**(1997) 04 AP CK 0005**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 12207 of 1989

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| Bharat Heavy Electricals Limited, Corporate Research and Development | APPELLANT |
| Vs | |
| Government of Andhra Pradesh and Others | RESPONDENT |

**Date of Decision :** 01-04-1997

**Acts Referred:**
Andhra Pradesh Municipalities Act, 1965 — Section 88(3), 88(4)

**Citation :** (1997) 4 ALD 134 : (1997) 4 ALT 175

**Hon'ble Judges :** S.R. Nayak, J;B. Subhashan Reddy, J

**Bench :** Division Bench

**Advocate :** E. Manohar, for the Appellant; B. Siva Reddy, SC, for the Respondent

## Judgement

S.R. Nayak, J.

1.The petitioner is a company owned by the Government of India. In this writ petition, as originally presented, it sought a direction to respondent Nos. 2 and 3 to act in accordance with the provisions of Sub-sections (3) and (4) of Section 88 of the A.P. Municipalities Act, 1965 (for short "the Act"), and exempt the township established by the petitioner from payment of the whole of water tax, drainage tax, lighting tax, scavenging tax, library cess etc., and levy and collect tax for general purposes.

2. It is the claim of the petitioner that the township was established, and it has not been deriving any benefit either in part or full in terms of supply of water or facility of drainage or lighting system from the respondents. In that view of the matter, they sought exemption from payment of aforementioned taxes by filing an application. When this writ petition was filed, the application filed by the petitioner under Sub-sections (3) and (4) of Section 88 of the Act was not yet decided. During the pendency of the writ petition, that application came to be rejected by the Government on the ground that there is no provision in the Act, and Section 88 of the Act is not applicable. The validity of the same is also sought to be assailed by the petitioner by filing W.P.M.P. No. 18312 of 1990 by

 

way of amendment of the writ petition.

3. Heard the learned Counsel for the parties.

4. Sub-section (3) and (4) of Section 88 of the Act read as follows :

"(3) The council may, with the previous sanction of the Government, exempt any particular part of a municipality from the payment of the whole or a portion of the water and drainage tax or of the lighting tax on the ground that such area is not deriving full benefit from the water supply and drainage or from the lighting system.

(4) The council may exempt by building or land from the whole or any portion of the scavenging tax if it is satisfied that the owner or occupier has made efficient arrangements for the daily removal there from the rubbish, filth and carcasses of animals".

5. The language of Sub-sections (3) and (4) of Section 88 of the Act is quite clear, unambiguous, and it does not admit more than one meaning. A careful reading of Sub-section (3) makes it very clear that the petitioner-Company can seek exemption from payment of tax mentioned therein on the ground that the area in question is not deriving full benefit from the water supply and drainage or from the lighting system established by the respondent-local authority. Similarly, Sub-section (4) of Section 88 of the Act also enables the respondent'' to exempt the petitioner from payment of scavenging tax.

6. Therefore, in our considered opinion the view taken by the Government in saying that Section 88 of the Act has no application, and no exemption could be granted to the petitioner is not a valid and sustainable reason. Therefore, the Government labouring under such erroneous view did not decide the case of the petitioner on merits. In that view of the matter, we think that the ends of justice would be met by directing the Government to consider the claim of the petitioner afresh on merits and pass appropriate orders. However, we make it clear that the Government should proceed to consider the claim of the petitioner on merits on the basis that it has power u/s 88 of the Act to exempt payment of tax. It is not permissible for the Government to again raise such excuse not to consider the claim of the petitioner on merits. In these terms, the writ petition is dispose of. It is submitted by the learned counsel for the petitioner that during the pendency of the writ petition, the company has been paying 50 per cent of the aforementioned demanded tax by virtue of interim order granted by this Court. The same arrangement shall continue till the Government takes a decision on the application of the petitioner on merits. The Government shall dispose of the application afresh, within a period of four months from the date of receipt of copy of this order.