

(2014) 07 KL CK 0092

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 32769 of 2010

Fr. Jose Thenpillil

APPELLANT

Vs

Karukutty Grama Panchayat

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 162, 162A, 200, 203, 207
Right to Information Act, 2005 — Section 2(h), 4(1)(d)

Citation : AIR 2014 Ker 181 : (2014) 4 ILR 68 : (2014) 3 KHC 631 : (2014) 3 KLJ 836

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : Wilson Urmese, Advocate for the Appellant; Viju Thomas, Government Pleader and G. Santhosh Kumar (P), Advocate for the Respondent

Judgement

Anil K. Narendran, J.—The petitioner is the President of Claretian Provincial House, Karukutty, which is a Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Ext. P1 is the certificate of registration dated 30/01/2008, issued by the Registrar of Societies. The petitioner has filed this Writ Petition seeking a writ of certiorari to quash Exts. P2, P4, P6, P7, P7(a), P9, P9(a) and P10 and also seeking a writ of mandamus commanding the Finance Committee of the Karukutty Grama Panchayat to consider Ext. P5 appeal afresh. According to the petitioner, the Provincial House is functioning in a newly constructed building bearing No. 367/A of Ward No. IV of the Karukutty Grama Panchayat (hereinafter referred to as "the respondent-Panchayat"). The Provincial House has only charitable objects and the building or any part thereof is not let out or intended to be let out and no income is derived from that building. There is also a chapel for worship, which is opened to the public. There is a reference library and other spaces are utilised for conducting classes, seminars, etc., and also for the educational purpose of priesthood students. As the building is used as a place of worship and for other religious and charitable purposes, it is liable to be exempted under Section 207

of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as "the Act") from property tax levied under Section 203 of the Act and service cess levied under sub-section (2) of Section 200 of the Act. However, the petitioner was issued with Ext. P2 notice of the respondent-Panchayat demanding a sum of Rs. 25,155/- towards property tax, Rs. 9,538/- towards permit fee and Rs. 1,258/- towards library cess. On receipt of Ext. P2 demand, the petitioner submitted Ext. P3 request before the respondent-Panchayat to exempt the building from payment of tax.

2. The respondent-Panchayat issued Ext. P4 communication stating that, going by Section 207 of the Act, the buildings set apart for public worship, buildings owned by educational institutions approved by Government and buildings owned by registered charitable institutions for which no rent is realised alone are exempted from property tax. Since the building owned by the petitioner does not fall under any of the exempted categories, tax exemption can be granted only if the petitioner obtains favourable orders from the Government. Aggrieved by Ext. P4, the petitioner had approached this Court in W.P. (C) No. 11967/2008 and the said Writ Petition was disposed of by judgment dated 10/04/2008 relegating him to avail the statutory remedy of appeal. This Court directed the respondent-Panchayat to issue ownership certificate of the petitioner on payment of Rs. 10,000/-, without prejudice to his contentions in the prospective appeal.

3. The petitioner filed Ext. P5 appeal before the Finance Standing Committee of the respondent-Panchayat, under Section 276 of the Act, contending that the building which consists of a chapel for public worship, seminary of priests, etc., and used for religious, charitable and educational purposes is liable to be exempted from property tax, as provided under Section 207 of the Act. The petitioner also relied on the judgment of this Court in *St. Liobha Bhavan v. Kodakara Panchayat* 1996 KHC 63 : 1996 (1) KLT 304. However, without considering Ext. P5 appeal, the respondent-Panchayat issued Ext. P6 notice demanding payment of Rs. 45,402/- toward property tax, penal interest, etc. Later, the petitioner was issued with Ext. P7 communication of the respondent-Panchayat, intimating that a decision has already been taken by the Panchayat Committee on 21/04/2009, rejecting his request to reduce the property tax assessed for the building. Ext. P7(a) decision of the Panchayat Committee was also enclosed along with Ext. P7 communication.

