

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

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Date of decision: 14th March, 2016

+ W.P.(C) 4027/2013 & CMs No.9500/2013, 9501/2013 & 16419/2014
(all for stay).

INDIAN STATISTICAL INSTITUTE

..... Petitioner

Through: Mr. P.K. Srivastava and Mr. S.P. Das,
Advs.

Versus

**SOUTH DELHI MUNICIPAL CORPORATION ASSESSMENT
AND COLLECTION DEPARTMENT**

...Respondent

Through: Ms. Mini Pushkarna and Ms. Yoothica
Pallavi, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition seeks exemption under Section 115 of the Delhi Municipal Corporation Act, 1957 (MCD Act) from payment of property tax for the properties of the petitioner including the one at 7, Shahid Jeet Singh Sansawal Marg, Katwaria Sarai, New Delhi – 110 016. Axiomatically, the petition also impugns the assessment and demand for property tax made.
2. Notice of the petition was issued and vide *ad interim* order dated 24th June, 2013 which continues to be in force, the respondent was restrained from taking any coercive action against the petitioner.
3. The respondent South Delhi Municipal Corporation (SDMC) has filed a counter affidavit contesting the petition. The counsels have been heard.

4. The petition seeks exemption as aforesaid pleading/contending:-
- (a) that the petitioner is an Institute of national importance constituted by the Indian Statistical Institute (ISI) Act , 1959;
 - (b) that the petitioner is an autonomous institution under the aegis of the Ministry of Statistics and Programme Implementation;
 - (c) that the petitioner is funded by financial grants and allocation by the Central Government;
 - (d) that the petitioner is engaged in research and academic field contributing to the educational development of the Nation and has produced educationists and scientists of International repute and acclaim;
 - (e) that the petitioner is neither profit oriented nor catering to the process of providing any service to the public at large with any intention to generate surplus funds or earnings for any purpose other than welfare of the State;
 - (f) that the petitioner cannot be classified as a Government company or statutory corporation which has a corporate personality of its own;
 - (g) that the petitioner is governed under the provisions of Article 285 of the Constitution of India and the properties held in the name of the

petitioner, whether movable or immovable, are properties of the Union of India (UOI) and thus cannot be subjected to Tax by any Tax Authority;

(h) the object of the petitioner, as declared in its Memorandum of Association are:-

(i) to promote the study and dissemination of knowledge of statistics with special reference to problems of planning of national development and social welfare;

(ii) to undertake research in various fields of natural and social sciences; and,

(iii) to provide for and undertake the collection of information, investigations, projects and operational research for purposes of planning and improvement of efficiency of management and productions and to undertake any other ancillary activities in fulfillment of the above objectives.

(i) that the petitioner receives most of its funds by way of grants, loans or otherwise from the Central Government for its activities including research, education, training and project activities, after due appropriation made by the parliament by law in each financial year;

- (j) that the petitioner fully depends on funds allocated by the Central Government;
- (k) the petitioner is a non-profit organization in the service of the Nation;
- (l) as per Section 6(2) of the ISI Act, the Central Government is empowered to issue such directions to the Auditors of the accounts of the petitioner as it may think fit;
- (m) the Central Government exercises supervening control on the accounts of the petitioner;
- (n) the petitioner cannot alter or amend in any manner its Memorandum or Rules and Regulations without previous approval of the Central Government;
- (o) the petitioner cannot on its own sell or otherwise dispose of any landed property owned by it; and,
- (p) the Central Government under Section 12(2) of the ISI Act is also entitled to assume functions and control of the petitioner as and when it thinks fit.

5. The respondent SDMC contends the petitioner to be not entitled to be exempt from Property Tax on the following grounds:-

- (i) that the petitioner is admittedly an autonomous body and as per explanation to Section 119 of the MCD Act, properties owned by a Government company or a statutory corporation which have a corporate personality of their own are not to be deemed to be properties of the Union;
- (ii) that even in case of properties of the Union, service charges are payable as per the guidelines contained in the Office Memorandum dated 15th / 17th December, 2009 issued by the Ministry of Urban Development, Government of India;
- (iii) the petitioner, since the year 1977-78 has been paying the property tax and the claim for being exempt has been made belatedly after 36 years;
- (iv) the scheme of the ISI Act clearly shows that the petitioner is empowered and authorised to dispose of any property acquired with monies provided for such acquisition by the Central Government, though with the previous approval of the Central Government – this necessarily means that the petitioner is also authorised to acquire properties for itself and dispose of the same; the authority to acquire/dispose of the properties is an incident of proprietary power;

- (v) merely because the property of the petitioner cannot be disposed of without the consent of the Central Government does not mean that the property is not owned by the petitioner;
- (vi) merely because Central Government is entitled to issue directions to the petitioner does not make the petitioner Central Government;
- (vii) that as per the ISI Act and otherwise, the petitioner is registered under the Societies Registration Act, 1860 and thus cannot be called Central Government and its properties cannot be called properties of the Central Government;
- (viii) merely because the petitioner is engaged in activities related to education does not make the petitioner Central Government;
- (ix) being non-profit oriented organization also does not make the petitioner Central Government;
- (x) once it is admitted that the petitioner is an autonomous body, it cannot be denied that it has a corporate personality; and,
- (xi) being an Institution of national importance also does not exempt the petitioner from payment of Property Tax.

6. During the hearing, besides the counsels reiterating their respective case, the counsel for the petitioner relied on *National Institute of Immunology Vs.*

Municipal Corporation of Delhi AIR 2002 Delhi 192 (DB) and the counsel for the respondent SDMC relied on ***Municipal Commissioner of Dum Dum Municipality Vs. Indian Tourism Development Corporation*** (1995) 5 SCC 251 and ***International Airport Authority of India Vs. Municipal Corporation of Delhi*** AIR 1991 Delhi 302 (DB).

