

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (C) NO. 3152 OF 2006

% Date of Decision : May 7th, 2008.

DELHI METRO RAIL CORPORATION LIMITED Petitioner
Through Mr. Soli Sorabjee, Sr. Advocate with
Mr. Pritesh Kapur and Mr. Chetan Sharma,
Advocates.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS Respondents

Through Mr. Ravi Shankar Prasad, Sr.
Advocate with Ms. Madhu Tawatia and Ms.
Sidhi Arora, Advocates.

Ms. Ruchi Sindhwani, Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be
allowed to see the judgment?

2. To be referred to the Reporter or not ? YES

3. Whether the judgment should be reported
in the Digest ? YES

SANJIV KHANNA, J:

1. The petitioner, Delhi Metro Rail Corporation Limited is a company registered under Section 617 of the Companies Act, 1956, with the Central Government and the Government of National Capital Territory of Delhi each having 50% holding. This is the third round of

litigation between the petitioner and Delhi Municipal Corporation, the respondent herein, on the question whether the petitioner is liable to pay property tax and other taxes under the provisions of Delhi Municipal Corporation Act, 1957. The petitioner had earlier filed Civil Writ No. 2065/2002, which was allowed vide order dated 4th April, 2002 with the direction to the Assessing Authority to decide the question whether the petitioner is liable to pay tax in view of Section 184 of the Railways Act, 1989 (hereinafter referred to as the 1989 Act, for short). After remand, the Additional Assessor and Collector passed another assessment order but again without deciding the question whether Section 184 of the 1989 Act was attracted. This Court in Civil Writ No. 1531/2003 quashed the said assessment order and remanded back the matter for determination whether the petitioner is liable to pay tax or is protected under Section 184 of 1989 Act.

2. The assessment order now passed by the Assessor and Collector on 30th March, 2005, in paragraph 3 refers to Section 184 of the 1989 Act, but the entire order is silent and does not specifically deal with the said Section. The Assessor and Collector has examined Section 119 of the Delhi Municipal Corporation Act and corporate entity of the petitioner, which makes it liable to pay taxes as any other individual or corporate entity, but the main question whether or not section 184 of the 1989 Act is attracted, is not

answered. The simplest course for this Court is to again remand back the matter to the Assessor and Collector to decide the question of applicability of Section 184 of 1989 Act. However, both the parties were reluctant and have addressed arguments on merits with reference to Section 184 of 1989 Act. I therefore proceed to decide the Writ Petition.

3. At the outset, it may be noticed that both 1989 Act and Delhi Municipal Corporation Act, 1957 are Central Acts enacted by the Parliament. Similarly, the Metro Railways (Construction of Works) Act, 1978 and the Delhi Metro Railway (Operation and Maintenance) Act, 2002 (hereinafter referred to as the 1978 Act and 2002 Act respectively, for short) have been enacted by the Parliament.

4. Section 184 of the 1989 Act reads as under:-

“184. Taxation on railway by local authorities.- (1) Notwithstanding anything to the contrary contained in any other law a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

(2) While a notification of the Central Government under sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax specified in the notification or in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Central Government may, having regard to all the circumstances of the

case, from time, to time, determine to be fair and reasonable.

(3) The Central Government may at any time revoke or vary a notification issued under subsection (1).

(4) Nothing in this section shall be construed to prevent any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may render or be prepared to render to the railway administration.”

5. The said Section in rather plain and unambiguous words, with a non obstante clause over-riding any other enactment, states that “railway administration” shall not be liable to pay any tax to a local authority for their funds. This, however, is subject to the condition that the Central Government can by a notification declare that “railway administration” shall be liable to pay tax as specified in the said notification. Exemption from tax by a local authority is granted to “railway administration”. This exemption is notwithstanding any other law to the contrary. Thus, notwithstanding the provisions of Delhi Municipal Corporation Act, 1957, a “railway administration” is not liable to pay tax under the said enactment, in view of Section 184 of the 1989 Act. It may be noted here that the Delhi Municipal Corporation Act, 1957 is prior in point of time and it was not contended by the respondents that Section 184 of the 1989 Act will not over ride the provisions of Delhi Municipal Corporation Act, 1957. It is also not the case of the respondents that any notification has

been issued by the Central Government under Section 184 of the 1989 Act declaring that the “Railway Administration” is liable to pay tax specified in the notification.

