IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.41534 to 41540 of 2016
and
WMP.Nos.35531 to 35544 of 2016

Vivekanandha College of Engineering
for Women rep.by Administrative Officer
Unjanai, Elayampalayam Post,
Thiruchengodu Taluk,
Namakkal District 637 205. ... Petitioner in
WP.Nos.41534 of 2016**(*)**

(*)Vivekanandha College for Women,
Rep.by Administrative Officer,
Unjanai, Elayampalayam Post,
Tiruchengodu Taluk,
Namakkal District 637 205 ... **Petitioner in**
WP.Nos.41535 of 2016

Vivekanandha Vidhya Bhavan
Matriculation Higher Secondary
School, rep.by Administrative Officer,
Unjanai, Elayampalayam Post,
Thiruchengodu Taluk,
Namakkal District 637205. ... Petitioner in
WP.No.41536/2016

Vivekanandha Nursing College for
Women rep.by Administrative Officer,
Veerachipalayam, Sankari Taluk,
Salem District 637303. ... Petitioner in
WP.No.41537/2016

Vivekanandha Engineering College for Women
Rep by Administrative Officer
Veerachipalayam Sankari Taluk
Salem District- 637 303 ... Petitioner in
WP.No.41538/2016

Vivekanandha Engineering College for Women
Rep by Administrative Officer
Alathur Veerachipalayam Post
Sankari Taluk Salem District- 637 303
... Petitioner in
WP.No.41539/2016

Vivekanandha Arts & Science
College for Women, rep.by Administrative Officer,
Alathur, Veerachipalayam Post,
Sankari Taluk,Salem District 637303. ... Petitioner in WP.No.41540/2016

Vs

1.The Secretary
Government of Tamilnadu
Rural Development & Panchayat
Raj Department, Fort St George
Chennai 600 009. ... 1st respondent in all the writ petitions

2.The Special Officer
Unjanai Panchayat
Elayampalayam Post
Thiruchengodu Taluk
Namakkal District 637 205. ... 2nd respondent in WP.Nos.41534, 41535, 41536/2016

3.The Special Officer
Veerachipalayam Village Panchayat
Veerachipalayam, Sankari Taluk
Salem District 637 303. ... 2nd respondent in WP.Nos.41537 & 41538/2016

4.The Special Officer
Alathur Village Panchayat
Veerachipalayam Post,
Sankari Taluk,
Salem District 637 303. ... 2nd respondent in WP.Nos.41539 & 41540/2016

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents relating to the demand raised by the 2nd respondent in its orders dated 18.11.2016 ; 22.11.2016 respectively and quash the same insofar as it relates to collection of Surcharge for the buildings of the petitioner institutions 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 education institutions.

For Petitioner in
all the writ petitions : Mr.Doraisami, Senior Counsel
for M/s.Muthumani Doraisami

For Respondent in
all the writ petitions : Mr.S.Diwakar, Spl.GP

COMMON ORDER

Heard Mr.Doraisami, learned Senior Counsel for the petitioners and Mr.S.Diwakar, learned Special Government Pleader accepting notice for the respondents and with their consent, the writ petitions itself are taken up for final disposal.

2.In these writ petitions, the petitioners are the 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-Panchayat to demand property tax from them on the ground that they are Educational Institution and they are entitled for such 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 Petition 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.Doraisami, learned Senior Counsel appearing for the petitioners submitted that the petitioner-institution is also covered under the same orders and they have paid property tax with effect from 05.03.2008. In these Writ Petitions, the challenge is to the demand of surcharge.

5. The learned Special Government Pleader appearing for the respondents have got instructions from the said Panchayat 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.

6. 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 respondent-Panchayat 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.

7. In the light of the above, the petitioner-institution 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-Panchayat 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-institution is entitled for the benefit of exemption, is pending consideration.

8. The learned counsel for the petitioners submitted that the petitioner-institution has 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/-.

9. In the light of the above, the petitioner-institution is 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 Petition 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-Panchayat, 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 property tax.

10.With the above direction, these Writ Petitions stand disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS IV)
Dated : 29.12.2016

(*) Corrected as per letter dated 25.01.2017
Sd/-Assistant Registrar(CCC)
Dated : 01.02.2017

/true copy/

Sub Asst. Registrar

Sgl

To

1. The Secretary Government of Tamilnadu Rural Development & Panchayat Raj Department, Fort St George Chennai 600 009.	To be Substituted to the
2. The Special Officer Unjanai Panchayat Elayampalayam Post Thiruchengodu Taluk Namakkal District 637 205.	order already despatched on 30.12.2016

3. The Special Officer
   Veerachipalayam Village Panchayat
   Veerachipalayam, Sankari Taluk
   Salem District 637 303.

4. The Special Officer
   Alathur Village Panchayat
   Veerachipalayam Post,
   Sankari Taluk,
   Salem District 637 303.

7 ccs to M/s. Muthumani Doraisami, Advocate, Sr. 69091
1 cc to Mr.S. Diwakar, Advocate, Sr. 69551
1 cc to Government Pleader, Sr. 70075

PVS (CO)
kk 29/12

GN(02.02.2017)