7. I have considered the controversy.

8. Section 113 of the MCD Act empowers the Municipal Corporation to *inter alia* levy property tax. As per Section 114, property tax is leviable on lands and buildings in Delhi. 'Building', as per Section 2(3) of the Act means a house, out-house stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include a portable shelter. Per Section 115, Property Tax is leviable on all vacant lands and buildings in Delhi except -

- (i) vacant land and building exclusively occupied and used for agricultural purposes;
- (ii) vacant land or building included in any village *abadi* and which is occupied for residential purpose by original owner;
- (iii) vacant land or building exclusively used for the purpose of public worship;

- (iv) vacant land or building exclusively occupied and used for the purpose of a public charity as may be specified in the bye-laws or for the purpose of medical relief to the poor or for education of the poor, free of charge;
- (v) vacant land or building exclusively used for the purpose of public burial or as cremation ground;
- (vi) heritage lands or buildings;
- (vii) vacant land or building owned exclusively by war widows etc.; and,
- (viii) vacant lands and buildings owned by or vested in a Corporation but not leased out or rented out and in respect of which property tax if levied would under the provisions of the Act be leviable primarily on a Corporation.

The Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004 in Bye-Law 6 deem only vacant land or building used exclusively for the purpose of housing an orphanage or an institution providing relief to physically or mentally challenged persons or for providing medical relief or education to the poor, free of cost without any motive to earn profit, being used for public charity.

‘Corporation’, as per Section 2(7) means Corporation of Delhi established under the MCD Act. Notice may also be taken of Section 120 of the MCD Act which provides that the property tax on any land and building shall be primarily leviable upon the owner thereof and of Section 123 which makes the property tax due in respect of any land or building a first charge thereon.

9. Section 119 also exempts from payment of property tax, “lands and buildings being properties of the Union”. The explanation thereto provides that

property owned by a Government company or a statutory corporation which has a corporate personality of its own, shall not be deemed to be the property of the Union. The genesis thereof is in Article 285 of the Constitution of India which exempts the property of the Union of India from all taxes imposed by a State or by any authority within a State.

10. ISI Act, as per its Preamble, was enacted to declare the Institution known as the Indian Statistical Institute i.e. the petitioner, then having its registered office at Calcutta, to be an institution of national importance and to provide for certain matters in connection therewith. Section 3 thereof declares the petitioner to be an institution of national importance; Section 4 of the Act, notwithstanding anything contained in the University Grants Commission Act, 1956 or any other law in force, empowers the petitioner to hold examinations and grant degrees and diplomas in statistics, mathematics, quantitative economics, computer science and such other subject related to statistics as may be determined by the petitioner from time to time. Section 5 empowers the Central Government to, after due appropriation made by the Parliament by law, pay to the petitioner in each financial year such sums of money as the Government considers necessary by way of grant, loan or otherwise. Section 6 requires the accounts of the petitioner to be audited by auditors as the Central Government may after consultation with the Comptroller

and Auditor-General of India select. Section 7 provides that notwithstanding anything contained in the Societies Registration Act or in the Memorandum or Rules and Regulations, the petitioner shall not alter or amend its Memorandum or Rules and Regulations except with the previous permission of the Central Government and shall not sell or otherwise dispose of any property acquired by the petitioner with money specifically provided for such acquisition by the Central Government save with the previous approval of the Central Government. Section 9 empowers the Central Government to constitute a Committee to review the work done by the petitioner by inspecting the buildings, equipment and assets of the petitioner and for evaluating the work done by the petitioner etc. Section 11 empowers the Central Government to in public interest issue directions to the petitioner including for amendment of its Rules, Regulations, Memorandum or for carrying out any works. Section 12 empowers the Central Government to assume functions of or control of the petitioner.

11. In my opinion, merely because the petitioner in the past has been paying the property tax, would not stop / bar / disentitle it from claiming exemption if entitled to in law. I need only reiterate that there can be no estoppel in law.

12. Now I will analyse the judgments on which the counsels have solely predicated their respective claim.

13. Supreme Court, in *Municipal Commissioner of Dum Dum Municipality* supra was concerned with the question whether the properties vested in the International Airport Authority of India (IAAI) under the provisions of the International Airports Authority Act, 1971 can be called the properties of the Union within the meaning of Article 285 of the Constitution of India and therefore exempt from tax. While the Division Bench of this Court in *International Airport Authority of India* supra had answered the said question in the negative, i.e. in favour of MCD, Calcutta High Court had taken a contrary view; a Single Judge of the High Court of Bombay also (in *International Airports Authority of India Vs. State of Maharashtra* MANU/MH/0668/1984) had taken the same view as Calcutta High Court. Supreme Court held that IAAI is a statutory corporation distinct from the Central Government and that the properties of the Union vested in IAAI cannot be said to have been vested in it only for proper management and after such vesting ceased to be properties of UOI for the purposes of Article 285. It was reasoned (i) that power to carry on a business is an incident of proprietary power; (ii) that the State is entitled to engage itself in all activities necessary for the promotion of the social and economic welfare of the community and Article 298 of the Constitution of India recognizes that the State can carry on any trade or business; (iii) that even before the advent of the Constitution, the State had been