4. Challenging Ext. P7, the petitioner had approached this Court in W.P. (C) No. 22892/2009 and this Court by Ext. P8 judgment disposed of the said Writ Petition directing that a decision on Ext. P5 appeal shall be rendered by the competent authority in the respondent-Panchayat, after hearing the petitioner and advertent to and considering the contents of sub-section (1) of Section 207 of the Act, within a period of two months from the date of receipt of a copy of the judgment. It was made clear that, further collection of tax or recovery against the petitioner will stand deferred until then. Pursuant to Ext. P8 judgment the petitioner was asked to appear before the Finance Standing

Committee of the respondent-Panchayat for a hearing. Though he attended the office, no opportunity was given to present the case before the said Committee. He was asked by the Secretary of the respondent Panchayat to submit documents relating to the building so as to present it before the committee. Accordingly, he submitted the said documents before the Secretary along with an argument notes.

5. Later, the petitioner was issued with Ext. P9 communication of the Secretary of the respondent-Panchayat intimating that the Standing Committee for Finance in its meeting held on 09/02/2010 decided not to exempt the buildings of the Claretian Provincial House from property tax. Ext. P9(a) decision of the Standing Committee for Finance was also enclosed along with Ext. P9 communication. The reasons stated in Ext. P9(a) decision to reject Ext. P5 appeal are that, the decision of this Court in *Mother Superior Adoration Convent v. Government of Kerala and Another* 2008 (1) KHC 345 : 2008 (1) KLT 446 : ILR 2008 (1) Ker. 101 is in respect of building tax levied by the Revenue Department. The main source of income of the Panchayat is property tax and the financial position of the Panchayat is very poor. Panchayat levy property tax on the residential buildings of ordinary people and as such the buildings constructed by the Claretian Provincial House cannot be exempted from property tax.

6. Later, the petitioner was issued with Ext. P10 demand notice demanding a sum of Rs. 1,28,708/- towards property tax for the period from 2007-08 to 2010-11 together with other charges including penal interest. It is aggrieved by the levy and consequential demand of property tax in respect of building No. 367/ A owned by the Claretian Provincial House, the petitioner has approached this Court in this Writ Petition, seeking various reliefs.

7. A counter-affidavit has been filed on behalf of the respondent-Panchayat contending that the Claretian Provincial House is functioning in a newly constructed multi-storied building having a plinth area of 34,190 sq.ft., which is a well-furnished building with high quality vitrified tile flooring. As a result of Ext. P8 judgment, the petitioner was heard on 08/01/2010. Thereafter, the matter was placed before the Panchayat Committee in its meeting held on 02/02/2010 and also before the Standing Committee for Finance in its meeting held on 09/02/2010. The Standing Committee decided that the petitioner is not entitled for exemption from tax and the same was intimated to him vide Exts. P9 and P9(a), which was followed by Ext. P10 demand notice. According to the respondent-Panchayat, as per sub-section (2) of Section 207 of the Act, the petitioner can approach the Government for exemption from tax. If the Government grant any such order, the Panchayat is ready to exempt the petitioner from payment of tax.

8. Heard arguments of the learned counsel for the petitioner, the learned Standing Counsel appearing for the respondent-Panchayat and also the learned Government Pleader appearing for the 2nd respondent.

9. The learned counsel for the petitioner contended that levy of property tax on the building of the Claretian Provincial House is patently illegal as the said building is liable to be exempted from levy of property tax, under sub-section (1) of Section 207 of the Act. In spite of the direction contained in Ext. P8 judgment of this Court, the Standing Committee for Finance rejected Ext. P5 appeal without hearing the petitioner and adverting to any of the legal contentions raised in the memorandum of appeal and the argument notes. Per contra, the learned Standing Counsel for the respondent-Panchayat contended that the decision taken by the Standing Committee for Finance in Ext. P9(a) is perfectly legal and no interference of this Court is called for.

9A. The grievance of the petitioner is regarding levy of property tax on the building of the Claretian Provincial House and according to him the said building is liable to be exempted from the levy of property tax, under sub-section (1) of Section 207 of the Act. Section 207 of the Kerala Panchayat Raj Act, 1994, which deals with exemption from Tax, Cess, etc., is extracted hereunder;

207. Exemption from Tax, Cess, etc.-- (1) The following buildings and lands shall be exempted from property tax as may be levied under Section 203 and service cess as may be levied under sub-section (2) of Section 200, namely.--

(a) buildings set apart for public worship and actually so used or used for allied purposes, religious study centres;

(b) building exclusively used for educational purposes or allied purposes under the ownership of educational institutions owned by the Government, aided or functioning with the financial assistance of the Government and the hostel buildings wherein the students of the said institutions reside;

(c) hospitals providing treatment to patients free of cost;

