(2011) 08 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition No. 1062 (M/S) of 2010

Vodafone Essar South Limited — APPELLANT

Vs

State of Uttarakhand and Others — RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Constitution of India, 1950 — Article 243H, 246, 246(3), 277, 285
Uttar Pradesh Municipal Corporation Act, 1959 — Section 119, 143, 172
Uttar Pradesh Municipalities Act, 1916 — Section 128, 239, 239(2), 294, 298
Uttar Pradesh Town Improvement Act, 1919 — Section 3

Citation : (2011) 114 RD 590 : (2011) 2 UC 1500

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The issue involved in this group of petitions is whether the Nagar Parishads and the Nagar Panchayats have any authority to impose Advertisement Tax on glowsigns, signboards and hoardings which have been affixed above the shops of private individuals.

2. For facility, the facts of Writ Petition No. 1062 (M/S) of 2010 is being taken into consideration. The Petitioner is a Company incorporated under the Indian Companies Act, 1956 and is a licensed Unified Access Service Provider in Uttarakhand Region granted by the Ministry of Communications, Government of India. In order to provide the services to its subscribers, the Petitioner has laid down a network and, in order to connect with a network, a subscriber is required to have a SIM Card (Subscriber Identification Module). This SIM is an electronic chip which stores the data of the subscriber to identify the subscriber to the Petitioner''s network.

3. These SIM cards are available through shopkeepers, who are not the agents of the Petitioner, but conduct the business of the Petitioner company in addition to other business, on a commission basis. These shopkeepers are required to

distribute the SIM cards and coupons to their prospective customers.

4. In order to provide information to the prospective customers that it is dealing in the Petitioner''s product, necessary hoardings are placed over their shop. The glowsigns, signboards, etc. is only intended to inform the customer of the trade and business being carried out in that shop which the Petitioner has erected/ placed/affixed on the shop.

5. The Petitioner in Writ Petition Nos. 340 (M/S) of 2011, 341 (M/S) of 2011 and 342 (M/S) of 2011 is a Company registered under the Companies Act, 1956 and carries on the business of manufacture and marketing of carbonated beverages and soft drinks. The products are available to the consumers through various retail outlets owned and operated by independent retailers. It is contended that such retail outlets, display over their premises, signboards depicting the trademarks, logo, etc. indicating the availability of the product at the outlet.

6. The Nagar Palika Parishads and the Nagar Panchayats are treating such signboards, hoardings affixed over the shops as advertisements and have issued work orders to private agencies to collect the Advertisement Tax or fee from the Petitioner. Pursuant to the work orders, the private Respondents have issued assessment bills to the Petitioner demanding payment of the amount. The Petitioners, being aggrieved by the issuance of the bills and by the actions of the Respondents in demanding Advertisement Tax or fee, have preferred the writ petitions.

7. Heard Sri Bharat Ji Agarwal and Sri Rajeev K. Virmani, Senior Advocates, assisted by Sri Shubham Agarwal, Sri Ashish Mishra, Sri Ashish Joshi, Sri Vikas Singh and Sri Rajeev Bhatt, learned Counsel for the Petitioners in all the writ petitions, Sri P.C. Bisht, Brief Holder for the State/Respondent No. 1, Mr. Sandeep Tandon, Advocate for Respondent Nos. 2 and 3, Mr. Ravi Babulkar, Advocate for Respondent Nos. 4 and 5, Mr. J.C. Belwal, Advocate for Respondent No. 8, Mr. A.K. Sharma, Advocate for Respondent Nos. 10 and 11, Mr. Manish Arora, Advocate for Respondent Nos. 12 and 13 in Writ Petition No. 1062 (M/S) of 2010, Ms. Joyce Irwin, Advocate holding brief of Mr. D.S. Patni, Advocate for Respondent Nos. 2 and 3, Mr. Rajeev Singh Bisht, Advocate for Respondent Nos. 8 and 9 (Nagar Palika Parishad, Haldwani), Mr. Davesh Bishnoi, Advocate for Nagar Palika Parishad, Kashipur, Mr. Pankaj Miglani, Advocate for Respondent Nos. 10 and 11 in Writ Petition No. 1063 (M/S) of 2010, Ms. Jyoti Joshi, Advocate for Respondent Nos. 2 and 3, Mr. B.D. Pande, Advocate for Respondent No. 5, Mr. Ravi Babulkar, Advocate for Respondent Nos. 20 to 23 in Writ Petition No. 1964 (M/S) of 2010, Mr. V.B.S. Negi and Mr. Ravindra Singh Bisht, Advocates for Respondent Nos. 2 and 3 in Writ Petition No. 1552/2010, Mr. Sandeep Tandon, Advocate for Respondent Nos. 2 to 5 in Writ Petition No. 1553 (M/S) of 2010, Mr. Sandeep Tandon, Advocate for Respondent No. 2, in Writ Petition No. 340 (M/S) of 2010, Mr. Ravindra Singh Bisht, Advocate for Respondent No. 2 in Writ Petition No. 341 (M/S) of 2010 and Mr. Yogesh Pacholia, Advocate holding brief of Mr. M.K. Chand, Advocate for Respondent No. 2 in Writ Petition No. 342 (M/S) of

2010.

