(2004) 10 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No''s. 687 and 8033 of 2004

Tate Teleservices Limited — APPELLANT

Vs

State of Gujarat — RESPONDENT

Date of Decision : 25-10-2004

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 132, 406, 451
Constitution of India, 1950 — Article 12, 226

Citation : (2004) 10 GUJ CK 0021

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Nanavati and Nanavati, for Petitioner Nos. 1-2 in Special Civil application No. 687 of 2004 and Asim J. Pandya, for Petitioner Nos. 1-2 in Special Civil application No. 8033 of 2004, for the Appellant; D.S. Pandit, Ld. AGP for Respondent No. 1 and Pranav G. Desai, in Special Civil Application No. 687 of 2004 and D.S. Pandit, Ld. AGP for Respondent No. 2 and Pranav G. Desai, in Special Civil Application No. 8033 of 2004, for the Respondent

Judgement

Jayant Patel, J.—As both the matters are inter-connected they are being heard together and dealt with this common judgement finally.

2. In both the petitions the action under challenge is that of Corporation in not granting exemption to the concerned petitioner company from the payment of octroi at par with Reliance Telecom Limited, which is as per the petitioners similarly situated. It is also the case of the petitioners that there was policy decision of the State Government on the basis of recommendation of Government of India to grant exemption from payment of octroi to basic telecom service providers and the said policy decision of the State Government is taken for grant of exemption by all the local authorities including the Corporation upto March, 2005. It is the case of the petitioners that such exemption has been granted by all the Corporations of the State Government except Vadodara Municipal Corporation - respondent herein. It is also the case of the petitioners that even Vadodara Municipal Corporation has granted exemption to Reliance

Telecom Limited, whereas though the petitioners are similarly situated, such facility of exemption has not been extended.

3. On behalf of respondent Corporation, it has been submitted by Mr. Desai, learned Counsel that the case of Reliance Telecom Limited cannot be said at par with the petitioners and he further submitted that even as per the policy decision of the State Government, such exemptions were to be granted to basic telecom service providers and now the petitioner companies cannot be said as basic telecom service provider companies and he further submitted that as such whether to grant exemption or not is a policy matter of the Corporation and so far as Reliance Telecom Limited is concerned, in view of a separate contract with the said company by the Corporation and in view of the earlier application already made at the relevant point of time, the petitioners would stand on a different footing and, therefore, he submitted that the General Board has taken the decision of continuing with the exemption to Reliance Telecom Limited and for the petitioners of SCA No. 687/2004 the decision is taken for cancelling the exemption.

4. It appears that in SCA No. 687/2004 after hearing both the sides this Court (Coram: A.R. Dave, J.) on 3.3.2004 had passed the following order:

" Rule. Service of rule is waived by learned AGP Shri H.D. Dave for respondent No. 1 and by learned advocate Shri Pranav G. Desai for respondent No. 2.

2. Heard the learned advocates on the question of granting interim relief.

3. It is the case of the petitioner-Company that it should be granted exemption from payment of octroi in respect of equipments, materials, cables and accessories, instruments, spare parts, etc. used for the purpose of basic telecom services in pursuance of recommendation made by the State of Gujarat to respondent No. 2 and other local authorities. It is also the case of the petitioner that a company, named, Reliance Telecom Ltd. is being given the benefit of exemption from payment of octroi in respect of the articles/equipments referred to hereinabove and, therefore, the petitioner company should also be given the same benefit.

4. The petitioner company had submitted an application for getting exemption on 18.1.2002, but till today no final decision has been taken by the General Board of respondent No. 2 Corporation though the Commissioner and Standing Committee of the respondent-Corporation have recommended grant of the exemption. It has been, therefore, prayed that by way of interim relief, exemption should be granted to the petitioner from payment of octroi as it has been done in the case of Reliance Telecom Ltd.

5. Learned advocate Shri P.G. Desai appearing for respondent No. 2 has submitted that the Municipal Commissioner as well as the Standing Committee of respondent No. 2 Corporation had considered the request made by the petitioner favourably and the matter is pending before the General Board of respondent No.

2 Corporation for final decision and, therefore, the benefit prayed for has not been granted. He has also tried to distinguish the case of the petitioner company from the case of Reliance Telecom Ltd. It has been submitted by him that possibly in the next meeting, which might be convened in the month of March, the case of the petitioner would be considered. It has been also submitted by him that possibly the benefit, which has been extended to Reliance Telecom Ltd. by way of exemption from payment of octroi on the articles/equipments referred earlier, might be withdrawn.

