

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 37 OF 2016

Shri Ajit Pralhad More. ... Petitioner.
V/s.
State of Maharashtra and others. ... Respondents.

Arvind Aswani i/b. J.G.Reddy for the petitioner.

M.M.Pabale , AGP for the State.

Ajay Patil for respondent No.3.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND G.S.KULKARNI, J.**

DATE : 20th January 2017.

PC. :

Heard learned counsel for the parties.

2. The petitioner before this Court is espousing the cause of public at large and seeking following reliefs:

“(a) The Hon'ble Court may be pleased to issue writ of certiorari or any other appropriate writ or direction in the nature of like nature

under Article 226 of Constitution of India, thereby quashing and setting aside the impugned IT/ ITES Policy 2015 issued by the Industries, Energy & Labour Department of Govt. of Maharashtra to the extent of clauses I, II, IV, V, VI, VIII, and IX therein in respect of concessions/ exemptions granted to IT Sector as per the IT/ ITES Policy 2015 framed by the Govt. of Maharashtra.

- (b) The Hon'ble Court may be pleased to issue writ of certiorari or any other appropriate writ or direction in the nature of like nature under Article 226 of Constitution of India, thereby quashing and setting aside the impugned Resolution No.302 passed by the Navi Mumbai Municipal Corporation on 30.1.2004 on the basis of the IT Policy, 2003 framed by the Govt. of Maharashtra in so far as it concerns grant of exemptions and concessions to the IT Sector.
- (c) The Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ or direction in the nature of like nature under Article 226 of Constitution of India, thereby directing the Industries, Energy & Labour Department of Govt. of Maharashtra not to implement the IT & ITES Policy, 2015 since it is unconstitutional, discriminatory and bad in law.
- (d) The Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ or direction in the nature of like nature under Article 226 of Constitution of India,

thereby directing for the Provision for compensation in other form to the corporation for the deficits caused because of exemptions given as per this policy.

- (e) The Hon'ble Court may be pleased to issue writ of mandamus or any appropriate writ or direction in the nature of like nature under Article 226 of Constitution of India, thereby directing the Navi Mumbai Municipal Corporation to recover the losses of Rs.603.33 crores from 307 IT industries situated in Navi Mumbai due to exemptions and concessions granted under the impugned IT Policy-2003 and IT & ITES Policy, 2009.
- (f) Pending hearing and final disposal of this petition, this Hon'ble Court, be pleased to stay execution, operation and implementation of the IT & ITES Policy, 2015 in so far as its applicability to Navi Mumbai Municipal Corporation is concerned.
- (g) Pending hearing and final disposal of this petition, this Hon'ble Court, be pleased to direct the Govt. of Maharashtra not to implement the IT & ITES Policy, 2015.
- (h) Ad-interim relief in terms of prayer clause (e) & (f) above be kindly granted.”

3. In brief, the background in which the present petition is filed is as under:

The Government of Maharashtra came with an IT Policy for granting benefits to the IT Sector in the form of exemptions/ concessions in municipal taxes/ octroi and entry taxes, etc. Subsequently, there was a modification by way of a circular defining as to which are the IT industries which would be entitled to such benefits. Similarly, from time to time, they amended the list of information technology industries which were entitled to such benefits. The policy came into existence in the year 2009 which is called as IT and ITES Policy, 2009. On the basis of this policy, there was a procedure laid down how the concessional benefits in other areas like electricity charges, lease, sub-lease of plots in municipal corporation area also came to be introduced apart from exemptions which were already allowed i.e. octroi/ entry taxes, etc. In the year 2009, by virtue of policy of 2009, the Government of Maharashtra is said to have issued a circular directing the Municipal Commissioners, Collectors, and Chief Officers of Municipal Councils to implement the policy. According to the petitioner, as laid down in the internal note prepared by Navi Mumbai Municipal Corporation, the Corporation itself is losing revenue of about Rs.100 crore per year. According to the petitioner, such policy is discriminatory in nature which favours only IT Sector, ignoring other industries which are more useful to the public at large. Therefore, the petitioner before this Court is challenging IT and ITES Policy, 2015 of the State of Maharashtra.

