(2019) 07 JH CK 0149

In the Jharkhand High Court

Case No : Writ Petition (c) No. 2487 Of 2018

Heavy Engineering Corporation Limited APPELLANT

Vs

State Of Jharkhand And Ors RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Jharkhand Municipal Act, 2011 — Section 151, 152, 152(3), 152(7), 152(8), 184, 590, 615, 615(8)
Indian Contract Act, 1872 — Section 23
Jharkhand Municipal Corporation Property Tax (Fixation, Collection and Recovery) Rules, 2013 — Rule 21
Service Discipline and Appeal Rules, 1979 — Rule 9(i)
Constitution Of India, 1950 — Article 14, 226, 265

Citation : (2019) 07 JH CK 0149

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Piyush Chitresh, Rupesh Singh, Sourav Chatterjee, Prashant Kr. Singh

Final Decision : Disposed Of

Judgement

I.A. No.7737 of 2018 :

Learned counsel appearing for the petitioner at the outset has submitted that one development has taken place in course of pendency of the writ petition by coming out with the total calculation of holding tax and in pursuance thereto, demand notice has been issued on 08.08.2018 which has been sought to be amended by making addition in the prayer to the writ petition.

In the instant interlocutory application being I.A. No.7737 of 2018 it has been stated that the main relief sought for in the writ petition is questioning the authority of the Ranchi Municipal Corporation in calling upon the details about the residence situated in the locality and in course of its pendency, the demand notice has been issued, therefore, the prayer made in the instant interlocutory application is having direct nexus with the relief sought for in the main writ petition, therefore, if the amendment sought for in the interlocutory application will not be allowed, the same will be nothing but only to multiply the proceeding and therefore, the prayer made in the interlocutory application is being allowed and the averment along with annexures enclosed in the interlocutory application i.e., demand notice dated 08.08.2018, is made part of this writ petition, accordingly, the interlocutory application stands disposed of.

W.P.(C) No.2487 of 2018 :

1. This writ petition is under Article 226 of the Constitution of India for issuance of writ in the nature of certiorari for quashing of Letter No.515 dated 08.03.2018 (Annexure-7) issued by the Assistant Executive Officer, Ranchi Municipal Corporation, Ranchi by which it has been informed to the petitioner to provide all the information with regard to all the building situated under the petitioner's campus so that the holding tax for the same can be calculated and thereafter, the demand will be sent to the petitioner and it has further been informed that the consolidated tax as earlier paid in terms of the agreement dated 02.07.1991 made between the Ranchi Municipal Corporation and M/s Heavy Engineering Corporation, the petitioner, will not be applicable after coming into effect of the Jharkhand Property Tax (Assessment, Collection and Recovery) Rules, 2013.

Further for a direction upon the respondents to allow the petitioner to deposit the tax of its campus in terms of the agreement dated 02.07.1991 made between the petitioner and the respondents.

Further direction for quashing the demand notice dated 08.08.2018 by which the total sum of Rs.3,70,89,565/- has been directed to be paid, failing which, the action in pursuance to the provision of Section 184 of the Jharkhand Municipal Act, 2011 would be initiated.

2. The brief facts of the case of the petitioner as per the pleadings made in the writ petition is that the petitioner, M/s Heavy Engineering Corporation, is a company registered under the Companies Act having its office at Ranchi in the State of Jharkhand.

The petitioner, M/s Heavy Engineering Corporation, is coming within the jurisdiction of the Ranchi Municipal Corporation, therefore, an agreement was entered into in between the petitioner, Heavy Engineering Corporation and the respondent-Ranchi Municipal Corporation on 02.07.1991 with regard to the payment of holding tax of the HEC as per the agreement which has been agreed between the parties that a lump-sum amount has been fixed as Rs.8,00,000/- only for the financial year 1990-991 and onwards and it has also been agreed that the Ranchi Municipal Corporation will not levy any tax on any other constructions authorized or unauthorized directly or indirectly without a representation and specific agreement with the petitioner.

In pursuance of the said agreement, the petitioner is paying the agreed yearly amount of holding tax which has been paid till 2015-16 and to that effect the receipt has been issued by the Ranchi Municipal Corporation dated 26.03.2016.

3. The Ranchi Municipal Corporation has come out with a letter being letter No.4109 dated 29.11.2006 which has been issued after enactment of the Jharkhand Property Tax (Assessment, Collection and Recovery) Rules, 2013, hereinafter referred to as the Rules, 2013, by which fresh assessment of tax is required to be done for the HEC area and the holding tax earlier paid by the petitioner in terms of the agreement dated 02.07.1991 will not be applicable and further directed to provide details of the building of HEC area as divided in the category contained therein.

