
(2003) 07 MP CK 0072

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1232 of 2002

Professional Examination Board

APPELLANT

Vs

Bhopal Municipal Corporation

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 132, 135, 136

Citation : (2003) 4 MPHT 95 : (2003) 3 MPLJ 436

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Ravindra Srivastava, Rakesh Shrotri and P. Dharmadhikari, for the Appellant; Ajay Mishra and P. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J. This is a revision by the appellant/Board u/s 392 of the M.P. Municipal Corporation Act, 1956 (hereinafter to be referred to as "the Act") read with Section 115, CPC against the order by which the appeal of the petitioner challenging imposition of property tax has been dismissed.

The petitioner is "Professional Examination Board" (hereinafter to be referred to as "the Board"). It was constituted as per notification dated 17-4-1982 (Annexure R-6) issued by the Man-Power Planning Department of the State Government. It has been stated in this notification that this Board would function under the Man-Power Planning Department and the State Government would have the power to issue necessary directions from time to time for conducting the business of the Board. It is also provided that the State Government would have the power to frame rules for this purpose. In Para 5 of this notification it is stated that the Board would be an independent unit and would have the right to acquire and hold movable and immovable property and it would have the capacity of suing and being sued. There is a further provision that the State Government would not be liable for any act or omission of the Board. The Man-Power Planning Department would have the power to change the Chairman and

Members of the Board in consultation with other concerned departments. The Board would open its own account and the existing PMT Board and PET Board and their properties would stand transferred to the Board. The State Government provided an amount of Rs. 3,00,000/- as working capital of the Board. As per Para 2 of this notification the Chairman and all other members of the Board were officers of the Government. The Board has constructed a building on the land allotted by the government to the Man-Power Planning Department. This land has not been transferred to the Board. The building has been constructed by the Capital Project Administration which is also constructing the building belonging to the Government. By order dated 15-2-2000 (Annexure R-4) of the Department of Technical Education and Man-Power Planning of the State Government, it has been clarified that the Board is a part of the State Government and it should be recognised as such.

The Commissioner, Municipal Corporation, Bhopal has imposed property tax on the building belonging to the Board as per Section 132 of the Act. He has demanded property tax of Rs. 13,53,225/- from the petitioner as per demand notice dated 2-8-1999 (Annexure R-3). The petitioner submitted before the Corporation that the building belonging to it is exempted from the property tax as per Section 136 (a) of the Act. According to the petitioner the building is "owned by and vesting in the State Government" and therefore, the demand of property tax from the petitioner by the Municipal Corporation is illegal. The Municipal Commissioner rejected the plea of the petitioner on the ground that the building is not of the ownership of the State Government but it belongs to the Board which is separate and distinct from the State Government. The petitioner filed an appeal before the District Court as per Section 149 of the Act against the order of the Municipal Commissioner and it has been dismissed by the impugned order.

The learned Counsel for both the sides have been heard. It is argued on behalf of the petitioner that the Board is not a separate juristic or legal entity and it is a part of the State Government and therefore, the building constructed by it on the land allotted to the Man-Power Planning Department is owned by the State Government. It is submitted that this has been made crystal clear by the State Government by order dated 15-2-2000 (Annexure R-4) and therefore, there is no scope for arguing that the Board is a separate entity. It is also pointed out that the Board made a proposal to convert itself into a Society under the Societies Registration Act but the State Government by its letter dated 2-12-1998 (Annexure R-10) rejected the proposal and made it clear that it would continue in its present form.

On the other hand it has been argued on behalf of the Municipal Corporation that the Board is not a department of the State Government but it is an autonomous body. It is contended that it is a separate legal entity. It is pointed out that as per notification dated 17-4-1982 the Board has the capacity of suing and being sued; hold and acquire property; the State Government is not liable for any act

or omission of the Board and it has been specifically stated in Para 5 that the Board would itself be an independent unit. For these reasons it is stated that the Board is not a part of the State Government. Certain documents have been filed to demonstrate that the Board is filing appeals before the Court in its own name, it has framed its own regulations for its employees and it has its own budget and accounts. It has been emphatically argued that a separate legal entity can be created in exercise of executive power of the State Government under Article 162 of the Constitution of India and the notification mentioned above has been issued in exercise of that power. It is submitted that it is not necessary that a separate legal entity can be created only "by or under a statute".

After considering the rival contentions of both the sides this Court is of the opinion that the Board is a part of the State Government. It is a limb, agency, projection, wing or extended arm of the State. It is not separate from the body and soul of the State. It is well known how the corporate personalities come into existence whether as a "corporation sole" or a "corporation aggregate". The well recognised modes of bringing into existence the Public Corporations are "by or under a statute". These are created by Acts of Parliament or State Legislatures. These are formed as Government Companies under the Companies Act, 1956 or Societies under the Societies Registration Act or even Co-operative Societies under the Co-operative Societies Act. Thus the veil of incorporation is woven around such Public Corporations and that makes them separate and distinct legal entities. It is through the act of "incorporation" by or under a statute that a separate juridical person is born and it is endowed with a corporate personality. For example Reserve Bank of India, Oil and Natural Gas Commission, Damodar Valley Corporation, Life Insurance Corporation, Road Transport Corporations and Food Corporation of India have been formed by Acts of Parliament. Similar Corporations have been created by the Acts of State Legislature, e.g., Board of Secondary Education. The examples of Government Companies are State Trading Corporation and Hindustan Shipyard Limited. The Societies are formed under the Societies Registration Act, e.g.y Council of Scientific and Industrial Research.