(d) buildings providing shelter to destitutes, orphans, physically or mentally challenged persons, persons suffering from fatal diseases or animals and using for charitable purposes by admitting all classes of people;

(e) libraries, reading rooms and play grounds open to public;

(f) ancient monuments being protected under the law relating to preservation of ancient monuments for the time being in force, or part thereof which are not used as residential houses or as public offices;

(g) burial and burning grounds;

(h) buildings owned by any Local Self Government Institution and the buildings attached to the institutions handed over to Local Self Government Institutions by the Government;

(i) buildings if the owner thereof belongs to below poverty line and used as his own dwelling house and having a plinth area of less than thirty square meters;

(j) residential buildings constructed and given free of cost by Government or

Quasi-Government institutions or Local Self Government institutions as part of welfare activities;

Explanation.-- The exemption granted under sub-section (1) shall not extend to buildings for which rent is realised by the owners and to residential houses not being hostels attached to educational institutions and to residential houses attached to libraries.

(2) The Government and with the permission of the Government, the Village Panchayat may exempt wholly or in part any class of buildings under the ownership of any person, from the payment of tax, cess or duty under the provisions of this Act.

10. Clauses (a) to (j) of sub-section (1) of Section 207 of the Act enumerate certain categories of buildings and lands which are exempted from property tax levied under Section 203 of the Act and service cess levied under sub-section (2) of Section 200 of the Act. The exemption contemplated under sub-section (1) of Section 207 of the Act is with reference to the nature of use of building. Going by the Explanation to sub-section (1) of Section 207 of the Act, the exemption granted under the said sub-section shall not extend to buildings for which rent is realised by the owners and to residential houses not being hostels attached to educational institutions and to residential houses attached to libraries. Therefore, once the nature of use of a building in respect of which exemption is sought for falls under any of the categories enumerated in Clauses (a) to (j) of sub-section (1) of Section 207, read with the Explanation to that sub-section, the Panchayat is left with no discretion but to exempt the said building from property tax levied under Section 203 and service cess levied under sub-section (2) of Section 200 of the Act.

11. Sub-section (2) of Section 207 of the Act empowers the Government to exempt wholly or in part any class of buildings from property tax and service cess levied under the Act. The said sub-section also authorises the Panchayat to grant such exemption, with the permission of the Government. Sub-section (2) of Section 207 empowers the Government to exempt from property tax buildings which do not fall under any of the categories enumerated in Clauses (a) to (j) of sub-section (1). But, there is no necessity to invoke such power under sub-section (2) of Section 207 of the Act, if the nature of use of a building in respect of which exemption is sought for falls under any of the categories enumerated in Clauses (a) to (j) of sub-section (1).

12. When an application is made before the Panchayat seeking exemption from property tax, the Panchayat has to consider whether the nature of use of that building falls under any of the categories enumerated in Clauses (a) to (j) of sub-section (1) of Section 207 of the Act. The plinth area of the building, the standard or quality of the materials used for flooring or furnishing the building, etc., are extraneous considerations alien to sub-section (1) of Section 207 of the Act, which contemplates exemption from property tax based on the nature of use

of the building. Similarly, the financial position of the Panchayat or the fact that property tax is its main source of income are also extraneous considerations, alien to law.

13. The Standing Committee for Finance constituted under Section 162 of the Act consists of members elected by the elected members of the Panchayat from among themselves. Going by Section 162A of the Act, the Standing Committee for Finance shall deal with appeals filed under sub-section (1) of Section 276 of the Act in matters connected with tax. Such a committee constituted under Section 162 of the Act is a "public authority" as defined under Section 2(h) of the Right to Information Act, 2005, which exercises quasi-judicial functions. As per Section 4(1)(d) of the Right to Information Act, every public authority shall provide reasons for its administrative or quasi-judicial decisions to affected persons. Therefore, the Standing Committee for Finance is duty bound to provide reasons while rejecting the appeal filed by the petitioner claiming exemption from property tax in respect of the building of the Claretian Provincial House. The said committee is also duty bound to ensure that its decision is based on germane considerations and not on extraneous considerations alien to sub-section (1) of Section 207 of the Act. If the reasoning of the said committee is based solely on such extraneous considerations, the decision so taken can be termed as a decision with "no reasons", which runs contrary to the mandate of Section 4(1)(d) of the Right to Information Act to provide reasons for its quasi-judicial decisions.

