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(2010) 09 PAT CK 0155

In the Patna High Court

Case No : CWJC No. 1641 of 1996

Sone Command Area Development Agency	APPELLANT
Vs	
The Union of India (UOI)	RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0155

Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 06.02.1995 (Annexure-1), passed by the learned Assistant Commissioner of income tax, (TDS), Circle-2, Patna, whereby he has held that the Petitioner is not a "local authority" within the meaning of Sub-section (20) of Section 10 of the Income Tax Act, 1961 (hereinafter referred to as "the Central Act"), and is, therefore, not entitled to the benefit of certificate for deduction at lower rate of tax within the meaning of Section 197 of the Central Act.

2. A brief statement of facts essential for disposal of the writ petition may be indicated. Sone Command Area Development Agency, the Petitioner herein, is an Agency within the meaning of Section 3(2) of the Bihar Agricultural and Rural Area Development Agency Act, 1978 (Bihar Act III of 1979) (hereinafter referred to as "the Bihar Act"). The Petitioner has housing property in the township of Patna to accommodate its offices. A portion of the same was in excess of its needs and was let out to tenant(s). The Petitioner had submitted returns claiming the benefit of reduced rate of taxation as per the provisions of Section 197 of the Central Act on the ground that it is a "local authority" within the meaning of Section 10(20) of the Act. The same was accompanied with particulars provided in Form-13 (Annexure-II), framed in terms of Rule 28(1) of the Income Tax Rules 1962 (hereinafter referred to as "the Rules"). The contention has been rejected by the impugned order, whereby it has been held that it is not a local authority within the meaning of Section 10(20) of the Act and is, therefore, not entitled to the benefit of taxation at lower rate in terms of Section 197 of the Central Act. Hence this writ petition.

3. Ms. Kalpana, learned Counsel for the Petitioner, assails the validity of the impugned order on the ground that the learned Assistant Commissioner has proceeded on a wrong footing and has completely misjudged the status of the Petitioner organization. She submits that, on a true interpretation of the provisions relevant in the present context, the learned Assistant Commissioner ought to have reached the conclusion that it is a local authority. She submits that Sub-section (31) of Section 3 of the General Clauses Act defines a local authority.

4. Learned Senior Standing Counsel for the Income Tax Department has supported the impugned order. In his submission, it is not a local authority within the meaning of Section 197 of the Central Act. He relies on the provisions of various enactments relevant in the present context, and the following judgments of the Supreme Court:

(i) Union of India (UOI) and Others Vs. Shri R.C. Jain and Others,

(ii) The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation,

(iii) Calcutta State Transport Corporation Vs. Commissioner of Income Tax, West Bengal,

5. We have perused the materials on record and considered the submissions of the learned Counsel for the parties. Section 197 of the Central Act provides that persons or body of persons covered by the same shall be required to pay income tax at a reduced rate. In the instant case, the Petitioner claims the benefit because of being a local authority in view of Rule 28(1) of the Rules, read with Form No. 13 (Annexure-II).

6. Chapter III of the Central Act is headed "Incomes Which Do Not Form Part of Total Income", and comprises of Sections 10 to 13A. Section 10 is headed ''Incomes'' not ''included in total income. Sub-section (20) of Section 10 of the Income Tax Act as it stood at the relevant point of time, read as follows:

Chapter III

Incomes which do not form part of total Income

Incomes not included in total income.

10. In computing the total income of a previous year of any persons, any income falling within any of the following clauses shall not be included--

xx xx xx xx xx xx xx xx xx (20) the income of a local authority which is chargeable under the head 84[*****] "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service 85[(not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area].

[Explanation.--For the purposes of this clause, the expression "local authority" means--

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(i) Panchayat as referred to in Clause (d) of Article 243 of the Constitution 87, or

(ii) Municipality as referred to in Clause (e) of Article 243 of the Constitution88, or

(iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(iv) Cantonment Board as defined in Section 388 of the Cantonments Act, 1924(2 of 1924);]

xx xx xx xx xx xx xx xx xx Emphasis added

7. Local authority has not been defined in the Act. The same has indeed been defined in Sub-section (31) of Section 3 of the Bihar & Orissa General Clauses Act, 1917 (Bihar & Orissa Act 1 of 1917), which reads as follows:

local authority" shall mean a Municipal Committee, District Board, or any other authority entrusted by any Government with, or legally entitled to, the control or management of a Municipal or local fund.

