**(2015) 07 MAD CK 0072**

**In the Madras High Court**

**Case No :** Writ Petition No. 10345 of 2015 and W.P.M.P. No. 1094 of 2008

Bharat Heavy Electricals Ltd. APPELLANT

Vs

Secretary to Government, Municipal Administration and Water Supply Department and Others RESPONDENT

**Date of Decision :** 08-07-2015

**Acts Referred:**
Tamil Nadu District Municipalities Act, 1920 — Section 83

**Citation :** (2015) 4 LW 707

**Hon'ble Judges :** T. Raja, J.

**Bench :** Single Bench

**Advocate :** M.S. Krishnan, Senior Counsel for V. Girishkumar, for the Appellant; R. Govindasamy, Additional Government Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

T. Raja, J.—The present Writ Petition has been filed by Bharat Heavy Electricals Limited, Tiruverambur, Trichy, seeking issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings of R-I in G.O.Ms. No. 30, MAWS Dept., dated 22.02.2005, to forbear the authorities from levying property tax for the period prior to 04.10.1999 and to direct the Panchayat to levy property tax in respect of the buildings belonging to the petitioner on and from 04.10.1999, the date of withdrawal of the instructions issued by the Government of Tamilnadu in its Memorandum No. 96770/C1/65-7, dated 02.11.1965. Mr. M.S. Krishnan, learned Senior Counsel appearing for the petitioner, at the first instance, would highlight upon the factual aspects by submitting that the petitioner is a Public Sector Undertaking, engaged in the manufacture of Boilers, Boiler components, Auxiliaries, Valves, etc. and that it had put up quarters for the purpose of accommodation of some of its employees. It actually provided all the amenities and facilities required for the upkeep and maintenance of the factory as well the township wherein the quarters situate. In fact, all major requirements of the township including provision of water, drainage facilities, laying of roads and maintenance of the same are met only by the petitioner by way of drawing a budget of its own and never, any of the facilities was provided by the third respondent-Panchayat. Therefore, the petitioner sought for exemption from the Government/R1 with regard to levy of taxes/property tax in respect of its township. Pursuant to the same, by Memo dated 02.11.1965, R1 had requested the District Collector, Trichy, to advise the Panchayat concerned not to levy tax in respect of the petitioner''s township. While so, by demand notice dated 14.10.1987, R-2 had called upon the petitioner to pay Rs. 1,07,362.50 purported to be the property tax for the township. Even though the petitioner addressed the said authority explaining about the earlier instruction of the Government to the Panchayat not to levy property tax pending decision on their application for grant of exemption, R-2 had issued a Notice, dated 10.06.1987, threatening to take distraint action against the petitioner, whereupon, the petitioner was constrained to file W.P. No. 7214 of 1987 for the issuance of a writ of mandamus to forbear R-2/Executive Officer of the Koothappar Panchayat from proceeding against the petitioner pursuant to the said notice. While disposing of the said petition by order, dated 26.09.1994, this Court had directed the authorities to pass appropriate orders only after taking into account the objections of the petitioner in the reply to the show-cause notice. However, the third respondent, without even properly considering the objections of the petitioner, by communication dated 15.06.1995, intimated levy of property tax to the tune of Rs. 86,50,890/- for the period from 1987-88 to 1994-95 and stated that, within one week of receipt of the communication, if aggrieved, the petitioner should file revision petition before the appropriate authority. Questioning the same, the petitioner had filed W.P. No. 15477 of 1995 and an order of stay of all further proceedings was granted in favour of the petitioner and the same was also subsequently made absolute. Aggrieved by the absolute interim stay, R-3 filed W.A. No. 120 of 1996 which was taken up together for disposal along with W.P. No. 15477 of 1995 filed by the petitioner. By Judgment dated 20.02.1996, the writ petition was dismissed with liberty to the petitioner to file its objection on the Notice, dated 15.06.1995. Subsequently, the petitioner submitted its objections, however, the authority had sent a reply, dated 18.03.1996, stating that there is no exemption for levy of property tax and that the petitioner is liable to pay Rs. 97,53,870/- towards property tax for the period between 1987 and 1996. The appeal preferred by the petitioner before the appellate authority was dismissed, whereupon, the petitioner had filed W.P. No. 6401 of 1999 challenging the demand made. By Orders dated 21.04.2004, while disposing of the writ petition, the Court had permitted the petitioner to file a fresh representation before the Government, if so advised, pointing out all the facts and, in turn, the Government was also directed to consider the representation and pass orders within three months from the date of representation. Consequently, the petitioner submitted a detailed representation, dated 14.05.2004, to the Government/R1 detailing about the applicability of exemption in its favour as it was extended to a similar entity viz., Salem Steel Plant, however, the first respondent, by the impugned proceedings, dated

 

22.02.2005, unfairly rejected the said representation by stating that the facts and circumstances of the case are not similar between the petitioner and Salem Steel Plant. Hence, the petitioner is before this Court.