6. The term “railway administration” has been defined in Section 2 (32) of 1989 Act as under:-

“2(32) “railway administration” in relation to –

- (a) a Government railway, means the General Manager of a Zonal Railway; and
- (b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement.”

7. The said definition does not in fact specifically define the term “railway administration” but indicates that in relation to a Government Railway, it means the General Manager and in relation to non-Government Railway, it means and refers to the person who is the owner, lessee of the Railway or the person working the railway under an agreement. The purpose and object of Section 2 (32) is to pin point the individual who will be treated as the Administrator of the Railway in the case of governmental and non-governmental railway. Purpose and objective of Clause 2(32) of 1989 Act is to identify the Administrator and not as such to define the expression. However, the definition clause indicates that “railway administration” includes both Governmental Railway and non-Governmental Railway. This becomes clear in view of definition given to the terms “Governmental Railway” and “Non-Governmental Railway” in Sections 2 (20) and

(25) of the 1989 Act. Governmental Railway means a railway owned by the Central Government and Non-Governmental Railway means a railway other than a Government Railway. Thus, “railway administration” includes both Government as well as Non-Government Railway and exemption granted under Section 184 of 1989 Act will apply to both Governmental Railway as well as Non-Governmental Railway.

8. The next question, which arises for consideration is whether the petitioner is in fact a “Railway”, which is a pre-condition for Section 184 of the 1989 Act to apply and, therefore, can be regarded as “Railway” within the expression “railway administration”. The word “Railway” has been defined in Section 2 (31) of the 1989 Act in the following words:-

“2(31) “railway” means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, officers, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest

houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic or a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration,

but does not include-

- (i) a tramway wholly within a municipal area; and
- (ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;”

9. The word Railway as per the above definition means Railway or any portion thereof, but the same should be used for public carriage of passengers, goods and includes various properties as specified in Clauses (a) to (f) therein. The term “Railway”, in the first part of the definition clause relies upon the word “Railway” as is understood in normal parlance, with a stipulation that it should be used for the purpose of transportation of public carriage of passengers or goods.

The Supreme Court in the case of ***Shahadara (Delhi)***

Saharanpur Light Railway Company versus Municipal

Board reported in AIR 1969 SC 513, had agreed with the

contention of the appellant therein that the expression “Railway” as is commonly understood means carriage of passengers and goods on

iron rails. The term “Railway” as described in Article 366 (20) does

not include tramway wholly within the municipal area, line of communication wholly situated in one State and declared by the Parliament by law not to be Railway. The petitioner qualifies and is a Railway within the meaning of Section 2(31) of the 1989 Act. It is engaged in transportation of passengers on rails. It is a public carriage. This factual position is not challenged by the respondent.

10. In view of the reasoning given above, it has to be held that Section 184 of 1989 Act grants protection from levy of taxation by a local authority to “railway administration” be it a Government Railway or a Non Government Railway. The petitioner, therefore, will be entitled to protection under Section 184 of the Act to the extent it is “railway administration” as defined in Section 2 (32) read with Section 2 (25) of the 1989 Act.

11. The respondent-Corporation in the written submissions has pleaded that the 1989 Act is not applicable to the petitioner on the ground that the 2002 and 1978 Acts are applicable. Reference is made to the definition Clauses of the 2002 Act in which the expression “Metro Railway” has been defined. It was stated that in view of specific definitions of the expressions “Metro Railway”, “Metro Railway Administration”, “Non-Governmental Metro Railway”, etc.; in the 2002 Act, the expression “railway administration” as defined in 1989 Act is not applicable. It is also contended that the petitioner is a “Metro Railway” and therefore not “Railway Administration”, under

