(2010) 08 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 4170 of 1998

Gopal Asaram Sharma — APPELLANT

Vs

The State of Maharashtra and Others — RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 265
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 108, 108A, 109, 109(2), 110

Citation : (2010) 5 BomCR 559

Hon'ble Judges : S.V. Gangapurwala, J;B.R. Gavai, J

Bench : Division Bench

Advocate : S.P. Shah, in Writ Petition No. 4170 of 1998 and Mukul Kulkarni, in Writ Petition No. 1515 of 2000, for the Appellant; R.K. Ladda, Assistant Govt. Pleader for State, Rashmi Hardas, holding for C.R. Deshpande, for Resp. No. 7 in Writ Petition No. 4170 of 1998 and N.B. Suryawanshi, for Resp. No. 6 in Writ Petition No. 1515 of 2000, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—Both the petitions involve common question of law, as such are decided together.

2. In Writ Petition No. 4170 of 1998, the petitioner has challenged the executive fiat issued by the Dy. Secretary, Urban Development, Mantralaya dated 14/01/1998 concerned with publication of model bye-laws regarding special water tax, so also challenges action of Municipal Council, Shahada publishing the public notice dated 23/6/1998 and the communication dated 18/6/1997 of the Director of Municipal Administration, thereby communicating all the Municipal Councils to carry out corresponding amendments in the respective bye-laws regarding water tax, whereas the petitioner in Writ Petition No. 1515 of 2000 challenges the executive directions of Dy. Secretary, Urban Development, Mantralaya dated 14/01/1998 and the public notice published by Sauda Municipal Council dated 30/3/1999 regarding special water tax, so also the communication

dated 18/6/1997 of the Director of Municipal Council, thereby communicating all the Municipal Councils to carry out the corresponding amendments in their bye-laws regarding special water tax.

3. The Municipal Councils in both the Writ Petitions initially used to levy special water tax @ Rs. 300/- per annum. Respondent No. 1 - State of Maharashtra, framed model bye-laws exercising its powers u/s 323 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (For short, ''Act of 1965'') in the year 1990. Thereafter, the model bye-laws were amended by respondent No. 1, thereby increasing the rate structure of the taxes and prescribing minimum rate of Rs. 806/- per annum for special water tax. The respondent - Municipal Council thereafter issued proclamation. The Municipal Councils have passed resolution increasing the minimum rate of special water tax to Rs. 806/- per annum. The petitioners have assailed this action of levying special water tax @ Rs. 806/- per annum.

4. Mr. S.P. Shah, the learned Counsel for the petitioner canvassed arguments on behalf of the petitioner in Writ Petition No. 4170 of 1998. Mr. Mukul Kulkarni, the learned Counsel for the petitioner in Writ Petition No. 1515 of 2000 adopted the arguments of Mr. S.P. Shah. The contour of the arguments of the learned Counsels for the petitioners can be culled out as under:

(i) The procedure prescribed for imposing the special water tax is not followed. The provisions of Section 111 read with Section 109 are not adhered. The bye-laws of the Municipal Council, Shahada have not been amended. As such, levy and collection of tax at the increased rate is contrary to the protective mandate of Article 265 of the Constitution of India.

(ii) The water supply is a public utility service. The same is the basic amenity. The increase in the rate structure beyond 100 % virtually affects and infringes the right to life of the citizens.

(iii) There is no resolution passed by the Council as contemplated u/s 112 of the Act of 1965 specifying the particular rate of Rs. 806/- per annum.

(iv) Having regard to the provisions of Section 323(6) of the Act of 1965, it is out side the competence of Director of Municipal Administration to issue any such order or direction asking the Municipal Councils to carry out amendments in the bye-laws.

(v) The levy and collection of water tax with retrospective effect is per-se unreasonable and without jurisdiction. The provisions of Section 322(4) of the Act of 1965 have been flouted.

5. Per contra, Miss. R.P. Hardas, the learned Counsel for the respondent contended-

(i) Section 323 of the Act of 1965 gives powers for imposition, alteration or regularization of taxes. Under these powers, the State has revised the water taxes schedule. The water supply scheme of Municipal Council is running in losses. The losses as detailed in the affidavit in reply are self-explanatory. The question of observance of the procedure prescribed u/s 111 read with Section 109(2) of the Act of 1965 will arise at the time of imposing taxes for the first time and as water taxes are altered by the State Govt., the same is implemented.