7.1 The definition of "local authority" fell for the consideration of the Supreme Court in the case of Union of India v. R.C. Jain (supra), paragraph-2 of which lays down the law and is reproduced hereinbelow:

2. Let us, therefore, concentrate and confine our attention and enquiry to the definition of ''local authority'' Section 3(31) of the General Clauses Act. A proper and careful scrutiny of the language of Section 3(31) suggests that an authority, in order to be a local authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of the Municipal Committee, District Board, or Body of Port Commissioner, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as corporate bodies. They must not be mere Governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of authority, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by State with such Governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc. etc. Broadly we may say that they may be entrusted with the performance of civic

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duties and functions which would otherwise be Governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority.

8. In order to qualify to be a ''local authority'', the Petitioner will have to satisfy the tests indicated by the Supreme Court in paragraph-2 of the judgment reproduced hereinabove. It must have separate legal existence. We will have to examine the aims & objects and the scheme of the Bihar Act to ascertain whether or not the Petitioner is a local authority, and has separate legal existence. Section 3 of the Bihar Act reads as follows:

Constitution of the Agency.--(1) The State Government may at any time after the commencement of this Act constitute an Agency or Agencies for the integrated rural and agricultural development of the command area of any irrigation project and/or such other area as the State Government may, by notification in the Official Gazette, specify:

Provided that the State Government may, by notification in the Official Gazette include at any subsequent stage, any area within the Agency so declared; or exclude any area from any such Agency or transfer any area from one Agency to another.

(2) The name and composition of any such Agency constituted under Sub-section (1) shall be specified in the notification.

(3) The Agency shall be a body corporate having perpetual succession and a common seal, with powers, subject to the provision of this Act to acquire, hold, dispose of property and to contract, and it may sue or be sued by its own name and title.

(4) The headquarters of the Agency shall be situated at such place in the area of Agency as the Agency may, by notification in the Official Gazette, specify.

The Petitioner has been so constituted by means of a notification issued by the State Government in terms of Section 3(1) of the Bihar Act. The Petitioner is a body corporate within the meaning of Sub-section (3) of Section 3 of the Bihar Act which can sue or be sued in its own name. Therefore, the Petitioner fulfills the first requirement indicated by the Supreme Court that a local authority should be a body corporate with its own seal, and can sue and can be sued in its own name. We, therefore, proceed on the footing that, in view of the provisions of Section 3(3) of the Bihar Act, the Petitioner has technically separate existence. This, however, does not conclude this aspect of the matter.

9. The next question to be ascertained is whether or not the Petitioner has really, factually, and in substance a separate legal existence as a corporate body. Section 4 of the Bihar Act provides for the constitution and the composition of

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the Board. It is evident that it substantially comprises of functionaries of the State Government, and the rest have to be nominated by the State Government, some of whom are rather ex-officio members. Section 4(2) of the Bihar Act provides that the Chairman and Managing Director of the Board shall be appointed by the State Government, who shall hold the post at the pleasure of the Government. Section 4(3) of the Bihar Act provides that ex-officio members of the Board shall hold office at the pleasure of the State Government. The constitution of the Board has to be done by the State Government in terms of Section 4 of the Bihar Act, is entirely a nominated body and it is, therefore, doubtful whether it has really separate legal existence as a body corporate. It is not at all an elected body and does not fulfill one of the essential requirements indicated by the Supreme Court. In other words, it is substantially controlled by the State Government, is not an elected body, and is practically little short of a government department.

10. The next important index indicated by the Supreme Court is that the body must function in a defined territorial area which the Petitioner fulfills, but is wholly devoid of a major requirement that its governing body must comprise of persons elected by inhabitants of the area.