carrying on several activities in the nature of commercial/trading/ manufacturing activity and after the commencement of the Constitution also the State and Central Governments embarked upon an extensive and systematic course of activity whereunder several business ventures were commenced and/or taken over; (iv) within a few years, however, it was realised that a business is to be carried on as a business and not in the manner of governmental activity; accordingly, the Central and State Governments started creating corporations for carrying on these activities and in case of major public utilities, statutory corporations were created under different enactments; (v) with a view to enable the statutory corporations and companies to carry on the activity which was hitherto carried on by the governments, the relevant properties, assets and liabilities were transferred to such new corporations which were supposed to operate on business lines, pay taxes and justify their creation and constitution; (vi) these corporations, whether created under the statute or registered under the Companies Act are distinct juristic entities owning their own properties having their own fund, capable of borrowing and lending monies and entering into contracts like any other corporation; (vii) in case of statutory corporations, the enactment creating them did not provide for any share capital, though it was made a body corporate with all the necessary and incidental powers - IAAI is one such corporation with no share capital but which has its own

properties, its own fund, accounts, employees and capable of lending and borrowing and entering into contracts; (viii) the properties held by IAAI fall in two categories i.e. those transferred to it at the time of its inception and those acquired by it subsequent to its constitution; (ix) there is no doubt that properties subsequently acquired are its own properties; (x) however since IAAI was constituted as a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable, and entitled to enter into contracts and vesting of properties therein was without any limitation is indicative of the said properties on such vesting ceasing to be properties of UOI; (xi) the provisions of the IAAI Act empowering the Central Government in various respect over the IAAI are mere regulatory provisions and do not take away from the factum of the properties of the UOI upon vesting in the IAAI ceasing to be properties of the UOI; (xii) IAAI also in its Annual Reports was not making any distinction between the properties of the UOI vested in it and properties subsequently acquired by it; (xiii) IAAI was liable to tax on its income, profits and gain, including on the income arising from the property of UOI vested in it; (xiv) the said properties, upon coming into force of the Airport Authority of India Act, 1994 had stood transferred to Airport Authority of India constituted thereunder; (xv) the principle that properties of Government companies, entire

share capital whereof was held by Government of India, were not exempt from said taxation was applicable to statutory corporations constituted under a statute also; and, (xvi) merely because the properties of the Union were vested in the IAAI with the object of ensuring better management and efficient operation of the airports, did not mean that it was a case of limited vesting for the purpose of better management.

14. I find Supreme Court to have in ***Food Corporation of India Vs. Municipal Committee, Jalalabad*** (1999) 6 SCC 74 held Food Corporation of India also not exempt from taxation under Article 285 of the Constitution of India. It was reasoned that a government company is distinct from the Central Government and that even if it is an agency or instrumentality of the Central Government, that does not lead to the inference that it was a government department because the Food Corporation Act, 1964 had given it a individuality apart from that of the government.

15. The Division Bench of this Court in ***National Institute of Immunology*** (supra) was concerned with the claim of the said Institute for exemption from levy of property tax on the grounds i) that it was autonomous body and functioning under the administrative control of Department of Science and Technology, Government of India; ii) that it was promoted and established by Government of

India for undertaking charitable activity in the field of basic and applied immunology and was engaged in important research projects relating to immunological approaches to contraception and in the development of vaccines for the cure of leprosy; iii) that the funding of the Institute came from the Government of India in the shape of grants-in-aid and from various institutions like the International Development Research Centre of Canada, the United States Agency for International Development, the Indian Council of Medical Research, the Family Planning Foundation, the Council of Scientific and Industrial Research and UNESCO etc.; iv) that the Institute had been provided with fifteen acres of land, free of cost and without any consideration on long term lease to enable the Institute to construct necessary buildings and infrastructure to carry out its objects; v) that the property of the Institute was actually the property of the Government of India; vi) that the Institute functioned through a Committee of persons appointed/nominated by the Government/Government servants; and, vii) that the Institute was not a commercial organization. The respondent MCD contested the said claim on the grounds, a) that the Institute being an autonomous body having been registered under the Societies Registration Act, 1860, its property had to be treated like other properties within the limits of MCD which are subject to property tax in accordance with the provisions of the MCD Act; b) that the Institute is not a

voluntary organization and its grant-in-aid was regulated by the statutory rules and was claimed as a matter of right and could not be said to be a voluntary contribution; c) that the so called voluntary contributions received from various organisations were advanced and utilised for specific projects; and, d) that there was no evidence to suggest that the funds were being applied for charitable purpose, for the general good of the public at large. A learned Single Judge of this Court found in favour of the MCD and also held that the petition raised disputed questions of fact which could not be adjudicated in writ jurisdiction. The Division Bench on appeal held:

- (I) that the Institute as per its Objects and Reasons was established for charitable purpose of undertaking research in the field of medical relief and education and was working for the objectives for which it was constituted;
- (II) that no portion of the income of the Institute was being paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profits to its members;
- (III) that the statutory rules regulating the grants from the Government of India were merely for checks and balances and did not detract from the voluntary nature of the grants-in-aid;

- (IV) that the fact that the grant-in-aid from Government of India was voluntary was also borne out from the fact that it could be stopped at any point of time and the Institute was not striking any fear, coercion or pressure in the mind of the donor for securing the grants;
- (V) that the Institute was not in a position to command the Government;
- (VI) that as per the Guidelines for implementing the research projects, the Department of Science and Technology had reserved the right to terminate the grant at any time if it was convinced that the grants has not been properly utilized or appropriate progress was not being made;
- (VII) that thus the grant was not compulsive in nature;
- (VIII) that Supreme Court in ***Commissioner of Income-tax, Bombay City-IV Vs. Gem & Jewellery Export Promotion Council*** (1983) 143 ITR 579 has held that the nature of grants-in-aid made by the Government to provide certain institutions with sufficient funds to carry on their charitable activities vests no right in the institutions to ask for the grants and it is solely within the discretion of the Government to provide grants to institutions of charitable nature;

