

*Whether approved for reporting?*<sup>1</sup>      *Yes.*

For the petitioner:    Mr.B.C. Negi, Advocate.

For the respondent:    Mr.Shrawan Dogra, Advocate.

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Dev Darshan Sud, J.

This is a second round of litigation between the parties. In, *CWP No.598 of 2005, titled: H.P.U.Summer Hill vs. M.C. Shimla, decided on 11.6.2007*, the petitioner herein had challenged the assessment made by the respondent for taxing its building. A number of grounds were urged by the University in support of its contention that the assessment so made was not correct. While disposing of the writ petition, this Court ordered:-

*"In my view, all the buildings and the properties of the University cannot be clubbed together for the purpose of*

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<sup>1</sup> *Whether Reporters of Local Papers are allowed to see the judgment?*      *Yes.*

levy of tax. The dispute pertains to levy of tax on the following properties:

1. Women Hostel (5 storey building)
2. 12 Teachers Houses
3. Computer Centre.
4. H.P.U. Health Centre.
5. Men's Hostel (5 Storey building)
6. Chandrabhaga Girls Hostels.
7. Arts Block Phase-II
8. Hazeldene.
9. Windermere Annexe.
10. Teacher's House (5 storey building).
11. 10 Nos. Non-Teaching Employee Quarter.
12. 7 shops near Library Building.
13. Windermere Cottage Sweeper quarter.
14. Windermere Ram Kuti
15. Windermere Cottage
16. University Guest House
17. Auditorium Rani Laxmi Bai Girls Hostel
18. Hutment Building.
19. Rani Laxmi Bai Girls Hostel
20. Blarni (Model School)
21. PG Centre Coffee House.
22. Art Block
23. Kingswood Hall
24. Women Hostel (Manikaran)
25. 10 Nos. Teacher's House
26. Administrative Block.
27. Two Science Blocks
28. Law Faculty Building
29. Subhash Chander Bose Building

30. *HPU Library Building*
31. *V.C.Office*
32. *Tennis Court*
33. *Renuka Girls Hostel*
34. *Windermere*
35. *Jutogh View Cottage.*
36. *Underground Water Tank.*
37. *Basement Library Building.*
38. *Cheriton Old.*

*The usage character and nature of each property has to be seen and considered separately for the purposes of determination of rateable value and only thereafter the property is to be subjected to levy of tax in accordance with the provisions of Sections 88(a), 88(b) or 88(c) of the Act. There are some properties which have been let out by the University to its employees/students and teachers and there are certain buildings which are used by the University for its own use for Imparting Education to the students. The respondent-Corporation can levy tax on the rateable value as determined under any of the provisions of Chapter-VIII and particularly Sections 88(b), (c) and (d) of the Act.*

*As has been noticed above, there are 38 such properties which need to be looked into individually. In my view therefore the matter needs to be remanded back to the respondent-Corporation for consideration afresh.*

*The learned counsel for the petitioner has sought to rely upon the*

decisions of the apex Court in Government Servant Cooperative House Building Society Ltd. and others Vs. Union of India and others (1998) 6 Supreme Court Cases 381, Ltd. Col. P.R. Chaudhary Vs. Municipal corporation of Delhi (2000) 4 Supreme Court cases 577 and India Automobiles (1960) Ltd. vs. Calcutta Municipal Corporation and another (2002) 3 Supreme Court Cases 388 to contend that the respondent's action to levy tax under Section 88 (c) of the Act is illegal and contrary to the settled position of law. Since I am remanding the matter back to the authority for its careful consideration, I am sure that the respondent shall keep in mind the principles of law laid down by the Apex Court while determining rateable value and subject the property of the petitioner to levy of tax in accordance with the provisions of Chapter-VIII of the Act.

The amount of tax already deposited by the petitioner pursuant to the bills raised by the respondent shall, however, continue to lie with the respondent and shall be subject to further adjustment.

In this view of the matter, the impugned order dated 18<sup>th</sup> October, 2003 (Annexure:P-8) as also the order dated 24<sup>th</sup> July, 2001 passed by the respondent-Corporation to the extent it decides the objection of the petitioner with regard to the determination of

*rateable value and levy of tax is set aside and the case is remanded back to the respondent-Corporation to re-determine the rateable value in accordance with the provisions of Sections 88 (a), 88(b) and 88(c) of the Act. The respondent shall pass a reasoned order after affording due opportunity to the petitioner. In view of the aforesaid discussions, the present writ petition is allowed and disposed of accordingly."*

We have reproduced the order in some detail as it is the mainstay of the grievance of the parties.