8. The submission of the learned senior counsel for the Petitioner is, that the Respondents have No. power or authority under any law or enactment either to impose a tax or a fee on Advertisement nor have power to delegate such power, if any, to a private agency. The learned Counsel submitted that the work order issued to the private Respondent to realize tax or fee was wholly illegal coupled with the fact that the bills raised was without any authority of law and was liable to be quashed.

9. In reply, the learned Counsel for the Respondents submitted that the Nagar Panchayats and the Nagar Parishads have the power and the authority to realize the tax u/s 128 of the U.P. Municipalities Act, 1916 (hereinafter referred to as the Act). Another counsel submitted that only a licence fee was being realised under the bye-laws framed u/s 298 of the Act.

10. In the light of the contradicting stand taken by different Nagar Parishads and Nagar Panchayats, it would be appropriate to deal with the situation, as to whether the charge sought to be levied upon the Petitioner is a tax or a fee.

11. The source of the power to make exclusive laws is derived from Article 246 of the Constitution. Clause (3) of Article 246 of the Constitution gives exclusive power to the legislature of the State to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule, more, appropriately referred to as the "State List". Under Article 243H of the Constitution, the legislature of the State, may by law, authorise a Panchayat to levy, collect and appropriate such taxes as may be specified in the law.

12. Under Entry 55 of List II of the Constitution the State legislature has the power to frame laws relating to Taxes on Advertisements. For facility, Entry 55 is extracted hereunder:

55. Taxes on advertisements other than advertisements published in the newspapers [and advertisements broadcast by radio or television].

13. The State legislature has framed a law for the Nagar Parishads for realization of tax u/s 128 of the U.P. Municipalities Act, 1916. For facility, Section 128 of the Act is extracted hereunder:

128. Taxes which may be imposed.-(1) Subject to any general rules or special orders of the [State Government] in this behalf, the taxes which a [Municipality] may impose in the whole or part of a municipality are-

(i) a tax on the annual value of building or lands or of both;

(ii) a tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on municipal services;

(iii) a tax on trades, callings and vocations including all employments remunerated by salary or fees;

[(iii-a) a theatre tax which means a tax on amusement or entertainments.]

(iv) a tax on vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein;

(v) a tax on dogs kept within the municipality;

(vi) a tax on animals used for riding, driving, draught or burden, when kept within the municipality;

(vii) [***]

(viii) [***]

(ix) a tax on inhabitants assessed according to their circumstances and property;

(x) a water-tax on the annual value of buildings or lands or of both;

[(x-a) a drainage tax on the annual value of buildings leviable on such buildings as are situated within a distance, to be fixed by rule in this behalf for each municipality from the nearest sewer line;]

(xi) a scavenging tax;

(xii) a conservancy tax for the collection, removal and disposal of excrementious and polluted matter from privies, urinals, cesspools;]

(xiii) [***]

(xiii-A) [***]

[(xiii-B) a tax on deeds of transfer of a immovable property situated within the limits of the Municipality;]

(xiv) [***]

(1) Provided that taxes under Clause (iii) and (ix) of Sub-section (1) shall not be levied at the same time [nor shall the taxes under Clauses (x-a) and (xii) of Sub-section (1) be levied at the same;]

[Provided further that No. tax under Clause (xiii-B) of Sub-section (1) shall be levied on deeds of transfer of immovable property situated within such area of municipality as forms part of the local area of any Improvement Trust created u/s 3 of the U.P. Town Improvement Trust, 1919 (U.P. Act VIII of 1919)];

Provided also that No. tax under Clause (iv) of Sub-section (1) shall be levied in respect of any motor vehicle].

(2) Nothing in this section shall authorize the imposition of any tax which the (State Legislature) has No. power to impose in the [State] under [the Constitution]:

Provided that a [Municipality] which immediately before the commencement of [the Constitution] was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by the Parliament.

14. Under U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as the Adhiniyam), taxes which can be imposed by the Zila Panchayat is indicated in Section 119. For facility, the said provision is quoted hereunder:

119. Taxes which may be imposed by the Zila Panchayat. -(1) The taxes which the Zila Pachayat may impose or continue the imposition of for the purpose of this Act shall be the following, namely-

(a) a tax on circumstances and property; or

(b) any other tax which the State Legislature has the power under the Constitution of India, including Article 277 thereof, to impose in the State and of which imposition by the Zila Panchayat has been authorised by the State Government.

(2) The taxes shall be assisted and levied subject to the provisions of Article 285 of the Constitution of India and in accordance with the provisions of this Act and rules, Regulations and bye-laws framed thereunder.

