IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13757 to 13759 of 2016
and
W.M.P.Nos.12053 to 12055 of 2016

Muthayammal Engineering College,
Rep. by its Authorised Signatory,
Arasapalayam, Kakkaveri Post,
Rasipuram, Namakkal District - 637 408
...Petitioner in WP.13757/2016

Mahendra Engineering College for Wormen,
rep. by its Authorised Signatory,
Kumaramangalam, Namakkal Road,
Tiruchengode Taluk,
Namakkal District - 637 205.
...Petitioner in WP.13758/2016

Mahendra College of Engineering,
Rep. by its Authorised Signatory,
Attur Main Road, Minnampalli (Po),
Valappadi (Tk.)
Salem District - 636 106.
...Petitioner in WP.13759/2016

Vs.

1. The Government of Tamil Nadu,
represented by its Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai 600 009.
... 1st Respondent in WP.Nos.
13757 to 13759/2016

2. Arasapalayam Village Panchayat,
Rep. by its President,
Arasapalayam,
Rasipuram Panchayat Union,
Namakkal District - 637 408
... 2nd Respondent in WP.13757/2016

2. Mandakapalayam Village Panchayat,
Rep. by its President,
Tiruchengode Taluk, Namakkal District - 637 205.
... 2nd Respondent in WP.13758/2016

2. Minnampalli Village Panchayat,
Rep. by its President,
Minnampalli,
Valappadi (Tk.),
Salem District – 636 106.

... 2nd Respondent in WP.13759/2016

Prayer in WP.13757/2016 : Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus calling for the records of the respondents relating to the Demand raised by the 2nd respondent vide Order dated 18.08.2015 and quash the same in so far as it relates to collection of Surcharge and forbearing the respondents from levying Surcharge as contemplated in Explanation- II under Schedule-I to Tamil Nadu Panchayats Act 1994 for the buildings of the petitioner educational institution.

Prayer in WP.13758/2016 : Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus calling for the records of the respondents relating to the Demand raised by the 2nd respondent vide Order dated 29.10.2015 Na.Ka.No.119/2013/ooNi7 and quash the same in so far as it relates to collection of Surcharge and forbearing the respondents from levying Surcharge as contemplated in Explanation- II under Schedule-I to Tamil Nadu Panchayats Act 1994 for the buildings of the petitioner educational institution.

Prayer in WP.13759/2016 : Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus calling for the records of the respondents relating to the Demand raised by the 2nd respondent vide Order dated 12.10.2015 and quash the same in so far as it relates to collection of Surcharge and forbearing the respondents from levying Surcharge as contemplated in Explanation- II under Schedule-I to Tamil Nadu Panchayats Act 1994 for the buildings of the petitioner educational institution.

For Petitioners : Mr.Kandhan Duraisami

For 1st Respondent : Mr.A.Zakkir Hussain
Government Advocate

For 2nd Respondent : Mr.M.E.Raniselvam

COMMON ORDER

Heard Mr.Kandhan Duraisami, learned counsel for the petitioners; Mr.A.Zakkir Hussain, learned Government Advocate appearing for the 1st respondent and Mr.M.E.Raniselvan, learned counsel appearing for the 2nd respondent. With the consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.In all these Writ Petitions, the petitioners are Educational Institutions run by an Educational Trust and the petitioners have challenged the levy of surcharge on property tax. The petitioners have separately questioned the authority of the respondent-Panchayats to demand property tax from them on the ground that they are Educational Institutions and they are entitled for exemption.

3.The stand taken by the respondents including the State Government is that the self-finance Engineering Colleges are not entitled for such exemption. The Writ Petitions filed by the various Educational Institutions came to be dismissed by a learned Single Judge of this Court, against which, Appeals were preferred before the First Bench in Writ Appeal No.2152 of 2010 etc. batch. By way of interim arrangement, the Division Bench of this Court has passed an order on 17.03.2011, directing the Appellants as well as the Writ Petitioners to pay property tax with effect from 5th March 2008, the date when the amended Rule came into force. Therefore, in all Writ Petitions where interim order of stay was granted, the same was modified by issuing the direction that the Institutions shall pay property tax with effect from 05.03.2008.

4.Mr.Kandhan Duraisami, learned counsel appearing for the petitioners submitted that the petitioners-institutions are also covered under the same orders and they have paid property tax with effect from 05.03.2008.

