BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P.(MD)Nos.5901 and 5904 of 2021
and
W.M.P.(MD)Nos.4623, 4626 and 4627 of 2021

W.P.(MD)No.5901 of 2021:-

The Lakshmi Ammal Polytechnic College,
represented by its Correspondent,
K.R.Arunachalam,
Tuticorin District. : Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Principal Secretary,
Department of Rural Development and Panchayat Raj,
Fort St.George, Chennai - 600 009.

2.The Block Development Officer (Village Panchayats),
Panchayat Union, Kovilpatti,
Tuticorin District.

3.The President,
Nalattinpudur Panchayat,
Kovilpatti Union, Tuticorin District. : Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records relating to the impugned demand notice issued by the third respondent, the President, Nalattinputhur Panchayat, Kovilpati, dated 12.01.2021 and quash the same.

For Petitioner	:	Mr.Isaac Mohanlal Senior Counsel for Mr.S.V.Sampath Kumar
For R1	:	Mr.C.Ramesh Special Government Pleader
For R2 and R3	:	Mr.R.Murugan Additional Government Pleader

W.P.(MD)No.5904 of 2021:-

The National Engineering College,
represented by its Correspondent,
K.R.Arunachalam,
Tuticorin District. : Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Principal Secretary,
Department of Rural Development and Panchayat Raj,
Fort St.George, Chennai – 600 009.

2.The Block Development Officer (Village Panchayats),
Panchayat Union, Kovilpatti,
Tuticorin District.

3.The President,
Nalattinpudur Panchayat,
Kovilpatti Union, Tuticorin District. : Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records relating to the impugned demand notice issued by the third respondent, the President, Nalattinputhur Panchayat, Kovilpati, dated 12.01.2021 and quash the same.

For Petitioner	:	Mr.Isaac Mohanlal Senior Counsel for Mr.S.V.Sampath Kumar
For R1	:	Mr.C.Ramesh Special Government Pleader
For R2 and R3	:	Mr.R.Murugan Additional Government Pleader

COMMON ORDER

Both the Writ Petitions raise identical grounds in challenging the impugned demand notice issued by the third respondent, dated 12.01.2021 towards payment of house tax/property tax. Therefore, a common order is passed in both the Writ Petitions as under:

2.The case of the petitioner in W.P.(MD)No.5901 of 2021 is that the Government of Tamil Nadu has issued G.O.Ms.No.2324, dated 19.12.1983 granting permission to petitioner's Trust to start an unaided Polytechnic College in the name and style of “Lakshmi Ammal Polytechnic College” in Nalattinputhur, Kovilpatti Taluk, Tuticorin District.

3.The case of the petitioner in W.P.(MD)No.5904 of 2021 is that the Government of Tamil Nadu has issued G.O.Ms.No.939, dated 20.07.1984, granting permission to the petitioner's Trust to start an unaided Engineering College in the name and style of “National Engineering College”, in Nalattinputhur, Kovilpatti Taluk, Tuticorin District.

4.The petitioner College after obtaining affiliation from the Director of Technical Education, Madras, started the Polytechnic College in the year 1983. As far as the Engineering College is concerned, an affiliation was obtained from the Madurai Kamaraj University and the College has been conducting their courses in certain disciplines at Under Graduate level. According to the petitioner, the institutions are totally self financed and no Government grant-in-aid is received. The institutions have good infrastructure facilities for overall growth of the students studying there.

5.Since inception of the institutions, they have been exempted from payment of house tax/property tax in respect of the building located in the campus. According to the petitioner that the land and buildings within the premises of the institutions have been exclusively used for the educational purposes and not for any other purposes.

6.The Government issued G.O.(Ms).No.38, Rural Development and Panchayat Raj, dated 05.03.2008 amending Rule 15(c) of Tamil Nadu Village Panchayat (Assessment and Collection of Tax) Rules, 1999 and a proviso was included by subjecting the educational institution conducting self finance unaided courses to levy of house tax. The amendment to the Rule was challenged before this Court in W.P.(MD) No.6664 of 2008. While the case was pending before this Court, in 2012 a demand notice was issued demanding house tax/property tax from the institutions and that was also challenged before this Court in W.P.(MD)No.13818 of 2012. This Court, while entertaining the Writ Petition, granted an order of interim stay on 30.10.2012.

7.In the meanwhile, the earlier Writ Petition filed by the institutions challenging the vires of the amendment in W.P.(MD) No.6664 of 2008 was dismissed vide common order, dated 03.11.2020. As against that, a Writ Appeal in W.A(MD)No.Sr48546 of 2020 was filed and the Writ Appeal still has not been numbered, according to the averments contained in the affidavit.

8.While matter stood thus, in pursuance of the dismissal of the Writ Petition filed by the institutions, a notice has been issued on 10.12.2020 and consequently, the impugned demand notice was also issued on 12.01.2021 demanding payment of property tax retrospectively for the period of 13 years from the assessment year

2008 onwards till 2021. The demand notices are subject matter of the challenge in these Writ Petitions.

9.Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioner would submit that before the Writ Appeal could be heard against the dismissal of the Writ Petition, the present demand has been made illegally and therefore, the same is liable to be interfered with. According to the learned Senior Counsel for the petitioners, these petitioners have enjoyed the interim stay throughout the proceeding pending before this Court and therefore, the same benefit may be given to these petitioners against the present demand as well.

10.The submissions as made by the learned Senior Counsel for the petitioner are unacceptable for the simple reason that the learned Judge of this Court vide his order, dated 03.11.2020, has dismissed the challenge on the basis of the ruling of the Honourable Supreme Court of India. The learned Judge of this Court has given a detailed reason and the same is useful to refer to herein in order to understand, how the present Writ Petition field by the petitioner is *per se* abuse of process of Court and liable to be dismissed in *limine*, which reads as under:

> "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 10/13 http://www.judis.nic.in W.P.(MD)Nos.6663, 6664 and 6665 of 2008 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."

11.When the challenge made by the institutions has been negatived and discountenanced completely, these petitioners have come with the present claim by colouring their challenge in a different form, but, in reality, the substance is same. Even according to these Writ Petitioners, the Writ Appeal has been filed and it is always open to these Writ Petitioners to work out their remedies before the Honourable Division Bench of this Court, in case the present demand is not sustainable. Even otherwise, this Court finds that earlier when these Writ Petitioners have obtained interim stay of payment of property tax and enjoyed the benefit of the interim order for a several years continuously without making any payment, this Court does not think that these institutions have any legitimate cause of action for complaining about the present demand after the disposal of the Writ Petition filed by them on 03.11.2020 by this court.

12.The petitioner institutions are fully to be blamed and responsible for allowing the tax arrears to snow ball into the present demand and therefore, the petitioner cannot be said to have been legitimately aggrieved by the present demand. In any case, it is upto them to work out their remedy in the Writ Appeal moved by them and certainly it is not for these institutions to come up with another Writ Petition and seek intervention of this Court.

13.For the aforesaid reasons, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1.The Principal Secretary,
The State of Tamil Nadu,
Department of Rural Development and Panchayat Raj,
Fort St.George, Chennai - 600 009.

2.The Block Development Officer (Village Panchayats),
Panchayat Union, Kovilpatti,
Tuticorin District.

+2 CC to M/s.S.V.SAMPATH KUMAR, Advocate (SR-11680,11681[F] dated 17/03/2021)

+1 CC to M/s.SPL GP (SR-12127[F] dated 18/03/2021)

W.P.(MD)Nos.5901 and 5904 of 2021

17.03.2021

RK(25.05.2021) 7P 6C