IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4500 OF 2001

NARENDRA YADAVRAO PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
.....
Advocate for petitioners : Mr. P. G. Godhamgaonkar
A.G.P. for respondent Nos. 1 to 3 : Mr. S. B. Pulkundwar
Advocate for respondent No. 4 : Mr. Pradeep Deshmukh
Advocate for respondent No. 5 : Mr. A. M. Karad
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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 13th JANUARY, 2015

PER COURT :-

1. The petitioners challenge the Government Resolution dated 23.02.2001, which is annexed to the petition, being unreasonable, improper, incompetent and amounts to encroachment on development plan, which is being implemented by the Corporation of the city. The Resolution mentioned that Aurangabad is an important city of this area. It has two important activities. First, industrial activity and second, tourism activity. For this purpose, the Government realized that infrastructure, such as roads, projects, etc. are required to be constructed around the city and outside the city. The resolution makes a list of 20 projects, which are either inside the city limits or outside the city limits. These projects are assigned to

the Maharashtra State Road Development Corporation. Part of the funds required for these projects are sought to be recovered from certain levy on petrol and diesel, sold within the city limits of Aurangabad. The recovery of Sales Tax is a State subject and there is specific legislation in the form of Bombay Sales Tax Act, 1959.

2. The learned counsel for the petitioners admitted that under the provisions of this Act, the State Government is empowered to recover sales tax on sale of articles within the limits of city. The learned counsel for the petitioner asserted that most of the projects in the list annexed to the resolution are roads outside the city limits of Aurangabad. He said that development of such roads is a responsibility of the State Government and to fulfill that responsibility, the State should not impose additional sales tax/levy on residents of Aurangabad city. In other words, he suggested that the funds required for these projects should be made available by the State without putting any burden on the residents of Aurangabad city.

3. The question, therefore, is whether the Government's decision is proper and secondly, whether the Government is empowered to impose additional levy on petrol and petroleum products, only upon purchasers within the limits of Aurangabad city.

4. We are not convinced that the decision to recover additional levy from the purchasers within the city, for the purpose of completion of project, is improper. The projects are beneficial to the residents of this city. If the projects are completed, the residents would certainly save lacs of rupees on fuel when they would use these elevated roads.

5. As regards the competence of the State for imposing additional levy, the learned counsel for petitioner did not show us any provisions of Sales Tax Act or Rules or any judgment to justify his contention that the State Government could not have singled out purchasers in the State which would amount to discrimination.

6. The third point, which is raised by the petitioners' advocate is that the development work would amount to encroachment on development of the city as per the development plan of the city prepared and being implemented under the provisions of Maharashtra Regional Town Planning Act, 1966. This submission is merely an allegation. The petitioners are unable to show as to why by undertaking the projects, mentioned in the resolution, any change, substantial or minor, is being made in the provisions of the development plan. We have, therefore, no difficulty to come to a conclusion that the resolution is neither improper, incompetent nor would amount to encroachment on development plan.

7. The learned counsel for the petitioners tried to refer to the provisions of entry No. 53 in the list No. 1 of Schedule 7 of the Constitution to challenge the State Government's decision to impose levy on sales tax on the sale of petroleum products. We are unable to accept this contention because what is being done has nothing to do with petroleum products as such, but the State Government's discretion to increase amount of sales tax on certain kind of products. The petitioner cannot challenge the competence of the State Government to impose sales tax on petroleum products. So, adding certain levy to such tax would certainly be acceptable.

8. The learned counsel for the petitioners also placed reliance on Chapter 11 of the Maharashtra Municipal Corporation Act, 1949. This deals with Municipal funds etc. By no stretch of imagination, the collection of levy or sales tax by the Government within the city limits of Aurangabad Municipal Corporation would amount to Municipal funds. The definition of Municipal funds is exhaustive. It does not include sales tax collected within the city limits of Municipal Corporation by the State. Therefore, reliance on this provision is improper.

9. The learned counsel then points out that at least three projects in the list annexed to the resolution are situated within the city limits

of Municipal Corporation. These projects are now the responsibility of the Municipal Corporation. But if the Government hands over these projects to MSRDC, the Corporation would not have any objection to it. Their responsibility is thereby reduced. The petitioners are no way concerned with this bifurcation of work and responsibilities. No loss to public at large would be caused by such bifurcation.

10. In the light of above, the petition should fail. Writ Petition is dismissed. Rule discharged.

(V. K. JADHAV, J.) **(A. V. NIRGUDE, J.)**

rlj/