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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) Nos.3554 to 3561 of 2011
and
M.P.(MD)Nos.1 and 2 of 2011 (in all the W.Ps.)

The Bharat Sanchar Nigam Limited,
Tirunelveli,
Through its General Manager. .. Petitioner in all the W.Ps.

Versus

1.Commissioner,
Shencottai Municipality,
Shencottai.

2.The Union of India,
Rep. by the Secretary,
Department of Telecommunication,
New Delhi. .. Respondents in all the W.Ps.

[R2 is *suo motu* impleaded vide order dated 22.03.2017,
made in W.P.(MD)No.3554 of 2011]

Prayer in W.P.(MD)No.3554 to 3560 of 2011.:- Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in Na.Ka.4487/2010, dated 28.12.2010 and quash the same in respect of Demand Nos.8294, 8295, 8296, 8297, 8298, 8299 and 8300, Door Nos.353/184, 355/184A, 357/184B, 359/184C, 361/184D, 363/184E and 365/184F, K.C.Road, Shencottai, respectively.

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Prayer W.P.(MD)No.3561 of 2011.:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in Letter No.Na.Ka.848/2008/A1, dated 26.11.2010, in

(i) Demand No.14001 with respect to Telephone Exchange, 8, North Car Street, Sublane III, Sankarankovil, for the period of 2010-2011.

(ii) Demand No.14553 with respect to Coaxil building 66, Melarathaveethi Part I Sankarankovil, for the period of 2008-2011.

(iii) Demand No.14611 with respect to Telephone Office staffs house, 12, Melarathaveethi, Sankarankovil, for the period of 2010-2011, and

(iv) Demand No.14612 with respect to Telephone Office 1st Floor, 8/1, North Car Street, Sublane III, Sankarankovil, for the period of 2010-2011.

For Petitioner (in all the W.Ps.)	:	Mr.K.Govindarajan
For R1 (in all the W.Ps.)	:	Ms.Balameenakshi for Mr.Pala.Ramasamy
For R2 (in all the W.Ps.)	:	Mr.S.Jeyasingh Senior Panel Counsel for Government of India

COMMON ORDER

Since the issue involved in all the Writ Petitions is one and the same, they are heard together and disposed of by this common order.

2.Bharat Sanchar Nigam Limited [in short "BSNL"] through its General Manager has filed W.P.(MD)Nos.3554 to 3560 of 2011, seeking a direction in the nature of Certiorari, to call for records of the first respondent namely, the

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Commissioner, Shencottai Municipality, in Na.Ka.4487/2010, dated 28.12.2010 and quash the same in respect of Demand Nos.8294, 8295, 8296, 8297, 8298, 8299 and 8300, Door Nos.353/184, 355/184A, 357/184B, 359/184C, 361/184D, 363/184E and 365/184F, K.C.Road, Shencottai, respectively.

3.W.P.(MD)No.3561 of 2011 is filed seeking to quash the following the demands made by the first respondent in Letter No.Na.Ka.848/2008/A1, dated 26.11.2010:-

(i) Demand No.14001 with respect to Telephone Exchange, 8, North Car Street, Sublane III, Sankarankovil, for the period of 2010-2011.

(ii) Demand No.14553 with respect to Coaxil building 66, Melarathaveethi Part I Sankarankovil, for the period of 2008-2011.

(iii) Demand No.14611 with respect to Telephone Office staffs house, 12, Melarathaveethi, Sankarankovil, for the period of 2010-2011.

(iv) Demand No.14612 with respect to Telephone Office 1st Floor, 8/1, North Car Street, Sublane III, Sankarankovil, for the period of 2010-2011.

4.The contention of the petitioner is that BSNL was formed on 01.10.2000 by the Government of India under the Companies Act, 1956. Before formation of BSNL, the entire Department was controlled by the

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Ministry of Telecom, Government of India. All the properties stood only in the name of the Government of India, Ministry of Telecom. Even though the BSNL was formed as a separate entity, it is under the control of the Government of India, Ministry of Telecom. The property situated in Ward J, Block 2, T.S.No.2, with an extent of 1.652 Hectares is the property under the Telephone Office, situated at Shencottai Town. The above said property till today stands in the name of the Central Government Poramboke. In order to prove the same, the petitioner has produced "A" Register Extract issued by the Tahsildar, Shencottai.

