

(2013) 05 P&H CK 0240
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19826 of 2011

Kurukshetra University

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2013) 171 PLR 696

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : A.S. Virk, for the Appellant; Kirti Singh, D.A.G., Haryana for the State and Mr. Sachin Gupta, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—The only question of law involved herein is, whether the petitioner-University is liable to pay the house tax to the respondent-Municipal Council or it is exempted therefrom, in view of clause 4 of the notification dated 13.12.2001 (Annexure P-10). The facts of the case, which are hardly in dispute, are that the petitioner is the creation of a Statute known as "Kurukshetra University Act, 1956" (Act No. XII of 1956), issued by the State of Punjab (Joint Punjab as it then was). The campus of the University is spread over a vast area of about 400 acres, including residential as well as nonresidential building, list whereof, is appended at Annexure P-1. It is the pleaded case of the petitioner-University that all the land and buildings situated in the campus of the University were being used exclusively for educational purposes. The income derived from the shopping complex, situated within the University Campus, constructed for the purpose of providing items of daily use to the students and staff, to provide them homely atmosphere, was also being used only for educational purposes. Further, the streets, roads, drainage, sanitation, parks and other civil amenities were constructed and being maintained by the petitioner-University from its own financial resources, without seeking any kind of assistance from the respondent-Municipal Council. A well thought decision was

taken by the respondent-State issuing the notification dated 17.1.1983 (Annexure P-2) and vide clause (iv) thereof, exemption was granted to religious, charitable and educational institutions. Even prior to issuance of notification (Annexure P-2), house tax was exempted qua the educational institutions, because of which no house tax was levied on the petitioner-University right from its inception.

2. Once the house tax was imposed in the year 1975, but on the representation having been made on behalf of the petitioner-University, it was granted exemption from house tax. With a view to set aside this ongoing controversy, the petitioner-University sought advise from the Examiner Local Fund Accounts, Haryana, vide Annexure P-4 and in response thereto, it was clarified vide Annexure P-5 dated 5.11.1984 that the shops and canteen in the University campus were exempted from house tax, as per clause (iv) of the above-said notification (Annexure P-2). Respondent-Municipal Council also intimated the petitioner, vide Annexure P-6 that in view of (iv) of the notification (Annexure P-2), the properties of educational institutions, i.e. University were exempted from house tax. However, vide Annexure P-7 dated 13.2.2001, respondent-Municipal Council sought information from the petitioner so as to enable the respondent-Municipal Council to assess the house tax for the year 2001-02, as per new House Tax Assessment Policy issued by the Government, Petitioner-University wrote to the respondent-Municipal Council replying above-said communication dated 13.2.2001 (Annexure P-7). In its reply dated 23.3.2001 (Annexure P-8), petitioner-University invoked the exemption clause and sought exemption from house tax. Respondent-Municipal Council again wrote to the petitioner-University vide communication dated 3.5.2001 (Annexure P-9) expressing its intention for house tax assessment. Then the impugned notification dated 13.12.2001 (Annexure P-10) came to be issued, which was amended vide notification Annexure P-11. Based on the notifications referred to herein-above, respondent-Municipal Council raised the impugned demand of house tax, vide letter dated 6.3.2002 (Annexure P-12).

3. Petitioner-University represented to the State Government vide Annexure P-13 dated 6.6.2002. Respondent No. 2 wrote back to the petitioner-University vide letter dated 10.7.2002 (Annexure P-14) saying that the petitioner-University was not entitled for exemption from house tax. In spite of the above-said communications, petitioner-University approached the State Government by way of its representation dated 29.1.2004 (Annexure P-15). Accordingly, a meeting was convened vide Annexure P-16. Annexure P-17 was the agenda for discussion before the meeting. Finally, respondent No. 2 wrote to the petitioner-University vide communication dated 7.6.2004 (Annexure P-18) for payment of house tax. It seems that when the respondent-Municipal Council started charging house tax from the petitioner-University and that too without providing any civic amenities, petitioner-University filed a civil suit for mandatory injunction vide Annexure P-19. Respondent-Municipal Council filed its written statement vide Annexure P-20. Vide order dated 19.8.2010 (Annexure P-21), learned civil court allowed

the application of the petitioner Under Order 39 Rule 1 and 2 read with Section 151 CPC, thereby restraining the defendant-respondent Municipal Council from charging any tax. However, appeal of the respondent-Municipal Council was allowed by the learned first appellate court vide order dated 27.7.2011, Annexure P-22. Thereafter, the respondent-Municipal Council issued a building and land tax bill dated 8.8.2011 (Annexure P-23) raising the impugned demand for house tax against the petitioner.

4. Notice of motion was issued and operation of the impugned demand notice for house tax (Annexure P-23) was stayed. Respondent No. 3 filed its reply. A separate written statement was filed on behalf of respondent No. 1, controverting the averments taken by the petitioner.