- (IX) that there was no reason to doubt the application of funds for the objectives of the Institute;
- (X) that the Institute had not let out its property and the residential accommodation constructed in the property was also not being used for any commercial purpose and was meant for scientists working with the Institute though rent was being recovered from their salaries as per rules and credited to the Government grants;
- (XI) that if the MCD has any doubts as to the utilization of the funds, it could have sought further information from the Institute and only if the Institute failed to do so, could exemption be denied on the said ground – however without asking any clarification exemption could not be refused merely by raising a doubt;
- (XII) that as per the balance sheet of the Institute, 95% of the funds were being received from the Government for medical research;
- (XIII) that when the bulk of the funds are being received and used by the Institute for charitable purpose, it could be said that just because a miniscule proportion of the funds to the extent of 5% was being received from other donors for specific research, it would alter the purpose for which the Institute / Society was functioning;

(XIV) that to qualify for exemption from payment of property tax, apart from satisfying other requirements, it has to be shown that the bulk of the money for its support has been received by way of voluntary contribution;

Unfortunately, *Municipal Commissioner of Dum Dum Municipality* supra was not noticed by the Division Bench

16. I find SLP(C) No.3368-3369 of 2002 preferred against the aforesaid judgment to have been dismissed *in limine* on 25th January, 2002.

17. However, Section 115 of the MCD Act, as was for interpretation before the Division Bench of this Court in *National Institute of Immunology* supra, has been amended w.e.f. 1st August, 2003 and since this petition pertains to the period subsequent thereto, we have to see whether the said amendment impacts the view taken by the Division Bench. Section 115, prior to its amendment *inter alia* exempted lands and building exclusively occupied and used by a society or body for a charitable purpose provided that such society or body was supported wholly or in part by voluntary contributions, applied its profits if any or other income in promoting its object and did not pay any dividend or bonus to its members. 'Charitable purpose' was explained as relief of the poor, education and medical relief but not a purpose which related exclusively to religious teaching. It would

thus be seen a) that while earlier to claim exemption, the land or building had to be occupied and used by a society or body, now the need for occupation and use to be by society or body has been done away with; b) that while earlier as long as occupation and use was for charitable purpose and other conditions specified met, exemption could be claimed, now exemption cannot be claimed unless such use and occupation is with the approval of the corporation; c) that while earlier exemption was available for use and occupation for charitable purpose as explained therein and which explanation was inclusive and not exclusive, now it is restricted to public charities specified in the bye-laws or for medical relief to or education of the poor, free of charge; d) axiomatically, the requirements earlier existing of the society or body being supported by voluntary contributions, applying its profits / income in promoting its object and not paying any dividend or bonus, have been done away with; and e) Section 115(2) now requires to be maintained a register showing land and building exempt from property tax and empowers the Corporation to levy on such lands and buildings service charge not less than 75% of the property tax if the land / building had not been so exempted.

18. It is not the case of the petitioner that it has the approval of respondent SDMC for occupation of its premises for purpose of a public charity or that its building is so shown in the register of exempt properties. It is by way of this

petition seeking such approval. Till it has the approval, it cannot be exempt. It is also not the case of the petitioner that it is occupying or using the building for medical relief to the poor. It is however the case of petitioner that it is occupying and using the building for education but it is not the case that the education is of the poor or free of charge. Thus, the petitioner does not satisfy the criteria at least as pleaded, of Section 115 (iv) as amended w.e.f. 1st August, 2003, to be entitled to exemption. The test applied by Division Bench of this Court in *National Institute of Immunology* supra, of Section 115 (iv) as then existing, is now not relevant. The relevance by the counsel for the petitioner thereon is thus misconceived.

19. One way, considered by me, to dispose of this petition is by directing the respondent SDMC to consider the case of the petitioner for exemption under Section 115(iv) as amended as aforesaid and of which amendment, both, petitioner and respondent neither made any reference in pleading or in hearing and appeared to be oblivious of. However the petitioner having referred to Article 285 of the Constitution of India also in its petition, it is deemed expedient to also consider the case of the petitioner thereunder read with Section 119 of the MCD Act which also has been amended w.e.f. 1st August, 2003 and is as under:

“119. Taxation of Union properties (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, lands and

buildings being properties of the Union shall be exempt from the property taxes specified in section 114:

Provided that nothing in this sub-section shall prevent a Corporation from levying any of the said taxes on such lands and buildings to which immediately before the 26th January, 1950, they were liable or treated as liable, so long as that tax continues to be levied by a Corporation on other lands and buildings.

Explanation. For the purposes of this section, property owned by a Government company or a statutory corporation, which has a corporate personality of its own, shall not be deemed to be the property of the Union.”

Section 119 becomes important in application of Article 285 because exemption under Article 285 of property of Union from all taxes imposed by a State or by any authority within a State is “save insofar as Parliament may by law otherwise provide.” Thus, even if the property of the petitioner were to be held to be property of Union, if Section 119 is enacted by Parliament and provides otherwise, it would not be exempt. No provision of ISI Act, though enacted by Parliament, is found to be relevant in this regard. No other law made by Parliament has been cited.