11. It is next to be ascertained whether or not the Petitioner organization has any amount of authority, and the freedom, to decide questions of policy affecting the area administered by it. Section 9 of the Bihar Act is headed ''Functions of the Agency'', Section 10 is ''powers of the Agency'', Section 11 is "power to prevent work adversely affecting Plan" Section 12 is ''provision of Plan'', and Section 13 is ''Stage and manner of preparation of the Plan''. Sections 14 to 20 prescribe the procedure which shall be followed for special schemes affecting the rights & interests of any individual. It thus appears to us that the Petitioner has the requisite authority and the freedom, or shall we say the duty and the responsibility, to formulate policies for integrated rural and agricultural development in the area it administers, irrigation facilities, rural electrification etc. However, the authority and freedom is substantially diluted by Section 33 of the Bihar Act which is reproduced hereinbelow:

33. Direction by the State Government.--For carrying out the purposes of this Act, the State Government may from time to time give to the Agency such general or special directions on matters of policy as it thinks fit, and the Agency shall comply with such directions.

12. The Supreme Court has also indicated the aims and objects which are normally entrusted to a local body, for example, to provide facilities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare service etc. In other words, the duties and the functions of a local authority would generally be to ensure civic amenities in concentrated human habitations, generally urban areas. On the other hand, the aims and objects of the Petitioner are to be found in Sections 3, 9, 10 and 12 of the Act. It has been

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entrusted with the duties and functions of integrated rural and agricultural development of the Command area of an irrigation project, and to provide facility of electricity. The Petitioner is thus wholly devoid of a major index, and is not charged with the duties and functions to provide civic amenities.

13. Section 24 of the Bihar Act deals with the funds of the Agency, and is reproduced hereinbelow:

24. Fund of the Agency.--(1) The Agency shall have its own fund and all receipts of the Agency shall be carried thereto and all payments shall be made by the Agency therefrom.

(2) The Agency may accept grants, subventions, donations and gift from the Central or the State Government or a local authority, or any individual or body, whether incorporated or not, for all or any of the purpose of this Act.

Although there are indications spread over different provisions of the Act that the Petitioner may raise its funds, but has no power to impose compulsory levy. Its main source of fund is found in Section 24 of the Bihar Act, and is substantially dependent on the State Government for the same. It, therefore, falls short of another important requirement indicated by the Supreme Court to qualify to be a local authority.

14. The next index to be ascertained is whether or not control and management of its funds vests in the authority. Sections 25 and 26 of the Bihar Act read as follows:

25. Power of Agency to spend.-- The Agency shall have the power to spend such sums as may be necessary for performing the functions and discharging the duties imposed on it under this Act, subject to the budget provision and/or any other directions, issued by the State Government in this behalf.

26. Recovery of the amounts due to the Agency.--The principal amount of loan and interest due from any person to whom the Agency has advanced loan for purposes of this Act and the amount due from any person as his share of contribution for development work in any area u/s 14 shall be recoverable as public demand under the Public Demand Recovery Act, 1914 (Bihar and Orissa Act IV of 1914).

We have already held hereinabove that the main source of the funds of the Authority is the Bihar Government and the Central Government. Its power to spend is subject to the budget provisions of the State Government, and/or any other directions issued by it. The Authority''s budget is subject to approval of the State Government. It is thus evident that the control and management of the funds available to it is not vested in it, and is on a tight leash. It is entirely controlled by the State Government.

15. The Supreme Court has held that in order to be a local authority, the aspirant authority must be of like nature and character as a Municipal Committee, District

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Board, or the like. Taking an over-all view of the aims objects & the scheme of the Act, and the foregoing discussion, the Petitioner is bereft of each and every index of a local authority, except in a most technical sense of having a separate legal existence capable of suing and being sued in its own name.

16. The Petitioner in no way answers the major indices indicated by the Supreme Court. In other words, on a survey of the provisions of the Bihar Act, we are of the view that the Petitioner does not appear to us to be a local authority within the meaning of Sub-section (20) of Section 10 of the Act.

17. The judgment of the Supreme Court in the case of Union of India v. R.C. Jain (supra), was followed by the Supreme Court in its later judgments in Calcutta State Transport Corporation v. Commissioner of Income Tax (supra), and Commissioner of income Tax v. U.P. Forest Corporation (supra).

18. We entirely agree with the conclusion arrived at by the learned Assistant Commissioner, though we rest our decision on different grounds.

19. In the result, we do not find any merit in the writ petition, and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Birendra Prasad Verma, J.

I agree.

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