5.Further, when the facts remain so, the first respondent issued a demand notice for the following demands:-

W.P.No.	Property details and Address	Demand Notice Date & No.	Financial Year	Balance Amount
3554/2011	D.No.353/184, Telephone Office, Ward J, Block-2, T.S.No.2, K.C.Road, Shenkottai Town.	Na.Ka.No. 4487/2010, dated 28.12.2010 & Demand No.8294	2000-2011	Rs.1,89,748/-
3555/2011	D.No.355/184A, Telephone Inspector Quarters, Ward J, Block-2, T.S.No.2, K.C.Road, Shenkottai Town.	Na.Ka.No. 4487/2010, dated 28.12.2010 & Demand No.8295	2005-2011	Rs.7,980/-

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3556/2011	D.No.357/184B, Telephone Inspector Quarters, Ward J, Block-2, T.S.No.2, K.C.Road, Shenkottai Town.	Na.Ka.No. 4487/2010, dated 28.12.2010 & Demand No.8296	2005-2011	Rs.7,980/-
3557/2011	D.No.359/184C, Telephone Inspector Quarters, Ward J, Block-2, T.S.No.2, K.C.Road, Shenkottai Town.	Na.Ka.No. 4487/2010, dated 28.12.2010 & Demand No.8297	2005-2011	Rs.7,980/-
3558/2011	D.No.361/184D, Telephone Inspector Quarters, Ward J, Block-2, T.S.No.2, K.C.Road, Shenkottai Town.	Na.Ka.No. 4487/2010, dated 28.12.2010 & Demand No.8298	2005-2011	Rs.7,980/-
3559/2011	D.No.363/184E, Telephone Sub-Inspector Quarters, Ward J, Block-2, T.S.No.2, K.C.Road, Shenkottai Town.	Na.Ka.No. 4487/2010, dated 28.12.2010 & Demand No.8299	2005-2011	Rs.7,980/-
3560/2011	D.No.365/184F, Cleaner Quarters, Ward J, Block-2, T.S.No.2, K.C.Road, Shenkottai Town.	Na.Ka.No. 4487/2010, dated 28.12.2010 & Demand No.8300	2005-2011	Rs.7,980/-

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3561/2011	(i) No.8, Telephone Exchange, North Car Street, Sub-lane III, Sankarankovil.	Na.Ka.No. 848/2008/A1 dated 26.11.2010 & Demand No. 14001	2010-2011	Rs.21,204/-
	(ii) No.66, Coaxil Building, Melarathaveethi Part - I, Sankarankovil.	Na.Ka.No. 848/2008/A1, dated 26.11.2010 & Demand No. 14553	2008-2011	Rs.45,700/-
	(iii) No.12, Telephone Office Staffs House, Melarathaveethi, Sankarankovil.	Na.Ka.No. 848/2008/A1, dated 26.11.2010 & Demand No. 14611	2010-2011	Rs.7,422/-
	(iv) No.81, Telephone Office, I Floor, North Car Street, Sub-Lane III, Sankarankovil.	Na.Ka.No. 848/2008/A1, dated 26.11.2010 & Demand No. 14612	2010-2011	Rs.16,584/-

Immediately, the petitioner informed the first respondent that the property stands only in the name of the Government of India and not in the petitioner's Company name, as such, they are exempted as per Article 285 of Constitution of India. In spite of repeated representations, the first respondent is not ready to accept the well settled legal propositions and the constitutional safeguards available to the properties stand in the name of the Central Government. Added to it, the first respondent threatened the petitioner day in and day out

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with coercive actions, hence, left with no other effective or efficacious remedy, the petitioner filed the above Writ Petitions.

