

CASE NO.:
Appeal (civil) 6532 of 2002

PETITIONER:
Municipal Corporation, Amritsar

RESPONDENT:
The Sr.Suptd. of Post Offices,Amritsar Div.& Anr.

DATE OF JUDGMENT: 21/01/2004

BENCH:
S.N. VARIAVA & H.K. SEMA

JUDGMENT:
J U D G M E N T

SEMA, J.

This appeal, preferred by the Municipal Corporation, Amritsar is against the judgment of the High Court dated 17th July, 2001, allowing the writ petition, filed by the respondents herein.

The appeal arises out of the following facts:

The Posts and Telegraphs Department has nine buildings within the limits of Amritsar Municipal Corporation (hereinafter referred to as 'the Corporation'). The appellant Corporation had issued notices to the respondents for payment of service charges for providing various services like water supply, street lighting, drainage and approach roads to the land and buildings in the municipal area. However, the respondents did not make any payment contending that the respondent-Department, being of Central Government, the properties owned by them are exempt from all taxes. Several demand notices, without any result, culminated in the notice dated 24.10.2000. Being aggrieved by the aforesaid notice, the respondents had taken the matter before the High Court, which was allowed and the aforesaid notice was set aside. The High Court, having noticed the earlier judgment of the Division Bench dated 19th December, 2000, held inter-alia that the demand of service charges made by the Municipal Corporation was violative of Article 285 of the Constitution.

We have heard learned counsel for the parties.

The questions revolve around for determination in this appeal are:

(a) Whether the demand for service charges, so made by the Corporation against the respondents is by way of 'service charge' or by way of 'tax'?

(b) If it is held that the demand so made was by way of 'tax', whether the same is violative of Article 285(1) of the Constitution of India.

Before we advert further we may, at this stage, peruse the demand notice dated 24.10.2000. It reads:

"The Joint Commissioner
Municipal Corporation,
AMRITSAR.

To

The Assistant Engineer,Civil
Postal Civil Sub Divisions,
Jalandhar City.

No. J.C/I.S./319

Dated 24.10.2000

Sub: Payment of Service Charges of the properties owned
By P & T Department, Amritsar.
\005\005..

Whereas a notice of demand in respect of service charges
in lieu of tax on land and Buildings with regards to the

following properties owned by P & T Department Amritsar for the period mentioned against each property, was served on the Senior Superintendent of Post Offices Amritsar vide letter Nos. PT/IS/307 dt. 19.7.95, E0/TS/252 dt. 23.5.97, E0/TS/1274 dt. 19.3.97, AC/TS/254 dt. 9.9.98 & No. AC/TS/627 dt. 6.1.99:

S.No.	Name of Deptt. & Location	Year	Amount
1.	General Post Office & Telegraph Office & Quarters New/XIII, Amritsar	1.4.67 to	2,33,296.65
			31.3.2K
2.	Post Office, Kt. Mohar Singh, Amritsar	do	29,173.80
3.	Post Office, KT Bhai Sant Singh, New/X, Amritsar	do	26,298.00
4.	Post Office, Durgiana Mandi New/XVI, Amritsar	do	18,336.47
5.	Post Office, Chhoharta, New XXII, Amritsar	do	17,036.42
6.	Post Office, Hide Market New/XV, Amritsar	do	14,492.95
7.	Post Office, KT. Sher Singh, New/XII, Amritsar	do	38,114.41
8.	Post Office, Kairon Market New/1, Amritsar	do	39,011.36
9.	Post Office, Chowk Phagwara	do	34,845.50
			4,51,105.56

Whereas Service Charges in respect of properties of Central Government are payable by the respective Deptt. to the Municipal Corporation of the rates varying from 33.1/25% to 75% as decided by the Government of India, Ministry of Finance in its letter No. 14(1)P/52-I dated 10.5.54 and No. 4(7)P/65, dated 29.3.67 (copy enclosed). According to para (ii)(c) of the letter dated 29.3.67, in respect of colonies where all the services normally are provided by the Municipal Corporation to the residents of other areas are being availed of, Service charges will be paid at 25% of the property tax rate realized from the private individuals. The next ratable value/annual value for the purpose of these instructions shall be 9% of the capital value of the property concerned both in respect of residential and non-residential properties.