The petitioner has again approached this Court alleging that the Municipal Corporation has not complied with this order and more especially the precedent of the Supreme Court cited before this Court in the previous petition. Learned counsel appearing for the petitioner urges that the principles of assessment have been laid down by the Supreme Court in three judgments, namely; **Government Servant Cooperative House Building Society Ltd. and Others vs. Union of India and Others (1998) 6 SCC 381, Lt.Col.P.R. Chaudhary Vs. Municipal Corporation of Delhi, (2000) 4 SCC 577 and India Automobiles (1960) Ltd. vs. Calcutta Municipal Corporation and Another (2002) 3 SCC 388.**

Learned counsel appearing for the Municipal Corporation submits that the assessment orders passed

are self-speaking. Annexures R-1 and R-2 are orders of assessment passed by the respondent after remand of the case. These two orders are passed on the consent of the petitioner. Hence, we do not intend to take them up for consideration. There are other orders on record, namely, Annexure R-3 to R-39, which have been challenged in this petition. These orders are stereotyped. While making the assessment, the only reason given for rejecting the case of the petitioner herein is in the following word in Annexure R-3:-

***"This Committee agreed with the contention of the representatives of the M.C. Shimla. The assessment as made by the M.C. Shimla is a per rules. The contention of the University is not tenable and no amendment is required to be made in the existing assessment of the building referred above which is Rs.4,30,275/- net P.A."***

This finds repetition in annexures R-4 to R-18. Thereafter the matters have been taken up for further consideration and disposed of by other orders on record.

The orders of this Court in ***CWP No.598 of 2005*** are preemptory and do not require any elaborate interpretation. All that this Court said was that the principles enunciated by the Supreme Court in the three decisions, should be taken into consideration. We do

not find anywhere on the record or in the orders which indicates that these decisions were infact considered. Infact as the decision(s) show that after noting the contention of the lawyers, the case is decided with the observations that the submissions made by the representative/counsel appearing for the Municipal Corporation, Shimla are accepted.

Learned counsel appearing for the respondents submits that the provisions on which reliance is placed for justifying the assessment orders are themselves the reasons for deciding the cases. We cannot accept this contention as merely acceptance is not advancing reason(s). Two important tasks had to be performed by the respondents:-

- (a) the assessment order(s) has/have to show as to whether the Supreme Court precedent relied upon were applicable to the facts of the case or not; and**
- (b) the order(s) has/have to be reasoned decision(s) and not mere accepting the submissions made by one side or the other.**

For that, there has to be something on the record to justify the conclusions arrived at by the adjudicating authority. Although reasons need not be elaborate, yet they must disclose the working of the mind of the Authority passing the order.

In State of **West Bengal** vs. **Atul Krishna Shaw** and another, **AIR 1990 SC 2205** it was held:-

"7. ... .. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice."

**(emphasis supplied)**

This is reiteration of the principle laid down by the Supreme Court in **M.P. Industries** vs. **Union of India**, **AIR 1966 SC 671**, lateron followed in **S.N. Mukherjee** vs. **Union of India**, **AIR 1990 SC 1984**, **The State of Punjab etc.** vs. **Bakhtawar Singh and others etc.** **AIR 1972 SC 2083** and **Union of India** vs. **M.L. Capoor and others**, **AIR 1974 SC 87**.

In **Union of India and Others** vs. **Essel Mining & Industries Ltd. And Another**, (2005)6 SCC 675, the Supreme Court holds that it is not the number of pages in a judgment/order which is relevant but the sufficiency of reasons indicated to justify the conclusions arrived at.

Consideration itself has a specified connotation in law meaning that there should be active application of mind by the Authority after considering



the entire facts and circumstances of the case. In *Divisional Personnel Officer Southern Railway and another vs. T.R. Challappan, AIR 1975 SC 2216*, the Court, while considering the ambit of the last part of Rule 14 of the Railway Servants (Discipline and Appeal) Rules (1968), set aside an order of removal by the Disciplinary Authority holding that it was without application of mind. In this context, the Court considered the meaning of the word "consider" and has held:-

"21. ... ..The rule-making authority deliberately used the word 'consider' and not 'determine' because the work 'determine' has a much wider scope. The word 'consider' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. ... .."

(page 2224)

We are not touching the merits of the respective submissions made by the learned counsel appearing for the parties on the facts pleaded by them, but we have only confined ourselves to the principles of

law involved. We may also add that when this Court directed that the precedent of the Supreme Court should be followed, it was but stating the obvious as it is the Constitutional obligation of every authority not only to follow the law declared by the Supreme Court but also to aid in its implementation. These two duties have been imposed under Article 142 and 144 of the Constitution of India. This writ petition is accordingly allowed. We hold that Annexures R-1 and R-2 shall be implemented as they are based on consent. The respondent Municipal Corporation shall proceed to decide the remaining assessment afresh in accordance with law by meticulously following the directions issued by this Court in ***CWP No.598 of 2005, titled: H.P.U.Summer Hill vs. M.C. Shimla, decided on 11.6.2007.*** We need not emphasize that it would also consider whether the principles of law laid down by the Supreme Court in the three decisions relied upon by the petitioner determine the principles for assessment of tax and are attracted to the facts of the case of the petitioner. The decision(s) arrived at will be reasoned decision(s) indicating with sufficient clarity and reasons for arriving at a particular conclusion.

This being the second round of litigation, we direct that the entire assessment proceedings be completed by the Corporation on or before the ***31<sup>st</sup> July, 2010*** for which purpose notice shall be given to the

University for a date on which the proceedings would be  
finalized. There shall be no order as to costs.

**(Dev Darshan Sud)**  
**Judge.**

**April 30, 2010.**  
**(aks)**

**(Kuldip Singh)**  
**Judge.**