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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 17.4.2016

Order passed on: 8.5.2017

Writ Petition No.4755 of 1998

Union of India through its General Manager, South Eastern Railway,
Garden Reach, Calcutta, through Divisional Railway Manager,
Eastern Railway, Bilaspur

----Petitioner

Versus

Municipal Corporation, Raipur, through its Commissioner, Municipal
Corporation, Raipur

---- Respondent

For Petitioner : Mr. Abhishek Sinha and
Mr.Ghanshyam Patel, Advocates
For Respondent : Mr. H.B.Agrawal, Senior Advocate
with Mrs.Meera Jaiswal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The stellar issue that emanates for consideration is whether the property owned by Union of India (South Eastern Railway) is subject to service charge by Municipal Corporation in the light of Constitutional provision enumerated in Article 285(1) of the Constitution of India read with Section 184 of the Railways Act 1989 ?
2. The Essential facts requisite to answer the question so posed for consideration are as under:-
 - 2.1 The petitioner herein/Union of India represented by General Manager, South Eastern Railway, has filed the instant writ petition calling in question the order dated

6.9.1998 followed by demand bill issued by the respondent raising demand of ₹ 15,00,000/- per year for five years from 92-93 to 96-97, total ₹ 75,00,000/- as service charges stating inter-alia that the property of Union of India is exempted from tax by virtue of Article 285(1) of the Constitution of India and therefore, no service charges can be levied to the property held by the Union of India.

3. Return has been filed by the respondent-Municipal Corporation, Raipur stating inter-alia that services are being provided by the Municipal Corporation, Raipur to the Railway Area, Raipur, therefore, property owned by Railway (Union of India) is liable for payment of service charges to the Municipal Corporation and their recovery of service charges are based on the office memorandum dated 26.4.1994 issued by the Government of India. Therefore, service charges are clearly recoverable and no exemption can be taken to the notice so issued for recovery of service charges and as such, the writ petition deserves to be dismissed.

4. Mr.Abhishek Sinha and Mr.Ghanshyam Patel, learned counsel appearing for the petitioner, would submit that no services are being provided to the Railway area, Raipur owned by Union of India by the respondent-Municipal Corporation and therefore by virtue of Article 285(1) of the Constitution of India read with Section 184 of the Railways Act, 1989 (hereinafter called as "Act of 1989"), the respondent-

Municipal Corporation, Raipur is not empowered to demand the service charges and placed reliance upon the judgments of the Supreme Court in the matters of **Union of India Vs. Purna Municipal Council and others**¹ and **Union of India and another Vs. Ranchi Municipal Corporation, Ranchi and others**².

5. Mr.H.B.Agrawal, learned Senior Counsel appearing for the respondent-Municipal Corporation, Raipur, would strongly place reliance on Annexure R/1 to buttress his submission and would submit that respondent-Municipal Corporation, Raipur is absolutely justified in imposing service charges upon the petitioner-Union of India as services are being provided to the Railway by the respondent-Municipal Corporation, as such, the writ petition deserves to be dismissed.

6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.

7. The issue for consideration would be whether service charges can be levied by Respondent-Municipal Corporation to the property owned by the Union of India (Railway).

8. In order to consider the plea raised at the Bar, it would be appropriate to consider Article 285 (1) of the Constitution of India which states as under:-

¹

(1992) 1 SCC 100

² (1996) 7 SCC 542

“285(1) Exemption of property of the Union from State taxation.”-(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.”

Thus, the property of Union shall be exempted from all taxes to be imposed by State or local authority within the territory of State.

9. Section 184 of the Act of 1989 provides as under:-

184.Taxation on railways by local authorities—

(1) Notwithstanding anything to the contrary contained in any other law, a railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government, by notification, declares the railway administration to be liable to pay the tax specified in such notification.

(2) While a notification of the Central Government under sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax specified in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Central Government may, having regard to all the circumstances of the case, from time to time, determine to be fair and reasonable.

(3) The Central Government may at any time revoke or vary a notification issued under sub-section (1).

(4) Nothing in this section shall be construed to prevent any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render to the railway administration.”

This section debars a local authority to tax a Railway in absence of any notification by the Central Government in this regard, as such, issuance of notification in this regard is *sine quo-non* for imposition of tax by local authority.