2. After highlighting upon the factual scenario, learned Senior Counsel would submit that both the petitioner and Salem Steel Plant being Public Sector Undertakings (PSUs), the authorities/Government cannot discriminate between the two companies in the matter relating to levy of property tax. According to him, in the case of Salem Steel Plant, the instructions issued by the Government in the year 1976 not to levy property tax came to be withdrawn only with effect from 12.09.1996. In other words, the Government had instructed the Panchayat concerned to levy property tax in respect of the buildings owned by Salem Steel Plants only from 12.09.1996. Therefore, when the Government, by Memo dated 02.11.1965, had granted property tax-exemption in favour of the petitioner by instructing the Panchayat accordingly, such exemption having been withdrawn only from 04.10.1999, the crucial date for levy of property tax should be only 04.10.1999 and it should not be made retrospectively from 1987-88. Moreover, even though the authorities take a ground that both the petitioner and Salem Steel Plants are different, in none of the proceedings, they could clarify or explain as to how the case of Salem Steel Plant is different from that of the petitioner. Thus, when the authorities are not able to clarify in clear terms as to on what basis both the companies are not entitled to same treatment, retrospective levy of property tax for the petitioner and prospective levy of the same in favour of Salem Steel Plants only exhibits a clear discrimination between PSUs on the part of the authorities; hence, the case of the petitioner deserves all acceptance, he pleaded.

3. Heard the learned Additional Government Pleader appearing for R-I and Mr. V. Suthakar as well as Mr. N.S. Nandakumar, appearing for Respondents-2 and 3 respectively.

4. This Court, after perusing the entire records made available in the light of the rival submissions advanced on either side, is unable to accept the case and claim of the petitioner for handful of reasons. First of all, the petitioner, being a PSU must be well aware of the position that one PSU cannot be equated with another in a generalized and uniform perspective regarding grant of exemption from paying the property tax, for, it is for the Government and the authorities functioning under the Tamil Nadu Panchayats Act/T.N. District Municipalities Act to make appropriate decisions on either grant or non-grant of exemption from paying property tax to a PSU depending on various factors like the place in which the PSU situates, its financial position, generation and extent of profits it makes, etc. Further, another glaring negative aspect against the petitioner is that even though it claims for prospective levy of property tax from 04.10.1999 on the basis that it was originally given an exemption order by Government''s Memo/ proceedings, dated 02.11.1965, and such exemption came to be withdrawn only from 04.10.1999, a perusal of the very proceedings dated 02.11.1965 would only

 

suggest that the petitioner was not granted an absolute exemption and that what was instructed to the authority by the Government through the Memo was not to levy any tax pending a decision on the request of the petitioner and that further, it was clarified in the said Memo itself that the said instruction would in no way prejudice the right of the authorities to levy the tax at a later date. For better appreciation, it would be of much relevance to extract the operative portion from the said proceedings dated 02.11.1965:-

"The attention of the Collector of Tiruchirappalli is invited to Government Endorsement No. 96770/01/65-1, dated 13.5.1965. The Bharat Heavy Electricals Limited has also requested exemption from the levy of tax. Pending a decision on the requests of the Bharat Heavy Electricals Limited the Collector is requested to advise the Panchayat Unions and/or Panchayats concerned not to levy any tax in the area. This will not prejudice their right to levy the tax at later date."

From the above Memo, which is claimed by the petitioner as an absolute order of exemption, it is very clear that, while instructing the panchayat not to levy any tax pending a decision, it was made clear by the Government that such instruction would in no way prejudice their rights in levying the tax at a later date. In other words, the petitioner was clearly given to understand in the year 1965 itself that even while pending decision on the issue relating to exemption of property tax, the authorities were in no way prevented from levying the tax at any future/later date.

5. Further, it cannot even be the case of the petitioner that such instruction not to levy tax was given to Salem Steel also from the year 1965, rather, admittedly, such instruction was issued in their favour only during 1976. After the said instruction of the year 1965 in favour of the petitioner without prejudice to the right of the Panchayat to levy tax at a later point of time, the authorities did not demand tax immediately, rather, the demand came to be made for the year commencing from 1987 that is, nearly two decades after the instruction. In the light of such clear position, this Court holds that the petitioner can hardly have any justification at all to seek for any more concession at this point of time. It is very heartening to note that, having enjoyed tax-exemption for about 22 years, the petitioner is bold enough to complain discrimination by pointlessly comparing its case with Salem Steel Plants. The petitioner, being a giant profit-making organisation and which is supposed to depict itself as a role-model company in the matter of tax-payment, is sadly endeavouring to avoid payment of tax by unnecessarily litigating before this Court time and again. After all, payment of the tax amount levied nearly two decades after the instructions "not to levy tax" would ultimately go for utilization towards implementation of public development schemes through the panchayat/municipality concerned. It must also be pointed out that the Government, by its communication dated 04.10.1999, while addressing the petitioner about withdrawal of the instructions already issued on 02.11.1965, made it clear that the Town Panchayats are functioning under the provisions under the provisions of the T.N. District Municipalities Act, 1929 and

the Government cannot interfere with the functioning of the Town Panchayats in respect of levy of property tax. Now, in the light of the fact that there is no provision either in T.N. Panchayats Act or T.N. Municipalities Act for grant of exemption from levying or giving concessions to the buildings of the petitioner and that further, the buildings in question not being covered by the general exemption available under Section-83 of the T.N. District Municipalities Act, this Court finds no justification whatsoever in the case and claim of the petitioner. Net result, writ petition fails and it is dismissed as devoid of any merit. No costs. Connected Miscellaneous Petition stands closed.

 