(2016) 01 KL CK 0090

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14781 of 2011.

Bharat Sanchar Nigam Limited - Petitioner @HASH Narakal Grama Panchayat

Date of Decision : 22-01-2016

Acts Referred:

Constitution of India, 1950 — Article 285
Kerala Panchayat Raj (Building Tax and Surcharge thereon) Rules, 1996 — Rule 21

Citation : (2016) 4 KLT 20

Hon'ble Judges : K. Harilal, J.

Bench : Single Bench

Advocate : S.K. Devi, Advocate, for the Petitioner; S. Shanavas Khan and Noushad Thottathil Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mr. K. Harilal, J. - The petitioner, Bharath Sanchar Nigam Limited (''BSNL'', in short, hereinafter) is a company incorporated under the Companies Act, 1956, and the company is represented by the Divisional Engineer (Internal), Parur. According to the petitioner, it is a Government of India Enterprises, which provide Telecommunication services to all over India. The BSNL was formed during October 2000, and till such time, the Telecommunication services were carried out by the Department of Telecommunication of India (''DOT'', in short, hereinafter). The properties and buildings acquired by the DOT at that time are still in the name of the Union of India and precisely in the name of the President of India. Even though the said buildings and properties are now under the occupation of BSNL, they have not been transferred to the BSNL, so far and still stand as earlier. Therefore, the petitioner is entitled to get exemption from the payment of all kinds of taxes under Article 285 of the Constitution of India. But, in contravention to the statutory protection, the 1st respondent Panchayat had issued Ext. P5 demand notice claiming an amount of Rs. 9,954/- as service charges under Rule 21 of the Kerala Panchayat Raj (Building Tax and the Surcharge Thereon) Rules, 1996 (for short, ''the Rules''). On receipt of Ext. P5, the petitioner had made Ext.P7 request to recall the notice, claiming the exemption under Article 285 of the Constitution of India. Thereupon, the 1st respondent Panchayat had issued Exts.P8 and P9 notices informing that if the amount, as demanded in Ext.P6, is not paid, further steps for prosecution will be initiated against the petitioner. In the above circumstance, the petitioner has filed this Writ Petition with a prayer to declare that Rule 21 of the Rules is ultra vires under Article 285 of the Constitution of India and to issue a writ of certiorari to quash Exts.P1, P3, P5, P6, P8and P9 notices.

2. The 1st respondent Panchayat entered appearance and filed a counter affidavit denying the exemption claimed under Article 285(1) of the Constitution of India and raised two contentions. Firstly, it is contended that the petitioner is a company registered under the Companies Act and thereby, the petitioner is not entitled to get exemption under Article 285 of the Constitution of India. Secondly, the amount demanded under Exts. P6 and P8 is not a tax, as contemplated under Article 285 of the Constitution of India, and the same is a service charge for the usage and maintenance of drainage, sanitation, water connection, sewage etc., provided by the Panchayat to all the people in the Panchayat, including the petitioner.

3. Heard the learned senior counsel for the petitioner and the learned Standing Counsel appearing for the 1st respondent.

4. The learned senior counsel appearing for the petitioner advanced arguments assailing imposition of service charge on the petitioner under Rule 21 of the Rules. The main thrust of the arguments is that Rule 21 is ultra vires under Article 285 of the Constitution of India. According to the learned Senior counsel, service charge also would fall within the ambit of ''tax'' contemplated under Article 285 and thereby State Legislature is incompetent to enact laws enabling levy of surcharge also. Tax on building means and includes any kind of charge imposed on the buildings, the counsel submits.

5. Per contra, the learned Standing Counsel for the 1st respondent has advanced arguments to justify the imposition of service charge on the petitioner under Rule 21 of the Rules. It is contended that the demand under Rule 21 of the Rules is not a demand of tax; but it is a consideration for various services rendered by the Panchayat to all the people, including the petitioner who own and possess buildings in that Panchayat. The crux of the arguments is that the tax and service charge are distinct and different and the same cannot be equated each other. The service charge can never be included in tax, the counsel submits.

