INDIAN COUNCIL OF AGRICULUTRAL RESEARCH
KRISHI BHAVAN: NEW DELHI-110 114.

No.21-4/2010-CDN Dated the 27 January, 2010

ENDORSEMENT

The Govt. of India, Ministry of Urban Development has issued the O.M. No. N-11025/26/2003 – UCD dated 15-17.12.2009 regarding Payment of service charges to local bodies in respect of Central Govt. properties – Supreme Court Order in Civil Appeal No.9458-63/2003 Rajkot Municipal Corporation & Others Vs. UOI & Others. The above mentioned OM is being uploaded on the ICAR Web-Site www.icar.org.in for information and further guidance.

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No.N-11025/26/2003-UCD
Government of India
Ministry of Urban Development
UCD/LSG Section

Nirman Bhawan,
New Delhi dated 15th December 2009

OFFICE MEMORANDUM

Subject: Payment of service charges to local bodies in respect of Central Government properties – Supreme Court Order in Civil Appeal No.9458-63/2003 -Rajkot Municipal Corporation & Others Vs. UOI & Others. .....

The undersigned is directed to State that the Hon'ble Supreme Court vide its order dated 19.11.2009 disposed of the Civil Appeal No.9458-63/2003 - filed by Rajkot Municipal Corporation & Others Vs. UOI & Others(copy enclosed) relating to payment of service charges by Central Government Departments to Urban Local Bodies, with the following directions:-

(1) The UOI & its Departments will pay service charges for the services provided by appellant Municipal Corporations. No Property Tax will be paid by UOI but service charges calculated @ 75%, 50% or 33 1/3% of Property Tax levied on property owners will be paid, depending upon utilization of full or partial or Nil services. For this purpose agreements will be entered into UOI represented by concerned Departments with respective Municipal Corporation.

(2) The arrangement at (1) is open to modification or revision by mutual consent. In the event of disagreement, the same shall be resolved by a 3 member Mediation Committee consisting of a representative of Central Government, a representative of concerned Municipal Corporation & a senior representative (preferably the Secretary in charge of Department of Municipal administration) of the State of Gujarat.

(3) In the event of any Department or Railways owning a property changes the Agreement unilaterally or fails to reach settlement through Mediation Committee, the concerned Municipal Corporation could take such action as it deems fit by approaching Courts/Tribunals for reliefs.

(4) The Municipal Corporations shall not resort to coercive steps (such as stoppage of services) nor resort to revenue recovery proceedings for recovery of service charges from UOI or its Departments.

(5) The services payable by UOI shall not be more than the service charges paid by State Government for its properties. Wherever exemptions or concessions are granted to the properties belonging to the state government, the same shall also apply to the properties of Union of India.

(6) If Railways do not abide by the instructions of Ministry of Finance as contained in the 4 circulars dated 10.5.1954, 29.3.67, 28.5.1976 and 26.8.1986 and general consensus set out above, it is open to Municipal Corporation to take suitable action as is permissible in Law.

2. All State Governments have been requested to note the above orders of Supreme Court and advice their Urban Local Bodies in regulating the payment of service charges in respect of Central Government properties in terms of the above judgement. In this connection, it is stated that the arrangement mentioned in point (2) above of para 1 is specific to the State of Gujarat and State Governments have been requested to consider appropriate dispute resolution mechanism in respect of their States.

3. The above orders of Supreme Court are hereby brought to the notice of all Ministries/Departments of Central Government with the request to issue necessary instructions to the concerned authorities under their administrative control for suitable compliance with regard to regulating of service charges payable by UOI & its Departments to the Urban Local Bodies for their properties.

R. Sathyanarayanan

(R. Sathyanarayanan)
Under Secretary to the Government of India
Ph. 23061072

To

1. All Ministries/Departments of Central Government
2. DG(W), CPWD, MOUD.

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Secy (D) & DG, ICAR

AS (D) & Secy, ICAR

31/10

CIVIL APPEAL NO.6706 OF 2004

Vadodara Municipal Corporation ... Appellant

Vs.

Union of India & Ors. ... Respondents

O R D E R

The Municipal Corporation of Rajkot, Ahmedabad, Jamnagar, and Vadodara in the state of Gujarat, which are statutory local municipal authorities under the Bombay Provincial Municipal Corporation Act, 1949 are the appellants in these appeals by special leave. The issue in these appeals relates to payment of service charges relating to supply of water, conservancy/sewerage disposal and other indirect services like approach roads with street lighting, drainage etc. provided by the said Municipal Corporations to properties owned by Union of India and its departments.

