BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17 / 04 / 2018

DELIVERED ON : 03/11/ 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.6663, 6664 and 6665 of 2008

K.R.College of Arts & Science
Rep by its Member Managing Committee
Thiru K.R. Arunachalam
K.R.Nagar, Kovilpatti- Taluk
Tuticorin District ... Petitioner in W.P.(MD)No.6663 of 2008

Lakshmi Ammal Polytechnic College
Rep by its Member Managing Committee
Thiru K.R. Arunachalam
K.R.Nagar, Kovilpatti- Taluk
Tuticorin District ... Petitioner in W.P.(MD)No.6664 of 2008

National Engineering College
Rep by its Member Managing Committee
Thiru K.R. Arunachalam
K.R.Nagar, Kovilpatti- Taluk
Tuticorin District ... Petitioner in W.P.(MD)No.6665 of 2008

Vs.

Government of Tamilnadu Rep
by the Secretary to Government
Rural Development and Panchayat Raj Department
Fort. St. George, Secretariat, Chennai-600 019
... Respondents in all cases

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration declaring the amended Rule 15(c) of the Tamil Nadu Village Panchayat (Assessment & collection of Taxes) Rules, 1999 as notified by the respondent vide G.O.Ms.No.38-Rural Development and Panchayatraj (P.R.1) dated 05.03.2008 as unconstitutional.

For Petitioners : Mr.A.L.Somayaji, Sr. Counsel
for Mr.V.Perumal

For Respondent : Mrs.J.Padmavathi Devi,
Spl.Govt.Pleader

C O M M O N O R D E R

"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"

FRANKFURTER,J (MOREY VS. DOUD)

"*Taxes may be and often are oppressive, unjust, and even unnecessary but this can constitute no reason for judicial interference.*"

2. But such an interference is called for in these writ petitions, where amendment to Rule 15(1) (c) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules 1999 vide G.O.Ms.No.38, Rural Development and Panchayat Raj (PR-1) Department dated 05.03.2008 has been challenged as unconstitutional.

3. The writ petitioners are educational institutions established within Panchayat areas. As per the original Rule 15(c) the buildings used for educational purposes including hostels and libraries run by the Government or local bodies and institutions aided by the Government and public buildings used for charitable purpose for sheltering the destitutes and animals were exempted from tax. The petitioner institutions established within the Panchayat area and aided by Government were enjoying the tax exemption. Suddenly by an amendment to the above Rule 15(c), Government aided institutions for conducting self financing unaided courses were subjected to levy of house tax. In other words the exemption is taken away for unaided self financing courses conducted by Government aided institution.

4. This according to the petitioner is discriminatory as the object and purpose of providing tax exemption is only for usage of buildings for educational purposes and there cannot be any discrimination between aided and unaided courses in the same institution or Government aided institutions and private institutions. Hence, the amendment is unconstitutional as it offends Art. 14 of the Constitution of India. Further Art. 41,45 and 46 of the Constitution of India are concomitant to the fundamental rights enshrined under Part III of the Constitution, but the impugned amendment runs contrary to the directive principles and as such, the impugned amendment is violative of the fundamental right to education. All the educational institutions in these writ petitions are recognised by All India Council for Technical Education (AICTE) and affiliated to respective Universities. While so, exemption on the basis aided and unaided or self-financing institution or course is discriminatory and taking away the benefit of exemption enjoyed

by the institutions for two decades all on a sudden by a discriminatory amendment is arbitrary and unreasonable. Further Sec.86(c) of the Tamil Nadu Municipalities Act provides for general exemption from payment of property tax. When similarly situated institutions in the Municipal areas are exempted, the institutions catering the need of rural area and downtrodden people were imposed with the levy of tax is again discriminatory and the Government is promissorily estopped from introducing such discriminatory amendment. The learned Senior Counsel appearing for the petitioners would rely on the judgment of the Division Bench of this Court in ***Sriram Educational Trust Vs. The President, 89, Perumal Pattu Panchayat Union, [2008 (1) CTC 449]*** wherein the very same Rule was challenged and decided in favour of the private educational institution. He would also rely on the following judgments:-

1. *K.T.Moopil Nair Vs. State of Kerala, AIR 1961 SC 552*
2. *New Manek Chowk Spg and Wvg Mills Co. Ltd., etc Vs. Municipal Corporation of the City of Ahmedabad and other, AIR 1967 SC 1801*
3. *S.K. Dutta, Income-Tax Officer, Salary cum-S.I.B. Circle, Assam and others Vs. Lawrence Singh Ingty, AIR 1965 SC 658*
4. *Ayurveda Pharmacy and another Vs. State of Tamil Nadu, AIR 1989 SC 1230*
5. *Minor A. Peeriakaruppan Vs. State of Tamilnadu and Others, 1971 (1) SCC 38*
6. *State of Maharashtra Vs. Raj Kumar, 1982 (3) SCC 313*
7. *Baldwin Girls High School, Bangalore and etc., Vs. Corporation of the City of Bangalore, AIR 1984 KARNATAKA 162*
8. *Aashirwad Films Vs. Union of India and Others, 2007 6 SCC 624*
9. *Vikram Cement & Anr Vs. State of Madhya Pradesh & Ors, AIR 2015 SC 2397*
10. *Dr. Janet Jeyapaul Vs. SRM University and Ors, 2016(1) CTC 240*

5. The learned Special Government Pleader appearing for the respondent relied on the judgments of ***Kaamadhenu Arts and Science College Vs. The State of Tamil Nadu*** in W.P.No.26999 of 2008 dated 30.07.2010; ***Amala Annai Matriculation Hr.Sec School Vs. State of Tamil Nadu*** in W.P.(MD) No.2161 of 2011 dated 09.11.2011 of this Court, wherein the above said amendment and the implementation vide the impugned Government Order have been upheld by this Court. Hence, she would contend that the matter is no more *res integra* and pray for the dismissal of the writ petitions.

