IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14551 of 2006
and
W.P.M.P.No. 15344 of 2006

Sri Sarada Eashwar Vidya Mandir Matriculation
Hr.Secondary School,
run by P.E.S. Charitable Trust,
rep. by its Trustee P.S.Kekhar,
New No. 4/24, Buddar Street,
Ambedkar Nagar,
Pozhichalur,
Chennai - 600 074.

...Petitioner

Vs.

1. The Pozhichalur Village Panchayat
First Grade,
rep. by its President,
Pozhichalur,
Chennai - 600 074.

2. The Divisional Development Officer,
Village Panchayats,
St.Thomas Mount at
Chitlapakkam,
Chennai - 600 064.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent dated 15.03.2006 demanding the house tax for the buildings bearing door No.4/24 owned by the petitioner institution and to quash the same.

For Petitioner : Mr.K.Soundararajan
For Respondents: Mr.N.Subbarayalu
for R1.
Mr.S.K.Bhuvaneswari, AGP.
For R2.

ORDER

The petitioner has filed this Writ Petition, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent dated 15.03.2006 demanding the house tax for the buildings bearing door No.4/24 owned by the petitioner institution and to quash the same.

2. The case of the petitioner is that the Trustee of the P.E.S.Charitable Trust, was created during the year 1998 with the sole aim of providing free education to the weaker sections of the society. The petitioner submit that the petitioner Trust, in order to cater to the needs of the under-developed area of Pozhichalur Village. The 1st respondent being a village panchayat, constituted under the said Act could levy tax on the houses pursuant to Section 171 of the said Act, but the power is not absolute and the same is subject to Sub Section (3) of Section 172 of the said Act, wherein, the Government shall, by notification, determine with regard to any panchayat Village or any clause of panchayat Villages whether the house tax shall be every half year or year and in doing so have regard to the matters enjoyed therein.

3. The very same issue was already dealt with by this Court in the case of Association of Management of Private Colleges, represented by its President, Dr.M.Aruchami Vs The Government of Tamil Nadu represented by its Secretary to Government and Special Commissioner, Rural Development and Panchayat Raj Department, Secretariat, Chennai - 600 009, in W.P.No. 21539 of 2008 and after referring to the issues, this Court has observed as follows;

> " 10. The Supreme Court itself has made the distinction between an aided institution and an unaided institution being subject to two different systems of control. While the aided institution is liable for a greater control by the laws made by the State, an unaided institution is not subject to similar control. Infact on the question of fee to be charged by unaided institution, there is no such restriction as seen from the above passage. The unaided institutions were always subject to House tax which law has also been made clear by the Full Bench. The present amendment excludes the exemptions granted to an aided institutions starting self financing courses in the same premises, thereby earning revenue. The State is not obliged to exempt such institution on the lines which was followed before the impugned amendment.

11. In the matter of exemption of a taxing statute, it is for the State to make proper classification. It cannot be said such classifications are hit by Article 14 either on the ground of it being a class legislation or that such a tax will amount to arbitrary exercise of power. In this context, it is necessary to refer to the decision of the Supreme Court in R.K. Garg v. Union of India reported in (1981) 4 SCC 675, wherein in paragraph 8 it was held as follows:

"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud where Frankfurter, J., said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Roig Refining Company be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues".

12. On the question of discrimination in the grant of exemption in a taxing statute, the Supreme Court in Sri Krishna Das v. Town Area Committee, Chirgaon reported in (1990) 3 SCC 645, in paragraph 31 observed as follows:-

"31. The contention that the tax is discriminatory in view of the exemptions granted to some of the products and to those that enter the TAC by rail or motor transport is equally untenable. It is for the legislature or the taxing authority to determine the question of need, the policy and to select the goods or services for taxation. The courts cannot review these decisions. In paragraph 16 of the counter-affidavit the TAC tried to explain the reason for not taxing salt, sugar and rice stating that they were not local produce but were imported from distant places and that the tax was levied only on the local produce which came from the neighbouring places. Courts cannot review the wisdom or advisability or expediency of a tax as the court has no concern with the policy of legislation, so long as they are not inconsistent with the provisions of the Constitution. It is only where there is abuse of its powers and transgression of the legislative function in levying a tax, it may be corrected by the judiciary and not otherwise. Taxes may be and often are oppressive, unjust, and even unnecessary but this can constitute no reason for judicial interference. When taxes are levied on certain articles or services and not on others it cannot be said to be discriminatory. Cooley observes: "Every tax must discriminate; and only the authority that imposes it can determine how and in what directions." The TAC having decided to impose weighing dues on the goods mentioned in the bye-laws it is not for the court to question it on the ground that some similar commodities or commodities arriving by rail or road were not subjected to the tax."

13. In the light of the above, this Court is not inclined to entertain the writ petition both on the ground of maintainability as well as on the grounds of merits. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed."

4. This writ petition is dismissed on the same lines of the decision cited above. No Costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The President,
Pozhichalur Village Panchayat
First Grade,
Pozhichalur,
Chennai - 600 074.

2. The Divisional Development Officer,
Village Panchayats,
St.Thomas Mount at
Chitlapakkam,
Chennai - 600 064.

+1 CC to Mr.K.Soundararajan, Advocate sr 63283.
+1 CC to The Spl. Govt. Pleader sr 63380.

W.P.No.14551 of 2006
and
W.P.M.P.No. 15344 of 2006

RP(CO)
SP(09/12/2019)