4. The petitioner has submitted response to the letter No.4109 dated 29.11.2006 clarifying therein that the tax would be paid in terms of the agreement made between the petitioner and the respondent on 02.07.1991 but the said reply has not been accepted and thereafter again one letter has been issued being Letter No.2481 dated 24.10.2017 and while the writ petition was pending a demand notice has been issued on 08.08.2018 after making calculation of the said agreement.

5. The contention has been raised on behalf of the petitioner that the agreement since has been reached in between the petitioner as well as the respondent-Corporation which is binding upon the parties, therefore, the same cannot be given go-by in the garb of the enactment of the provision of Rules, 2013.

The petitioner corporation is making payment of the rent in pursuance to the agreement dated 02.07.1991 and in the said agreement, the specific clause save and except lump-sum amount no other tax on any head would be required to be paid to the respondent Corporation and therefore, the requirement as has been sought for by the impugned order, cannot be allowed to be sustainable.

6. Per contra, Mr. Prashant Kumar Singh, learned counsel appearing for the Ranchi Municipal Corporation on the strength of filing counter affidavit has submitted that the plea which is being taken by the petitioner with respect to having effect of the agreement dated 02.07.1991 is not worth to be considered for the reason of enactment of the provision of Rules, 2013 and once the said Rule has been enacted, whatever agreement has been entered into in between the parties, the same will be said to be superseded by virtue of the force of the new Rules of 2013 and the respondent Corporation acting on the basis of the provision of Rules, 2013 has rightly issued the impugned order by directing the petitioner Corporation to submit the self assessment form.

Further submission is that at the time of reaching the agreement on 02.07.1991 there was no law in the name of Property Tax, therefore, agreement was arrived at but since the specific provision has been made by virtue of enactment of Rules, 2013 by enforcing it under the provision of Jharkhand Municipal Rules, 2011 therefore, the terms and conditions of the agreement will lost its force from the date of enactment of the provision of Rules, 2013.

He has further submitted that so far as the demand notice is concerned, there is alternative remedy available to the petitioner and therefore, the said demand notice may not be interfered with on the ground of availability of alternative remedy.

7. Learned counsel for the petitioner has relied upon a judgment rendered in the case of The Municipal Council, Raghogarh & Anr vs. National Fertilizer Ltd. & Ors, passed in Civil Appeal No.2511 of 2011.

8. Having heard the learned counsel for the parties and on appreciation of their rival submissions, this Court deem it fit and proper to discuss the legal position before entering into the rival submissions advanced on behalf of the parties.

9. In the context of this case, it would be relevant at the outset to make a reference of Article 265 of the Constitution of India whereby and whereunder it has been mandate that no tax can be imposed without any authority of law.

The subject matter of Article 265 of the Constitution of India fell for consideration before the Hon'ble Apex Court in the case of Bimal Chandra Banerjee Vrs. State of M.P., reported in AIR 1971 Supreme Court 517, wherein at paragraph-18, it has been laid down that no tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation is made specially authorizes the imposition even it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule-making authority. A rule making authority has not plenary power. It has to act within the limits of the power granted to it.

In the case of Sri Srinivasa Theatre Vrs. Govt. of Tamil Nadu, reported in AIR 1992 Supreme Court 999, the purpose of imposition of tax has been dealt with at paragraph-11, wherein it has been laid down that the instrument of taxation is not merely a means to raise revenue in India; it is, and ought to be, a means to reduce inequalities.

In the context of the mandate as contained under Article 265 of the Constitution of India, it is to be seen as to whether any enactment has been made conferring power upon the respondent-Ranch Municipal Corporation to impose tax.

The Parliamentarian have thought to introduce a bill for decentralization, autonomy and accountability of, urban self-government at various levels, to introduce reforms in financial management and accounting systems, internal resource generation capacity and organizational design of municipalities, to ensure professionalization of the municipal personnel, and to provide for matters connected therewith or incidental thereto which has finally came at 74th Amendment Act, 1992.

In pursuance to the 74th Amendment Act to consolidate and amend the laws relating to the Municipal Government in the State of of Jharkhand has been enacted known as Jharkhand Municipal Act, 2011.

10. The settled position of law is that in absence of a statute the authority can

come out with an agreement or any type of instrument which is legally permissible.

11. Chapter 17 of Part IV stipulates about the matter pertaining to municipal revenue wherein under Section 151 internal revenues of municipality has been carved out which consist of its receipts from the following sources :

(a) taxes levied by the municipality,

(b) user charges levied for provision of civic services, and

(c) fees and fines levied for performance or regulatory and other statutory functions.