(ii) The resolution is passed by the Municipal Council of charging the special water tax @ Rs. 806/- per annum.

(iii) Subsequently Resolution No. 12 is passed by the Municipal Council, Shahada on 16/1/1999 adopting the model bye-laws.

6. Mr. Suryawanshi, the learned Counsel for the respondent - Municipal Council in Writ Petition No. 1515 of 2000 adopted the arguments of the learned Counsel for the respondent in Writ Petition No. 4170 of 1998 and further submitted that the respondent - Municipal Council, Sawda has not charged special water tax with retrospective effect.

7. Before adverting to the arguments of the respective counsels of the parties, it would be appropriate to refer to the relevant provisions relied by the respective counsels.

Section 109: Procedure preliminary to imposing tax u/s 108 (and Fees u/s 108A)- A Council before imposing any of the taxes referred to in Section 108 (and fees referred to in Section 108-A) shall observe the following preliminary procedure:

(a) it shall, the by resolution passed at a special meeting, select for the purpose one or the other of the taxes specified in that section and approve the bye-laws concerning the tax selected, and in such bye-laws specify.

(i) xxxxxxxxxxxxxx

(ii) the amount or rate at which the Council proposes to assess each such class;

111. Local publication of bye-laws relating to taxes, with notice- (The bye-laws referred to in Sections 109 and 110, as sanctioned and published in the Official Gazette, shall be displayed by the Council on its notice board in the Municipal office. The Council shall also publish a notice in the prescribed form in a local newspaper informing the inhabitants of the Municipal area of the subject matter of the bye-laws so displayed and the date on which they shall come into force. Such date shall, however, be not less than thirty days from the date of publication of such notice).

Provided that-

(a) a tax leviable by the year shall not come into force except on one of the following days, namely, the first day of April, the first day of July, the first day of October or the first day of January in any year; and if it comes into force on any day other than the first day of April, it shall be leviable by the quarter till the first day of April then next ensuing.

(b) if the levey of a tax, or a portion of a tax, has been sanctioned for a fixed period only, the levy shall cease at the conclusion of that period, except so far as regards recovery of arrears which may have become due during that period.

147. Power of State Government to require Council to impose taxes- Where it appears to the State Government that the balance of the municipal fund of a Council is insufficient for meeting any expenditure incurred u/s 309 or for the performance of duties for the performance of which the Director had fixed a period u/s 312, the State Government may by notification require the Council to impose, within the municipal area, any tax specified in the notification which may be imposed u/s 108 and which is not at the time imposed, within the said area or to enhance any existing tax in such manner or to such extent as the State Government considers fit; and the Council shall forthwith proceed to impose or enhance in accordance with the requisition, such tax under the provisions of this Chapter as if a resolution of the Council had been passed for the purpose u/s 109.

322. (1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(3) xxxxxxxxxxxx

(4) It it appears to the State Government that an amendment of any of the by-laws of a Council is necessary or desirable in the interest of the general public or because they are inconsistent with any provisions of this Act or the rules made thereunder, the State Government may, after consulting the Council, by notification in the Official Gazette, amend or cancel any of the by-laws and on the issue of such notification the by-laws shall be deemed to have been duly amended or cancelled, as the case may be, accordingly, without prejudice to the validity of anything previously done or omitted to be done.

323. Power to make and enforce aceptance of model by-laws- (1) The State Government may make model bylaws and publish them in Official Gazette for the guidance of the Councils.

(2) If a Council has already made bylaws on a matter for which model by-laws are made by the State Government, the Council may adopt the model by-laws with such minimum changes as the peculiar local circumstances may warrant.

(3) If at any time it appears to the Director that the by-laws made by a Council on any matters are inadequate to regulate such matters, and model by-laws have been made by the State Government for such matters, the Director may by an order in this behalf require the Council to adopt such model by-laws modified to suit local conditions.

(4) xxxxxxxxxxxxxxx

(5) xxxxxxxxxxxxxxx

(6) xxxxxxxxxxxxxxx.

