

(2009) 10 MAD CK 0196

In the Madras High Court

Case No : W.A. No. (MD) No. 505 of 2007

The President, K. Vellakulam Panchayat, Kallikudi Chatram,
Madurai District

APPELLANT

Vs

Kamaraj College of Engineering and Technology Managing
Board

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Constitution of India, 1950 — Article 243B, 243H

Tamil Nadu Panchayats Act, 1994 — Section 168, 168, 169, 170, 171

Citation : (2009) 5 CTC 289

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J;M. Jeyapaul, J

Bench : Full Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; S. Subbiah, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The matter relates to grant of exemption of house tax u/r 15 (c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 (hereinafter referred to as "Rules, 1999"). Learned single Judge allowed the prayer of the respondent, Kamaraj College of Engineering and Technology ("college" for short) by impugned judgment dated 10th April, 2006, reported in 2006 (3) MLJ 1068. During the pendency of the appeal against the said judgment, in another case of Sriram Educational Trust Vs. The President, 89, Perumalpattu Panchayat Union, Division Bench of this Court having affirmed the view of learned single Judge, the matter has been referred to the Larger Bench. The question involved in the present case is

Whether Rule 15(c) enables the Panchayat to exempt the educational institutions from payment of house tax or mandates the Panchayat to grant such exemption.

2. Learned single Judge held that the college being an educational institution is entitled for exemption and, thereby, directed the Panchayat to grant exemption

and refund the house tax already paid.

3. The college was established in the year 1998. It has different buildings to house its classrooms, office, library, hostel and staff quarters. The Panchayat assessed house tax for the first time during the assessment year 2001-02 and issued demand notice on 3rd Dec, 2001 asking the college to pay house tax of Rs.31,900/=, which the college paid. The college also paid house tax for the subsequent financial year 2002-03. For the assessment year 2003-04, house tax was revised to Rs.37,950/= which was also paid by the college. There being further construction made, house tax was revised to Rs.43,010/= for the assessment year 2004-05. This time, instead of paying the house tax, on 17th April, 2004, the college represented and asked for exemption u/r 15 (c) and the Panchayat having refused to grant exemption by letter dated 2nd Aug., 2004, the college finally represented on 14th Sept., 2004 to refund the house tax already paid and, thereafter, filed the writ petition, which was allowed.

4. Learned counsel appearing on behalf of the Panchayat made the following submissions :-Section 176 of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as the "Act") mandates that no exemption of tax can be granted as specified u/s 168 or 171 of the Act except in accordance with the rules. Grant of exemption is an enabling provision empowering the Panchayat to grant exemption in accordance with the rules. Therefore, the High Court cannot direct the Panchayat to grant exemption to a particular educational institution till it is shown that the decision taken is arbitrary or discriminatory.

Learned single Judge in the present case, as also the Division Bench in *Sriram Educational Trust* (supra) failed to notice the provision of Section 176, which specifically mandates that no exemption can be granted except in the manner as prescribed under the rules.

Rule 15 (c) being a subordinate legislation cannot override Section 176 of the Act, which prohibits the Panchayat from giving any exemption except in the manner provided under the rules.

The word "shall" used in Rule 15 (c) should be read as "may" in view of the provision of Section 176, which prohibits exemption of house tax.

If the Panchayat takes a decision not to grant exemption to particular class of buildings, including the college for a specific reason, it cannot be forced to grant such exemption u/r 15(c). Thereby, no educational institution or any other category or class of buildings can claim exemption as a matter of right, till such decision is taken by the Panchayat to grant exemption to a class of buildings.

For meeting the objects and reasons for inserting Article 243 to 243-O of the Constitution vide 73rd Amendment and to enable the Panchayats to acquire the status and dignity of viable institutions, the provision have been made u/s 168 to 171 and, therefore, the Court cannot force the Panchayat to grant exemption till the Panchayat decides to do so u/s 176 of the Act.

Self-financing Colleges like the respondent having established within the Panchayat limits in view of negligible land value, the college being fully residential with canteen and other facilities available inside the campus and as it charges extraordinary fees and capitation fee against management quota and as the Panchayat do not get anything in return due to the establishment of those colleges, except house tax, the Panchayat cannot be forced to exempt house tax on colleges like the respondent.