6. Several judgments have been cited by the learned advocates to substantiate their respective claims.

7. Looking to the facts of the case, it is not in dispute that the benefit, which is granted to Reliance Telecom Ltd., is not being granted to the petitioner company and thereby respondent No. 2 is giving discriminatory treatment to the petitioner company. It also appears that substantial delay has taken place in considering the petitioner''s case by the Board.

8. Looking to the fact that discriminatory treatment is being given to the petitioner or, as no final decision has been taken in the case of the petitioner, by way of ad-interim relief, it is ordered that the petitioner shall be given facility of "No-Bill" in respect of the articles, equipments, cables and accessories, etc. used for the purpose of basic telecom services till the General Board of the respondent Corporation takes final decision in the matter.

9. It would be open to any of the parties to approach this court for modification of this order, by filing a note, as and when the circumstances are changed so that a suitable order can be passed after considering the changed circumstances.

S.O. to 5.7.2004. D.S. permitted."

5. It has been submitted that thereafter in view of the decision of the General Board, the petitioners have also challenged the resolution of the Corporation rejecting the exemption to the petitioner company. There is no dispute on the point that since the matter was pending before this Hon''ble Court, a statement was made at the bar to continue with "No Bill Facility" to the petitioners of SCA No. 687/2004 and the same facility is accordingly continued till today.

6. The petitioner of SCA No. 8033/2004 is also one of the basic telecom service provider companies and also a Corporation of Government of India. It is the case of the petitioners that earlier the exemption was granted prior to the incorporation of B.S.N.L. However, since 1st October, 2000, after formation of B.S.N.L., the said "No bill" facility was granted and continued upto July, 2003 and thereafter is discontinued. It is also the case of the petitioner that B.S.N.L. is similarly situated as that of the petitioners of SCA No. 687/2004 and also Reliance Telecom Limited and other companies providing basic telecom services and, therefore, the same treatment deserves to be granted to it by the respondent Corporation, which is an instrumentality of the "State" within the

meaning of Article 12 of the Constitution of India and it has been submitted that similar order may be passed by this Court at par with SCA No. 687/2004.

7. In case of Gujarat Research and Medical Institute and Anr. v. State of Gujarat and Ors., reported in in a matter of grant of exemption from property tax and others, under Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as the "Act") this Court had an occasion to consider the question regarding the scope and ambit of power of the State Government u/s 451 of the Act. At paragraphs 6, 7, and 9 it was observed as under:

"6. Under these circumstances, I am of the view that when it is a question of exercising the powers for the purpose of exemption, the petitioner can approach to the State Government u/s 451 which is more or less the revisional jurisdiction of the State Government over any resolution or order of the Corporation or of the Municipal authority or otherwise subordinate thereto. Prima facie I am not impressed with the contention raised by Mr. Raval that, since there is a remedy provided u/s 406 of preferring appeal, the State Government cannot exercise the revisional jurisdiction or such dispute would not fall u/s 451. The submission of Mr. Raval to support the said contention is that provisions of Section 451 is a remedy provided for a general and a larger issue and it may not apply to the individual action qua citizen for levying of the tax or for grant of the exemption. Mr. Raval relied upon some of the observations of the Division Bench in case of Gujarat Vidya Sabha Vs. Municipal Corporation of the City of Ahmedabad, and more particularly at para 8 read with para 16 of the said judgment. In my view, the reliance placed by Mr.Raval upon the said judgment in the present cases is ill-founded inasmuch as in the case of Gujarat Vidhya Sabha (supra), the case before the Division Bench, such question of exemption was raised before the Small Causes Court and was not dealt with by the Small Causes Court and, therefore, at para 16 it has observed that such question regarding provision of Section 132 should have been decided by the Small Causes Court. Such is not in the present situation inasmuch as the petitioners have not approached the Small Causes Court against the decision nor the judgment of the Division Bench in case of Gujarat Vidhya Sabha (supra) can be said as laying down the principle for curtailing the jurisdiction of the State Government u/s 451 of the Act.