5. Learned counsel for the petitioner submits that in view of clause (iv) of the notification dated 17.1.1983 (Annexure P-2), petitioner-University was clearly exempted from the house tax. None of the respondent-authorities have applied their independent judicious mind, while passing the impugned orders. If the baseless and misconceived interpretation of clause (iv) of the notification (Annexure P-2), as made by the respondent-authorities is accepted, very object of the notification (Annexure P-2) would stand defeated. Factual aspect of the matter has not been denied by the respondents in their written statements. No basic amenities were being provided by the Municipal Council. All the facilities like public health, sanitation, streets, roads, street lights, sewerage, water supply, parks and public conveniences were being provided and maintained by the petitioner-University itself, from its own sources. The entire income was being spent only for the educational purposes. The petitioner-University was not a commercial institution nor it was being run with the object of earning profit. When equated with other institutions who are entitled for exemption, like religious and charitable institutions, petitioner-University was on a better footing for granting exemption as per clause 4 of notification dated 13.12.2001 (Annexure P-10). Finally, while relying upon a Division Bench judgment of this Court in Digamber Jain Society Vs. State of Haryana etc., learned counsel for the petitioner prays for allowing the writ petition and setting aside the impugned orders.

6. Per contra, learned counsel for the respondent-Municipal Council submits that the petitioner-University was not entitled for exemption. The respondent-Municipal Council was bound by the directions issued by the respondent-State. The house tax was levied, in compliance of the directions issued by the respondent-State. No illegality can be attached with the demand notice (Annexure P-23) issued by the respondent-Municipal Council. He next contended that petitioner has got the alternative remedy of appeal. Civil Suit filed by the petitioner was also pending. While relying upon the judgment of this Court in Faridabad Model School and Another Vs. State of Haryana and Others, , learned counsel prays for dismissal of the writ petition. Supporting the contentions raised by the learned counsel for the respondent-Municipal Council, learned counsel for

the State submits that respondent-Municipal Council was justified in law, while raising the demand of house tax.

7. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned demand notice cannot be sustained and the present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

8. It is undisputed on record that petitioner was the creation of a Statute. Its object was to provide education. No civic amenities or facilities were being provided by the respondent-Municipal Council. All the basic amenities including public health, sanitation, streets, roads, parks etc. were being provided and maintained by the petitioner-University itself. The entire income was being spent for educational purposes only. In such a situation, clause (iv) of the notification (Annexure P-2) and also clause 4 of notification dated 13.12.2001 (Annexure P-10) clearly comes to the rescue of the petitioner-University.

9. Since the claim and counter claim of both the parties hinges on the interpretation of clause 4 of the notification (Annexure P-10), it would be appropriate to reproduce it here and the same reads as under:--

All buildings and lands attached to or owned by religious educational or charitable institutions or held under trust wholly for religious educational or charitable institutions or held under trust wholly for religious educational or charitable purposes and duly registered under a statute and not transferable provided that they are providing services without any charges to the community and the entire income is applied/utilized for religious educational or charitable cause in the State of Haryana, provided further that such institutions will inform the committee about its properties and income and its income is not used or intended to be used for a private religious purpose or for the benefits of a particular caste or community. Charitable purposes include educational and medical relief to the poor and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. The municipality would call for such information and records as may be necessary to satisfy itself about the genuineness of the claim for such exemption before granting it in case of any false registration/record coming to the notice of the committee or brought to the notice of committee double the amount of the tax will be charged immediately and the institutions will be debarred for the next five years from the exemption of the tax. However, on the expiry of such period, the institution can be reconsidered for the exemption of tax, if it qualifies for the exemption under the existing provisions.

10. The only harmonious construction and meaningful interpretation of the above-said clause 4 is that the educational institutions like the petitioner-University are exempted from the house tax. The irresistible conclusion is that the respondent

authorities proceeded on misconceived approach, while misunderstanding, misconstruing and misinterpreting the object, scope and ambit of the above-said clause 4 of the notification (Annexure P-10), while issuing the impugned demand notice for house tax on the petitioner-University. Having said that, this Court feels no hesitation to conclude that the impugned demand notice was without any jurisdiction and the same cannot be sustained.

11. When the above-said clause 4 of notification (Annexure P-10) is closely examined, considered and appreciated in the right perspective, it becomes clear that the petitioner-University was eligible and entitled for the exemption from the house tax. Any other interpretation of clause 4 will defeat the very purpose thereof, which can never be the legislative intent behind it. Since the genuine grievance of the petitioner has neither been discussed nor discarded but altogether illegally ignored by the respondent-Municipal Council, the impugned demand notice has resulted in miscarriage of justice and the same cannot be sustained.