5. Learned counsel appearing on behalf of the respondent-college, advanced the following arguments :-

The Division Bench in *Sriram Educational Trust (supra)* having already approved the impugned judgment, it requires no further interference. The respondent college, though recognised by the Madurai Kamaraj University, but being an unaided college and being a self-financing institution is entitled for exemption u/r 15 (c). Levy of tax is different from collection of tax and such collection alone in respect of buildings covered u/r 15 (c) are exempted from such tax.

The word "shall" used in rule 15 has to be considered as a "mandate whereby the Legislature of the State intended to grant exemption to class of buildings, including educational institutions as mentioned u/r 15 (c). If there is a loss of revenue to the Village Panchayat, it is for the Government to provide sufficient funds depending upon the extent and collection of funds and, thereby, exemption cannot be refused on the ground that the Panchayat will be losing revenue.

6. We have heard the learned counsel for the parties and perused the records.

7. It came to the notice of the Parliamentarians that though Panchayati Raj institutions have been in existence since long but "those institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons, including the absence of regular elections, prolonged supersession, insufficient representation of weaker sections like the Scheduled Caste, Scheduled Tribe and women, inadequate devolution of powers and lack of financial resources" (emphasis added). It was in this background, by 73rd Amendment a new Part relating to Panchayat was added to provide amongst other things Gram Sabha in a village or group of villages; constitution of Panchayat at villages or other levels; direct election to all seats of Panchayats and villages and intermediate levels, etc., and devolution by the State Legislature of powers and responsibilities upon Panchayats with respect to preparation of plans for economic development and social justice and for implementation of the development scheme, sound finance of Panchayats by securing authorisation from the State Legislature for grants-in-aid to the Panchayat from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of revenues of designated taxes, duties, tolls and fees, etc. Part IX, Article 243 to 243-O was inserted by the 73rd Amendment.

8. Article 243-B deals with constitution of Panchayat. Article 243-H relates to power to impose taxes and creation of funds of Panchayat.

The Legislature of the State have been authorised to frame law authorising a Panchayat to levy, collect and appropriate taxes, duties, tolls and fees, as would be evident from the said provision and quoted hereunder :-

"243-H. Powers to impose taxes by and Funds of, the Panchayats. - The Legislature of a State may, by law, -

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom as may be specified in the law."

9. In exercise of powers conferred by Article 243-H, the State of Tamil Nadu has also authorised the Panchayats, including the appellant, to levy, collect and appropriate taxes, duties, tolls and fees in accordance with the procedure and subject to limits as prescribed under the Tamil Nadu Panchayats Act, 1994.

10. Section 171 relates to taxes leviable by Village Panchayat, relevant portion of which reads as follows :-

"171. Taxes leviable by Village Panchayats. --

(1) Every Village Panchayat shall levy in the Panchayat Village a house tax.

(2) A Duty shall also be levied in every Panchayat Village on certain transfers of property in accordance with the provisions of Section 175.

(3) Subject to such rules as may be prescribed and with the sanction of the Inspector and subject to such restrictions and conditions, if any, as may be imposed by him either at the time of granting sanction or later, the Village Panchayat may also levy in the village, a tax on agricultural land for a specific purpose.

Sub-section (1) of Section 171 while mandates the Village Panchayat to levy house tax, u/s 172 it has been mandated that such house tax shall be levied on all houses in every Panchayat Village, which shall be the first charge. The relevant provisions are quoted hereunder :-

"172. House-tax. - (1) The house-tax shall be levied on all houses in every Panchayat Village on the basis on which such tax was levied in the local area concerned immediately before the commencement of this Act or on the basis of classified plinth area at the rates specified in Schedule I, as the Village Panchayat

may adopt subject to the provisions of sub-section (3).

(2) The house-tax shall, subject to the prior payment of the land revenue, if any, due to the Government in respect of the site of the house, be a first charge upon the house and upon the movable property, if any, found within or upon the same and belonging to the person liable to such tax.