20. The first question is whether the property of the petitioner can be said to be property of Union.

21. I have already noticed above the relevant provisions of ISI Act. The petitioner, in its petition has already set out, and as recorded above, the objectives

of the petitioner. A further perusal of the Memorandum of Association of the petitioner shows the petitioner Institute to be empowered:

- “3.1 to hold meetings, and arrange lectures, seminars, discussions, conferences, instructions and courses of studies.
- 3.2 to establish, maintain, and manage and assist in the establishment and maintenance of schools, colleges, training institutions, education centres, laboratories, workshops, factories, experimental farms, research units, clinics, medical and biological units, libraries, reading rooms and museums;
- 3.3 to provide facilities for advanced studies and researches in areas referred to in the objects of the Institute;
- 3.4 to institute or create professorships, lectureships and other posts and to employ officers, workers, contractors and others as necessary on salary, allowance, honorarium or wages or piece-rate remuneration or without remuneration whole or part-time or on casual basis;
- 3.5 to create working centres, branches, divisions, departments, faculties, sections and units for the proper and efficient conduct of the activities of the Institute in different sectors;
- 3.6 to hold examinations and to award diplomas, certificates, and other distinctions including conferment of degrees as permissible under law for proficiency in areas referred to in the objects of the Institute;
- 3.7 to undertake investigations including field work and to prepare reports on statistical and other subjects in its own behalf or on behalf of or in cooperation or collaboration with Government or other institutions, organizations, parties or persons;

- 3.8 to publish books, periodicals, reports, research and working papers and other materials at its own costs or with grants or other assistance received for the purpose and to contribute to the cost of the above classes of publications and to sell such publications, to distribute them gratuitously or at reduced prices, and for the aforesaid purpose to establish and maintain directly or in collaboration with other agencies, printing presses, units for photographic or other methods of reproduction, and other technical establishments;
- 3.9 to develop the research and teaching activities of the Institute with the approval of appropriate authorities, into an organization having the status of a university;
- 3.10 to take appropriate steps for the Institute and / or its diplomas, certificates, degrees registered and / or recognized in different parts of India and in Foreign countries;
- 3.11 to carry on directly or in collaboration with associated or subsidized agencies research for the development of and to make, construct, manufacture or produce computing and scientific instruments, machines, equipment, appliances and tools;
- 3.12 to organize, and carry on directly or in collaboration with associated or subsidized agencies pilot and field experiment and operational research in areas referred to in the objects of the Institute;
- 3.13 to organize, establish, affiliate, carry on and maintain, dissolve, disaffiliate or give up working centres, branches, or associated or other instructions having objects wholly or partly similar to those of the Institute;
- 3.14 to amalgamate with the Institute any other organization having objects wholly or in part similar to those of the Institute, or to amalgamate the Institute with such organizations;
- 3.15 to cooperate with the Government, universities, associations, societies, institutions and organizations and to establish outlying centres;

- 3.16 to establish and maintain contact with researches, studies and activities carried out in different parts of the world in areas referred to in the objects of the Institute and with persons working in these fields in different parts of the world through joint and cooperative studies and projects, meetings, conferences and interchange of visits and otherwise;
- 3.17 to accept endowments, gifts and donations, fees, block grants, rents and other funds and payments in lieu of goods or services rendered; to invest funds; to borrow or otherwise raise money; to purchase, take on lease or otherwise acquire, and sell, let out or give on lease or otherwise dispose of movable and immovable properties;
- 3.18 to receive security deposits in cash or otherwise in connection with the, activities of the Institute;
- 3.19 to incur expenditure and make all necessary financial arrangements for carrying on the work of the Institute;
- 3.20 to make donations and grants or give subscriptions and otherwise assist individual workers, institutions or associated bodies when this is considered desirable for the furtherance of the objects of the Institute or any of them;
- 3.21 to establish, maintain or continue one or more Provident Fund or Superannuation Fund or similar funds for the benefit of workers of the institute and such other persons on whom Provident Fund benefits can be conferred by the Institute;
- 3.22 to create or constitute funds under its own management or under the management of such authorities, agencies, institutions or associations as may be considered suitable for purposes of carrying out such work as may be entrusted to them in the interest of the Institute and of the Institute's workers or for the furtherance of the objects of the Institute or any of them, and to pay into such funds such amounts as may be considered necessary from time to time for carrying out the aforesaid activities;
- 3.23 to develop lands and to construct, build, alter or demolish roads, drains, waterworks, buildings, structures, and other works for the purpose of the Institute and of its workers;

- 3.24 to establish and maintain directly, or through suitable subsidized or other agencies, hostels, mess, guest houses, housing tenements and colonies, canteens, transport, organizations including night schools, adult education centres, health homes, clubs and cooperative organizations for proper and efficient performance of the activities of the Institute and / or for the welfare of its workers and their families, students, and associated workers;
- 3.25 to do all or any of the above things in any part of the world as principals, agents, contractors, trustees or otherwise and either alone or in conjunction with others;
- 3.26 to frame rules and regulations and to modify or rescind the same from time to time;
- 3.27 to make, alter or rescind statutes, Bye-laws and standing orders in such manner as may be laid down by rules and regulations; and
- 3.28 to take such other action or actions as may be incidental or conducive to the attainment of the objects of the Institute or any of them.”

22. A Society registered under the Societies Registration Act is a juristic person, property whereof vide Section 5 of the said Act, if not vested in the trustees is deemed to be vested in the governing body for the time being of the Society and which, vide Section 6 of the Act, is capable of suing and being sued in the name of the governing body. Therefrom it follows that the property of the petitioner as a society cannot be said to be the property of UOI. Clause 3.17 of the Memorandum of Association of petitioner also empowers petitioner to sell or dispose of its properties though Section 7(c) of the ISI Act makes the exercise of said power subject to approval of Central Government if the property is acquired with money specifically provided by Central Government for such

acquisition. However Section 7(c) would not apply if the money for acquisition of property though has flown from Central Government but by way of general grant and not specifically for acquiring property.

23. Though in *National Institute of Immunology* supra, claim for exemption was made also under Article 285 but the relief granted was only under Section 115(4) and not under Article 285. The said judgment is thus of no avail to the petitioner in this regard.