15. A perusal of Section 128 of the Municipalities Act clearly indicates that there is No. provision to impose a tax on advertisements. Similarly, Section 119 of the Adhiniyam is silent on the imposition of a tax on advertisement. The Act or the Adhiniyam does not permit the Nagar Parishad or the Nagar Panchayat to impose or realize Advertisement Tax.

16. In Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., , the Supreme Court held that No. tax could be imposed unless the statute provides imposition of a tax.

17. In Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, , the Supreme Court held that in the absence of an express provision, No. tax could be levied. The Supreme Court held:

6. After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is No. scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power.

18. In the light of the aforesaid, the Court holds that neither Section 128 of the

Act nor Section 119 of the Adhiniyam confers any power on the Nagar Parishad or on the Zila Panchayat to levy or realise Advertisement Tax on glowsigns, signboards which are placed on the private shops.

19. A licence fee can be imposed u/s 294 of the Municipalities Act. For facility, the said provision is executed hereunder:

294. Licence fees, etc.-A Municipality may charge a fee to be fixed by bye-law for any licence sanctioned or permission which it is entitled to require to grant by or under this Act.

20. Under this provision, a fee could be charged as fixed by a bye-law. Section 298 of the Act gives power to a Municipality to make bye-laws which are consistent with the Act. Under Category ''H'' of List I, a municipality can frame a bye-law for regulating the posting of bills and advertisements.

21. Some of the Nagar Parishads have framed bye-laws which includes a provision for imposing a fee for putting up glowsigns, hoardings, etc. The Nagar Panchayat, Udham Singh Nagar, have framed a bye-law dated 8.10.1986 issued u/s 298(2) of the Act. Under Clause (2) of the bye-law, an advertisement can be put up after permission upon payment of such fees as per the rates specified in Clause (5). However, Clause 3(b) of the bye-law clearly stipulates that No. fee would be levied upon a person who puts up a signboard on his own property or such building where he is carrying on his business. Similar provision exists in the notification dated 30.10.1976 by which the bye-laws of the Nagar Panchayat Muni-ki-Reti was framed.

22. Section 143 of the Adhiniyam gives power to a Zila Panchayat to charge a fee to be fixed by a bye-law. Section 239 gives power to a Zila Panchayat to make bye-laws. The learned Counsel for the Respondents in Writ Petition No. 341 (M/S) of 2011 submitted that the fee was being realized u/s 239(2)H(a). For facility, the said provision is extracted hereunder:

239(2)H(a).- Prohibiting or regulating any act which occasions or is likely to occasion a public nuisance, for the prohibition or Regulation of which No. provision is made elsewhere by or under this Act.

23. In the opinion of the Court, this provision cannot be invoked for imposing a fee on hoardings, glowsigns, etc. Further, the bye-law annexed to the counter affidavit only reveals that a fee would be charged on such advertisements or hoardings which are erected on the road side or at a public place.

24. In the light of the aforesaid, it is clear that the Nagar Parishads and the Nagar Panchayats do not have any provision in its bye-laws to levy or realise any fee from such persons who are putting up hoardings, glowsigns on their shops or on such buildings where they are carrying on their business.

25. There is another aspect of the matter. u/s 172(h) of the U.P. Municipal Corporation Adhiniyam, 1959, a tax on advertisements not being advertisements

published in a newspaper could be imposed. This provision gives a clue that only a tax could be imposed on advertisement and that No. fee could be imposed. In State of Bihar v. S.K. Roy (1966) Supp. SCR 259, Yogendra Nath Naskar Vs. Commissioner of Income Tax, Calcutta, and M/s Pappu Sweets and Biscuits etc. v. Commissioner of Trade Tax Uttar Pradesh 1998 U.P.T.C. 1086, it has been held by the Supreme Court that subsequent legislation can be looked at in order to see what is the proper interpretation to be put in the legislation when it is found to be obscure or ambiguous or capable of more than one interpretation.

26. In identical situation, in Bharti Airtel Limited v. State of U.P. and Ors. in Writ Petition No. 7848 of 2010 (M/S), the Lucknow Bench of the Allahabad High Court held that the action of the Respondents in imposing Advertisement Tax and thereafter awarding contracts to private agencies for realizing the tax on hoardings, signboards and glowsigns on private shops by the company for advertising their products where the company''s business was being carried out was invalid and consequently quashed the notices. The said judgment is squarely applicable to the present case.

27. In the light of the aforesaid, it is held that neither the Nagar Parishad nor the Nagar Panchayat have any authority of law to levy a tax or a fee on Advertisements placed by the Petitioners over the private shops or buildings where they are carrying on their business. Consequently, the work orders issued by the Nagar Parishads and the Nagar Panchayats to the private agencies and the bills raised pursuant to it, being wholly illegal and without any authority of law, are quashed. The writ petitions are allowed. In the circumstances of the case, parties shall bear their own cost.