(3) The Government shall, by notification, determine in regard to any Panchayat Village or any class of Panchayat Villages whether the house-tax shall be levied every half-year or year and in so doing have regard to the following matters, namely :-

(a) the classification of the local areas u/s 4;

(b) the annual receipts of the Village Panchayat;

(c) the population of the Panchayat Village and the predominant occupation of such population; and

(d) such other matters as may be prescribed.

(4) The Government may make rules providing for -

(a) the persons who shall be liable to pay the tax and the giving of notices of transfer of houses;

(b) the grant of vacancy and other remissions;

(c) the circumstances in which the conditions subject to which, houses constructed, reconstructed or demolished, or situated in areas included in, or excluded from the Panchayat Village during any half-year or year, shall be liable or cease to be liable to the whole or any portion of the tax.

(5) If the occupier of a house pays the house-tax on behalf of the owner thereof, such occupier shall be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner."

11. There is a prohibition of exemption of payment of surcharge or tax as specified u/s 168 or 171 except in accordance with rules as may be prescribed by the State. For this purpose, it is relevant to notice Section 176, which reads as follows :-

"176. Exemption. - No exemption from the payment of any surcharge or tax specified in Section 168 or 171 shall be granted by the Village Panchayat or the Panchayat Union Council except in accordance with such rules as may be prescribed :

Provided that in any particular case, such exemption may be granted with the previous sanction of the Government."

12. From the aforesaid constitutional provisions and State enactments, while it will be evident that Parliament, with a view to empower the Village Panchayat to

have its own financial resources, inserted Article 243-H empowering the State Government to legislate authorising a Panchayat to levy and collect appropriate taxes, duties, tolls and fees in accordance with the procedure prescribed by the State; the State of Tamil Nadu, in terms with Article 243H empowered the Village Panchayat to levy house tax. Under sub-section (1) of Section 171, the Village Panchayats have been mandated to levy such house tax on all houses in every Panchayat Village. U/s 176 while it has been mandated not to grant any exemption from payment of surcharge or tax specified u/s 168 or 171, the Panchayats have been empowered to grant such exemption only in accordance with the rules as prescribed by the State. Therefore, it is the Panchayat which has the authority to decide whether it will grant exemption or not and if it so decides to grant exemption from payment of tax u/s 171 it requires to follow the procedure as prescribed under the rules. In view of the aforesaid provision of Article 243-H and Section 171 (1) r/w Sections 172 and 176, the State Government cannot force the Panchayat to grant exemption of tax to one or other category of person or building.

13. Rule 15 specifies the exemption of specified class of houses from house tax, as evident from the said Section and quoted hereunder :-

"15. Exemption of specified classes of houses from house-tax.- The following buildings shall, if they fall within the meaning of house as defined in the Act, be exempt from the house tax-

- (a) buildings set apart for public worship and either actually so used or used for no other purpose;
- (b) choultries for the occupation of which no rent is charged and choultries where the rent charged for the occupation is used exclusively for charitable purposes;
- (c) buildings used for educational purposes including hostels and libraries which are open to the public and public buildings used for charitable purpose of sheltering the destitute or animals;
- (d) such ancient monuments protected under the Ancient Monuments Preservation Act, 1904, or parts thereof, as are not used as residential quarters or as public offices;
- (e) charitable hospitals and dispensaries and other buildings exclusively used for charitable purposes;
- (f) such hospitals and dispensaries maintained by Railway Administration as may, from time to time, be notified by the Government;
- (g) buildings belonging to Village Panchayats;
- (h) buildings of the Forest Department situated within the forest area which are within the jurisdiction of a Village Panchayat;
- (i) light houses;

(j) all cattle pounds maintained by the Revenue Department; and

(k) cyclone shelters;

Provided that nothing contained in clauses (a) and (c) shall be deemed to exempt from house-tax, if any building for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses:

Provided further that Educational Institution (not commercial in nature) exempted from levy of house-tax, immediately before the commencement of the Act shall continue to be exempted under the said Act.

Explanation. - The exemption granted under this Rule shall not extend to residential quarters attached to schools or colleges not being the hostels or residential quarters attached to hospitals, dispensaries and libraries."

