

(2013) 12 GUJ CK 0093

In the Gujarat High Court

Case No : Special Civil Application No. 1046 of 2012

Bharat Sanchar Nigam Limited

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0093

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Gaurang H. Bhatt, for the Appellant; Bharat Vyas, AGP for the Respondent(s) No. 1, Mr. Dipen K. Dave, Advocate for the Respondent(s) No. 2 and Notice Served by DS for the Respondent(s) No. 1, for the Respondent

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—The present petition has been filed by the petitioner-Bharat Sanchar Nigam Limited under Articles 14, 19, 226 as well as under Article 265 and 300A of the Constitution of India and also under the provisions of the Gujarat Municipalities Act, 1963 and the Indian Telegraph Act, 1885 read with the Rules, for the prayer inter alia that the impugned final demand notice dated 10.8.2011 and 22.11.2011 issued by Respondent No. 2 - Chotila Municipality, Chotila raising the demand from the Petitioner-BSNL, Surandranagar, may be quashed and set aside, on the grounds stated in the memo of petition. Heard learned Advocate Shri Gaurang H. Bhatt for the petitioner and learned AGP Shri Bharat Vyas for the Respondent State.

2. In view of the order passed earlier, though the matter has been kept today, no one is present for learned Advocate Shri Dipen K. Dave for Respondent No. 2.

3. Learned Advocate Shri Gaurang Bhatt for the petitioner has referred to the papers and submitted that in view of the judgment of the of the Hon"ble Division Bench of the High Court in Special Civil Application No. 1898 of 2009 in case of Indus Towers Ltd. v. State of Gujarat, the Government Resolution dated

11.12.2008, on the basis of which the amount of Rs. 1,63,000/- was claimed, the said Resolution has been set aside. Learned Advocate Shri Gaurang Bhatt has also referred to the order of the Hon''ble Division Bench (Coram: D.A. Mehta and H.N. Devani, JJ.) in Special Civil Application No. 157 of 2010 with Special Civil Application No. 13960 of 2009 dated 22.4.2010 and submitted that the scheme of the Constitution and the Government Resolution dated 11.12.2008 was examined vis-a-vis the provisions of the Constitution, and the court has struck down the said Resolution in the case of Indus Tower Limited. Thereafter, in light of the judgment in case of Indus Tower Limited, the earlier Government Resolution was amended and Government Resolution dated 20.11.2009 was issued, which was also quashed and set aside by the order of the Hon''ble Division Bench in Special Civil Application No. 157 of 2010 with Special Civil Application No. 13960 of 2009 dated 22.4.2010. Learned Counsel Shri Bhatt submitted that thereafter, in Special Civil Application No. 2961 of 2010, the same Hon''ble Division Bench (Coram: D.A. Mehta and H.N. Devani, JJ.) vide order dated 7.5.2010 quashed and set aside the demand notice purported to have been issued in reliance of both the aforesaid Resolutions dated 11.12.2008 and 28.11.2009. He therefore submitted that since both the Resolutions have been struck down considering the constitutional provision under Article 265 of the Constitution of India read with the provisions of Bombay Provincial Municipal Corporation Act and the Gujarat Municipalities Act, the present petition may be allowed, as any such notice is without jurisdiction or the authority. In view of the contentions raised referring to Article 265 of the Constitution of India read with the provisions of the BPMC Act and the Gujarat Municipalities Act and also considering the judgment of the Hon''ble Division Bench in Special Civil Application No. 1898 of 2009 and allied matters in case of Indus Tower Limited dated 22.4.2010 and subsequent judgment of the same Division Bench in Special Civil Application No. 157 of 2010 with Special Civil Application No. 13960 of 2009 dated 22.4.2010 and also the judgment in Special Civil Application No. 2961 of 2010 dated 7.5.2010, the present petition deserves to be allowed, where the same issue has been considered with regard to the very basis for the authority under which such demand could be raised. Therefore, the impugned demand notices dated 10.8.2011 and 22.11.2011 are hereby quashed and set aside in view of the aforesaid legal position. Further, the undertaking has also been offered by the petitioner in compliance with the earlier order which was passed in order to remove the seal of the mobile tower. Therefore, the present petition stands allowed. Both the impugned notices, as stated, above are hereby quashed and set aside. Rule is made absolute. No order as to costs.