Section 184 of the 1989 Act. The argument is fallacious and should not be accepted. For the purpose of 1989 Act and for applicability of Section 184, we have to refer to the definitional clauses and other provisions of the said enactment. It is not necessary to examine the provisions of the 2002 Act or 1978 Act to interpret and define the expressions and terms used in 1989 Act. The judgments relied upon by the respondent rather than supporting the respondent, support the case of the petitioner. In ***Feroze N. Dotivala versus P.M. Wadhvani and Others***, reported in (2003) 1 SCC 433, which was relied upon by the respondent, it has been held that two similar terms may not mean the same thing if their definitions in two different statutes are at variance with each other. Two similar terms can have two different meanings under two enactments depending upon the context in which the said terms have been used. Therefore, it will not be proper to import the definition of the terms “Metro Railway”, etc. used in 2002 Act into 1989 Act. 1989 Act is a separate enactment and its clauses have to be interpreted as per the definition given to the said term in the said enactment. Recourse to 2002 enactment is not permissible to define “Railway Administration” under 1989 Act. It is also equally well settled that there can be two separate enactments dealing with the same subject matter and the question which one of the two enactments will prevail on a particular issue or question, may arise in a given case, but the said question is not relevant and

material for the present controversy. Therefore, it is not possible to hold and accept the contention of the respondent corporation that the petitioner ceases to be “railway administration” within the meaning of Section 2 (32) of 1989 Act in view of definition clauses in 2002 enactment or as 2002 Act stands enforced. Moreover, the expression “Railway” is generic in nature and the expression “Metro Railway” is a mere specie. “Metro Railway” will be included and forms part of the generic expression “Railway”.

12. The definition clauses in 1978 Act and 2002 Act have not been incorporated into 1989 Act. 2002 Act is, in fact, later in point of time but no amendments have been made to incorporate the definition clauses of the said Act into 1989 Act. Similarly, definition clauses in 1978 Act have also not been incorporated into 1989 Act. It is not permissible to refer to the definition clauses of 1978 Act and 2002 Act for the purpose of interpreting the expressions and terms used in 1989 Act. As discussed below, 1978 Act and 2002 Act, are in addition to and not in derogation of the 1989 Act.

13. Section 43 of the 1978 Act reads as under:-

“43. Application of the Indian Railways Act, 1890.- Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, the *Indian Railways Act, 1890 (9 of 1890).”

14. Thus, Section 43 stipulates that the provisions of the said Act are in addition to and not in derogation of the Indian Railways Act,

1890. I may note here that when 1978 Act was enacted, Indian Railways Act, 1890 was in force before it was repealed and replaced by 1989 Act. Section 8(1) of the General Clauses Act, 1879 stipulates that when a Central Act or Regulation made, is repealed or reenacted with or without modification, then reference made to the earlier enactment unless different intention appears, shall be construed as reference to the reenacted Act. The said Section of the General Clauses Act is applicable. In this regard, I may refer to judgment of the Supreme Court in the case of ***Sale Tax Officer Kanpur and Other versus Union of India and Others***, reported in 1995 SUPP 1 SCC 410, wherein the Supreme Court has held that reference to Indian Railways Act, 1890 in Section 28A (8) of Uttar Pradesh Sales Tax Act by virtue of Section 8(1) of the General Clauses Act after repeal of the earlier enactment, will mean as reference to 1989 Act. Thus, for the purpose of Section 43 of 1978 Act, reference to Indian Railways Act, 1890 will mean reference to 1989 Act. The contention of the respondent Corporation that Section 43 of the 1978 Act has become dead and lifeless because it refers to Indian Railways Act, 1890 and not to 1989 Act is misconceived. As noticed above, when 1978 Act was enacted, Indian Railways Act, 1890 was in force but subsequently, 1989 Act was enforced with the earlier enactment being repealed. Similarly, for the purpose of Section 2(2) of 1978 Act reference will have to be made to 1989, Act

for defining all words and expressions, which have not been defined in 1978 Act.

15. Logically, it also follows that when Section 104 of the 2002 Act makes reference to 1978 Act, it also makes reference to Section 43 of 1978 Act and therefore to 1989 Act. Section 104 of 2002 Act reads as under:-

“104. Application of other Acts.- Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the Metro Railways (Construction of Works) Act, 1978 (33 of 1978).”