Whereas the office of P&T Department has failed to deposit the amount as specified in the notice of demand raised vide letters mentioned above amounting to Rs. 4,51,105.56.

Now, I, Gurwaryam Singh, PCS, Joint Commissioner, Municipal Corporation, Amritsar exercising the delegated powers of Commissioner, Municipal Corporation, Amritsar conferred on me vide office order No. C/242 dated 4.8.1999 direct that the Service Charges of the buildings owned by P&T Department may be paid within 30 days failing which the moveable property lying in the said properties would be attached and retained to be sold in order to recover the arrears of service charges by public auction.

Encl: As above

Sd/-

(Gurwaryam Singh)
Joint Commissioner,
Municipal Corporation, Amritsar
Exercising the powers of Commissioner
Municipal Corporation, Amritsar."

Article 285(1) provides that the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

As observed from the impugned notice, the whole basis of the demand notice was in pursuance of the letters/circulars issued by Government of India, Ministry of Finance being Nos. 14[1]-P/52/1 dated 10.5.54 and 14(7)-P/65 dated 29.3.67. It is argued by Mr. Mahabir Singh, learned counsel that the Corporation is justified and entitled for payment of service charges in view of the circulars issued by the Government of India, as referred to above. We are unable to countenance with this contention of the learned counsel. The circulars, aforesaid, issued by the Union of India were administrative in nature. It is now settled principle of law that administrative circulars cannot override the constitutional provisions. The Government of India circular, as referred to above, was issued by one Deputy Secretary to the Government of India. By no stretch of imagination such circulars, issued by the Deputy Secretary to the Government of India, can be said to have any overriding effect over the mandate of Article 285(1) of the Constitution. We are, therefore, of the view that the circulars so issued, as noticed above, do not alter the position with regard to the bar imposed by Article 285(1) of the Constitution. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point.

The question, whether the demand so made was by way of 'service charge' or 'tax', need not detain us any longer. The demand so made was with regard to the services rendered to the respondents' department, like water supply, street lighting, drainage and approach roads to the land and buildings. In the counter, the respondents averred that they are paying for the services rendered by the appellant-Corporation by way of water & sewerage charges and power charges separately. It is also categorically averred that no other specific services are being provided to the respondents for which the tax in the shape of service charges can be levied and realized from the respondents. There is no provision in the Municipal Corporation Act for levying service charges. The only provision is by way of tax. Undisputedly, the appellant-Corporation is collecting the tax from general public for water supply, street lighting and approach roads etc. Thus, the "tax" was sought to be imposed in the garb of "service charges". The interplay of the constitutional and legal provisions being well cut and well defined, it was clearly not within the competence of the Corporation to impose tax on the property of the Union of India, the same being violative of Article 285(1) of the Constitution.

Furthermore, the issues raised herein are no more res-integra. This Court, in (1992) 1 SCC 100 Union of India v. Purna Municipal Corporation & Ors. considered an identical question and held that Section 135 of the Railways Act, being an Act of the Central Government and saved by clause (1) of Article 285 of the Constitution, clause (2) of Article 285 was not attracted, and the Municipal Corporation was restrained from demanding tax by way of service charges from railways. This is what this Court has said in para 5 of that judgment:

"The aforesaid provisions, existing as it is, in terms permits taxation of railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a central enactment has no role to play in sub-article (2) of Article 285, for that is a sphere in which the State legislation operates. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-article (1) of Article 285. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ and direction asked for in favour of the Union of India restraining the respondent council from raising demands on the railway in

regard to service charges."

The same view was reiterated in (1996) 7 SCC 542 Union of India & Anr. v. Ranchi Municipal Corporation & Ors.

For the aforesaid reasons, the appeal is devoid of merits and it is accordingly dismissed with no order as to costs.

JUDIS