5.The issue raised in these Writ petitions pertains to the demand of surcharge on property tax from the petitioners Engineering Colleges. An identical issue was considered by this Court in W.P.No.8160 of 2016 etc. batch and this Court passed an order on 20.06.2016 taking into consideration the interim orders passed by the Hon'ble First Bench of this Court and also taking note of the fact that the larger issue as to whether the petitioners-institutions are entitled for exemption from property tax is pending before the Hon'ble Supreme Court. The operative portion of the order reads as follows:

> "4. The learned Special Government Pleader appearing for the respondents have got

instructions from the respective Panchayats and would submit that in terms of Schedule 1 as per Section 172(1) of the Tamil Nadu Panchayats Act, 1994, (hereinafter referred as 'Act") and in the explanation contained therein, they are entitled to levy surcharge and it shall be leviable on the house tax at the rates specified in the schedule, which is at 60% for commercial establishments.

5. The respondents have furnished a tabulated statement, from which, it is seen that they have calculated surcharge at 60% of the property tax, which had been done relying upon Table 2 in Schedule 1 of the Act. The issue would be as to whether at this juncture, the respondents-Panchayats would be entitled to demand surcharge. Section 172 of the Act deals with the levy of house tax and the procedure for levying house tax. So far as the levy of surcharge is concerned, the only provision which refers to the same is Section 168 which speaks of local cess surcharge. The said provision has been omitted by virtue of Tamil Nadu Panchayats (Amendment Act, 2009 - with effect from 06.08.2009). The learned counsel appearing for the respondents have not referred to any other statutory provision by which surcharge is leviable at flat rate, as in the instant case, 60% of the property tax has been levied as surcharge. Surcharge has been defined under various taxation statutes, as a penal levy and the penal levy is on account of non-payment of taxes or on account of belated payment of taxes. This Court, prima-facie is of the view that by referring to the Explanation in Schedule 1 of the Act, the respondents are not justified in demanding surcharge at flat rate of 60%. However, this issue is left open to be decided later on, since the larger issue as to whether the petitioners-institutions are entitled for exemption from property tax, is pending consideration before the Division Bench of this Court. That apart, certain Institutions have also approached the Hon'ble Supreme Court as against the dismissal of their cases and the Hon'ble Supreme Court in Special Leave Petition No.20031 of 2012, which had been filed against the order in Writ Appeal against the judgement dated 20.10.2010 in W.A.No.505 of 2007, has granted leave.

6. In the light of the above, the petitioners-institutions shall continue to pay the property tax in terms of the interim order granted by the Division Bench of this Court in W.A.No.2152 of 2010, etc. batch, dated 17.03.2011 and also pay the library cess which is levied at 1% of the property tax upto date. So far as the surcharge is concerned, it appears that the petitioners have effected part-payments. Therefore, whatever payments which have been made towards surcharge, need not be refunded at this juncture, nor it is required to be adjusted as of now. The respondent-Panchayats shall not levy any surcharge and they shall await the decision of the Hon'ble Division Bench of this Court or the Hon'ble Supreme Court whichever is earlier, where the larger issue as to whether the petitioner-institutions are entitled for the benefit of exemption, is pending consideration.

7. The learned counsel for the petitioners submitted that the petitioner-institutions have been regularly remitting the property tax and for instance, with regard to Kaaveri Educational Trust (petitioner in W.P.No.8160 of 2016), they have paid property tax from the assessment year 2013-2014, and the property tax has been abruptly increased from Rs.4,64,325/- to Rs.13,74,305/-.

8. In the light of the above, the petitioner-institutions are at liberty to challenge the increase of property tax by availing remedies available under the provisions of the Act and this can be done by the petitioners without prejudice to the rights in the pending Writ Petitions as well as Appeals,wherein the larger issue with regard to levy of property tax is put to challenge.In the light of the above,the respondents are directed to issue a revised demand giving break-up details. The above direction shall be complied with by the respondent-Panchayats, within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the petitioners should be granted reasonable time to comply with the revised demand of propertytax.With the above direction, these Writ Petitions stand disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed."

6.In the light of the above, these Writ Petitions are also disposed of, on similar lines. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sgl

To

1. The Secretary,
   Government of Tamil Nadu,
   Rural Development and Panchayat Raj Department,
   Fort St. George, Chennai 600 009.

2. The President,
   Arasapalayam Village Panchayat,
   Arasapalayam,
   Rasipuram Panchayat Union,
   Namakkal District - 637 408

3. The President,
   Mandakapalayam Village Panchayat,
   Tiruchengode Taluk,
   Namakkal District - 637 205.

4. The President,
   Minnampalli Village Panchayat,
   Minnampalli,
   Valappadi (Tk.),
   Salem District - 636 106.

+3cc's to Mr.Muthumani Doriasami, Advocate, S.R.No.35415
+1cc to Mr.M.E.Raniselvam, Advocate, S.R.No.35369
+1cc to the Government Pleader, S.R.No.35525

W.P.Nos.13757 to 13759 of 2016

NRJK(CO)
CA(14/07/2016)