24. Supreme Court, in *Board of Trustees for Vishakhapatnam Port Trust vs. State of A.P.* (1999) 6 SCC 78, in the context of Vishakapatnam Port Trust held that since the vesting of the properties by Central Government in the Board was absolute and not for management only and because the Board was not a department of Central Government but had distinct identity of a company, its properties were not exempt from taxation under Article 285 on grounds of being property of Union. Reliance, besides on *Municipal Commissioner of Dum Dum Municipality*, was placed on *Electronics Corporation of India Ltd vs. Secretary Revenue Department, Govt. of Andhra Pradesh* (1999) 4 SCC 458.

25. Applying the said tests, which are akin to the tests applied in *Municipal Commissioner of Dum Dum Municipality* and *Food Corporation of India*

supra, the properties of the petitioner, even if acquired with grant from the Government of India specifically for such acquisition and even if disposal / sale thereof by petitioner be subject to permission of Central Government, cannot be said to be properties of UOI and once they are not, the question of exemption under Article 285 does not arise.

26. I however find that in the context of IAAI itself, Supreme Court in ***Ramana Dayaram Shetty Vs. International Airport Authority of India*** (1979) 3 SCC 489 held that the government, which represents the executive authority of the State may act through the instrumentality or agency of natural persons or it may employ instrumentality or agency of juridical persons to carry out its functions—of social welfare which cannot be performed within the framework of Civil Services; such juridical persons would ex-hypothesi be agencies of the government and acting as instrumentality or agency of government would obviously be subject to the same limitations in the field of constitutional and administrative law as government itself, though in the eyes of law they would be distinct and independent legal entities. It was held that if government acting through its officers is subject to certain constitutional and public law limitations, it must follow *a fortiori* that government acting through the instrumentality or agency of corporations should equally be subject to the same limitations.

27. Notwithstanding the aforesaid, subsequently in *Municipal Commissioner of Dum Dum Municipality* supra, properties of IAAI were held to be not properties of Union, of course without noticing *Ramana Dayaram Shetty*. It thus follows that the instrumentalities or agencies of State though are subject to same constitutional and administrative law limitations, even though distinct and independent legal entities, as to which the government is but are not entitled to benefits / immunities bestowed by the Constitution on the government. The same appears to me to be an anomaly and which perhaps is one of the reasons for which such instrumentalities and agencies though created to perform governmental functions which could not be suitably performed within the civil services framework, are unable to break free from the very shackles which do not allow the civil services framework to perform those functions, defeating the very purpose and objective of creation thereof.

28. The anomaly is confounded further by meting out treatment in certain respects, of the property of such agencies / instrumentalities, different from that of private entities. Supreme Court, in *Ashoka Marketing Ltd. Vs. Punjab National Bank* (1990) 4 SCC 406, for the same reasons as aforesaid in *Ramana Dayaram Shetty*, explained the setting up of public corporations and for dismissing the challenge to applicability of Public Premises (Eviction of

Unauthorised Occupants) Act, 1971 to their properties. It was held that the need for providing speedy machinery for eviction of unauthorized occupants of government properties extended to properties of such agencies/instrumentalities also.

29. Article 285 is reciprocal to Article 289 which exempts properties of Union from State taxation. The framers of our Constitution having devised a federal structure for the country, for its smooth working, provided for immunity of property of Government from taxation by another government. I am of the view that when the Courts as aforesaid have accepted the necessity for creation of juridical entities by government for better performance of governmental functions and held the said entities to be subject to same constitutional and administrative law limitations as the Government, I see no reason why the same benefits as available to Government, particularly as to holding of immovable property qua which some benefits as applicability to PP Act have also been extended, should not be made available to such entities also. Else, we will be defeating the very purpose of creation of these entities. Subjecting properties of such entities performing core or essential governmental functions to taxation, is found to be contrary to the Constitutional mandate contained in Article 285. Allowing properties of Union of India in the hands of juridical entity created for

better performance of a governmental function to be subjected to taxes imposed by States or authorities within a State would result in putting an impediment to better functioning and performance and adding costs to the efficiency of a governmental function. Mention may be made of ***Municipal Corporation, Amritsar Vs. The Senior Superintendent of Post Offices Madras*** (2004) 3 SCC 92 holding that Article 285 cannot be defeated by levying service charge in lieu of property tax : (Though subsequently, as recorded in order dated 19th November, 2009 in Civil Appeal No.(s) 9458-9463 of 2003 titled ***Rajkot Municipal Corporation Vs. Union of India*** of the Supreme Court, it was agreed that Union of India and its departments will pay service charge for the services provided by the Municipal Corporations but not the property tax). A nine Judge Bench of the Supreme Court in ***New Delhi Municipal Council Vs. State of Punjab*** (1997) 7 SCC 339 explained that a Federation pre-supposes two coalescing units i.e. Federal/Central Government and State Government; each is supposed to be Supreme in the sphere allotted to it; power to tax is an incident of sovereignty and that the basic premise behind Articles 285 and 289 is that one sovereign cannot tax another.

30. All the judgments holding properties of independent legal entities even if fully controlled by Union of India to be not entitled to benefit of Article 285 are

in respect of ‘corporations’ viz IAAI, Food Corporation of India, Port Trust which were created for carrying on business. Following the said line of judgments and finding North Delhi Power Limited to be also carrying on business, a Division Bench of this Court in judgment dated 9th December, 2013 in LPA 2630/2005 titled ***North Delhi Power Limited Vs. MCD*** held the land occupied by North Delhi Power Limited though purportedly on licence from the Government of National Capital Territory of Delhi to be also amenable to property tax. The petitioner however is materially different. It is not created to carry on any business or trading activity. The petitioner though created as a Society with the objective of promoting the study and dissemination of knowledge of statistics etc as set out above, has by the ISI Act been conferred the status of an institution of national importance and certain additional powers viz to grant degrees and diplomas, which are essential governmental functions.

