BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.19572 of 2022
and
W.M.P.(MD).No.14286 of 2022

Bharat Sanchar Nigam Limited,
Represented by Assistant General Manager,
(Network Planning - CF A),
Office of the Principal General Manager,
Bharathidasan Salai,
Cantonment,
Tiruchirappalli – 620 001. ... Petitioner

Vs.

1. The Secretary to Government,
   Municipal Administration and Water
   Supply Department,
   Secretariat, St.George Fort,
   Chenai – 600 009.

2. The Commissioner,
   Pudukkottai Municipality,
   Pudukkottai. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned orders vide Na.Ka.No.4626/2021/A1 dated 18.03.2022 and Na.Ka.No.4626/2021/A1 dated 21.03.2022 and the consequential impugned order vide Na.Ka.No.4626/2021/A1 dated 08.08.2022 passed by the 2nd Respondent and quash the same and consequently, direct the 2nd Respondent to re-assess the property tax in respect of Assessment Nos.109/016/901632, 109/016/901672 and 109/018/900401, after adjusting / deducting the payment of Rs.20,38,107/- already paid towards property tax for the period from 01.10.2000 to 18.04.2011.

For Petitioner	:	Mr.D.Shanmugaraja Sethupathi
For Respondents	:	Mr.M.Prakash Addl. Government Pleader for R1 Mr.S.Kameswaran Standing Counsel for R2

O R D E R

This Writ Petition has been filed to call for the impugned orders passed by the 2nd Respondent vide Na.Ka.No.4626/2021/A1, dated 18.03.2022 and Na.Ka.No.4626/2021/A1, dated 21.03.2022 and the consequential impugned order vide Na.Ka.No.4626/2021/A1, dated 08.08.2022 and consequently, to direct the 2nd Respondent to re-assess the property tax in respect of Assessment Nos.109/016/901632, 109/016/901672 and 109/018/900401, after adjusting / deducting the payment of Rs.20,38,107/- (Rupees Twenty Lakhs Thirty Eight Thousand One Hundred and Seven only) already paid towards property tax for the period from 01.10.2000 to 18.04.2011.

2. The Petitioner is Bharat Sanchar Nigam Limited (in short referred to as 'BSNL') which was incorporated on 01.10.2000. It is a Government of India owned telecommunication service provider. The telecommunication service was earlier provided by the Department of Telecommunication under Ministry of Communication, Government of India. The Tiruchirappalli Secondary Service Area (hereinafter referred to as "SSA") of BSNL, was in occupation of three buildings / premises at Pudukkottai within the territorial jurisdiction of Pudukkottai Municipality. The 2nd Respondent assessed the property tax in respect of two buildings. All the properties of BSNL (throughout India) are vested with Government of India, Department of Telecommunication (hereinafter referred to as "DoT"), including the above three properties situated at Pudukkottai. The title to the properties were transferred in favour of BSNL on 19.04.2011.

Thereafter, the Revenue Authorities had mutated the Revenue records in respect of the above three properties in favour of BSNL, Tiruchirappalli SSA on 28.03.2012.

3. It is submitted by the learned counsel for the Petitioner that though the title of the above properties was vested with BSNL, Tiruchirappalli SSA, only on 28.03.2012, the 2nd Respondent had assessed the property tax in respect of the above three premises and demanded to pay property tax even for the period prior to vesting/ transferring of property in favour of BSNL Tiruchirapalli, SSA. The 2nd Respondent had issued demand notices and had taken coercive steps to recover the property tax under the threat of lock and seal of the premises. The Tiruchirappalli, SSA has remitted a sum of Rs.20,38,107/- towards property tax during the period from 01.10.2000 to 18.04.2011, under threat of recovery steps / coercive proceeding.

4. It is submitted by the learned counsel for the Petitioner that the question viz., whether levy of property tax before property stood transferred from DoT to BSNL is permissible is no longer *res integra* and the Hon'ble Division Bench of this Court in the case of ***Bharat Sanchar Nigam Limited, Represented through its Deputy General Manager, (CFA&Admin.,) vs. The Commissioner of Nagercoil Municipality*** in ***Review Application (MD) Nos.77 to 84 of 2018,*** held that the property stood vested with BSNL only from 19.04.2011. The relevant portions of the above order reads as under:

> *"the subject asset viz., telephone exchange and quarters building is deemed to be vested with BSNL with effect from 19.04.2011".*

Thereafter while dealing with the payment of property tax prior to 19.04.2011 i.e., vesting of property with BSNL, it was held as under:

> *"the payment so far made by the Petitioner as property tax shall be adjusted towards tax dues and if there is anything more in cash what is payable, the same may be*

adjusted towards future liability".

5. It is submitted by the learned counsel for the Petitioner that the decision of the Hon'ble Division Bench of this Court would squarely cover the issue and bind the Respondents. However, despite the above order of the Hon'ble Division Bench of this Court, the 2nd Respondent has issued the impugned order rejecting the Petitioner's request for adjustment of the tax paid prior to vesting of the property from the Union in favour of the Petitioner.

6. To the contrary, it is submitted by the learned counsel for the Respondents that levy of property tax would not be covered by the embargo under Article 285 of the Constitution of India and submitted that circular had been issued to that effect.