6.In support of his submissions, the petitioner referred to "A" Register Extract, dated 04.02.2011, wherein it is recorded as "kj;jpa murhq;f Gwk;Nghf;F". Further, in support of his contentions, the petitioner has produced the Gazette Notification of the Government of India, dated 17.03.2001, to emphasise that a Memorandum of Understanding, dated 30.09.2000, entered into between the President of India [acting through the Secretary to the Government of India, Ministry of Communications, Department of Telecommunications (DoT)] and Bharat Sanchar Niagam Limited, the business of providing telecom services in the Country, maintaining the telecom network/running the telecom factories by the Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) [which were earlier provided by the Department of Telecommunications (DoT)] later has been transferred to the newly formed Company *viz*., Bharat Sanchar Nigam Limited (BSNL) with effect from 01.10.2000. All assets and liabilities (except certain assets which will be retained by DoT required for the units and offices under control of DoT) of the Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) stood transferred to BSNL with effect from the said date.

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Further, the petitioner also referred to the Office Memorandum, dated 15.12.2009, issued by the Government of India, Ministry of Urban Development, following the Hon'ble Apex Court's judgment in **Rajkot Municipal Corporation and others vs. Union of India and others [Civil Appeal Nos.9458-9463 of 2003],** wherein, the Hon'ble Apex Court had directed the Union of India and its Departments to pay service charges for the service provided by the Rajkot Municipal Corporation and no property tax will be paid by the Union of India, but service charges calculated @ 75%, 50% or 33 1/3% of property tax levied on property owners will be paid, depending upon the utilization of full or partial or Nil services. For the said purpose, agreements will be entered into by the Union of India, represented by concerned Departments with the respective Municipal Corporations.

7.The learned counsel for the petitioner further referred to another communication of the Ministry of Communications and IT, dated 23.11.2012, wherein, it is stated that in accordance with the Gazette Notification, dated 23.01.2001, published on 17.03.2001, all the assets and liabilities (except certain assets which will be retained by the DOT required for the units and offices under control of DoT) of the Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) stood transferred to BSNL with effect from the said date and the concerned Government Pleader at

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District/Taluk level may be consulted to ascertain the formalities required for such mutation of titles.

8.The learned counsel for the petitioner also referred to a Communication of the BSNL, dated 02.07.2014. Further, the learned counsel referred to the proceedings of the Revenue Divisional Officer, Tirunelveli, dated 15.04.2016, wherein a direction has been given to the Tahsildar, Ambasamudram and the Tahsildar, Shencottai, for mutating the name of Department of Telecommunications as "BSNL" in the revenue records.

9.The learned counsel for the petitioner also produced MoU, dated 30.09.2000, entered into between the President of India [acting through the Secretary to Government of India, Ministry of Communications, Department of Telecommunications (DoT)] and the BSNL, wherein the modalities of formation of BSNL and taking over the assets of DoT are given.

10.In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **Rajkot Municipal Corporation vs. Union of India** reported in **2013 (14) SCC 599**, for a proposition that the Union of India and its Departments will pay service charges and they will not pay any property tax.

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11.The learned counsel for the petitioner also referred to a decision of the Punjab and Haryana High Court in the case of **Union of India vs. Municipal Council, Batala [RSA No.3584 of 2010, dated 20.09.2012]**,for the same proposition, wherein it is held that protection under Article 285 of the Constitution of India, cannot be overridden by the administrative circulars or instructions.

12.Lastly, the learned counsel for the petitioner relied on a decision of the Hon'ble Apex Court in **Food Corporation of India vs. Brihanmumbai Mahanagar Palika and others [Civil Appeal Nos.9350 and 9351 of 2019, dated 19.03.2020]**, wherein the Hon'ble Apex Court held that the Food Corporation of India is exempted from payment of property tax by virtue of Article 285 of the Constitution of India, but they are liable to pay service charges for the services rendered by the Corporation.

