(2016) 08 P&H CK 0287

In the Punjab And Haryana At Chandigarh

Case No : RSA No.1770 of 2011 (O&M)

Principal General Manager (Telecom) APPELLANT

Vs

Cantonment Board RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:
Constitution of India, 1950 — Article 285 (1)

Citation : (2017) 2 PLR 289

Hon'ble Judges : Amit Rawal J.

Bench : Single Bench

Advocate : Anil Rathee, Advocate, for the Appellant; M.S. Sachdeva, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal J. - This order of mine shall dispose of two cases, RSA bearing No.1770 of 2011 and CWP No.9046 of 2011 at the instance of BSNL.

2. Mr. Anil Rathee, learned counsel appearing for the appellant/petitioners submitted that the respondent-Board had asked the appellant/petitioners payment of amount on account of service charges for the periods i.e. 2002-03, 2003-04 vide notice dated 09.06.2004 and of subsequent period from 01.04.2004, on the premise that exemption available under Article 285 (1) of the Constitution of India is only applicable to the Government properties. The aforesaid order was challenged by filing Civil Suit No.230 of 2005, which has been dismissed by both the Courts below. Against the aforementioned judgments and decrees, regular second appeal has been filed and the writ petition has been filed qua subsequent issue of notice dated 23.01.2009 claiming an amount of `5,28,210/- (Annexure P-1).

3. He further submitted that since beginning the stand of the BSNL is that the property belongs to the Central Government and therefore, the exemption granted is applicable. Even as per the provisions of Section 99 of the Cantonment

Act, 1924, certain buildings are exempted from payment of rates/taxes and as per Section 97 of the Act, every Board shall be deemed to be municipality for the purposes of the Municipal Taxation Act, 1881, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below and the impugned order, as the Cantonment Board cannot demand service charges by formulating the following substantial questions of law:-

(i) Whether the appellant is entitled to benefit of provisions of Section 285(1) of the Constitution of India read in conjunction with Section 97 of the Cantonment Act, 1924?

(ii) Whether the judgments and decrees passed by the Courts below suffered from illegality and perversity?

4. In support of his contentions, he relied upon the ratio decidendi culled out in the judgment of Hon''ble Supreme Court in Municipal Corporation Amritsar v. Senior Superintendent of Post Offices, Amritsar Division and another, (2004) 3 SCC 92 where the Hon''ble Supreme Court held as under:-

"The demand so made was with regard to the services rendered to the respondents'' Department like water supply, street-lighting, drainage and approach roads to the land and buildings. In the counter, the respondents averred that they are not paying for the services rendered by the appellant Corporation by way of water and sewerage charges and power charges separately. It is also categorically averred that no other specific services are being provided to the respondents for which the tax in the shape of service charges can be levied and realized from the respondents. There is no provision in the Municipal Corporation Act for levying service charges. The only provision is by way of tax. Undisputedly, the appellant Corporation is collecting the tax from general public for water supply, street lighting and approach roads etc. Thus, the "tax" was sought to be imposed in the garb of "service charges". The interplay of the constitutional and legal provisions being well cut and well defined, it was clearly not within the competence of the Corporation to impose tax on the property of the Union of India, the same being violative of Article 285(1) of the Constitution.

The circulars issued by the Union of India were administrative in nature. It is now settled principle of law that administrative circulars cannot override the constitutional provisions. The Government of India circular was issued by one Deputy Secretary to the Government of India. Such circulars cannot be said to have overriding effect over the mandate of Article 285(1). The circulars so issued do not alter the position with regard to the bar imposed by Article 285(1). The interplay of the constitutional and legal provisions being well cut and well defined, requires no marked elaboration to stress the point."