12. In view of what has been discussed here-in-above, it is unhesitatingly held that since the petitioner was challenging the very jurisdiction of respondent-Municipal Council for imposition of the house tax, availability of an alternative remedy will not come in the way of the petitioner. No doubt, it is the general rule that whenever there is an alternative remedy available under any Statute, this Court will be slow while exercising its writ jurisdiction without first relegating the petitioner to its alternative remedy. However, this rule is not absolute in every given situation. Whenever, in the peculiar facts and circumstances of the case, this Court comes to the conclusion that the action taken strikes at the very root cause and also suffers from patent and jurisdictional error, this Court would not and must not hesitate to exercise its writ jurisdiction.

13. It is undisputed position on record that the petitioner uses its total income only for educational purposes. It is not even the allegation of the respondents that petitioner-University was running any profit making business or it was a commercial organisation or the entire income was not being used for educational purposes. Once it is so, petitioner-University fulfilled all the essential ingredients for exemption from the house tax under the above-said exemption clause 4 of the notification (Annexure P-10).

14. So far as the judgment relied upon by the learned counsel for the respondents is concerned, there is no dispute about the law laid down therein, however, the same is clearly distinguishable on facts. In the cited judgment, it was not the pleaded case of the petitioner therein that the total income was being used only for educational purposes. Further, assessment of the house tax, at the hands of Municipal Council, was upheld even by the Joint Commissioner, rejecting the demand for exemption and reiterating the levy of house tax. In the present case, since the facts are not at all disputed, no evidence, as such, is required to be led by the parties. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first,

before applying any codified or judge made law thereto. Sometimes difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others,

15. Similarly, the suit filed by the petitioner was not a suit for declaration. Admittedly, it was a suit for injunction. The relief claimed herein is entirely different. Had the petitioner been seeking only a writ of mandamus, such a writ petition would not have been maintainable, in view of the pendency of a suit for injunction. However, the petitioner herein is seeking a writ in the nature of certiorari for quashing the very notification issued by the State, on the basis of which, the impugned action was taken by the Municipal Council. Since the petitioner is challenging the jurisdiction of the respondent authorities, which goes to the root of the cause, the present writ petition was rightly filed and the same is held to be maintainable in the given circumstances of the case.

16. So far as exemption in favour of educational institution is concerned, an identical issue came up for interpretation before a Division Bench of this Court in Digamber Jain Society's case (supra). The relevant observations made by the Division Bench of this Court, in para 5 and 6 of the judgment, which can be gainfully followed in the present case, read as under:--

5. We have heard the counsel for the parties and have perused the two Notifications. We have also gone through the judgment in C.W.P. 14138 of 2003 and are satisfied that it fully covers the case in hand. Under the Notification dated 30.7.1975, the exemption was provided in para-2 of the Notification, which reads as under

"2. All buildings and lands or portions thereof used exclusively for educational purposes including colleges, schools, board houses, hostels and libraries, if such buildings and lands or portion thereof are either owned by the educational institutions concerned or have been placed at the disposal of such educational institutions without payment of any rent.

Note: No exemption wilt be given to any property as defined in Clauses (1) and (2) if any portion thereof has been constructed or used for commercial purpose."

(Emphasis supplied)

Under the new Notification dated 30.9.2003, the exemption is provided in para-3, which reads as under:

3. All buildings and land or portions thereof used exclusively for educational purposes where fees at rates prescribed by Government or equivalent to Government schools are charged, including approved colleges, schools, boardings, hostels and libraries, if such buildings and land or portion thereof are either owned by the educational institutions concerned or have been placed at the disposal of such Educational Institution without payment of any rent

Note: No exemption will be given to any property as defined in Clauses (1) and (3) if any portion thereof has been constructed or used for commercial purposes.
(Emphasis supplied)

A conjoint reading of the aforesaid two paras shows that as far as the colleges, schools, boardings, hostels and libraries are concerned, the buildings of the same have been exempted from House Tax, if such buildings or portion thereof are either owned by the educational institution or have been placed at the disposal of such educational institution without payment of any rent. The provision is identical in para-3 of the new Notification with the exception that the word "approved" has been added to the colleges, schools, boardings, hostels and libraries.

6. It is not in dispute that the petitioner-School is an approved institution. In this view of the matter, we are satisfied that the judgment relied upon by the counsel for the petitioners fully covers the case in their favour. In view of the above, we are satisfied that the petitioner-School is not liable to pay the House Tax.

17. Respectfully following the law laid down by the Division Bench of this Court and applying the same to the facts of the present case, this Court is satisfied that respondent-Municipal Council had no jurisdiction to impose the house tax on the petitioner-University. Consequently, the petitioner is held entitled for exemption under clause 4 of the notification (Annexure P-10). The question posed at the outset, is answered in favour of the petitioner, accordingly. The respondent authorities failed to appreciate the true import of clause 4 reproduced above, in the right perspective. Thus, impugned demand notice (Annexure P-23) is held to be without jurisdiction, which cannot be sustained.

18. No other argument was raised.

19. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned demand notice (Annexure P-23) is illegal and cannot be sustained, therefore, it is ordered to be set aside. Resultantly, with the observations made here-in-above, the instant writ petition stands allowed, however, with no order as to costs.