13.The first respondent filed a counter affidavit and submitted that it is admitted by the petitioner in his affidavit that the BSNL was formed on 01.10.2000 by the Government of India under the Companies Act, 1956. Before formation of BSNL, the entire Department was controlled by the Ministry of Telecom, Government of India. BSNL is a commercial organization formed under the Companies Act, 1956 and it is not exempted

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from payment of the property tax. Hence, the first respondent issued the demand notices. The petitioner's Organization in Karaikudi Municipality paid property tax to the Karaikudi Municipality. Being a Company spread throughout the India, they cannot take a different stand for different regions.

14.In support of her contentions, the learned counsel for the first respondent referred to a letter of Deputy Director General of BSNL Headquarters, dated 14.08.2001, addressed to the Chief General Manager [CGM], Rajasthan Circle, Jaipur, with copies marked to all the Chief General Managers of BSNL. The Deputy Director General of BSNL, in the said communication, clarified that BSNL cannot claim exemption of local taxes under Article 285 of the Constitution of India and therefore, taxes must be paid subject to availability of funds in the relevant heads of account. Thus, after this communication, the petitioner ought not to have challenged the tax demand. Further, vide communication dated 26.07.2005, again, the BSNL Headquarters, New Delhi, confirmed the same and given a direction to the Civil Wing Unit under the control of BSNL to comply with the instructions. Further, the Commissioner of Municipal Administration, Chennai, in R.O.C.No.60804/2005/R1, dated 14.10.2005, had given instructions to all Municipal Corporation Commissioners and the Corporation Commissioners that the High Court of Delhi in the case of **International Airport Authority**

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of India vs. Municipal Corporation of Delhi and others reported in **AIR 1991 Delhi 302**, held that the property owned by the Union Government Company or a statutory Corporation, which has a corporate personality of its own, cannot be said to be the property of the Government of India and therefore, it is liable to State or Municipal Taxation. Further, the Hon'ble Apex Court has given a specific direction to all the Commissioners of Municipalities and Corporations to take action to assess the property owned by the statutory corporations like, Bharat Sanchar Nigam Limited, Bharat Heavy Electricals Limited, Indian Airlines etc., for levy of property tax as they cannot claim any exemption on the ground that their properties belonged to the Central Government. The Director of Municipal Administration, by another communication, dated 05.11.2009, after referring to the earlier Circular, dated 14.10.2005, had directed the Executive Authorities to follow Article 285 of the Constitution strictly for bringing into the property tax net of all the Statutory Corporations and the same provision should be informed to all the Statutory Corporations concerned, if the same are housed within the jurisdiction.

15.Further, the learned counsel for the first respondent referred to the communication of the Deputy General Manager, BSNL, Chennai, dated 16.07.2011, wherein directions have been issued to all concerned that challenging the imposition of property taxes by the local bodies in a Court of

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law may not yield success, and the payment of property tax appears to be imminent, and hence, requested to pay the property tax wherever claims have been raised by the local bodies. Following the same, the local bodies, the State of Tamil Nadu, have issued the demand notices. The petitioner has no locus to challenge the same and take umbrage under Article 285 of the Constitution of India.

16.In support of her contentions, the learned counsel for the first respondent referred to a judgment of the Hon'ble Apex Court in **Municipal Commissioner of Dum Dum Municipality and Others vs. Indian Tourism Development Corporation and Others** reported in **1995 (5) SCC 251**, wherein, it is held that the properties of Union of India vested with statutory corporations or Government Companies, not exempted from tax imposed by the Municipal Corporations. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285 of the Constitution.

17.Further, the learned counsel for the first respondent relied upon a decision rendered by the High Court of Kerala in the case of **Bharat Sanchar Nigam Limited vs. State of Kerala and others** reported in **2017 (3) KLT 672**, wherein it has been clearly held that BSNL which is a Company

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incorporated under the Companies Act, 1956, is a legal entity distinct and separate from the Central Government. Hence, the BSNL cannot claim exemption from taxation under Article 285 of the Constitution.