5. Per contra, Mr. M.S. Sachdeva, learned counsel for the Cantonment Board in both the cases submitted that simpliciter suit filed for injunction in the absence of declaration qua challenge of the demand notice was not maintainable, hence,

simpliciter suit for permanent injunction in the absence of declaration is liable to dismissed. He further submitted that no doubt the property belonged to Government of India but the BSNL has become a Board/Corporation in view of the ratio decidendi culled out in the judgment of Hon''ble Supreme Court in Board of Trustees for the Visakhapatnam Port Trust etc. v. State of A.P. And others 1999(6) SCC 78 wherein it has been held that Board is not a department of Central Government. It has a distinct entity and therefore, is not exempted from taxation under Article 285 of the Constitution of India, thus, urges this Court for dismissal of both the cases. He also relied upon Section 99(2) of the Cantonment Act, 1924 to contend that present building would not fall within the exemption clause as the service charge is being imposed to cover the cost of specific services, in essence, the Cantonment Board was also providing access to the road, supply of water etc. and therefore, had raised the demand under the head "Service Charges."

6. I have heard learned counsel for the parties and appraised the paper book. A conceded position on record is that the property is of Union of India. Article 285 of the Constitution of India and Section 97, 98 and 99 of Cantonment Act read thus:-

"285. Exemption of property of the Union from State Taxation: (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

Sections 97, 98 and 99 of Cantonment Act, 1924:-

"97. Power to prohibit or exempt from taxation:- Every Board shall be deemed to be a Municipal Committee for the purposes of the Municipal Taxation Act, 1881.

98. Power to make special provision for conservancy in certain cases:- A Board may make special provision for the cleansing of any factory, hotel, club or group of buildings or lands used for any one purpose and under one management, and may fix a special rate and the dates and other conditions for periodical payment thereof, which shall be determined by a written agreement with the person liable for the payment of the conservancy or scavenging tax in respect of such factory, hotel, club or group of buildings or lands:

Provided that, in fixing the amount, proper regard shall be had to the probable cost to the Board of the services to be rendered.

99. Exemption in the case of buildings. - (1) When, in pursuance of section 98, a Board has fixed a special rate for the cleansing of any factory, hotel, club or group of buildings or lands, such premises shall be exempted from the payment

of any conservancy or scavenging tax imposed in the cantonment.

(2) The following buildings and lands shall be exempt from any tax on property other than a tax imposed to cover the cost of specific services rendered by the Board, namely: -

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

(b) Buildings used for educational purposes and public libraries, playgrounds and dharamshalas which are open to the public and from which no income is derived;

(c) Hospitals and dispensaries maintained wholly by charitable contributions;

(d) Burning and burial grounds, not being the property of the Government or a Board, which are controlled under the provisions of this Act;

(e) Buildings or lands vested in a Board; and

(f) Any buildings or lands, or portion of such buildings or lands, which are the property of the Government.

7. From the reading of aforementioned provisions of Article 285 of the Constitution of India and Sections 97 to 99 of the Cantonment Act, 1924, it is clear that services rendered to the appellant/petitioner like water supply, street lighting etc. are being charged by the Cantonment Board as per Sections 97 and 99(2) of the Act and therefore, Cantonment Board cannot raise the demand in view of the provisions of Section 285(1) of the Constitution of India. The aforementioned view of mine is supported by the judgment of Hon''ble Supreme Court in Municipal Corporation Amritsar''s case (supra). There is no dispute with the ratio decidendi culled out in the judgment of Hon''ble Supreme Court in Board of Trustees for the Visakhapatnam Port Trust''s case (supra), for, it would apply only in case the property belongs to the Board. In the present case, as noticed above, the property belongs to Union of India, and therefore, in my view, the demand raised by the Cantonment Board under the head "Service Charges" was without jurisdiction. In fact, the appellant/petitioner is entitled for exemption as noticed above.

8. There is no force in the submission of Mr. Sachdeva, learned counsel appearing for the respondent that the suit in the absence of declaratory relief was not maintainable. In such type of suits, the relief of declaration is not mandatory to be sought. This view of mine is supported by ratio decidendi culled out in the judgment of this Court in Madan Mohan v. Arun Kumar, 1984 PLJ 239.

9. For the foregoing reasons, the substantial questions of law determined above are answered in favour of the appellant and against the respondent. The judgments and decrees passed by the Courts below are set aside as both the Courts below failed in appreciating the documentary as well as oral evidence and accordingly, demand notice (Annexure P-1) is hereby quashed.

10. Both the second appeal and the writ petition are allowed. Decree sheet shall be prepared accordingly.