7. I do not find any merit in the above submissions made by the learned counsel for the Respondents for the following reasons. There cannot

be any levy of tax on the property of the Union. Admittedly, the subject properties belonged to the Union *viz.* DoT until 19.04.2011 when it stood transferred/ vested with BSNL from DoT.

a) Scope of Embargo under Article 285 of the Constitution of India:

Article 285 of the Constitution of India, reads as under:

> *"Article 285:*
>
> *(1) The property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State."*

Though power to tax is an incident of sovereignty, the basic premise of the embargo is that one *sovereign* cannot tax the other *sovereign*. Articles 285 and 289 of the Constitution of India manifests the mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity is created, in favour of the Union is absolute, the immunity created in favour of State is a qualified one. Article 285 of the Constitution of India is an absolute and emphatic ban. there is no way a

State legislature can levy tax upon the property of the union[1]. On reading Article 289 of the Constitution of India and its complementary Article 285 of the Constitution of India together, the intention of the Constitution-makers was that Article 285 of the Constitution of India would exempt all property of the Union from all taxes on property by a state or by an authority within that State, while Article 289 of the Constitution of India exempts all income and property of a state from Union taxation[2]. It may be relevant to note that it was held by the Hon'ble Supreme Court that any property belonging to the Union of India irrespective of its use could not be subjected to tax and the proviso of Section 94 of the Karnataka Municipalities Act, 1964, to that extent is *ultra vires* of the Constitution of India[3]. Thus levy of property tax while it belonged to DoT is impermissible in view of the embargo contained in Article 285 of the Constitution of India.

1 New Delhi Municipal Council v. State of Punjab AIR 1997 SC 2847.
2 In rea Sea Customs Act, S 20 (2), AIR 1963 SC 1760,1774
3 Union of India v. City Municipal Council, Rani Bennur, AIR 2000 Kant 104,106

b) Limitation on Administrative Circular:

The circular issued by the Union of India was administrative in nature and it is trite law that administrative circular cannot override the constitutional provisions. In this regard, it may be relevant to refer to the judgment of the Honb'le Supreme Court of India in the case of ***Municipal Corporation, Amritsar vs. Senior Superintendent of Post Offices, Amritsar Division and others*** reported in ***(2004) 3 SCC 92*** and the relevant paragraph is extracted hereunder:

> *"7. ..... We are unable to countenance this contention of the learned counsel. The circulars, aforesaid, issued by the Union of India were administrative in nature. It is now settled principle of law that administrative circulars cannot override the constitutional provisions. The Government of India circular, as referred to above, was issued by one Deputy Secretary to the Government of India. By no stretch of imagination such circulars, issued by the Deputy Secretary to the Government of India, can be said to have any overriding effect over the mandate of Article 285(1) of the Constitution. We are, therefore, of the view that circulars so issued, as noticed above, do not alter the*

position with regard to the bar imposed by Article 285(1) of the Constitution. The interplay of the constitutional and legal provisions being well cut and well defined, requires no marked elaboration to stress the point."

c) Levy of Property Tax on Property belonging to Union even in the hands of occupier - Impermissible:

The question of levy of property tax even on the occupier has been rejected as unsustainable by the Hon'ble Supreme Court in the case of ***Food Corporation of India vs. Brihanmumbai Mahanagar Palika and others*** reported in ***(2020) 3 JT 419,*** holding that the property in issue is covered by Article 285 of the Constitution of India, the relevant portion of the order is extracted hereunder:

"36. The heading of Section 146 is "Primary responsibility for property taxes from whom to rest". When there is a claim of exemption from payment of property tax with regard to property owned by the Government of India, the question of primary responsibility or secondary responsibility loses its importance. When payment of property tax is exempt under Article 285(1) to tax the occupier runs counter to the very claim of exemption as

delineated by Article 285. Section 146 of 1888 Act as it exists now has to be construed in a manner so as to give effect to the meaning and purpose of Constitutional protection granted under Article 285. The statutory provision, may it be Section 146 of 1888 Act, cannot be read in a manner so as to run contrary to a constitutional provision."

8. Reliance was sought to be placed by the learned counsel for the Respondents on the decision of this Court in *W.P.(MD)Nos.3554 to 3561 of 2011,* wherein, it was held as under:

> *"24. ..... 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."*

9. This Court finds that the above order is contrary to the decision of the Hon'ble Division Bench of this Court and thus, reliance is misplaced.

This Court finds that the decision of the Hon'ble Division Bench of this Court was not brought to the notice of the learned Single Judge in W.P.(MD)Nos.3554 to 3561 of 2011 dated 29.07.2022. Therefore, I find that there is no merit in the attempt made by the learned counsel for the Petitioner in trying to place reliance upon the learned Single Judge of this Court, which is contrary to the binding orders of the Hon'ble Division Bench of this Court.

10. In view of the same, the impugned orders passed by the 2nd Respondent dated 18.03.2022, 21.03.2022 and 08.08.2022 are set aside and the Petitioner is at liberty to submit a representation seeking adjustment of property tax paid until 19.04.2011 towards any demand that may be raised against the Petitioner. On receipt of such representation, the same shall be considered within a period of eight weeks from the date of receipt of such representation keeping in view the judgement of the Hon'ble Division Bench of this Court.

11. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

26.10.2022

Index : Yes / No
Speaking Order : Yes / No

vji

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MOHAMMED SHAFFIQ, J.

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