

(1998) 07 GUJ CK 0030

In the Gujarat High Court

Case No : Letters Patent Appeal No. 155 of 1997

Palitana Municipality

APPELLANT

Vs

Maharashtra Bhuvan Jain Dharmashala and Another

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Gujarat Education Cess Act, 1962 — Section 13

Citation : AIR 1998 Guj 245

Hon'ble Judges : M.R. Calla, J;J.R. Vora, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; Nagin N. Gandhi, P.V. Hathi and A.V. Trivedi, P.G. Desai, G.P., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Calla, J.—In these 13 Letters Patent Appeals, we notice the dismal fact of the unusual litigious persverance of Palitana Municipality against the statutory exercise of power by the State of Gujarat under the Gujarat Education Cess Act, 1962.

2. This batch of 13 Letters Patent Appeals filed by the Palitana Municipality are directed against a common judgment and order dated 29th January, 1997 passed by the learned single judge. in Special Civil Applications No. 7055/87 to 7067/87 whereby all the Special Civil Applications have been dismissed and the rule issued in each of them has been discharged.

3. We do not consider it necessary to give the narration of the previous, innings of litigation between the parties because the same has been recorded in detail by the learned single judge in paras 6, 7 and 8 of the impugned judgment and order dated 29th January, 1997. Suffice it will be to say that the State of Gujarat in exercise of its powers under Sub-section (3) of Section 13 of the Gujarat Education Cess Act, 1962 had issued a notification dated 24th December, 1963 granting exemption from payment of tax u/s 12 of the said Act to certain class of

lands and buildings specified therein. On the basis of this notification, there was litigation between the parties because the concerned Mamlatdar had issued an order granting exemption to the respondents trusts which were registered under the Bombay Public Trusts Act. This order passed by Mamlatdar was set aside by the Asstt. Collector, Palitana on 30-11-82. The orders passed by the Asstt. Collector, Palitana, were challenged through Special Civil Applications Nos. 164/86 and 14 other Special Civil Applications. All these 15 Special Civil Applications filed by different Trust Dharmashalas were decided by a common order dated 8-4-86 on the same lines on which the Division Bench had earlier decided the LPA No. 172/77. Thereafter, order was passed on 17th March, 1987 whereby the respondent trusts were exempted from the payment of education cess on the basis of the notification dated 24th December 1963, as issued earlier. On reading of this order dated 17th March, 1987 which was issued by the order of the Governor shows that this order has been passed after hearing the public trusts as also the Palitana Municipality and the Assistant Collector of Palitana. Such orders which have been passed with regard to the respondent trusts on 17th March, 1987 were made the subject-matter of challenge by the Palitana Municipality before this Court through Special Civil Applications Nos. 7055/87 to 7067/87 and all these Special Civil Applications have been dismissed by the learned single judge by the common judgment and order dated 29th January, 1997 which is under challenge in these Letters Patent Appeals.

4. We have heard learned counsel and have also gone through the impugned judgment and order dated 20th January, 1997 and the record of these proceedings.

5. As regards the contention raised by the learned counsel for the appellant that the notification dated 24th December, 1963 had not been tabled before the Assembly as required by the proviso to Sub-section (3) of Section 13, it may be straightaway observed that this contention has no factual foundation whatsoever. On the contrary, it is established on record that the notification was tabled before the State Legislature as required under the proviso and Mr. PC Desai, learned Government Pleader has made a pointed reference to the letter to this effect which was sent by the joint Secretary to the Legislative Assembly on 28th November, 1996. This document was produced by the Government Pleader on the direction of the Court. Mr. P.V. Hathi appearing for some of the respondents also produced a copy of the list of proceedings of Assembly showing that the same was tabled in the Assembly and we do not find any substance in this argument that the notification dated 24th December, 1963 had not been tabled before the State Legislature and that the proviso to subsection (3) of Section 13 has not been followed. Since we are satisfied as a question of fact that it was so tabled and the proviso has been complied with, we need not go into the question as to whether the requirement under this proviso is mandatory or directory although the learned single judge has held that it is only a directory provision.

6. Learned counsel for the appellant has then contended that before passing the

order dated 17th March, 1987, opportunity was not afforded to the Palitana Municipality and thus the direction which was given by this Court in the earlier litigation had not been followed. This contention raised by the learned counsel for the appellant is contrary to the record. Besides the fact that the order dated 17th March, 1987 itself shows that it had been passed after hearing the Palitana Municipality and others, it is the case of the appellant itself in the body of the petition that a notice had been given to the Palitana Municipality and it had also filed a reply to such notice. Merely because a grievance is raised that certain details were asked and they were not supplied, that argument cannot be extended to raise the contention that opportunity was not afforded or that the order had been passed without affording a reasonable opportunity. The concerned authority while passing this order dated 17th March, 1987 was in fact not holding a trial. Notice had been given and all the parties were heard and whatever case they wanted to put up had also been put up by them before the concerned authority and therefore this contention has no substance and on that basis the order dated 17th March, 1987 could not be set aside. The learned single judge has also dealt with this question in detail in the impugned judgment.

7. The third contention which was raised on behalf of the appellant is that in fact the respondent trusts are not entitled to such an exemption and as an ancillary argument it was submitted that these trusts are taking charges from the pilgrims and visitors if not in the form of rent, in the form of donations. So far as charging any amount as rent from the pilgrims and visitors by the public trusts are concerned, the same was not substantiated by any record, contemporaneous or otherwise and even if it is assumed that some donations are being received from the pilgrims and visitors, it cannot be said that the respondent trusts are functioning with any profit motive or that they are making any money or that the donations which are given voluntarily by the pilgrims and visitors amount to rent or any income to this public trusts as the same appears to be received only against the use as user charges. Be that as it may so far as the question of exemption is concerned, it is purely a subjective satisfaction of the Government which has ample powers under the Act to exempt appropriate lands and buildings.

8. We do not find any error or infirmity in the order passed by the learned single Judge so as to warrant any interference by this Court. The order passed by the learned single Judge is only confined to the respondent trusts which were parties to this litigation or similar Trust Dharamshalas and therefore the apprehension of the learned counsel for the appellant that on the basis of this judgment over those institutions which are not functioning as charitable institutions will also take the benefit of this judgment is wholly misconceived and unfounded.

9. There is no substance in any of these 13 Letters Patent Appeals and all these LPAs are hereby dismissed.

10. In view of the order passed in the main Letters Patent Appeals, no orders are required to be passed in Civil Applications Nos. 5274/97 and 5275/97 for stay.