16. Thus, the said Section states that provisions of 2002 Act are in addition and not in derogation of the 1978 Act. The provisions of 1978 Act continue to apply even after 2002 Act was enforced. By virtue of Section 43 of the 1978 Act the provisions of 1989 Act will continue to apply and will accordingly be applicable even after enactment of 2002 Act. It may also be noticed here that the term “Railway” for the purpose of 2002 Act has been defined in Section 2(P) to mean Railways as defined in Section 2 (31) of the 1989 Act. Section 2 (2) of 2002 Act also states that words and expressions not used but defined in 1978 Act shall have the same meaning as assigned to them under the Act. The legislature while enacting 1978 Act and 2002 Act has followed the legislative device of “incorporation” and for the sake of convenience avoided verbatim reproduction of parts of the earlier Acts into the later Acts. The provisions of the

earlier Act, therefore, to the extent stipulated get incorporated and become part and parcel of the later Act as if they have been bodily transposed. It cannot be said that in the present case incorporation is by reference and, therefore, modification or reenactment of the statute will not have any effect and the original provisions will continue to apply or in other words the provisions of Indian Railways Act, 1890 will continue to apply as far as 1978 Act is concerned. The present case is one of incorporation and not of mere reference and, therefore, upon re-enactment, the new enactment will apply. The legislative intent is clear and does not permit acceptance of the plea raised by the respondent. It has also been specifically provided in 2002 Act that the provisions will be in addition to but not in derogation of the 1978 Act. The 1989 Act continues to apply in view of Section 104 of 2002 Act and Section 43 of the 1978 Act.

17. In view of the above discussion, the contention of the respondent that in case of any ambiguity in exemption provisions, interpretation should be in favour of the State rather than the tax payer, in the present case is held to be not applicable. There is no ambiguity or doubt in ascertaining the meaning and interpreting Section 184 of 1989 Act. Therefore, the judgment of the Supreme Court in the case of ***State Level Committee and Another versus Morgardshammar India Limited***, reported in (1996) 1 SCC 108 is

not applicable. This judgment may be of relevance on the aspect, discussed below.

18. For the reasons given above, it is accordingly held that Section 184 of the 1989 Act applies and the petitioner is entitled to exemption under the said Section. The impugned orders passed by the respondents holding that the petitioner is liable to pay tax under the provisions of Delhi Municipal Corporation Act, 1957 to this extent is liable to be set aside and quashed.

19. However, it is clarified that this Court has not examined and gone into the question with reference to liability of third parties, other than the petitioner to pay property tax and other taxes. It is open to the respondent to examine agreements and transactions entered into between the petitioner and the third parties to verify and decide whether the said third parties are liable to pay tax.

20. Another aspect which requires consideration is whether and which type of properties qualify and can be regarded as "Railway" for the purpose of Section 2 (31) of the 1989 Act and whether certain properties belonging to the petitioner do not qualify and cannot be regarded as Railway properties and, therefore, are not entitled to exemption under Section 2 (32) read with Section 184 of the 1989 Act. This aspect has not been examined by the Assessor and Collector and requires detailed scrutiny and examination. Factual details will also have to be examined.

21. This question requires interpretation of Section 184 and the term “railway administration” and whether it includes properties not specified in Clauses (a) to (f) of Section 2 (31) of 1989 Act. It was pointed out by the counsel for the petitioner that under Section 184 of the 1989, Act, exemption or immunity has been granted to “Railway Administrator” from payment of taxes to local authorities. As already held above, the expression “railway administration” has not been defined in Section 2 (32) of 1989 Act but the said definition merely stipulates the person who will be regarded as an Administrator of the Railway in question. The said sub-section, therefore, seeks to pin point and specifically state the person who will be regarded as the Administrator of Railway in both Governmental Railway and non-Governmental Railway. A conjoint reading of Sections 2(31), 2 (32) and 184 of the 1989 Act would indicate that Administrator of Railway is exempt from payment of taxes in respect of a “Railway” as defined in Section 2 (31). A property or a transaction which does not fall within four corners of Section 2 (31), is not granted protection or immunity from taxation by local authorities under Section 184 of 1989 Act. Section 184 of 1989 Act, therefore, grants immunity to an Administrator of a Railway only in respect of assets as defined in Section 2 (31) and not in respect of other assets. Assets/properties or transactions not mentioned in Clauses (a) to (f), of Section 2 (31), will be liable to and can be subjected to tax by local authorities. I may