18.The second respondent Union of India filed a status report and submitted that BSNL has been formed as a Company on 01.10.2000. The Assistant General Manager (Admin), Office of the Principal General Manager, BSNL, Tirunelveli, had sent a communication dated 15.07.2022, to the Accounts Officer (Admin), Tamil Nadu Circle, Chennai, referring to the present batch of writ petitions *viz.,* W.P.(MD)Nos.3554 to 3560 of 2011 as well as W.P.(MD)No.3561 of 2011, pertaining to the property at Sankarankovil, wherein it has been admitted that the revenue documents have been mutated on 18.07.2016 for 40 cents and on 08.02.2016 for 40 cents and 59 cents, respectively. Further, the Town Survey Field Register of Shencottai Town has been enclosed, wherein it is recorded that S.No.113/7A Part, Old Survey No.299 of 0.16.52 Hectares stands in the name of BSNL. Thus, the learned Senior Panel Counsel submitted in unequivocal terms, it is confirmed that the property stands in the name of BSNL and prayed for dismissal of the Writ Petitions.

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19.Considering the submissions and on perusal of the materials from the documents produced by the respective counsels, it is seen that the Government of India, published a Gazette Notification, dated 17.03.2001, wherein, it is seen that BSNL has been formed with effect from 01.10.2000. All the assets and liabilities (except certain assets which will be retained by DoT required for the units and offices under control of DoT) of the Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) stood transferred to the BSNL with effect from the said date. Further, it is stated that the land and building and supply or services, subsisting on the date of transfer of business and/or required for operation of BSNL have also been transferred and assigned to BSNL with effect from 01.10.2000. Further, in Sl.No.3 of the Office Memorandum, dated 15.12.2009, it is stated that in the event of any Department or Railways owning a property changes the Agreement unilaterally or falls to reach settlement through Mediation Committee, the concerned Municipal Corporation could initiate action as it deems fit in accordance with law. The only caveat is that the Municipal Corporation shall not resort to coercive steps. Further, in the Communication of the Deputy Director General of Ministry of Communications and IT, directions given to transfer the respective immovable properties from DOT to BSNL.

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20.The Memorandum of Understanding, dated 30.09.2000, which is between the Department of Telecommunications (DoT) and BSNL, has given the effective date of implementation from 01.10.2000. The assets and liabilities of the business shall stand transferred to BSNL from the said date onwards. Thus, the BSNL, which is a commercial Company, had come into existence from 01.10.2000 and from thereon, they cannot take any umbrage under Article 285 of the Constitution.

21.As per Schedule-I of Memorandum of Understanding, all apparatus and plants, lines and wires, cables, land and buildings and motor vehicles have been transferred. Thus, it is clear that all buildings and properties after 01.10.2000 are standing in the name of BSNL.

22.The citations relied on by the learned counsel for the petitioner are not relevant to the facts of this case.

23.The High Court of Delhi in **International Airport Authority of India vs. Municipal Corporation of Delhi and others** reported in **AIR 1991 Delhi 302**, held that the property owned by the Union Government Company or a statutory Corporation, which has a corporate personality of its own, cannot be said to be the property of the Government of India and therefore, it

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is liable to State or Municipal Taxation. It is further held that all the Commissioners of Municipalities and Corporations shall take action to assess the property owned by the statutory corporations like, Bharat Sanchar Nigam Limited, Bharat Heavy Electricals Limited, Indian Airlines etc., for levy of property tax as they cannot claim exemption on the ground that their properties belonged to Central Government, which has been reiterated by the Hon'ble Apex Court in the case of **Municipal Commissioner of Dum Dum Municipality and others vs. Indian Tourism Development Corporation and others** reported in **1995 (5) SCC 251**. The Deputy Director General of BSNL, vide communication dated 14.08.2001, in unequivocal terms, confirms that there is no exemption of local tax under Article 285 of the Constitution. In this context, it would be apposite to extract below the same:-