7. In addition to the above, it is pertinent to note that the language of Section 132 is not providing for enabling power to the Corporation to impose the tax and to grant exemption but, in my prima facie view, the legislature has put an embargo on power of the Corporation to tax over a building which are covered in Clauses a, b and c, because the language is that general tax shall be levied in respect of a building and lands, except . Therefore, it is not a matter where the Corporation is in full command of the situation or the scheme of the legislature provides that it may tax and may also grant exemption. Therefore, it is a question of putting an embargo on power of the Corporation. It may be that the Corporation may examine whether the condition precedent for prohibiting them for charging the tax on the building is complied with or not but certainly such

situation cannot be at par with the case where a tax is to be recovered on the basis of rateable value. If it is a case of charging tax by fixing a rateable value, in normal circumstances, the person concerned from whom the tax is to be recovered may prefer an appeal u/s 406. Moreover, the exercise of the power u/s 132 of the Act and more particularly the operation of the embargo of recovering tax upon the buildings which are falling in the clauses a to c is subject to the power of the State Government u/s 451, which, in my view, is a supervisory jurisdiction of the State over any execution of any resolution or order of the Corporation or its officers. Therefore, prima facie I find that it is a matter where the State Government can exercise the revisional jurisdiction or its power u/s 451 against the decision of the Corporation of charging general tax on the basis that the building is not used for charitable purpose.

9. In view of the aforesaid discussions, since it may also result into examining the disputed questions, I would have relegated to the petitioner to approach before the Corporation itself but the stand of the Corporation is that the petitioners are not entitled for the exemption and they have a right to recover tax and, therefore, in view of this clear stand of the Corporation, I find that no useful purpose would be served and it is more better if the petitioner approach the State Government by making appropriate application u/s 451, and let the matter be considered by the State Government in exercise of its revisional jurisdiction u/s 451. Even otherwise also, as per the Law of Interpretation of Statute, in the matter pertaining to taxation, this Court before exercising its power under Article 226 of the Constitution would normally relegate the parties to approach before the authority within the provisions of the Act and the power of this Court normally would be exercised after exhausting of such remedies."

8. Even otherwise also, it appears that the whole issue has arisen on account of the policy decision of the State Government to grant exemption from the payment of octroi to the basic telecom service provider companies in view of the recommendations of the Government of India for giving encouragement to such industries/companies. As the matter is also pertaining to the implementation of the policy of the Government of India and also of the State Government, it would be just and proper to direct the State Government to consider the matter.

9. In view of the aforesaid observations Mr. Nanavati, learned Counsel for the petitioners in SCA No. 687/2004 and Mr. Pandya, learned Counsel for the petitioners in SCA No. 8033/2004 submitted that the petitioners would make appropriate application to the State Government u/s 451 of the Act within a period of two weeks from today. However, it has been submitted that the interim arrangement which has been made may be continued till the State Government decides the matter.

10. On behalf of the respondent Corporation, it has been submitted by Mr. Desai that time-bound direction may be issued, otherwise the matter will continue for an infinite period and it may adversely affect the Corporation.

11. It appears that as the State Government is to consider the matter, it may not be necessary for this Court to finally conclude any questions which are raised in this petition. However, in view of the earlier order dated 3.3.2004 referred to hereinabove passed by this Court, the same arrangement deserves to be continued. There is no material placed on record to show that the petitioners of SCA No. 8033/2004 stand on a different footing and even otherwise also the concerned petitioner company is one of the basic telecom service providers owned by Government of India and, therefore, if until the State Government finally decides the matter, the same interim relief is granted in favour of the petitioners of SCA No. 8033/2004, it would be just and proper and further in the event the application is not accepted by the State Government both the petitioners, including petitioners of SCA No. 8033/2004 can be directed to pay the amounts of octroi.

12. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

12.1) The petitioners are relegated to the remedy of approaching before the State Government u/s 451 of the Act and the petitioners shall file the application to the State Government within a period of two weeks from today together with the copy of the order of this Court.

12.2) The State Government shall decide the same in accordance with law after giving opportunity of hearing to both the sides, as early as possible, preferably within a period of eight weeks from the date of receipt of such application.

12.3) Until the State Government decides the application or upto 31.3.2005, whichever is earlier, the facility of "No Bill" arrangement which has been ordered in SCA No. 687/2004 and continued till today shall continue in respect of both the petitioners, subject to the final order which may be passed by the State Government. In case the decision of the State Government is continue the same policy even after 31.3.2005, the interim arrangement shall continue until the State Government decides the matter u/s 451 of the Act as indicated in earlier direction. It is made clear that in the event the State Government does not accept the case of the petitioners, the petitioner Companies will be required to pay the amount to the respondent Corporation without prejudice to the rights to challenge the decision in accordance with law.

13. The petitions are partly allowed. Rule made absolute accordingly. There shall be no order as to cost.