14. Moreover, Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* 1971 (1) All ER 1148, observed as follows; "The giving of reasons is one of the fundamentals of good administration". In *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, , the Apex Court held as follows;

6.It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons..... If Courts of law are to be replaced by administrative authorities and Tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and Tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and Tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law....."

15. By Ext. P8 judgment, this Court directed disposal of Ext. P5 appeal filed before the Standing Committee for Finance, after hearing the petitioner and advertent to the provisions under sub-section (1) of Section 207 of the Act. Though the petitioner attended the office of the Panchayat, no opportunity was given to present the case before the Standing Committee for Finance. Instead, the Secretary of the Panchayat asked the petitioner to submit documents relating to the building so as to present it before the said Committee and accordingly he submitted the said documents before the Secretary along with an argument note.

16. Later, the Standing Committee for Finance vide Ext. P9(a) rejected Ext. P5 appeal stating that the main source of income of the respondent-Panchayat is property tax and the financial position of the Panchayat is very poor. The Panchayat is levying property tax on the residential buildings of ordinary people and as such the buildings constructed by the Claretian Provincial House cannot be exempted from levy of property tax. In the counter-affidavit filed on behalf of the respondent-Panchayat it is contended that the Claretian Provincial House is functioning in a newly constructed multi-storied building having a plinth area of 34,190 sq.ft., which is a well-furnished building with high quality vitrified tile flooring. As the reasoning of the Standing Committee for Finance in Ext. P9(a) is based solely on such extraneous considerations, it is a decision with "no reasons", which runs contrary to the mandate of Section 4(1)(d) of the Right to Information Act to provide reasons for its quasi-judicial decisions. While taking such a decision, the said Committee failed to observe the basic principles of natural justice in its proper spirit. Hence the said decision in Ext. P9(a) is legally unsustainable.

17. By Ext. P8 judgment, this Court directed the competent authority in the respondent-Panchayat to take a decision on Ext. P5 appeal, which is a statutory appeal filed under sub-section (1) of Section 276 of the Act, after hearing the petitioner and advertent to the provisions under sub-section (1) of Section 207 of the Act. But, no opportunity was given to the petitioner to present the case before the Finance Standing Committee, which is the Appellate Authority. Instead, the Secretary of the respondent-Panchayat asked the petitioner to submit certain documents. Going by the counter-affidavit filed on behalf of the 1st respondent, the petitioner was heard by the Secretary of the Panchayat, on 08/01/2010. Thereafter, the matter was placed before the Panchayat Committee in its meeting held on 02/02/2010 and also before the Standing Committee for Finance in its meeting held on 09/02/2010.

18. Therefore, the procedure adopted by the Standing Committee for Finance while disposing Ext. P5 appeal is patently illegal, in violation of the principles of natural justice and also contrary to the directions of this Court contained in Ext. P8 judgment. Going by the provisions in Section 276 of the Act, an appeal filed before the Standing Committee for Finance has to be disposed of by the said Committee which is the Appellate Authority. The said Appellate Authority, which consists of members elected by the elected members of the Panchayat from

among themselves, has to hear the petitioner, who is the appellant in Ext. P5 appeal, and take a decision thereon in accordance with law, after adverting to the provisions under sub-section (1) of Section 207 of the Act. The so called hearing conducted by the Secretary of the Panchayat meet neither the requirement of the principles of natural justice nor the directions of this Court contained in Ext. P8 judgment. On that ground as well, the decision taken by the Standing Committee for Finance on Ext. P5 appeal is liable to be set aside. In the result, this Writ Petition is disposed of, without expressing anything on the merit of the exemption claimed by the petitioner, by setting aside Exts. P9 and P9(a) and directing the Standing Committee for Finance of the respondent - Panchayat to consider Ext. P5 appeal afresh, after affording the petitioner an opportunity of personal hearing, and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of 3 months from the date of receipt of a certified copy of this judgment. The Standing Committee for Finance shall pass a reasoned order, after adverting to the provisions under sub-section (1) of Section 207 of the Act and also the contentions raised by the petitioner. It will be open to the petitioner to submit any written submission before the Standing Committee for Finance and also rely on the judgments of this Court governing the field. It is made clear that, the demand made in Ext. P10 will be subject to the outcome of Ext. P5 appeal.

No order as to costs.