(2006) 04 MAD CK 0321

In the Madras High Court

Case No : Writ Petition No. 1766 of 2005 and W.P.M.P. No. 1773 of 2005 and W.V.M.P. No. 4 of 2006

Kamaraj College of Engineering and Technology Managing Board — APPELLANT

Vs

The President, K. Vellakulam Panchayat, Kallikudi Chathiram, Madurai District — RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 171, 172, 174, 176(1), 242

Citation : (2006) 04 MAD CK 0321

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : N. Subramanian, for the Appellant; V. Vivekanandan, for the Respondent

Judgement

P. Jyothimani, J.—Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent. This writ petition is filed against the order of the respondent dated 02.08.2004 confirming the assessment of house tax for the buildings bearing door Nos. 5/279 to 5/283 under Assessment Nos. 853 to 857 owned by the petitioner institution and for a direction against the respondent to grant exemption to the buildings owned by petitioner institution in respect of payment of house tax and also refund of tax already paid.

2. The case of the petitioner is that the petitioner is an educational institution recognised by the All India Council for Technical Education and affiliated by the Anna University. The institution is running on self finance pattern. The petitioner institution has put up a building for the educational institution and the Anna University has granted affiliation and the Government of Tamil Nadu approved the same. The buildings belonged to the petitioner institution is lying within the jurisdiction of the respondent Panchayat. The respondent has assessed the institution property for the house tax and levied the tax of Rs. 2,900/- apart from the library cess etc., with effect from the financial year 2001-2002 and also

issued a demand notice dated 03.12.2001. Believing bona fide that the petitioner is liable to pay the tax, the same has been paid. Even in the year 2002-2003 the respondent demanded the tax and the same has been paid. Further even for the year 2003-2004 when the respondent revised the tax and the same has been paid. Thereafter, the petitioner came to know that the buildings belonging to the educational institutions ?re exempted from the payment of the property tax.

3. Therefore, when the respondent has made demand for the year 2004-2005 on the enhanced assessment at 15% through letter dated 07.06.2004, the petitioner has informed that the buildings are exempted from the property tax. After receiving the said letter the respondent has replied on 02.08.2004 stating that u/s 172 and 174 of Tamil Nadu Panchayats Act, 1994, exemption of tax could be claimed only by the institutions run by the Government and there is no provision for giving exemption to the petitioner''s institution which is run in a self financing pattern.

4. The respondent has also referred to G.O.Ms. No. 255 Rural Development Department dated 13.12.1999 under which by exercise of the power under Sections 171,172,174 and 176(1) of the Section 242 of the Tamil Nadu Panchayats Act, 1994, the Government has framed the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999. The petitioner has enclosed all the particulars for grant of exemption. However there was no reply, it was in order to avoid any distraint proceedings the petitioner has paid Rs. 43,010/- by way of Demand Draft. The petitioner has challenged the communication of the respondent dated 02.08.2004 on various grounds including that the Government has framed the rules as per the provisions of the Tamil Nadu Panchayats Act namely the Tamil Nadu Panchayats (Assessment and Collection of Taxes)Rules 1999 as per the G.O.Ms. No. 255 dated 13.12.1999 in which it is clearly stated that the educational institutions are exempted from the payment of house tax.

5. On the other hand, the respondent has filed the counter affidavit, stating that the G.O.Ms. No. 255 under which the said rules were framed have only exempted from the property tax, government Schools and government aided schools and that exemption will not be applicable to private schools and colleges. It is also the case of the respondent that inasmuch as the petitioner institution is a private institution without aided from the Government, it is not entitled for exemption.

6. Mr. N. Subramanian learned counsel appearing for the petitioner institution would submit that the Government has framed the rules by virtue of the powers under the Tamil Nadu Panchayats Act, 1994 and under the rules called Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999. Rule 15 which applies to exemption in respect of specified classes from the payment property tax, specifically states that the buildings used for educational purposes including hostels, libraries which are open to the public and public buildings used for charitable purpose of sheltering the destitute or animals are exempted from the payment of property tax.

7. He would also contend that the proviso to said rule which states that the educational institution (not commercial in nature) exempted from levy of house tax immediately before the commencement of the Act shall continue to be exempted under the Act applies to the educational institutions which were in existence which was not commercial in nature and exempted from tax before the Tamil Nadu Panchayats Act, 1994 came into existence were also exempted.

8. Therefore, according to the learned counsel that proviso which was intended not only for the purpose of including any educational institutions which were in existence before the Tamil Nadu Panchayats Act, 1994 came into existence and exempted from house tax shall continue to be exempted only in those cases. The term not commercial in nature was used in respect of those institutions. Whereas the said commercial in nature has no implications as far as the educational institutions which are claiming exemption after the act has come into existence like that of the petitioner which was not exempted before the Tamil Nadu Panchayats Act, 1994.

9. On the other hand, Mr. V. Vivekandan, the learned counsel appearing for the respondent would submit that the Rule 1 5 which specifically says that the educational institutions which are not commercial in nature are exempted and therefore, according to him, the petitioner institution which is run on self financing pattern should be deemed to be commercial in nature and therefore, it is not entitled for exemption.

10. I have considered the rival contentions of the learned counsels for the petitioner as also the respondent and also perused the records.

