(2008) 06 MP CK 0036

In the Madhya Pradesh High Court

M.P. Nagar Nigam/Nagar Palika Karamchari Sangh and Another etc.	APPELLANT
Vs	
Sate of Madhya Pradesh and Others	RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:
Madhya Pradesh Municipal Corporation Act, 1956 — Section 189A

Citation : AIR 2009 MP 71 : (2009) 3 MPHT 233

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Judgement

Ajit Singh, J.—The order passed in Writ Petition No. 4196/2005 M.P. Nagar Nigam/Nagar Palika Karamchari Sangh, Katni v. State of Madhya Pradesh shall also govern the disposal of Writ Petition No. 3990/2005 Katni Transport Association v. State of Madhya Pradesh. The petitioner of Writ Petition No. 3990/2005 has also been permitted to intervene in Writ Petition No. 4196/2005 wherein he had opposed the reliefs sought therein. As a result both the petitions have been heard together.

2. In Writ Petition No. 4196/2005 petitioner No. 1 is the Union of employees of Municipal Corporation, Katni (in short, "the Corporation") and petitioner No. 2 is an elected Corporator of that Corporation. They have challenged the validity of communication dated 13-5-2005. Annexure P8, addressed by the Commissioner, Urban Administration and Development, to the Commissioner, Municipal Corporation, Katni, directing him to stop the collection of terminal tax by the system of Naka or barrier which the State Government had abolished in view of the provisions of the Terminal Tax (Assessment And Collection) on, the Goods Exported from Madhya Pradesh Municipal Limits, Rules, 1996 (in short, "the Rules"). The petitioners have also prayed for a direction against the State Government to pay compensation of Rs. 25,00,000/- per month for the period during which the Corporation could not collect the terminal tax by Naka or barrier system. According to the petitioners, the Corporation is entitled to collect

terminal tax by the system of Naka or barrier as without it the source of revenue of Corporation becomes virtually nil and no fund is left for payment of salaries to the employees. The petitioners have averred that earlier also when the Corporation was restrained to collect the terminal tax by Naka or barrier system, it suffered grave financial crisis. The apprehension of petitioners is that if the Naka or barrier system of collecting terminal tax by the Corporation will be removed, they will not be able to get their salaries from the Corporation. The Corporation, which is respondent No. 2, in its return, has supported the cause of petitioners. In the return the Corporation has also taken the plea that it is empowered u/s 189-A of the Madhya Pradesh Municipal Corporation Act, 1956 (in short, "the Act") to recover the tax by public auction or private contract lease imposed under the Act. The State respondent No. 1), on the other hand, has prayed for the dismissal of the petition.

3. In Writ Petition No. 3990/2005 the petitioner is Katni Transport Association and is aggrieved with the collection of terminal tax by the Corporation through private contractor (respondent No. 4) by the system of Naka or barrier. In this petition also the Corporation has reiterated its authority to collect terminal tax by public auction or private contract lease. As regards the collection if terminal tax through private contractor (respondent No. 4) the Corporation, in the return, has averred that his contract was cancelled vide order dated 25-5-2005, Annexure R-2/3. The petitioner has not controverted this fact by filing any rejoinder.

4. The crucial question which calls for consideration in these petitions is whether the Corporation is empowered to collect terminal tax by the system of Naka or barrier.

5. Section 189-A of the Act, which deals with recovery of taxes by public auction or private contract, reads; as under:

189-A. Recovery of taxes by public auction or private contract.--Notwithstanding anything contained in this Act, the Corporation may, by public auction or private contract lease the recovery of any of the taxes and fees which may be imposed Under this Act, subject to the condition and limitation, if any, prescribed by the State Government in this behalf.

(Emphasis supplied)

6. For the purposes of collector of terminal tax, the State Government has framed the rules already mentioned above by the notification dated 21-2-1997 published in Madhya Pradesh Gazette on 7-3-1997.

3. Every person, businessman, establishment and the license holder under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (No. 24 of 1973), shall be responsible to collect the terminal tax or the goods at the rate specified in the Schedule, if he himself exports any goods as shown in the schedule or sale for the purpose of export.

4. The petition, businessman, establishment or license holder, as mentioned in

Rule 3 shall deposit in the Municipal Treasury the amount of terminal tax collected during the last month on the goods exported from the Municipal limits, through their shop establishment along with the return up to 10th day of every month.

Hindi version of these rules is as follows:

(Vernacular matter omitted....Ed.)

The English version of the rules is not happily worded and is, therefore, ambiguous. The defect in the English version was also noticed earlier by the learned single Judge of this Court in Moolji Bhai and Others Vs. State of Madhya Pradesh and Another, . Hindi is the authorized language for the use of Bills and Rules passed in Madhya Pradesh. Therefore, if the English version is not happily worded and ambiguous, the Hindi version can be read for resolving the ambiguity and for correctly interpreting any rules made. See M/s. Park Leather Industry (P) Ltd. and Another Vs. State of U.P. and Others, . In the English version of Rule 3 the word "or" is clearly a mistake for "on". Similarly, the word "sale" is also a mistake for the word "sells". These mistakes get clarified by reading the Hindi version. According to Rule 3 every person, businessman, establishment and the license holder under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 is responsible to collect the terminal tax on the goods at the rates specified in the schedule if he himself exports any goods as shown in the schedule or sells for the purpose of export. Rule 4 requires such person to deposit in the municipal treasury the amount of terminal tax collected during the last month on the goods export from the municipal limits through their establishment along with the return up to 10th day of every month. The rules do not contemplate any other mode of recovery of terminal tax.

7. Reading of Section 189-A of the Act reveals that mode of recovery of taxes under that provision is subject to the condition and limitation prescribed by the rules. On proper interpretation this provision means that if the rules prescribe any other method of recovery and do not contemplate the recovery of taxes by public auction, private contract or lease, the taxes cannot be recovered by such means and the mode of recovery as prescribed by the rules must be followed. The petitioners are essentially the employees of Corporation and if their salaries are not paid they have to claim the same from the Corporation but they have no locus standi to challenge the mode of recovery prescribed by the rules and to insist that terminal tax can be collected by the system of Naka or barrier. The rules do not provide for the collection by Naka or barrier system. In the case of Moolji Bhai and Others Vs. State of Madhya Pradesh and Another, this Court has already held that the rules were aimed at abolishing the Naka or barrier system as "that was very inconvenient to everyone and was also a source of harassment and corruption".

8. The petitioners have also not changed the validity of the Rules 3 and 4.

For these reasons, Writ Petition No. 196/2005 fails and is dismissed and Writ

Petition No. 3990/2005 is allowed with a direction that the Corporation (respondent No. 2) shall not recover the terminal tax by system of Naka or barrier.