Not a single instance could be pointed where a distinct corporate personality has been conferred on a body by an executive order of the Government. The Union or the State in exercise of their executive power under Articles 73 and 162 of the Constitution can form the Boards or Bodies for carrying on the Governmental or public functions but these would only be extended arms or wings of the Government and would not be clothed with separate "corporate shell" or legal entities. Such Boards or Bodies or by whatever name they are called would continue to be a part of the Government or its Department. The Telecommunication Department is the latest example. It was working as a Department of the Central Government but now it has been corporatised by forming "Bharat Sanchar Nigam Limited". A posterior approach in this respect demonstrates that it could not have been done by just issuing an executive order. That is why the need arises for creating the corporate bodies "by or under a statute" and not through an executive fiat. Creation of these bodies other than

through an act of incorporation would continue to keep them within the fold of the Government.

In Halsbury's Laws of England, 4th Edn. Vol. 9 page 716, a Corporation is defined as "a body of persons (in the case of corporation aggregate) or an office (in the case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question". Garner elucidates : "a public corporation is a legal entity established normally by Parliament and always under legal authority, usually in the form of a special statute, charged with the duty of carrying out specified Governmental functions in the national interest, those functions being confined to a comparatively restricted field, and subjected to control by the Executive, while the Corporation remains juristically and independent entity not directly responsible to Parliament". In Law Lexicon by P.R. Aiyar, 1997 Edition edited by Justice Y.V. Chandrachud the "Corporation" has been dealt with at page 419 as "artificial persons established for prescribing in perpetual succession certain rights, which, if conferred on natural persons, would fail in process of time. The following definition of a corporation was given by Chief Justice Marshall in the celebrated Dartmouth College case : A corporation is an artificial being, invisible, intangible and existing only in contemplation of law. Being, the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important ones, immortality, and if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, or perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession with these qualities and capacities, that corporations were invented and are in use. By these means a perpetual succession of individuals are capable, of acting for the promotion of the particular object, like one immortal being", Corporation is a Body of Politics or Incorporate; so called as the person composing it are made into a body, and of capacity to take and grant, etc. or, it is an assembly and joining together of many into one fellowship and brotherhood, whereof, one is head and chief, and the rest are the body; and this head and body knit together, make the Corporation; also it is constituted of several members, like unto the natural body, and framed, by fiction of law, to endure in perpetual succession".

In S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, , a Corporation is defined thus : "A Corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking,

holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as natural person may".

In *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, it has been observed that the "State is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State". It has been further observed : "In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge Governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often of specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government".

Again in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, it is said : that the Corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of Constitutional or administrative law as the Government itself, though in the eye of the law they would be distinct and independent legal entities. If the Government acting through its officers is subject to certain Constitutional and public law limitations, it must follow & fortiori, that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations.

Recently the Constitution Bench of seven learned Judges of the Supreme Court by a majority of 5 : 2 in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, has traced the history and evolution of the public Corporations. It is found from this judgment that the instances of corporate personalities are statutory Corporations, Companies or Societies incorporated and formed by or under various Acts. It has been held that if such corporate bodies are "financially, functionally and administratively" dominated by or under the control of the Government these would be "State" within the meaning of Article 12 of the Constitution and fundamental rights guaranteed by Part III of the Constitution of India would be enforceable against them. In Para 96 in the minority judgment also it has been observed : "In different judicial pronouncements, some of which we have reviewed, any company, corporation,

society or any other entity having a juridical existence if it has been held to be an instrumentality or agency of the State, it has been so held only on having been found to be an alter ego, a double or a proxy or a limb or an off-spring or a mini-incarnation or a vicarious creature or a surrogate and so on - by whatever name called - of the State. In short, the material available must justify holding of the entity wearing a mask or a veil worn only legally and outwardly which on piercing fails to obliterate the true character of the State in disguise. Then it is an instrumentality or agency of the State".