Section 152 contains provision of power to levy taxes wherein the specific provision has been made under sub-section (3) which pertains to the levy, assessment and collection of taxes under this Act shall be in accordance with the provisions of this Act and the rules and regulations made thereunder.

The State Government in pursuance to the provision as under sub-section (3) to Section 152 and Section 590, has come out with a rule known as Jharkhand Municipal Corporation Property Tax (Fixation, Collection and Recovery) Rules, 2013 which has been enacted for the purpose of determination, collection and recovery of the taxes/levy.

The provision of Rules, 2013 contains repealing and savings clause as under Rule 21 which stipulates that from the date of implementation of Rule all relevant circulars/executive instructions/decisions shall be deemed to have repealed, the decision already taken prior to enactment of the provision of Rules, 2013 the same will be deemed to have taken under the provision of the instant Rule.

Sub-section (7) to Section 152 provides provision for imposing following taxes to be assessed on the basis of annual rental value at such rates as prescribed by the Government from time to time :

(i) Holding Tax

(ii) Water Tax

(iii) Latrine Tax

(iv) Tax on any other item included in Twelfth Schedule of the Constitution of India on such rate as prescribed.

Sub-section (8) to Section 152 provides provision conferring power upon the Municipality to revise the rate of tax on annual rental value once in five years or earlier with the prior approval of the State Government.

The aforesaid provisions contains a separate chapter being Chapter 17 under Part IV which deals with the source of internal revenues and for getting the revenue, the same will be subject to enactment of rules and regulations made thereunder.

It is further evident that the municipality has got power to revise the rate of tax on annual rental value once in five years or earlier with the prior approval of the State Government.

12. Under the Jharkhand Municipal Corporation Act under Chapter 48 which contains provision under Section 615 wherein the repeal and savings clause is there.

It is evident from the repeal and savings clause that with effect of the date from the date of coming into force of the Jharkhand Municipal Act, 2011, Patna Municipal Corporation Act shall stand repealed, meaning thereby, that after bifurcation of the State of Bihar, under that Act, the State of Jharkhand came into being and in consequence thereof, State of Jharkhand has enacted the Jharkhand Municipal Act, 2000 in supercession to the Patna Municipal Corporation Act under which the Ranchi Municipal Corporation has been created since the original Act i.e., Patna Municipal Corporation Act under which the agreement dated 02.07.1991 has been reached in between the parties has already been repealed by way of Jharkhand Municipal Act, 2000 will said to have lost its force if the said agreement was continued till the date of issuance of the aforesaid impugned letter.

13. Reference of sub-section (8) to Section 615 also needs to be made which is savings clause containing therein provision that any action taken in exercise of any power conferred by or under the Acts referred in sub-section (1) shall be deemed to have been done or taken in exercise of power conferred under this Act, as if this Act were in force on the day on which such thing or action was done or taken, meaning thereby, any action in pursuance to the erstwhile provision of law will be deemed to have in continuation and taken in pursuance to the new Act, 2011.

14. The savings clause needs to be read along with the provision of Section 152 sub-section (8) which confers power upon the municipality to revise tax on annual rental value once in five years or earlier with the prior approval of the State Government, meaning thereby, the action has been said to be in continuation but that does not preclude the respondent corporation in invoking the jurisdiction conferred under sub-section (8) to Section 152 of Jharkhand Municipal Act, 2011 and in order to give its effect under the provision of sub-section (3) to Section 152 the Rules, 2013 has been enacted.

It is thus evident that the agreement and like that of Instruments has not been saved under the statute.

It is thus evident that the Ranchi Municipal has got authority to impose tax as required to possess authority in view of the provision as contained under Article 265 of the Constitution of India by virtue of enactment in the name of Jharkhand Municipal Corporation Property Tax (Fixation, Collection and Recovery) Rules, 2013.

15. In the backdrop of this legal position, the factual aspect has been appreciated.

The whole argument of the learned counsel for the petitioner revolves from regarding an agreement dated 02.07.1991 since according to the petitioner in terms of the said agreement the respondent corporation as also the petitioner have agreed for making payment of lump-sum amount of tax, therefore, the statute as contained either under the Jharkhand Municipal Act, 2011 or the Rule made thereunder as Rules, 2013 will not have overriding effect upon the terms of the agreement.

The question which is being answered by this Court whether the agreement dated 02.07.1991 if contrary to the public policy will allow to prevail upon the statutory provision as contained under Rules, 2013.

