IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.41733 to 41741 of 2016 &

W.M.P.Nos.35724 to 35741 of 2016

Vivekananda College of Technology for Women, rep., by its Administrative Officer ...Petitioner in WP.41733/2016

Vivekananda College of Nursing, rep. by its Administrative Officer ...Petitioner in WP.41734/2016

Vivekananda Teacher Training Institute for Women, rep.by its Administrative Officer ...Petitioner in WP.41735/2016

Vivekananda Dental College for Women, rep.by its Administrative Officer ...Petitioner in WP.41736/2016

Swamy Vivekananda College of Pharmacy, rep.by its Administrative Officer ...Petitioner in WP.41737/2016

Vivekananda College of Arts and Science for Women, rep.by its Administrative Officer ...Petitioner in WP.41738/2016

Vivekananda Institute of Medical Science and Research rep.by its Administrative Officer ...Petitioner in WP.41739/2016

Vivekananda Institute of Engineering & Technology for Women, rep.by its Administrative Officer ...Petitioner in WP.41740/2016

Krishna College of Education for Women, rep.by its Administrative Officer ...Petitioner in WP.41741/2016

Vs

1.The Government of Tamil Nadu,
rep. by its Secretary, Rural Development & Panchayat Raj Department, Fort.St.George, Chennai-9.

2.Sakthinaickenpalayam Panchayat,
rep., by its Special Officer, Elayampalayam Post, Tiruchengode Taluk, Namakkal District-637205. ...Respondents in all the WPs

PETITIONS under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondents relating to the demands raised by the second respondent in its orders dated 18.11.2016 and quash the same in so far as they relate 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 educational institutions.

For Petitioner : Mr.Kandhan Duraisami in all WPs
For Respondent-1: Mr.S.Diwakar, SGP

COMMON ORDER

Mr.S.Diwakar, learned Special Government Pleader accepts notice for the first respondent. Heard the learned counsel for the petitioners. In view of the nature of relief to be granted ultimately, the writ petitions are taken up for final disposal without ordering notice to the second respondent.

2. In these writ petitions, the petitioners, which are educational institutions run by an educational trust, have challenged the levy of surcharge on property tax. The petitioners separately questioned the authority of the respondent-Panchayat to demand property tax from them on the ground that they are educational institutions and that they are entitled for such exemption.

3. The stand taken by the respondents, in the earlier writ petitions filed by similarly placed persons like the petitioners herein, including the State Government was 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 Hon'ble Division Bench of this Court passed an order on 17.3.2011, directing the appellants as well as the writ petitioners to pay property tax with effect from 5th March 2008 - the date on which 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 5.3.2008.

4. The learned counsel for the petitioners has submitted that the petitioner-institutions are also covered under the same orders and they have paid property tax with effect from 5.3.2008. In these writ petitions, the challenge is to the demand of surcharge.

5. The learned Special Government Pleader appearing for the first respondent has got instructions and would submit that in terms of Schedule 1 as per Section 172(1) of the Tamil Nadu Panchayats Act, 1994 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. In the earlier writ petitions, the respondents furnished a tabulated statement, from which, it was seen that they 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 said 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 6.8.2009). The learned counsel appearing for the first respondent has 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.

7. 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 Hon'ble 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 S.L.P.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.

8. In the light of the above, the petitioner-institutions shall continue to pay the property tax in terms of the interim order granted by the Hon'ble Division Bench of this Court in W.A.No.2152 of 2010, etc. batch, dated 17.3.2011 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 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-institutions are entitled for the benefit of exemption, is pending consideration.

9. The learned counsel for the petitioners has submitted that the petitioner-institutions have been regularly remitting the property tax.

10. 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 said 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. Therefore, 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 shall be granted reasonable time to comply with the revised demand of property tax.

11. With the above directions, these writ petitions stand disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To
The Secretary to Government of Tamil Nadu, Rural Development & Panchayat Raj Department, Fort St., George, Chennai - 600 009.

+5 cc's to Mr.Muthumani Doaraisami,advocate,sr.69834

+1 cc to Mr.S.Diwakar,advocate,sr.70177

+1 cc to Govt.Pleader,sr.70492.

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krd 23/12

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