In Dias Jurisprudence, Fifth Edition page 251 under the chapter "Persons" the "Corporation Sole" has been dealt with as under: "From an early time it was found necessary to continue the official capacity of an individual beyond his lifetime, or tenure of office. The common lawyers accordingly created a second "person" who, though passing under the same name as the flesh and blood individual, enjoys legal existence in perpetuity. This is the corporation sole, which is a personification of official capacity. Unity of jural relations is thus assured a continuity which it would not otherwise have. "The living official comes and goes", said Salmond in a passage which has become classic, "but this off-spring of the law remains the same for ever". Reference has been made to the famous case of *Salomon v. Saloman & Co.* (1897) AC 22, in which it was held by the House of Lords that a Company on "incorporation" becomes separate from its promoters or shareholders. 14. Article 285 of the Constitution of India provides that the property of the Union shall be exempt from all taxes imposed by the State or by an authority within the State. Similarly Article 289 provides that the property and income of a State shall be exempt from Union taxation. Cases arose in which the words "property of the Union" or "property of the State" came to be considered, Articles 285 and 289 are complementary to each other. The first case which came before the Supreme Court under Article 289 was *Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another*, . The question was whether the income of a public corporation was State income. The A.P. State Corporation was established in 1958 under the Road Transport corporation Act, 1950. Before 1958, transport in the State was controlled by Government department and its revenue was exempt from income tax under Article 289(1). The Supreme Court held that the income made by a Public Corporation was not State income because a Corporation under the law has a distinct personality from its shareholders. It was pointed out that the Corporation though statutory has a personality of its own and this personality is distinct from that of the State or other shareholders. It can not be said that a shareholder owns the property of the Corporation or carries on the business with which Corporation is concerned. Hence prima facie the income derived by the trading Corporation can not be claimed by the State which is one of the shareholders. It is also clear that the trading activity carried on by a Corporation is not a trading activity carried on by the State departmentally nor is it a trading activity carried on by State through its agents appointed in that behalf.

In *Western Coalfields Limited Vs. Special Area Development Authority, Korba and*

Another, , also it was held that the Companies incorporated under the Companies Act, 1956 have a corporate personality of their own distinct from that of the Government of India. Therefore, the property tax under the M.P. Municipal Corporation Act, 1956 or M.P. Municipalities Act, 1961 can be levied on the buildings belonging to the such companies. The contention that the property in reality belongs to the Union of India was rejected. The same view has been taken in Food Corporation of India Vs. Municipal Committee, Jalalabad and Another, and Western Coalfields Limited Vs. Municipal Council, Birsinghpur Pali and Another, .

The decision of the Supreme Court in State of Punjab and Others Vs. Raja Ram and Others, , has been cited on behalf of the respondent insupport of the plea that a Corporation is separate and distinct from the Government. This was a case of Food Corporation of India which has been created under the Food Corporation Act, 1964. It was held that the Food Corporation is not a Government department as it is a statutory Corporation.

In Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, , it has been observed by the Supreme Court: "After Second World War a new pattern of public corporations developed in England as an instrument of planning in a mixed economy. The general characteristics of such a public corporation is that it is normally created by a special statute; it has no shares and no shareholders either private or public, and its shareholder, in the symbolic sense, is the nation represented through Government and Parliament; the responsibility of the public corporation is to the Government, represented by the competent Minister and through the Minister to Parliament; the administration of the public corporation is entirely in the hands of a Board which is appointed by the competent Minister; and it has the legal status of a corporate body with independent legal personality. This trend spread to other countries and in India also public corporations have been constituted by Acts of Parliament. The Nationalised Banks and LIC are such new types of Public Corporations".

Again in M/S. Electronics Corporation of India Ltd. Etc. Etc. Vs. Secretary, Revenue Department Govt. of Andhra Pradesh and Others Etc. Etc., , it has been held that a clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that be the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares. It has also been held that Article 285 of the Constitution of India does not apply when the property that is to be taxed is not of the Union of India but of a distinct and separate legal entity.

In the present case the land on which building in question has been constructed belongs to the Man-Power Planning Department of the State Government. It has not been transferred to the Board. Therefore, in view of the decision of the Supreme Court in HUDCO v. Municipal Corporation, Delhi AIR 2001 SC 432, the land is not liable to property tax under the M.P. Municipal Corporation Act, 1956.

In *Devi Dayal Marwah Vs. The State of Andhra Pradesh*, the question which arose before the Division Bench was whether the Board of the Industrial Trust Fund was a department of the Government or a Corporation. It has been held that one of the tests to find whether an institution is a Corporation or a Department of the Government to enquire whether the undertaking functions as a responsible independent organisation and not as part of any department of State. It was held that the Industrial Trust Fund was not created as a Corporation and therefore, it was part of the State Government.

In view of the above discussion the petitioner Professional Examination Board is a department of the Government. It is not a Corporation as it has not been created "by or under any statute". The building constructed by this Board is in reality the building of the Man-Power Planning Department to whom the land has been allotted by the Government and the Board is a part of the Government Department. This building and the land are exempted from payment of property tax u/s 136 (1) of the M.P. Municipal Corporation Act, 1956. Therefore, the revision is allowed. The impugned orders of the District Court and of the Municipal Commissioner are set aside and it is declared that the demand of the property tax by Municipal Corporation, Bhopal from the petitioner Board is not according to law. The demand is quashed.