> ***"A copy of BSNL Head Quarters Lr.No.BSNL/15-1/SR/ND, dated 14.08.2001 addressed to CGM Rajasthan Circle, Jaipur.***
>
> *Sub:- Payment of local trades under Article 285 of the Constitution of Land and Building.*
>
> *...*
>
> *Kindly refer to Yr D.O.Lr.No.BLDG/171-RLG/IV/14, dated 21.06.2001 addressed to Shri.S.P.Purwar, Director (Finance) BSNL regarding payment of taxes for various land and building situated at Jodhpur in Rajasthan Circle.*
>
> *The case has been examined in the BSNL Head Quarters and it has been decided that BSNL cannot claim exemption of local taxes under Article 285 of the Constitution and therefore the taxes may be paid subject to availability of funds in the relevant head of account."*

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24.The Circular of Commissioner of the Municipal Administration, dated 14.10.2005 and the Circular of the Director of Municipal Administration, dated 05.11.2009, confirm the properties of BSNL are not exempted under Article 285 of the Constitution and the Municipal authorities can levy property tax, since BSNL cannot claim any exemption on the ground that their properties are vested with the Central Government. Thus, there is no ambiguity or doubt that from 01.10.2000 onwards that all the properties of Department of Telecommunications are vested with the BSNL and thereafter, the properties were transferred and acquired by the BSNL and therefore, the Municipal authorities can levy tax.

25.In view of the above, this Court finds no merit in the contentions of the learned counsel for the petitioner. Hence, all the Writ Petitions are dismissed. It is for the BSNL authorities to approach the Municipal authorities, if they are aggrieved on raising of demand, within 30 days from the date of receipt of a copy of this order. The Municipal authorities are directed to consider the same within a period of 30 days thereafter, to collect the municipal tax dues. No costs. Consequently, connected Miscellaneous Petitions are closed.

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26.Before parting with these cases, this Court places its appreciation to Ms.Balameenakshi, learned counsel appearing for first respondent, for her thorough preparation, sustained resistance and meticulous assistance to this Court for disposal of this batch of Writ Petitions.

29.07.2022

Index : Yes/No
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To

1.The Commissioner,
Shencottai Municipality,
Shencottai.

2.The Secretary,
Union of India,
Department of Telecommunication,
New Delhi.

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M.NIRMAL KUMAR, J.

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Common order made in
W.P.(MD)Nos.3554 to 3561 of 2011

29.07.2022

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W.P (MD).Nos.3554 to 3561 of 2011
and
M.P (MD).Nos.1 and 2 of 2011 (in all W.Ps.)

M. NIRMAL KUMAR, J.

Today, these matters are listed under the caption "For Being Mentioned" at the instance of learned counsel for the petitioner in respect of the order passed on 29.07.2022.

2. It is submitted by the learned counsel for the petitioner that there is some corrections in the cause-title of the order dated 29.07.2022 and therefore, the order needs suitable clarification. Accordingly, the entire cause title of the order dated 29.07.2022 is substituted to read as under:

The Bharat Sanchar Nigam Limited,
Tirunelveli,
Through its General Manager ... Petitioner in all the W.Ps.

Versus

1.Commissioner,
Shencottai Municipality,
Shencottai. ... 1st respondent in W.P.Nos.3554 to 3560 of 2011

1.Commissioner,
Sankarankoil Town Municipality,
Sankarankoil. ... 1st respondent in W.P.No.3561 of 2011

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M. NIRMAL KUMAR, J.

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2.The Union of India,
Rep. by the Secretary,
Department of Telecommunication,
New Delhi. ... 2nd respondent in all the W.Ps.

[R2 is *suo motu* impleaded vide order dated 22.03.2017
made in W.P.(MD) No.3554 to 3561 of 2011]

3. Except the above modification, other portion of the order dated 29.07.2022 remains unaltered.

4. The issue is clarified, accordingly.

5. The Registry is directed to carry out the amendment and issue fresh copy of the order, in accordance with law.

10.01.2023

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Note:

Registry is directed to mark copy to
The Commissioner,
Sankarankoil Town Municipality,
Sankarankoil.

W.P (MD).Nos.3554 to 3561 of 2011
and
M.P (MD).Nos.1 and 2 of 2011 (in all W.Ps.)

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