BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **20.09.2017**

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD)No.15585 of 2015
and
M.P.(MD).No.1 of 2015

Cheran College of Engineering,
Rep. by its Chairman,
P.M.Karuppanan,
Cheran Nagar,
Coimbatore Main Road,
NH-67, K.Paramathi,
Karur. .. Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary,
   Rural Development Department,
   Fort St. George, Secretariat,
   Chennai - 600 009.

2. The District Collector,
   Karur District,
   Karur.

3. K.Paramathi Panchayat,
   Rep. By its
   The President,
   Karur District, Karur. .. Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to quash the demand notice of the third respondent dated 11.08.2015 made in Na.Ka.No.A5/3122/2012 in respect of the Assessment Years 2012-2013, 2013-2014, 2014-2015 so far as demanding surcharge for a sum of Rs.1,54,287/- and consequently forbearing the respondents from demanding surcharge from the petitioner.

For Petitioners : Mr.Shanmugaselvam

For Respondents : Mr.J.Gunaseelan Muthiah - for R1 & R2
Government Advocate

Mr.K.Maheshraja - for R3

ORDER

This Writ Petition has been filed seeking a Writ of Certiorarified Mandamus to quash the demand notice, issued by the third respondent and consequently forbearing the respondents from demanding surcharge from the petitioner.

2. Facts-in-nutshell, are as follows:

i) It is the case of the petitioner-College that it is an Educational Institution approved by AICTE affiliated to Anna University. According to the petitioner, the petitioner- College was exempted from house-tax under Rule 15(c) of the Tamil Nadu Panchayats (Assessment and Collection of Taxes) Rules, 1999 (hereinafter referred to as "the Rules"). However, pursuant to the amendment, the College was directed to pay the tax as per the demand of the Panchayat;

ii) It is submitted that the petitioner college has been paying the demanded House Tax, Surcharge, Library Cess for the every assessment year without any default and there is no tax due payable by the petitioner-College, except the surcharge demanded by the third respondent. The third respondent vide his impugned proceeding dated 11.08.2015, stated that the the petitioner has to pay a sum of Rs.1,54,287/- towards the surcharge of Rs.51,429/- for the Assessment Year 2012-13, Rs.51,429/- for the Assessment year 2013-14 and Rs.51,429/- for the assessment year 2014-15 aggregating a sum of Rs.1,54,287/-. Aggrieved by the same, the petitioner-College is before this Court.

3. The learned Counsel for the petitioner-College would submit that the petitioner-College was mechanically forced to pay the tax under various heads based on the amendment, which was brought in force. The main object of the petitioner-College is to impart good education to the students having rural background and deprivation of exemption would affect the yeoman services being rendered by the petitioner-College. Hence, the impugned order of demand is liable to be set aside at the threshold.

4. On the other hand, the respondents have contended that the issue involved in this case is no longer *res integra*, as a Full Bench of this Court has already considered the issue in entirety in the case of ***The President, K.Vellakulam Panchayat vs. Kamaraj College of Engineering and Technology, Virudhunagar,*** reported in ***2009 (5) CTC 289***, wherein the Full Bench of this Court had declined to interfere in the process of levy of Tax and rejected the plea of institutions, like that of the College. Therefore, it is the contention of the respondents that there is no interference warranted by this Court in this writ petition and

the same has to be dismissed *in limine*.

5. I have considered the rival submissions and perused the materials available on record.

6. The short point for consideration in the writ petition is whether the demand made by the third respondent is valid in the eye of law. The answer is in affirmative, because the Legislature of the State has been authorised to frame law authorizing a Panchayat to levy, collect appropriate taxes, duties, tolls and fees as enunciated under the relevant provisions of the Act and the Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class of buildings in absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. Such fact is emphasized in the judgment of the Full Bench of this Court and there is no quarrel in it.

7. However, in the present case on hand, though the college had paid some amount against various demands, the third respondent, after amendment of the provisions, issued the present impugned demand notice, directing them to pay a sum of Rs.1,54,287/- towards surcharge, in a hasty manner. It is also not mentioned whether opportunity of hearing was given to the college or not. Even in Paragraph No.10 of the Full Bench's judgment of this Court itself (cited supra), it has been laid down that though the Panchayat is empowered to levy tax, it should be in accordance with the procedure and subject to limits as prescribed under the Tamil Nadu Panchayats Act, 1994. According to the College, the third respondent has levied Tax even for the portions already assessed, statutorily exempted etc., without application of mind.

8. The Honourable Full Bench of this Court in ***The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District v. Kamaraj College of Engineering and Technology*** reported in ***2009 (5) CTC 289***, while considering the plea of the respondent - College therein as to the grant of exemption from levy of house tax as per Rule 15 of the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, held as follows:

> "17. We have already noticed that Rule 15 is a subordinate legislation which cannot override the substantive provisions of the Act such as Sections 171 (1), 172 and 176. Section 171(1) mandates the Village Panchayat to levy house tax on all the houses of the Village Panchayat. The mandate is also clear from Section 172, wherein the basis of levy of house tax has been prescribed. There is a prohibition from grant of exemption of surcharge or tax under Section 176 except in accordance with the rules. Therefore, if Rule 15 is read with the aforesaid Sections 171, 172

and 176, it is to be held that under Rule 15 it is not mandatory to grant exemption from the house tax, but is an enabling provision allowing the Village Panchayat to grant exemption to a class of buildings as specified therein, if it so chooses. Rule 15 cannot be held to be mandatory to exempt a class of buildings from payment of house tax, which otherwise will run counter to Sections 171, 172 and 176 of the Act and may render Rule 15 *ultra vires.* Therefore, the word "shall" used in Rule 15 has to be read as "may" to give effect to the said rule of exemption.

18. We, accordingly, hold that the exemption prescribed under Rule 15 is not mandatory and is an enabling provision empowering the Village Panchayat or Panchayat Union to grant exemption to a class of buildings as specified therein. The corollary is that it is open for the Village Panchayat or Panchayat Union not to grant such exemption in favour of one or other class of such buildings. The Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class off buildings in absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. Once a Village Panchayat or Panchayat Union takes a decision to grant exemption in favour of one or other class of buildings, only in that case no discrimination can be made between two similarly situated persons and no order can be passed in an arbitrary manner.

Learned Single Judge, in the present case, and the Division Bench in ***Sriram Educational Trust*** (supra) having failed to notice the aforesaid aspect, we hold that the Division Bench in ***Sriram Educational Trust*** (supra) has not laid the correct law.

19. In view of our finding in the present case and as we find that the appellant has not decided to grant exemption to any of the educational institutions or other buildings under Rule 15, the respondent college having knowledge of the same and having paid the house tax since 2001-02, we hold that the respondent-College was not entitled for grant of exemption nor it is entitled for refund of the house tax already paid."

9. Therefore, following the judgment of the Full Bench judgment of this Court (cited supra), while declining to interfere with the impugned demand notice, this writ petition is disposed of, directing the third respondent to re-do the entire exercise in

respect of levy of Taxes insofar as the petitioner-College is concerned and issue fresh demand notice, if need be, after affording an opportunity of hearing to the petitioner-college. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary,
   The State of Tamil Nadu,
   Rural Development Department,
   Fort St. George, Secretariat,
   Chennai - 600 009.

2. The District Collector,
   Karur District,
   Karur.

+ 1 cc TO Mr.N.Shanmugaselvam , Advocate in SR No. 80729

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AE/KKR/SAR2/09.01.2018/5P/4C

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