2. The appellant municipal corporations have been raising bills annually, in regard to the service charges payable by Union of India and its departments. When some of the bills were not paid, the municipal corporations resorted to attachment of the properties of Union of India, by invoking revenue recovery proceedings by treating the dues as arrears of taxes. Such actions of the appellants were challenged by Union of India in a

batch of writ petitions before the Gujarat High Court which were disposed of by the impugned common order of the High Court dated 19.9.2002. The High Court allowed the petitions holding as follows :

> "None of the impugned demand notices or recovery orders intimating attachment of the properties of the Union Government are referable to any contract and these have obviously been issued by the Municipal Corporation under the purported exercise of powers to recover service charges in lieu of property taxes. When the taxes themselves could not be levied except by removing the exemption by law made by the Parliament as contemplated by Section 285(1), the embargo cannot be taken away by any implication arising from such administrative communications. Even if the respondents were entitled to recover any compensation on the basis of an alleged assurances of the Central Government, the nature of their demand would have been entirely different and not as has been made in all these matters by way of recovery notices for tax dues and coercive action for recovery of such dues. The attempt to base the contention now on quasi-contract theory and entitlement for compensation for services rendered, cannot cloud the nature of the demand notices and the orders of recovery which are issued under the provisions of the said Act and the Rules having bearing on the aspect of levy and recovery of Municipal taxes. No exemption can be spelt out from the communication of 1954 and 197 which can make any inroad in Article 285(1) of the Constitution.
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> It is thus clear to us that, in absence of any notification under Section 184(1) of the Railways Act, 1989 or under the corresponding provision of Section 135(1) of the Act of 1890, and in absence of any contract as contemplated under sub-section (4) of the corresponding provision of Section 135 of the Act of 1890, it was not open to any of these corporations to impose any tax or service charges in lieu of tax under the said Act and effect recovery by issuing the impugned demand notices and other coercive orders. Admittedly, there is no law enacted by the Parliament, withdrawing the exemption from Municipal taxes, as contemplated by Article 285(1) in respect of the

properties occupied by the Postal Department or Office of the Accountant General. Obviously, therefore, the recovery of property taxes or service charges in lieu of such taxes as is sought to be done under the impugned demand notices and orders issued for the coercive recovery of the Municipal taxes under the said Act, is ultra vires the powers of the Municipal Corporation. All the impugned notices, demand notices as well as other orders issued by these Municipal Corporations for effecting recovery of service charges in lieu of taxes are, therefore, hereby set aside.

Rule is made absolute in each of these petitions accordingly, with no order as to costs. If any amount is deposited pursuant to the interim orders, that may be refunded to the Union of India."

3. The said order was challenged by the appellant Municipal Corporations on the ground that the words "exempt from all taxes imposed by a State or by any authorities within the State" occurring in Article 285 of the Constitution of India do not include service charges claimed by them in respect of properties owned by the Union of India. They also contend that the arrangement arrived at and referred to in the communications/circulars the Government of India dated 10.5.1954, 29.3.1967, 28.5.1976 and 26.8.1986 were enforceable agreements between the Government of India and the Municipal Corporations, which had nothing to do with Article 285. The municipal corporations also contended that section 135(1) and 184(1) of the Railways Act, 1989 exempted the Railways only from payment of taxes and not from payment of service charges.

4. Article 285 of the Constitution provides that :

"(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State."

"(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution is liable or treated as liable, so long as that tax continues to be levied in that State."

Section 184 (1) of the Railways Act, 1989 reads thus:

"(1) Notwithstanding anything contrary contained in any other law, a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

5. In *Union of India & Ors. v. State of Uttar Pradesh & Ors.* - 2007 (11) SCC 324, this Court upheld the decision of the High Court that charges for supply of water or for other services rendered under any statutory obligation, is a fee and not tax. It was held that the Union of India was liable to pay such charges and should honour the bills served in that behalf. Referring to Section 52 of the UP Water Supply and Sewerage Act, 1975, it was held that the charges were loosely termed as "tax", that the nomenclature was not important and what was charged is a fee for the supply of water as well as maintenance of the sewerage system, and such service charges are to be considered as a fee and were not hit by Article 285 of the Constitution. It was further made clear that what was exempted by Article 285 was a

tax on the property of Union of India but not a charge for service which were being rendered in the nature of water supply or for maintenance of sewerage system.

6. When these appeals were earlier listed for hearing, both sides agreed that they will attempt a broad consensus on several pending issues and narrow down the areas of controversy and agree for a dispute resolution mechanism. We are told that in pursuance of it, discussions were held among various departments of the Government of India with the Department of Urban Development. In pursuance of it, an affidavit dated 9.4.2009 has been filed on behalf of Union of India crystallizing its stand on various issues. Union of India has now agreed in principle for the following:

(i) It is liable to pay service charges to the municipal corporations for providing services like supply of water, conservancy/sewerage disposal, apart from general services like approach roads with street lights, drains etc.

(ii) It will pay service charges to the Municipal Corporations, for the services, as stated in its circulars dated 10.5.1954, 29.3.1967, 25.5.1976 and 26.8.1986, but will not pay any taxes.

(iii) Having regard to the fact that only service like supply of water could be metered and other services like drainage, solid waste management, approach roads, street lighting etc., could not be metered, the percentage of property tax will be worked out as service charges, on the basis of instructions issued by the Ministry of Finance.

(iv) The concerned Ministry of the Union to which the property belongs will enter into separate contracts with the respective municipal corporation for supply of services and payment of

service charges and pay the bills for annual service charges regularly.