8. It is not disputed that earlier the Municipal Councils were charging special water tax @ Rs. 300/- per annum. The State Govt. had amended the model bye-laws vide notification dated 1/4/1997, thereby prescribing the minimum rate of special water tax @ Rs. 806/- per annum and different rates for different purposes. It is also a fact that the Municipal Councils thereafter passed resolutions increasing the special water tax to Rs. 806/- per annum. The bone of contention of the learned Counsels for the petitioners is that the procedure as has been laid down, has not been adhered by the Municipal Councils and if the procedure is not followed, the same would vitiate the very imposition of the tax. So also, such exorbitant increase in water tax is not in the interest of the citizens residing in the area of the said Municipal Councils.

9. In the resolution passed by the Municipal Council it has been stated that the water supply scheme is in enormous losses and to curb the said losses, it is inevitable to increase the special water tax.

10. The Apex Court in the case of Jagannath and Others Vs. Union of India (UOI), has held that mere challenge that tariff imposed by Tax law is very heavy, can not be entertained.

11. The State Govt. has exercised the powers vested in it u/s 323 of the Act of 1965. Section 323 gives ample power to the State Govt. in this regard and the Council has a right to adopt the said bye-laws.

12. Section 147 of the Act of 1965 gives power to the State Govt. to require the council to impose taxes. If it appears to the State Govt. that the balance of the Municipal funds of the Council is insufficient for meeting any expenditure incurred u/s 309 of the Act of 1965 or for the performance of the duties, the State Govt. may by notification require the Council to impose any tax specified in the notification which may be imposed u/s 108 of the Act of 1965. Bare reading of Section 108 of said Act shows that special water tax is a tax which can be imposed u/s 108 of the Act of 1965.

13. The reading of all the provisions conjointly would lead to a conclusion that the State Govt. has the powers to make model bye-laws. Even the Director can direct the Council to adopt the model bye-laws made by the State Govt. Sub-section (4) of Section 323 mandates that the Council shall comply with the orders of the Director under Sub-section (3) of Section 323 of the Act of 1965. In the present case, the Govt. had made and published the amended model bye-laws vide resolution dated 1/4/1997, wherein the minimum special water tax has been specified. The Govt. through Dy. Director vide its communication dated 14/1/1998 directed all the Municipal Councils to comply said model bye-laws and to charge the tax as detailed therein. The reasons are also given while directing the Municipal Councils to charge the said special water tax at the rate specified in the model bye-laws by the State Govt. The Govt. has taken into consideration that the water supply scheme has to be run on the basis of "no profit no loss".

The revenue generated from special water tax was not sufficient to meet the expenses. To make the water supply scheme self-sufficient, the Govt. has decided to enhance the special water tax. The Govt. taking into account that the water supply scheme has to be self-sufficient and that the present rate of taxes were not sufficient to meet the expenses has amended the model bye-laws prescribing enhanced minimum rate. The same is in conformity with the provisions. The Municipal Council has also thereafter passed the resolution adopting the said model bye-laws. The resolution dated 30/3/1998 passed by the Municipal Council confirmed that the special water tax is to be charged at the amended rates as per the model bye-laws promulgated by the State Govt. The reasons are also given by the Municipal Council. The objection of the petitioners that there was no resolution adopting the model bye-laws and as such the levy of special water tax at the enhanced rate is illegal, is also taken care of by the respondent Municipal Council by subsequently passing the resolution on 16/1/1999 adopting the model bye-laws. The earlier resolution dated 30/3/1998 in effect is the same. But only in clear words it was not mentioned that the model bye-laws are adopted. Subsequently, that has also been done vide resolution dated 16/1/1999.

14. The contention of the petitioners that the special water tax is payable from 1/4/1998 and the resolution is passed by the Municipal Council subsequently in June, 1998 and thereby the special water tax is being charged with retrospective effect, is not sustainable. There is no restriction on the Council from charging the special water tax with retrospective effect. The act does not prohibit the Municipal Council from doing so. Even the Apex Court in the case of Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others, has held that retrospective taxing clause is permissible.

15. Taking into account all the above aspects, we do not find any merit in the petition. As such the Writ Petitions are dismissed with no order as to costs. Rule is discharged.

