(2015) 01 KAR CK 0233

In the Karnataka High Court

Case No : Writ Appeal Nos. 3507 and 3506 of 2010 (LB-BMP)

Bruhat Bangalore Mahanagara Palike and Others — APPELLANT

Vs

Senior Superintendent of Post Offices — RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Constitution of India, 1950 — Article 254, 285
Karnataka Municipal Corporations Act, 1976 — Section 110, 2

Citation : (2015) 01 KAR CK 0233

Hon'ble Judges : S. Sujatha, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : Subramanya R., Advocate for Ashok Haranahalli Assts., for the Appellant; S. Prakash Shetty, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The appellants are questioning the correctness and legality of the order passed by a learned Single Judge in WP Nos. 9965 of 2007 and 10799 of 2006 dated 4-8-2010.

2. The question involved in these appeals is whether the Bruhut Bengaluru Mahanagara Palike [BBMP] can demand service charges from the appellant - department of posts - in respect of the offices held by it?

3. Relying on sub-section (2) of Section 110 of the Karnataka Municipal Corporations Act, 1976 [for short, the Act], BBMP demanded the postal department to pay service charges. Postal department contended that in view of the provisions of Article 285 of the Constitution of India, the postal department need not pay any tax and/or service charges to the BBMP. The request made by the department has been turned down by the BBMP. Therefore, the aforesaid writ petitions came to be filed. The learned Single Judge relying on Article 285 and also the judgment of the Hon''ble Supreme Court in the case of Municipal Corporation, Amritsar Vs. The Senior Superintendent of Post Offices, Amritsar Division and Another, came to the conclusion that the demand made by the

BBMP is not proper and accordingly writ petitions filed by the postal department have been allowed. Challenging the same, the BBMP has filed these appeals.

4. The main contention of Sri Subramanya R, learned counsel for the appellants-BBMP is that in view of sub-section (2) of Section 110 of the Act, there is an enabling provision for the BBMP to demand the postal department to pay service charges at the rate of 25% of the tax payable on the building. According to him, the postal department has not challenged the provisions of sub-section (2) of Section 110 of the Act. In the circumstances, he contends that the order passed by the learned Single Judge is liable to be set aside.

5. Sri S. Prakash Shetty, learned counsel for the respondents-postal department submits that though the phrase used is ''service charges'', considering the definition of the clause of tax as defined under sub-section (41) of Section 2 of the Act, ''tax'' includes toll, rate, cess, fee or other import leviable under the Act. According to him, the other imports leviable under the Act have to be considered as tax and service charges and would attract the same. Therefore, he contends that there is no necessity for the postal department to challenge the provisions of sub-section (2) of Section 110 of the Act. Relying on the provisions of Article 254 of the Constitution of India, he contends that there is repugnancy between the central Act and the state Act and in such circumstances, the provisions of the central Act prevail over the provisions of the state Act and therefore sub-section (2) of Section 110 of the Act is held to be inconsistent with the central Act and even if the Presidential asset is obtained by the state, the same has to be ignored. He further submits that in similar circumstance, the Hon''ble Supreme Court in the case of MUNICIPAL CORPORATION AMRITSAR [supra] and in the case of Union of India Vs. Purna Miunicipal Council and others, has ruled that there is no provision to demand service charges by the municipalities. Accordingly, he requests the court to dismiss the appeals.

6. Having heard the learned counsel for the parties, the only point that is to be considered by us in these appeals is whether the learned Single Judge has committed an error in allowing the writ petitions filed by the postal department?

7. Learned counsel for the appellants-BBMP does not dispute that the tax payable by the postal department on its buildings is exempt under sub-section (2) of Section 110 of the Act. However, he contends that service charges are payable by the postal department. But, in similar circumstances, the Hon''ble Apex Court, in the aforesaid decisions has held that such service charges cannot be demanded by municipal councils/corporations. In view of Article 254 of the Constitution of India, we are also of the opinion that there is repugnancy between the state Act and the central Act. When postal department is governed by the central Act and when there is exemption from payment of tax under the provisions of the Act, we are of the view that there is no need or necessity for the postal department to challenge the provisions of sub-section (2) of Section 110 of the Act, more particularly keeping in view the definition of ''property tax'' under the Act. Accordingly, we do not see any merits in these appeals. In the

result, the appeals are dismissed.