notice here that the words used in Section 2 (31) of 1989 Act supports the above construction. Section 2 (31) defines Railways in terms of “means and includes”, with a separate and clear portion within the definitional clause that sets out things that are to be included and are not to be included within the scope and ambit of the said definition. When the words “means” and “include” are both used in definition clause, the definition is considered to be exhaustive (See in this regard observations of the Supreme Court in ***Mahalakshmi Oil Mills versus State of Andhra Pradesh***, reported in AIR 1989 SC 335, wherein item No. 4 of the 1st Schedule of the Central Excise and Salt Act, 1944, which defines tobacco to mean any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth was interpreted. It was held that the definition was exhaustive and, therefore, tobacco seeds cannot be regarded as tobacco). The view taken is also fortified by the decision of the Supreme Court in the case of ***Sales Tax Officer Kanpur*** (supra). In the said case, reference was made to definition of “Railway” in Section 3 (4) of the Indian Railways Act, 1890 for the purpose of deciding whether exemption granted under Section 28A (8) of the Uttar Pradesh Sales Tax Act in favour of Railway Administration was applicable. The question that arose for consideration was whether city booking

agencies were “Railways” for the purpose of Section 28A (8) of the Uttar Pradesh Sales Tax Act. It was held that for a city booking agency to fall within the expression “Railways”, it must fall within one of the categories mentioned in Clauses (a) to (f) mentioned in Section 2 (31) of 1989 Act or Clauses (A) to (D) of Section 3 (4) of Indian Railways Act, 1890. It was also observed that this question could be decided if the relevant rules, orders and instructions including the contract agreement between the Railway and the city booking agencies were examined. The case was accordingly remanded back to the High Court to decide the question whether city booking agencies fall within the expression “Railways”.

22. The result of the above discussion is that anything which falls within the definition of term “Railway” cannot be taxed by the respondent under the Delhi Municipal Corporation Act, 1957 in view of Section 184 of the 1989 Act. However, the respondent is entitled to tax under the Delhi Municipal Corporation Act, 1957 the assets and properties, which do not fall and are not “Railways” within the meaning of Section 2 (31) of the 1989 Act. A bare reading of the Section 2 (31) of 1989 Act will show that lines, electrical equipments, installations, stations, warehousing workshops, running room, rest house etc. constructed for the purpose of or in connection with the railway are exempted from taxation under the Delhi Municipal Corporation Act, 1957. The Delhi Municipal Corporation will have to

establish and show that a particular building or asset can be taxed under the Delhi Municipal Corporation Act as it does not fall within the meaning of "Railway" as defined in Section 2 (31) of 1989 Act. This aspect requires examination and to this limited extent the matter is remanded back to the Assessor and Collector for fresh adjudication. The Assessor and Collector will keep the ratio of this decision in mind and ensure that properties or assets mentioned in Section 2 (31) of 1989 Act are not taxed. He shall give a specific finding on each asset/property brought to tax. The petitioner will cooperate and furnish all details, documents and information in this regard to the Assessor and Collector.

23. In view of the findings given above, it is held that the petitioner is entitled to exemption from payment of municipal taxes in view of Section 184 of 1989 Act, but only in respect of assets/properties which have been defined as Railway in Section 2 (31) and not in respect of other assets/properties. It is also clarified that this is subject to issue of notification by Central Government withdrawing the said exemption and also subject to right of the respondent- Delhi Municipal Corporation to raise and claim property tax from third parties, if permissible and allowed under law. The writ petition is accordingly allowed to the extent indicated above. In the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

MAY 07, 2008.
VKR/P