6. In view of the rival submissions made at the Bar, the point that arises for consideration is, whether the imposition of service charge under Rule 21 of the Kerala Panchayat Raj (Building Tax & Surcharge Thereon) Rules 1996 is ultra vires under Article 285 of the Constitution of India.

7. At first, it is apposite and profitable to examine the relevant provisions under Article 285 of the Constitution of India and Rule 21 of the Kerala Panchayat Raj (Building Tax & Surcharge Thereon) Rules 1996. Article 285 is extracted below:

"285. Exemption of property of the Union from State taxation. - (1) The property of the Union shall, save in so far as Parliament may be 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 liable or treated as liable, so long as that tax continues to be levied in that State."

8. The relevant part of Rule 21 of the Kerala Panchayat Raj (Building Tax & Surcharge Thereon) Rules is extracted below and it reads as follows :

"21. Service charge is leviable in the case of buildings owned by the Central Government and exempted from building tax. - A service charge, on the buildings owned by the Central Government and exempted from tax under Article 285 of the Constitution of India may be levied from the Central Government, subject to the conditions mentioned below, towards sanitation, water supply, scavenging, street light and drainage wherever the Village Panchayat has arranged such services."

9. Going by Article 285 of the Constitution of India, it is seen that the properties of Union of India shall be exempted from all the taxes imposed by a State or by any authority within a State.; whereas, Rule 21 of the Rules mandates that service charge shall be realised from all the buildings which are exempted from taxes under Article 285 of the Constitution of India for the service rendered by the Panchayat, by providing sanitation, water connection, scavenging, drainage and street light etc.

10. As rightly contended by the learned senior Counsel for the petitioner, this Court is of the opinion that, tax and service charge are entirely different and distinct. ''Service charge'' contemplated under the said Rule is a charge to be levied for rendering service towards sanitation, water supply, scavenging, street light and drainage etc. Here, the service rendered by the Panchayat is the basis of the imposition of service charge. Put it differently, it is a charge which is being levied as consideration in lieu of common amenities provided to the public. Since the buildings owned by Central Government have also been availing such amenities, the Central Government is also liable to pay service charge as one among beneficiaries of the service rendered by the Panchayat, like the general public. Here the buildings owned by the Central Government stand on a par with that of general public as the service of public amenities involves recurring expenses. This levy of charge is intended to meet incurrence of recurring expenses in this respect, of the Panchayat. Therefore, the buildings owned by the Central Government cannot claim any exemption from service charge, which is realisable under Rule 21 of the Kerala Panchayat Raj (Building Tax and Surcharge Thereon) Rules under the cover of Article 285 of the Constitution of India.

11. The above view is supported by the decision held by the Constitutional Bench

of the Supreme Court in AIR 1963 SC 1760 [in-re, Sea Customs Act, 1878, Section 20(2)]. There, having referred to the language of Article 285 of the Constitution of India and intention of the framers of the Constitution, the learned Chief Justice, for majority came to the conclusion that immunity granted by Articles 285 and 289 was of similar ambit and extended only to direct taxes without exempting indirect taxes such as excise and customs duties. Here, in my view, service charge is not a tax at all.

12. Since the Central Government itself is not exempted from payment of service charge under Rule 21 of the Act, the question whether the building owned or possessed by BSNL will be deemed to be the building owned or possessed by Central Government will not come into consideration in this Writ Petition and that question will stand open.

13. In Ext. P8, it is specifically stated that the amount levied is towards service charge only. In Ext.P9, the reference is shown as service charge, exempting Building Tax. Hence the service charge contemplated under Rule 21 of the Rules can never be insulated by or exempted under Article 285 of the Constitution of India.

14. In the above analysis, the challenge against the demand made by the respondents under Rule 21 of the Rules will stand rejected and this Writ Petition is dismissed.