Before answering the said issue reference needs to be made of the provision of Section 23 of the Indian Contract Act which reads as hereunder:-

"23. What considerations and objects are lawful, and what not.-The consideration or object of an agreement is lawful, unless-

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

The question of applicability of the agreement if opposed to the public policy fell for consideration before the Hon'ble Apex Court by dealing with the provision of Section 23 of the Indian Contract Act in the judgment rendered in the case of Central Inland Water Transport Corpn. Ltd. Vrs. Brojo Nath Ganguly and Anr., reported in AIR 1986 Supreme Court 1571, wherein provision as contained under Clause (i) of Rule 9 of the Service Discipline and Appeal Rules, 1979 and the Central Inland Water Transport Corpn. Ltd has been held to be void under Section 23 of the Contract Act, 1872 as being opposed to public policy and held to be ultra vires under Article 14 of the Constitution of India to the extent that it confers upon the corporation, the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice.

The same question fell for consideration in the judgment rendered in the case of Biharilal Jaiswal and Ors. Vrs. Commissioner of Income-tax and Ors., reported in

AIR 1995 SCW 4587, wherein it has been held that the object of such agreement must be held to be of such a nature that if permitted, it would defeat the provisions of any law within the meaning of Section 23 of the Contract Act, in that view of the matter, such an agreement is declared by Section 23 as unlawful and void.

In the pretext of the provision of Section 23 of the Contract Act, it is to be seen the very object of the agreement and to assess it as to whether it is coming in the way of the public policy that has come by way of the Act, 2011 along with the Rules, 2013.

16. The very object of the provision of Rules, 2013 is to collect tax of different nature to be revisable on expiry of five months and if that statutory provision would be considered by taking into consideration the terms and conditions of the contract which is contained in agreement dated 02.07.1991, it would transpire that a lump-sum payment of Rs.8 lakhs has been agreed to be paid on date, but after coming into effect of Rules, 2013 which confers power upon the competent authority to impose tax to be varied at the interval of five years, therefore, the public policy is for imposition of tax is different nature and hence the very condition of the agreement which is lump-sum of Rs.8 lakhs agreed to be paid will be held to be not in consonance of the said public policy, therefore, the said agreement will be held to be countered by Section 23 of the Contract Act.

Further, the question herein is that when by virtue of 74th Amendment, the power has been conferred upon the Municipal Corporation to collect tax in order to give autonomy and give accountability as has been informed by the learned Advocate General that the State is not accountable to make any financial assistance to the Corporation, therefore, collection of tax of being the source of revenue available to the Corporation and if the Corporation is invoking the aforesaid provision, the same cannot be said to suffer from infirmity.

17. The original prayer made in the writ petition for quashing the communication, whereby and whereunder, some details have been asked for and if certain details have been sought for by the respondent Corporation, can it be interfered with the High Court sitting under Article 226 of the Constitution of India.

The answer of the Court would be in negative, it is for the reason that when the Heavy Engineering Corporation-petitioner is also taxable since they have already entered into an agreement dated 02.07.1991, therefore, the petitioner is duty bound to apprise the details which has been sought for by the respondent Corporation and if he will follow the direction stipulated therein, it would not be said that any prejudice is going to be caused to the petitioner Corporation, furthermore the petitioner Corporation is not a private litigant rather it is also a Govt. of India Enterprises coming under the Ministry of Heavy Industries and therefore, the Corporation cannot be allowed to behave like private litigant.

18. In the backdrop of this factual aspect and in the considered view of this

Court, if certain information has been sought for by the Ranchi Municipal Corporation, the same cannot be said to infringe any of the fundamental rights of the petitioner's Corporation warranting any interference by the writ Court in exercise of power of judicial review under Article 226 of the Constitution of India.

In view thereof, the impugned order needs no interference by this Court.

19. The second prayer which has been allowed by this Court while dealing with the interlocutory application which pertains to demand notice, this Court is of the view that since the same pertains to quantum which will depend upon the quantification of different heads and there is alternative remedy available to the petitioner Corporation under the provision of Rules, 2013, therefore, this Court instead of applying its mind on merits of demand notice, deem it fit and proper to direct the petitioner to approach before the alternative Forum available under the Provision of Rules, 2013.

20. The petitioner Corporation will be at liberty to make objection to such demand, if that would be made, the competent authority would decide the same in accordance with law.

21. If such objection would be made, the competent authority in course of deciding the issue will also provide the details of quantification and if any objection to that effect would be made, the competent authority will decide the same after providing an opportunity of hearing within stipulated time preferably within a period of three months' from the date of receipt of copy of the order.

22. Accordingly, the writ petition stands disposed of.

23. In consequence thereof, interlocutory application being I.A. No.7737 of 2018 also stands disposed of.

W.P.(C) No.2487 of 2018

The matter although was disposed of but for seeking some clarification from the learned Advocate General of the State, the matter has been posted by notifying it but after hearing the learned Advocate General of the State on the issue, the order which has been passed by this Court on 08.07.2019 is directed to remain intact.