4. In response to this, the State of Maharashtra has placed on record its stand answering each and every paragraph of the petition. Ultimately, they have indicated the purpose of introducing the policy in the State of Maharashtra and how it could be beneficial to the development of information technology industries which again leads to the growth of housing/ retail and property prices in the area concerned. According to them, the experience shows that the employment in the IT Sector in the financial year 2004 was 8,30,000 and this has increased to 31,32,000 which shows that there is an increase by four times by financial year 2014. Therefore, depending upon the data collected, the State Government took a policy decision to have such benefits extended to the IT Sector since the share of IT export from the State of Maharashtra is 20% of the IT export of the entire country. In that view of the matter, they detailed out in paragraphs- 5, 7 and 8 the reasons which persuaded the State of Maharashtra to come out with the policy of 2015. Paragraphs 5, 7 and 8 of their affidavit read as under:

“5. With reference to Para No.13 of the PIL, I say that For preparing IT/ITES policy-2015 of Government of Maharashtra several rounds of discussion were held with various stakeholders. Based on the outcome of these discussions and based on the experience of the department in implementing earlier IT/ITES policies and based on the recent development in IT/ITES Sector and

with consultation with Task Force Committee constituted by i.e. * L.D., GR No.ITP-2015/C.R.No.12/2015/IND-2, dtd. 16/1/2015 this policy has been framed.

Due to the earlier policy initiative, IT sector in the State has grown by leaps & bounds during the last decade. The employment in IT sector across India in FY-2004 was 8,30,000 nos. and this has increased to 31,32,000 i.e. an increase of 4 times by FY-2014. According to data of Software Technology Parks of India (STPI), the export by IT sector in Maharashtra was Rs.5,508 Crores in FY-2003 which has reached to Rs.49,796 Crores in FY-2013, recording an increase of 800 percent. The share of IT export from the State of Maharashtra is 20% of IT export from the country. The State ranks 2nd in IT in the country based on overall performance according to STPI data.

The IT & ITES Policy 2015 is advisory. Even for the earlier IT & ITES policies of the State, the decisions were to be taken by the municipal councils and municipal corporation.

Taking the view of revenue loss on octroi and property tax is a narrow perspective as growth of IT industry leads to growth of housing/ retail and property prices in the area.

There is higher demand for goods from the employees staying in municipal area due to increase in their numbers and higher purchasing power.

The property tax & other municipal taxes collections also increase due to greater demand for quality housing.

The development of the support infrastructure and services, leads to increase in property tax & other municipal taxes.

Development in IT Sector has given tremendous boost to growth of sectors like banking, securities & derivatives, e-commerce, inventory management, logistics, transport, aviation, telecommunication, customer relationship management, retail supply chain, accounting etc., so in order to develop eco-system such concessions are necessary in policy period.

6.

7. With reference to Para No.15 of the PIL, I say that NMMC is not the only agency providing all the benefits mentioned. It grants benefits at (g), (h) at its discretion and at (I) by charging premium for the additional FSI granted to the Private IT Park.

8. With reference to Para No.16 of the PIL, I say that For preparing IT/ITES Policy-2015 of Government of Maharashtra several rounds of discussions were held with various stakeholders. Based on the outcome of these discussions and based on the experience of the department in implementing earlier IT/ITES policies and based on the recent development in IT/ITES Sector and with consultation with Task Force Committee constituted by i.e. & L.D., GR No.ITP-2015/C.R.No.12/2015/IND-2, dtd. 16/1/2015 this policy has been framed.

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The IT/ITES units/ industry has some specific ecosystem requirements. Also, it a clean, non-polluting type of industry and hence it has been allowed in any zone.”

5. According to the petitioner, the main ground seems to be that apart from loss of revenue to the State, there is discrimination between other industries and the IT Sector i.e. violating Article 14 of the Constitution, they have challenged the said policy.

6. When we consider the benefits given to the industries, even under the Income Tax Act, when they establish IT Sector, there is an exemption from import duty, etc. in the formative years of the establishment of the sector. Having regard to the IT development across the world and its use for the growth of economy in the country, the Government takes policy decisions from time to time to encourage establishment of such industries so as to boost the economy of the country and also to create employment to the people of the State or the country across. In order to come up with a policy, especially with regard to revenue, it is not an overnight

decision but only after deliberations and discussions are held in the concerned department in relation to the policy decision and only after taking opinion of the stakeholders and considering the expected loss so far as revenue is concerned, such policy decisions are taken to boost the economy only with vision of growth of the economy and per capita income in future. It is well settled that encouraging growth of economy by making positive discrimination cannot be considered as discrimination under Article 14 of the Constitution. Since the aim of the policy was to promote growth of IT Sector which is well recognized in the country, such policy is introduced.

7. In these circumstances, we are of the opinion, we cannot sit over the policy decision taken by the State in bringing out such policy on the grounds raised in this petition. Accordingly, petition is dismissed.

8. It is needless to state that if any such benefits are extended to other sectors, they are at liberty to make representation to the State to that effect.

(G.S.KULKARNI, J.)

CHIEF JUSTICE