Under clause (c) of Rule 15, buildings used for educational purposes, including the hostels and libraries, which are open to public and public buildings used for charitable purposes of sheltering destitute or animals, exemption of house tax can be granted by the Village Panchayat.

14. It was argued on behalf of the respondent that the word "shall" used in rule 15 mandates the Village Panchayat to exempt house tax of the buildings as mentioned therein. But such submission cannot be accepted as it will go contrary to Sections 171 (1), 172 and 176 of the Tamil Nadu Panchayats Act, 1994.

15. For construction of a statute, the cardinal rule is that the statute must be understood according to its plain language unless there are adequate grounds to justify the inference to what the Legislature clearly intended. Nothing be added or subtracted therefrom. In *Prakash Nath Khanna - Vs - CIT - 2004 (266) ITR 1 (SC)*, the Apex Court held that the choice between a strict construction and liberal construction arise only in case of doubt as regards the intention of the Legislature manifest on the statutory language and observed as follows :-

".....It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them", (see *Lenigh Valley Coal Co. v. Yensavage*, 218 FR 547). The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama*, AIR 1990 SC 981 and *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*,

G.P.Singh in his "Principles of Statutory Interpretation", 3rd Edn., under the Chapter "Avoiding rejection of words" observed :-

"In the interpretation of statutes", observes DAS GUPTA, J.: "the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. (JK Cotton Spinning & Weaving Mills Co. Ltd. v. State of UP- AIR 1961 SC 1170, p. 1174)." The legislature is deemed not to waste its words or to say anything in vain (Quebec Railway, Light, Heat & Power Co v. Vandry, AIR 1920 PC 181, p. 186) and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. (Ghanshyamdas v. Regional Asstt. Commr., Seles Tax, AIR 1964 SC 766, p. 722)

It was further observed as follows :-

"When the legislature enacts a particular phrase in a statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which would not be there if the words were left out." (Hill v. Williams Hill (Park Lane) Ltd.)."

16. We have already noticed that Rule 15 is a subordinate legislation which cannot override the substantive provisions of the Act such as Section 171 (1), 172 and 176. Section 171 (1) mandates the Village Panchayat to levy house tax on all the houses of the Village Panchayat. The mandate is also clear from Section 172, wherein the basis of levy of house tax has been prescribed. There is a prohibition from grant of exemption of surcharge or tax u/s 176 except in accordance with the rules. Therefore, if Rule 15 is read with the aforesaid Sections 171, 172 and 176, it is to be held that u/r 15 it is not mandatory to grant exemption from house tax, but is an enabling provision allowing the Village Panchayat to grant exemption to a class of buildings as specified therein, if it so chooses. Rule 15 cannot be held to be mandatory to exempt a class of buildings from payment of house tax, which otherwise will run counter to Sections 171, 172 and 176 of the Act and may render Rule 15 ultra vires. Therefore, the word "shall" used in Rule 15 has to be read as "may" to give effect to the said rule of exemption.

17. We, accordingly, hold that the exemption prescribed u/r 15 is not mandatory and is an enabling provision empowering the Village Panchayat or Panchayat Union to grant exemption to a class of buildings as specified therein. The corollary is that it is open for the Village Panchayat or Panchayat Union not to grant such exemption in favour of one or other class of such buildings. The Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class of buildings in absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. Once a Village Panchayat or Panchayat Union takes a decision to grant exemption in favour of one or other class of buildings, only in that case no discrimination can be made between two similarly situated persons and no order can be passed in an arbitrary manner.

Learned single Judge, in the present case, and the Division Bench in *Sriram Educational Trust (supra)* having failed to notice the aforesaid aspect, we hold that the Division Bench in *Sriram Educational Trust (supra)* has not laid the correct law. In view of our finding in the present case and as we find that the appellant has not decided to grant exemption to any of the educational institutions or other buildings u/r 15, the respondent college having knowledge of the same and having paid the house tax since 2001-02, we hold that the respondent college was not entitled for grant of exemption nor it is entitled for refund of the house tax already paid. We, accordingly, set aside the impugned judgment dated 10th April, 2006, passed in W.P. No. 1766/05 and allow the writ appeal. But in the facts and circumstances, there shall be no order as to costs.