6. I have considered the submissions of both the sides.

7. A Full Bench of this Court in ***The President, K. Vellakulam Panchayat, Kallikudi Chatram, Madurai District Vs. Kamaraj College***

of Engineering and Technology, Virudhunagar [2009 (5) CTC 289] has held that Rule 15 gives discretion to Panchayat to exempt tax in respect of any house falling under the category mentioned. As such, the said Rule is not mandatory and hence, it is not mandatory to the Panchayat to grant exemption to educational institution falling under such category. While the matter was under consideration Government has made the above impugned amendment to the rule 15(c) of the abovesaid Rules. When a challenge was made to this Rule by various institutions, all the matters were grouped together and decided on 30.07.2010 in ***Kaamadhenu Arts and Science College Vs. State of Tamil Nadu (Supra)*** and the amendment to the rule and the Government order were upheld. Thus the issue is no longer *res integra*.

8. The judgment relied on by the learned Senior counsel to the proposition that taxation cannot be made by executive fiat or on flat rate basis without reasonable nexus or by creating a class within a class or classification on the basis of **caste** overlooking the merit or giving weightage to rural candidates are violative of Art 14 of the Constitution of India are not applicable to the case on hand. In the instant cases, imposition of tax is made by the power conferred by the rules, which has statutory force and not by administrative instructions. The Hon'ble Supreme Court in ***Aashirwad Films Vs. Union of India and Others, [2007 (6) SCC 624]*** has held that imposition of entertainment tax on the basis of language considered as improper exercise of power and not justified within the same class. But in the above case, the discrimination was made by way of a notification in violation of Art.351 of the Constitution of India and hence violative of Art. 14 of the Constitution and thereby it is held that the State has exceeded the limitation and improperly exercised its jurisdiction. Whereas the learned Judge while deciding the batch of cases in Kaamadhenu Arts and Science College, has categorically discussed this issue. The impugned amendment, is subordinate legislation. The Act empowers the Panchayat to levy tax under Sections 171 and 172 of the Tamil Nadu Panchayat Act, 1994. Under Sec.176, the power is conferred on the Panchayat to exempt any house from tax. The action of the respondent is supported by a statute, unlike it was done by an executive fiat in Aashirwad Film's case. The other judgment of the Hon'ble Supreme Court in ***Vikram Cement and another Vs. State of Madhyapradesh and Others, (AIR 2015 SC 2397)*** is pertaining to imposition of tax within the same class of assessees. There cannot be any discrimination between the identically situated persons. In the above case, while granting permission to defaulters to remit tax at reduced rate, refusing to refund the excess tax to those who have paid tax at higher rate, that too, paid in time was considered as creating two categories within the same class of persons identically situated. The said ratio will not be applicable to the case on hand. In the instant case, the classification is made on usage of building for educational purposes on commercial basis. The statute never had

exempted the commercial buildings or buildings used for educational purposes on commercial basis, but it exempted the house tax for charitable purposes. Therefore, the above judgment is of no avail for the petitioner.

9. The judgment of Karnataka High Court, in ***Baldwin Girls High School, Bangalore Vs. Corporation of Bangalore, (AIR 1984 Kant 162)*** is akin to the judgment of the Division Bench of this Court in Sriram Educational Trust case. The Full Bench of this Court has over ruled the above decision and hence it cannot prevail over the Full Bench decision on this aspect in respect of the very same rule.

10. Thus, the judgments relied on by the learned Senior Counsel for the petitioners are of no avail and do not come in support of the case of the petitioners.

11. As observed above, the issue is no longer *res integra*. This Court in Kaamadhenu Arts and Science College case following the decision of the Hon'ble Supreme Court in ***R.K.Garg Vs. Union of India (1981) 4 SCC 675*** has held that imposition of house tax on private educational institutions or self financing courses by Government aided institutions are not discriminatory. The validity of Rule 15 (c) of the Tamil Nadu Village Panchayats (Assessment & Collection of Taxes) Rules, 1999 and G.O.Ms.No.38, Rural Development and Panchayatraj (P.R.1), dated 05.03.2008, are upheld. Therefore, I respectfully follow the above decision. The Hon'ble Supreme Court in ***Sri Krishna Das Vs. Town Area Committee, Chirgaon, (1990 3 SCC 645)***, has observed that

> " *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.*"

In the impugned amendment, I do not find any transgressions or abuse of powers, but the action has justifiable statutory backing, which does not warrant judicial interference. Hence the writ petitions are dismissed. No costs.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Secretary to Government
Government of Tamilnadu
Rural Development and Panchayat
Raj DepartmentFort. St. George,
Secretariat, Chennai-600 019.

+3 CC to M/s.V.PERUMAL, Advocate (SR-20925[F] dated 03/11/2020)

Common Order made in

W.P.(MD)Nos.6663, 6664 and 6665 of 2008

03.11.2020

VR(CO)
NR (10/11/2020) 6P : 5C