31. Supreme Court, in ***B.S. Minhas vs Indian Statistical Institute*** (1983) 4 SCC 582 was concerned with a challenge to the appointment of the Director of the petitioner *inter alia* on the ground of being in violation of its bye laws. The said challenge was contested by the petitioner *inter alia* on the ground that a writ petition under Article 32 of the Constitution of India as had been filed was not maintainable and that its bye-laws were not statutory and thus there was no

obligation to observe the procedure laid down therein. In this context it was held (i) that the petitioner though a Society but is governed by the ISI Act - its control completely vests in the Union of India; (ii) it is wholly financed by the Union of India; (iii) all the functions of the petitioner are controlled by the Union of India; (iv) the annual work programmes and the general financial estimates in respect of such work of the petitioner are settled by Committees appointed by the Central Government and the petitioner cannot undertake any research or training programme without the approval of the Central Government; (v) the petitioner had been declared as an Institution of National Importance; (vi) the petitioner's powers to alter, extend or abridge its memorandum or rules and regulations and to sell or otherwise dispose of its property acquired with the money specifically provided for such acquisition by the Central government could not be exercised except with the previous approval of the Central Government; (vii) the petitioner receives grants from the Central Government to meet almost the entire expenditure on its plan and non-plan activities; (viii) the Chief Executive Body of the Petitioner Institute is the Council consisting of 25 members including three representatives of the Central Government; (ix) even if any other moneys are received by the petitioner, it can be done only with the approval of the Central government and

the accounts of the petitioner have to be submitted to the Central Government for scrutiny and satisfaction; (x) the petitioner has to comply with the directions of the Central Government; (xi) the control of the Central Government is deep and pervasive and, therefore, for all intents and purposes, the petitioner is an instrumentality of the Central Government and an authority within the meaning of Article 12 of the Constitution and therefore, subject to the constitutional obligations under Articles 14 and 16 of the Constitution of India; (xii) the petitioner though was given the mould of a Society but the said veil for the purpose of convenience of management and administration could not be allowed to obliterate the true nature of the reality behind, which is the government; (xiii) reliance in this regard was placed on *Ajay Hasia etc. v. Khalid Mujib Sehravardi* (1981) 1 SCC 722 laying down that if such a body were to be free from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the government would be enabled to over-ride the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency, while retaining control over it.

32. It would thus be seen that the Supreme Court at least for the purposes of Articles 12 and 14 of the Constitution of India has held the petitioner to be

government and found deep and pervasive control of the Government in the affairs of the petitioner and held the reality behind the veil of a society, to be the Government.

33. In my view, what has been held by the Supreme Court in the context of IAAI etc has to be confined to juridical entities carrying on business and a distinction has to be carved out vis-a-vis other instrumentalities/entities of the Government which are established not for carrying on any trade of business but for efficiently performing essential governmental functions. Education and research is an essential government function. Reference, if any, required in this regard can be made to *Biharilal Dobray Vs. Roshan Lal Dobray* (1984) 1 SCC 551.

34. I have also wondered the effect of declaration of an institution as an institution of national importance. Surprisingly no effect or consequences thereof is provided though I find that a number of other institutions also have been so declared. Institutes of national importance is a coveted list of IITs, NITs, AIIMS, National Institute of Pharmaceutical Education, PGI, Chandigarh etc. However merely from the factum of the legislative lacuna of not providing the consequences/effect of declaration of an institution as an institution of national importance I am not willing to give the said declaration by a Parliamentary mandate a go by and the same has to be given due weightage. Property of such an institution has but to be treated as property of the Union of

India. I have for this reason only set out hereinabove in entirety all the clauses of Memorandum of Association of petitioner to show that there is nothing therein from which it can be said to be trading or carrying on business. Entries 62 to 64 of List I of the Seventh Schedule of the Constitution of India empower the Parliament alone to declare an institution to be an institution of national importance. Supreme Court, in ***Damyanti Naranga Vs. Union of India*** (1971) 1 SCC 678 held that though constitution of Societies is under List II of the Seventh Schedule but Parliament, by exercising power under Entry 63 of List I, on the basis of declaration of Society as an institution of national importance, becomes competent to legislate with respect to the Society. To the same effect is ***Dharam Dutt Vs. Union of India*** (2004) 1 SCC 712 which rather also observes that under Section 5 of the Societies Registration Act, the expression “property belonging to Society” does not give the Society a corporate status in the matter of holding and acquiring property. A Parliamentary declaration of an institution as an institution of national importance was held to be tantamounting to Union of India taking over the institution by enacting such law.

35. The nine-Judges Bench of the Supreme Court in ***New Delhi Municipal Council Vs. State of Punjab*** supra was concerned with the claim of the States under Article 289 of the Constitution of India for exemption from property tax with respect to their properties situated in the NDMC areas. It was held by a majority of five Judges that the levy of property tax by NDMC was valid to the extent it related to lands and buildings owned by State Governments and used or occupied for the purpose of any trade or business carried on by State Government. However levy was held to be invalid and inapplicable where lands and properties were not used for purposes of any trade or business. It was

held that it is not possible to say that every activity carried on by the Government is a Governmental activity; a distinction has to be made between Governmental activity and trade and business carried on by the Government; unless an activity in the nature of trade or business is carried on with a profit motive, it would not be a trade or business; where there is no profit motive involved in any activity carried on by Government, it cannot be said to be carrying on a trade or business. In view of the manifold activities carried on by Government under the Constitutional scheme, the necessity to maintain a balance between the Centre and the States, especially in the context of levy of tax by one unit of federation upon the other, was emphasised. The other four Judges held the properties of the State to be totally exempt from payment of property tax.