(v) Union of India and its departments will periodically review the arrangements with the respective municipal corporations, as suggested by its Advisory committees and make modifications or revisions in the rates of service charges.

(vi) Wherever properties of state government are exempted, such exemption shall apply to properties of central government also. Under no circumstances, the service charges payable by the Union of India will be more than the service charges paid by the state government.

(vii) The arrangement will not affect the legal rights conferred by the appropriate laws, in regard to any property held by the Union.

7. The Union of India has also stated that taking note of the relevant circumstances, it has decided to pay service charges at the following rates: (a) 75% of the property tax levied on private owners, where the properties of the Union are provided by the municipal corporations with all services/facilities as were provided to other areas within the municipal corporation; (b) 50% of the property tax levied on private owners, in regard to properties of the Union, where only some of the services/facilities were availed; and (c) upto a maximum of one-third (33 and 1/3%) of the property tax levied on private owners in regard to properties which did not avail any of the services provided by the municipal corporation, as they were self-sufficient on account of all services being provided by the Union itself.

8.

8. It was also clarified that where no services were availed from the municipal corporation, a rate within the ceiling of 33 and 1/3% of the property tax, will be negotiated and settled having regard to the relevant circumstances. In so far as properties of Indian Railways are concerned, it was stated that as it owns properties in virtually every municipal corporation in India and normally all its properties do not utilise the services provided by municipal corporations, Railways propose to pay only a token service charge of 5% or such other rate as may be agreed by mutual negotiations.

9. Learned counsel for the appellants submitted that the appellant municipal corporations submitted that they were broadly in agreement with what has been stated and agreed by Union of India in the said affidavit. The appellant-Municipal Corporations also confirmed and agreed :

(i) that they will not levy or demand any "property tax" in respect of the properties belonging to Union of India and used for the purposes of the government;

(ii) that the demands will relate only to service charges for direct services like supply of water and conservancy/sewerage disposal services, and other general services such as approach roads with street lighting, drainage etc.;

(iii) that they broadly agreed to the rates of service charges agreed by Union of India; and

(iv) that if there is defaults or if negotiations with the concerned departments for in regard to service charges fail they will not take any coercive steps for recovery (like cutting off supplies) nor resort to revenue recovery proceedings, but will take recourse to other remedies available to them in law for recovery.

10. The appellants however expressed reservations only in regard to the stand of the Railways that it will only pay nominal service charges at 5% of the property tax. They point out that there can be no property of Railways which can be termed as 100% self sufficient in regard to services, as common indirect services provided by the Municipal Corporation (like approach roads with street lighting etc.) will be enjoyed by them. They also drew our attention to the fact that Ministry of Railways (Railway Board) had also issued a circular dated 24.7.1954, similar to the circulars issued by the Government of India, Ministry of Finance, providing for payment of part of the property tax, as services charges for water, scavenging etc. The learned Solicitor General however stated that she was not sure whether the said circular continues in force or was superseded by other circulars. Be that as it may.

11. In view of the above, there is no need to consider the appeals on merits. We dispose of appeals and pending applications by recording the following broad agreement between the parties:

(i) The Union of India and its departments will pay service charges for the services provided by the appellant municipal corporations. They will not pay any property tax. The service charges will be paid at 75%, 50% and 33 1/3% respectively of the property tax levied on private owners, depending upon whether Union of India or its department is utilising the full services, or partial services or nil services. The Union of India represented by its concerned department will enter into agreements/understandings in regard to service charges for each of its properties, with the respective municipal corporation.

(ii) The above arrangement is open to modification or periodical revisons by mutual consent. In the event of disagreement on any issue, parties will resort to a dispute resolution mechanism by reference to a three Member Mediation Committee consisting of a representative of the Central government, a representative of the concerned municipal corporation and a senior representative (preferably the Secretary in charge of the department of municipal administration) of the State of Gujarat.

(iii) If Railways or any other department of Union of India owning a property changes the agreement/understanding unilaterally, or fail to reach a settlement through the Mediation Committee in regard to any disputes, or fails to clear the dues, it is open to the concerned Municipal Corporation to initiate such action, as it deems fit in accordance with law by approaching the jurisdictional courts/tribunal for final and interim reliefs.

(iv) The municipal corporations shall not resort to coercive steps (such as stoppage of supplies/services) nor resort to revenue recovery proceedings for recovery of any service charge dues from Union of India or its departments.

(v) The service charges payable by Union of India will under no circumstances be more than the service charges paid by state-government for its properties. Wherever exemptions or concessions are granted to the properties belonging to the state government, the same shall also apply to the properties of Union of India.

(vi) If the Railways does not to abide by the four general circulars of the Union of India dated 10.5.1954, 29.3.1967, 28.5.1976 and 25.8.1986 and the general consensus set out above, it is open to municipal corporation to take such action as is permissible in law.

Sd

.....J.
(R V Raveendran)

Sd

New Delhi;
November 19, 2009.

.....J.
(K.S. Radhakrishnan)