(2010) 09 AHC CK 0125

In the Allahabad High Court

Case No : C.M.W.P. No. 347 of 2004 and two other writ Petitions

Banaras Hindu University APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Banaras Hindu University Act, 1915 — Section 177
Constitution of India, 1950 — Article 12, 285

Citation : (2011) 2 AWC 1409 : (2011) 1 UPLBEC 739

Hon'ble Judges : Yatindra Singh, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Yatindra Singh and Rajes Kumar, JJ.—The main question involved in these writ petitions relates to the power of the Municipal Corporation to levy service charge in pursuance of the office memo of the Central Government dated 26.4.1994 (the O.M.).

THE FACTS

2. Article 285 of the Constitution exempts the property of the Union from the State taxation. The O.M. was issued stating that, though the buildings of the Union are exempted from the municipal taxes but they are liable to pay service taxes as contemplated therein.

First writ petition

3. The Banaras Hindu University, Varanasi (the B.H.U.) is a Central University established by Central Government under the Banaras Hindu University Act (Act No. 16 of 1915). It is a statutory corporation established under the Central Act.

4. The Municipal Corporation, Banaras issued 10 notices dated 3-9.2.2004 (Annexures-11, 12 and 13 to the writ petition) under the Municipal Corporation Act (the Act) informing the B.H.U. regarding the assessment of their buildings

and asking them to show cause why service charges as contemplated in the O.M. be not taken from them. Hence the present writ petition by the B.H.U.

Second writ petition

5. The Indian Institute of Technology, Kanpur (I.I.T.-K) is an engineering institute. Initially it was a society. Subsequently, it was incorporated by the Central Government under the Indian Institute of Technology Act (Act No. 59 of 1961). I.I.T.-K is also a statutory body incorporated under the Central Act.

6. The Municipal Corporation, Kanpur issued notice in the year.2003 requiring the I.I.T.-K to make available the details of its building so that the proceedings for assessment under the Act may be undertaken.

7. Subsequently, an order was passed on 21.7.2006 assessing the house assessment and thereafter charging service charge according to the O.M. Hence the second writ petition by the I.I.T.-K.

Third writ petition

8. In 1926, a royal commission for agricultural recommended setting up an establishment for agricultural research. In pursuance of the same Imperial Council for Agricultural Research was established as a society registered under the Societies Registration Act. After independence, it was renamed as Indian Council of Agricultural Research (I.C.A.R.). Indian Institute of Pulses Research, Kanpur (I.I.P.R.) is a branch of the I.C.A.R. The buildings etc. belong to the I.C.A.R.

9. The I.I.P.R. received a notice from the Municipal Corporation, Kanpur dated 3.11.2009 regarding payment of general house tax. The Petitioner filed its reply on 16.11.2006. Thereafter, the accounts of the I.I.P.R. were attached on 29.3.2007 for payment of the general house tax dues. Hence, the third writ petition.

10. The third writ petition was filed by I.I.P.R. and not I.C.A.R. as the notices etc. were in the name of I.I.P.R. otherwise, it is for the benefit of I.C.A.R.

11. In the counter-affidavit in the third writ petition, it is stated that the accounts were attached not because of recovery of any general house tax but for the recovery of service charge in pursuance of the O.M.

Service Charge under the O.M.-Being Demanded

12. In all the writ petitions the amount that is being demanded is the service charge in pursuance of the O.M. and not any other tax or fee. The question is, does the O.M. apply to them.

POINTS FOR DETERMINATION

13. We have heard Sri V. K. Singh, Sri Hem Pratap Singh, Sri Yashwant Varma, Sri D. K. Singh, Ms. Pooja Goel, counsel for the Petitioners and Sri Vivek Verma,

Sri Chandan Sharma and standing counsel for the Respondents.

14. The following points arise for determination:

(i) Whether the O.M. is applicable to buildings of the Petitioners;

(ii) Whether a tax or a fees can be charged by an office memo;

(iii) Whether the Petitioners who are imparting education (in the first and the second writ petitions) and is a research institute (the Petitioner in the third writ petition) are charitable institutions and cannot be assessed in view of Section 177(b) of the Act.

Ist Point: Not Applicable

15. The B.H.U. as well as I.I.T.-K are statutory bodies incorporated under the Central Government Act. They have right to sue and can be sued in their own name.

16. The I.I.P.R. is the branch of I.C.A.R. that is a registered society under the Societies Registration Act. It can also sue and be sued in its own name.

17. A statutory corporation, or a society or a company, even if it is State within the meaning of Article 12 of the Constitution or an instrumentality of the Union, are not synonymous with it. They have different identity and cannot be treated to be Union (see below). Food Corporation of India Vs. Municipal Committee, Jalalabad and Another, ; Islam and Ors. v. Gopal Dubey and Ors. : (1999) 4 SCC 458 : (1999) 3 Scale 123: State of Punjab and Others Vs. Raja Ram and Others, ; Municipal Commissioner of Dum Dum Municipality and Others Vs. Indian Tourism Development Corporation and Others,

18. The O.M. only applies to the buildings of the Union. It does not apply to the statutory corporation or the societies that have independent identity. No service charge can be realised from the Petitioners in pursuance of the O.M. In view of this the impugned recoveries against the Petitioners are illegal and are liable to be quashed.

2nd and 3rd POINT: NOT NECESSARY TO DECIDE

19. The counsel for the Petitioner cited the following rulings in support of second and third point:

(i) Second point,

Municipal Corporation, Amristar v. Senior Superintendent of Post Office AIR 2004 SC 2912 : 2004 (2) AWC 1717 ;

(ii) Third point,

P.C. Raja Ratnam Institution Vs. Municipal Corporation of Delhi and Others,

Municipal Corporation of Delhi Vs. Children Book Trust, Christian Children Fund I.N.C. v. Municipal Corporation Delhi

Jindal Stainless Ltd. and Another Vs. State of Haryana and Others,

T. M. A. Pal v. State of Karnakata. 2002 (4) AWC 3297

And submitted that these points should be decided in their favour.

20. We are allowing the writ petition on the first point. It is not necessary to express any opinion on the second and the third point.

CONCLUSIONS

21. Our conclusions are as follows:

(i) The statutory corporation as well as the societies are not Union even if they are established by the Union Government. They are not covered by the office memo dated 26.4.1994 issued by the Central Government;

(ii) The recovery of service charges in pursuance of office memo dated 26.4.1994 is illegal and are quashed. However, it will be open for the Respondents to assess and charge such tax or fee as permissible under the law after giving reasonable opportunity to the Petitioners.

With these observations, the writ petitions are allowed.