36. Thus, even while deciding the question of levy of property tax where the property is held by the State Government itself, a distinction was made by the majority between use of the property for carrying on business and use of the properties for essential or core governmental functions. I may however mention that the same was in the context of difference in language of Article 285 and Article 289. I however see no reason why such a distinction be not made while deciding the question of levy tax on juridical entities created by the government for better performance of its essential governmental function.

37. I also find at least a Single Judge of the High Court of Madhya Pradesh in *Professional Examination Board Vs. Bhopal Municipal Corporation*

MANU/MP/0231/2003 to have held the Professional Examination Board constituted by a notification of the State Government as an independent entity with a right to acquire and hold movable and immovable property and to sue and be sued in its own name to be exempted from payment of property tax. However the primary reason which prevailed was the factum of the Board though an independent entity but by an executive order of the Government and thus continuing to be the part of the Government.

38. However that still leaves the effect of Section 119 of the MCD Act as reproduced hereinabove, to be considered. Though Article 285 exempts properties of the Union but Section 119 of the MCD Act while also providing so further provides that a Government company or a statutory corporation which has a corporate personality of its own shall not be deemed to be property of Union. Though ordinarily no law can over ride the Constitution but since Article 285 as aforesaid says “in so far as Parliament may by law otherwise provide”, a question arises whether the explanation to Section 119 of the MCD Act providing so is a law made by Parliament.

39. A Corporation or a Corporate has been defined in Halsbury's Laws of England, Fourth Edition as “a body of persons which is recognized by law as

having a personality which is distinct from the separate personalities of the members of the body”. In Law Lexicon by P.R. Aiyar, 1997 Edition it has been described as “an artificial person established for prescribing in perpetual succession certain rights, which, if conferred on natural persons, would fail in process of time. A corporation is an artificial being, invisible, intangible and existing only in contemplation of law and being the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence”. Supreme Court also in ***S.S. Dhanoa vs Municipal Corporation*** (1981) 3 SCC 431 adopted the same definition. A Society registered under the Society Registration Act would also thus fall thereunder.

40. Once that is so, even if relying on ***B.S. Minhas*** supra, it is held that the property of the petitioner is the property of the Union and thus exempt under Article 285 of the Constitution of India, but Article 285 itself being subject to law made by Parliament and if Parliament has vide Section 119 of the MCD Act provided that property owned by a Government company or a statutory corporation which has a corporate personality of its own shall not be deemed to be property of the Union and the ISI Act having not exempted the properties of the petitioner from payment of property tax, it will but have to be held that the

property of the petitioner would not be entitled to the benefit of Article 285 of the Constitution of India.

41. MCD Act when enacted in the year 1957 was enacted by the Parliament.

However Section 119 as then enacted by the Parliament was as under:

“119. Taxation of Union properties. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, lands and buildings being properties of the Union shall be exempt from the property taxes specified in section 114:

Provided that nothing in this sub-section shall prevent the Corporation from levying any of the said taxes on such lands and buildings to which immediately before the 26th January, 1950, they were liable or treated as liable, so long as that tax continues to be levied by the Corporation on other lands and buildings.

(2) Where the possession of any land or building, being property of the Union, has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) to a displaced person, or any association of displaced persons, whether incorporated or not, or to any other person [hereafter in this sub-section and the proviso to sub-section (1) of section 120 referred to as the transferee], the property taxes specified in section 114 shall be leviable and shall be deemed to have been leviable in respect of such land or building with effect from the 7th day of April, 1958 or the date on which possession thereof has been delivered to the transferee, whichever is later, and such property taxes shall, notwithstanding anything contained in the proviso to sub-section (1) of section 126 or any other provision of this Act, be recoverable with effect from that day or date, as the case may be.”

Section 119 as reproduced in para 19 above was brought in w.e.f. 13th January, 2012 by way of the Delhi Municipal Corporation (Amendment) Act 2011 enacted by the Legislative Assembly of the National Capital Territory of Delhi. It would thus be seen that Section 119 as enacted by the Parliament till its amendment by the Legislative Assembly of Delhi did not provide that the properties of a government company or a statutory corporation which has a corporate personality of its own shall not be deemed to be property of the Union. I have wondered whether the amendment by a State Legislature to a law made by Parliament can be treated as law made by Parliament. In my opinion the answer but has to be “No”. Once that is so it cannot be said that the explanation to Section 119 as now exists to the effect that property of a government company or a statutory corporation which has a corporate personality of its own shall not be deemed to be property of the Union is a law made by Parliament which is saved by the general provision of Article 285 exempting properties of Union from taxation by State Government or by any of the authorities within the State.

42. I therefore hold that the properties of the petitioner to the extent not let out and/or not used for any trade or business are entitled to exemption under Article 285 of the Constitution. Accordingly the attempt of the respondent to

levy the said property to property tax is not valid and is quashed and it is declared that the respondent is not entitled to recover any property tax from the petitioner qua properties used by the petitioner for its own objectives and as long as they are not let out or used for any trade or business. The petitioner shall however be liable for service charges as levied with respect to properties of Union of India.

43. The petition is allowed on aforesaid terms.

No costs.

44. Post script: I have undoubtedly in deciding so travelled beyond the pleadings and contentions of the parties. However again in doing so I draw strength from the majority view in *New Delhi Municipal Council Vs. State of Punjab* supra to the effect that the fact that a party or Government does not choose to raise an argument cannot be a ground for the Court not to declare the correct position in law.

RAJIV SAHAI ENDLAW, J

MARCH 14, 2016
'pp/gsr'..