(1997) 03 KAR CK 0019

In the Karnataka High Court

Case No : Regular Second Appeal No. 450 of 1984

M/s. Pragathi Printers, Shimoga — APPELLANT

Vs

City Municipal Council, Shimoga — RESPONDENT

Date of Decision : 24-03-1997

Acts Referred:

Karnataka Municipalities (Amendment) Act, 1984 — Section 5, 94 (1), 95

Citation : AIR 1998 Kar 167 : (1997) ILR (Kar) 3302 : (1998) 4 RCR(Civil) 489

Hon'ble Judges : T.N. Vallinayagam, J;R.V. Raveendran, J;P. Krishnamoorthy, J

Bench : Full Bench

Advocate : Smt. Hemalatha Mahishi, for the Appellant; Sri B.B. Bajentri, for the Respondent

Judgement

1. This case was referred to the Full Bench by a learned Single Judge of this Court to re-consider the decision of a Full Bench of this Court in Kasturiranga Iyengar v Town Municipal Council, Hassan, in view of the Amendment to Section 94, sub-clause (viii) of the Karnataka Municipalities Act by Section 5 of the Karnataka Municipalities Amendment Act, 1984 (hereinafter referred to as ''the Act'').

2. The question involved in this appeal is as to whether a Municipality, for water supplied by them, is competent to levy, on an individual, water-rate or water-rates in the form of tax assessed on buildings and lands and also to charge him for such supply of water according to the quantity used or according to the terms agreed with him or them. The Full Bench referred to above, held in the light of Section 94, as it stood at that time, that, it is not competent for any authority to impose both water-rate in the form of tax as also to charge them for such supply of water according to the quantity used or according to the terms agreed with them.

3. Section 94(viii) of the Act, at the relevant time, read as follows:

"94. Taxes which may be imposed.--(1) Subject to the general or special orders of the Government, a Municipal Council.-

(a) after observing the preliminary procedure required by Section 95; and

(b) with the sanction of the Government and at rates not exceeding those specified in Schedules I to IV,

may levy any one or more the following taxes.-

(i) to (vii) xxx xxx xxx.

(viii) a water-rate or water-rates for water supplied by the Municipal Council which may be imposed in the form of a tax assessed on buildings and lands, or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case".

4. The section, as it stood at that time, authorises the Municipality to levy one or more of taxes including a water-rate or water-rates for water supplied which may be imposed in the form of tax assessed on buildings and lands or in any other form including that of charges for such supply, the mode of which, has to be fixed. Interpreting the word ''or'' contained in the section, the Full Bench held that, for water supplied by the Municipal Council, it is competent for the Municipality only to levy a water tax or charges for the water supplied and not both.

5. The above section was amended by the Municipalities Amendment Act (Act 33 of 1984), by which, the wording of Section 94(viii) was amended. The words "which may be imposed in the form of a tax, assessed on buildings and lands, or in any other form including that of charges for such supply" was substituted by the words "imposed in one or more of the following forms that is to say, in the form of a tax assessed on buildings and lands or in any other form including in the form of charges for such supply". After the amendment, Section 94(viii) reads:

"A water-rate or water-rates for water supplied by the Municipal Council imposed in one or more of the following forms that is to say, in the form of a tax assessed on buildings and lands or in any other form including in the form of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case".

The Amendment Act further provides that, amendment to Section 94 shall be deemed to have come into force with effect from 7-4-1964. Section 7 of the Act is the validation clause by which levy on water-rate made before the Amendment Act, was validated as if the levy was in accordance with the amended provisions. Section 7 of the Act further provided that, any tax assessed on the basis of water-rates and also on the basis of the actual water-consumption shall be valid and effective as if such levy was made in accordance with the provisions of the Amended Act. The Act made further provision that no Court shall enforce any decree or order directing the refund of any such rates.

6. On going through the Amended Section 94(viii), we are clearly of the opinion that, after amendment of the above section, the dictum laid down by the Full Bench decision referred to above, cannot have any application in the light of the additions made to the above section. Under the amended section, it is clearly provided that the tax can be levied by means of a water-rate or water-rates for water supplied and it can also be imposed in one or more of the two forms, viz., in the form of a tax assessed on buildings and lands or in any other form including in the form of charges for such supply. Before the amendment, the tax could be levied only in one of the forms mentioned in that section, whereas, after the amendment, at the choice of the Municipal Council, they are competent to levy tax by imposing both on the basis of assessment of buildings and lands and for charges for such supply. In the light of the Amendment Act, the Municipality is competent to levy tax by adding the water-rate as also the charges for actual supply. In that view of the matter, after amendment of Section 94(viii) by Act 34 of 1984, the dictum laid down in the case referred to above, cannot be operative: In the light of the amendment of Section 94(viii), it is clear that the tax may be levied by taking into account both water-rate as also the charges for the supply of water to a consumer.

7. In view of what is stated above, we declare that, after the amendment of Section 94(viii) by the Amendment Act, 1984, the decision in Kasturiranga Iyengar''s case, supra, is no longer good law as the section has been amended with retrospective effect from 7-4-1964.

In view of what is stated above, there is no merit in this appeal and it is accordingly dismissed.