11. At the outset, the entire domain of discussion depends upon the Tamil Nadu Panchayats (Assessment and Collection of Taxes) Rules 1999. Admittedly the said rules were framed by the Government as per the G.O.Ms. No. 255 Rural Development dated 13.12.1999, by virtue of the powers conferred u/s 171,172, 174 176 (1) and 242 of the Tamil Nadu Panchayats Act, 1994 and that Rule was framed in supersession of rules relating to house tax which were in existence before the said date.

12. In the said Rules, Rule 15 contemplates exemption in respect of specified classes of houses from payment of house tax. It is relevant to extract the entire Rule-15, which states as follows:

15 Exemption of specified clauses of houses from house tax: The following buildings shall, if they fall within the meaning of house as defined in the Act, be exempt from the house tax.

a) Buildings set apart for public worship and either actually so used or used for no other purpose;

b) Choultries for the occupation of which no rent is charged and Choultries where the rent charged for the occupation is used exclusively for charitable purposes.

c) Buildings used for educational purposes including hostel and libraries which are open to the public, and public buildings used for charitable purpose of sheltering the destitute or animals.

d) Such ancient monuments protected under the Ancient Monuments Preservation Act, 1904, or parts thereof, as are not used as residential quarters or as public offices.

e) Charitable hospitals and dispensaries and other buildings exclusively used for charitable purposes.

f) such hospitals and dispensaries maintained by Railway Administrations as may, from time to time be notified by the Government;

g) Building belonging to Village Panchayats,

h) Buildings of the Forest Department situated within the forest area which are within the jurisdiction of a village Panchayat,

i) light houses,

j) all cattle pounds maintained by the Revenue Department and

k) cyclone shelters:

Provided that nothing contained in clauses (a) and (c) shall be deemed to exempt from house-tax if any building for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses:

Provided further that education institution (not commercial in nature) exempted from levy of house-tax, immediately before the commencement of the Act shall continue to be exempted under the said Act.

Explanation: The exemption granted under this rule shall not extend to residential quarters attached to schools or colleges not being the hostels or residential quarters attached to hospitals, dispensaries and libraries.

13. Therefore, on the face of it Rule 15(c) exempts buildings used for educational purposes including hostels etc., The term educational purpose are not defined any where either under the Rules or under the Panchayats Act.

14. In such circumstances, the terms should be construed as institutions which are used for all educational purposes irrespective of the fact as to whether they are aided institutions or unaided institutions. Therefore, there was absolutely no difficulty in construing that even unaided institution like that of the petitioner is entitled for exemption under the said clause.

15. However, the second proviso to the said Rule is to be interpreted in a proper manner. In this regard, I am eliciting the said proviso once again "Provided further that educational institutions (not commercial in nature) exempted from levy of house tax, namely before the commencement of the Act shall continue to

be exempted under the said Act."

16. Therefore, the proviso applies only in respect of the educational institutions which were already exempted from the levy of house tax before the Tamil Nadu Panchayats Act, 1994 came into existence.

17. In the present case, it is not the case of the respondent that the petitioner institution was already exempted before the Tamil Nadu Panchayats Act, 1994 came into existence. Infact, as I have narrated the facts they came to know of the present rules of 1999 only now and till then, the petitioner institution has infact been paying the property tax till 2003-2004.

18. Therefore, on the face of it, the petitioner institution is not covered under the proviso. Even otherwise what is contemplated in the proviso is that those institutions which were run in a commercial manner which were exempted from the property tax before the Tamil Nadu Panchayats Act came into existence, alone are not entitled for exemption under the Rule 15(c) of the said Rules. These may include the tutorial colleges and like private institutions. As I have stated, the petitioner institution is not covered under the said proviso at all by any stretch of imagination. Therefore, there is absolutely no difficulty to come to the conclusion that as far as the petitioner institution is concerned it is not covered under the proviso and therefore, on the face of it the petitioner institution is entitled for exemption under Rule 15(c) of the said Rules.

19. Now, the contention of the learned counsel for the respondent that the educational institutions which are commercial in nature are not exempted from the property tax deserves to be considered to some extent. There is no question of any educational institutions which are in commercial basis at all when such educational institutions are recognised by the Government and recognised by or the All India Council for Technical Education or Medical Council etc., affiliated to the universities are all deemed to be educational institutions irrespective of the fact whether they are aided by the Government or not. However, there may be certain laws which are applicable to the aided schools and aided colleges but as far as the general term of the educational institution is concerned whether they are aided or unaided institutions they are nevertheless educational institutions as long as they are recognised by the competent authority namely the Government or the All India Council for Technical Education or Medical Council and other authorities which are competent to approve or the universities which affiliate. These institutions are different from other private tutorial colleges, training schools etc., which are not recognised by the Government or any other authority, but run purely on private basis.

20. Therefore, in my considered view, when once the approval is given by the competent authority or affiliation given by the universities then such educational institutions whether they are aided or not are deemed to be the educational institutions in the general terms. This is relevant because after the law relating to prohibition of caption fees has been introduced by way of legislation there is no

question of any commercial attitude educational institutions at all which are recognised.

21. In view of the same, I am of the considered view that apart from the fact that under the second proviso Rule 15 of the Tamil Nadu Panchayats (Assessment and Collection of Taxes) Rules, 1999, the petitioner institution is not covered, even on the general term the house building used for the educational purpose include the educational institutions which are either or aided or unaided or run on self financing pattern and are entitled for exemption from payment of house tax. Therefore, in my considered view, the petitioner institution is entitled for exemption as per the Rules. In view of the same, the writ petition stands allowed. There is no order as to costs. Consequently, connected W.P.M.P. and W.V.M.P. are also closed.