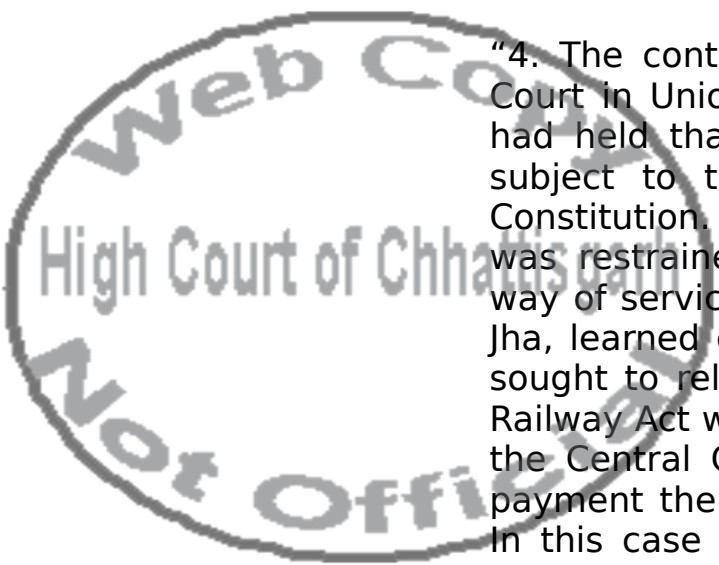
10. It is the case of the petitioner-Union of India (SE Rly) that Municipal Corporation, Raipur is not providing any service to the Railways in the capacity of local body and imposition of service charge is in nature of tax which is not leviable on the Railways in terms of Section 184 of the Act of 1989 read with Article 285 of the Constitution of India. It is further case of the petitioner that in absence of any provision in the Chhattisgarh Municipal Corporation Act to levy service charge, no such charge can be levied upon the petitioner, therefore, levy of service charges is without jurisdiction and without authority of law. The law in this regard is well settled by catena of judgments rendered by the Supreme Court which may be noticed herein gainfully:-

10.1 In **Purna Municipal Council** (supra), the Railways challenged the notice of demand issued by Purna Municipal Council claiming Rs.28,400 by way of “service charges” due for the period from 1954 to 1960. The Union of India made a reference to Article 285 of the Constitution of India read with Section 135 of the Railways Act, 1890. It was held as under by Their Lordships:-

“5.....the interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ and direction asked for in favour of the Union of India restraining the respondent Council from raising demands on the Railways in regard to service charges. We make it clear that the rights of the local authority as flowing under Section 135 of the Indian Railways Act, 1890 stand preserved in the event of the Central Government moving into

the matter, if not already moved. In the circumstances of the case, however, there will be no order as to costs.”

10.2 The Supreme Court in the matter of **Ranchi Municipal Corporation, Ranchi** (supra) following **Purna Municipal Council** (supra) has held that Section 135 of the Act of 1890 (Section 184 of Act of 1989) is subject to the provisions of Article 285(1) of the Constitution of India and therefore, the Corporation has no right to demand service charge from the Union of India. It was observed as under:-



“4. The controversy is no longer res integra. This Court in Union of India v. Purna, Municipal Council had held that Section 135 of the Railways Act is subject to the provisions of Article 285 of the Constitution. Therefore, the respondent-Municipality was restrained from demanding any payment by way of service charges from the Railways. Shri M.P. Jha, learned counsel appearing for the Municipality sought to rely on Clause (4) of Section 135 of the Railway Act which contemplates a contract between the Central Government and the Municipality and payment thereof on the basis of the said contract. In this case the contract now sought to be relied upon is only to relieve distress warrant pending disposal of the dispute in the High Court. Therefore, it cannot be construed that there is any contract between the Union of India and the Municipality. In view of the fact that the Municipality has no right to demand service charges from the Union of India, the demand made by the Municipality is clearly ultra vires its power. It is true that earlier W.P. No.2844/92 was filed and was dismissed by the High Court and the special leave was refused by this Court on the ground of gross delay.”

10.3 Thereafter, the principle of law laid down in **Ranchi Municipal Corporation, Ranchi** (supra) was followed by the Supreme court in **Municipal Corporation, Amritsar Vs. Senior Superintendent of**

Post Offices, Amritsar Division and Another³.

Following question was also framed by Their Lordships for consideration:-

- “(a) Whether the demand for service charges so made by the Corporation against the respondents is by way of “service charge” or by way of “tax” ?
- (b) If it is held that the demand so made was by way of “tax”, whether the same is violative of Article 285(1) of the Constitution of India?”

While answering the above-stated question the Supreme Court followed the principle of law laid down in **Purna Municipal Council** (supra) and held that Municipal Corporation is not entitled to recover service charges from the Railways. It was observed as under:-

“9. Furthermore, the issues raised herein are no more res-integra. This Court, in *Union of India v. Purna Municipal Council* considered an identical question and held that Section 135 of the Railways Act, being an Act of the Central Government and saved by clause (1) of Article 285 of the Constitution, clause (2) of Article 285 was not attracted, and the Municipal Corporation was restrained from demanding tax by way of service charges from railways. This is what this Court has said in para 5 of that judgment:

"5. The aforesaid provisions, existing as it is, in terms permits taxation of railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a central enactment has no role to play in sub-article (2) of Article 285, for that is a sphere in which the State legislation operates. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-article (1) of Article 285. The interplay of the constitutional and legal provisions being

³ (2004) 3 SCC 92

well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and issue the writ and direction asked for in favour of the Union of India restraining the respondent council from raising demands on the Railway in regard to service charges.”

Thus the principle of law laid-down in **Ranchi Municipal Corporation, Ranchi** (supra) was followed with approval and it has clearly been held that since there is no provision in the Municipal Corporation Act for levying service charge and if the amount is said to be imposed in the name of service charges, it was clearly not within the competence of the Corporation to impose service charge on the property of the Union of India and the same being violative of Article 285 (1) of the Constitution of India.

11. The submission of learned Senior Counsel for the respondent-Corporation that Union of India has issued office memorandum dated 26.4.1994 which authorizes the Corporation to levy service charges on the property belonging to Central Government.
12. A careful perusal of the said document would show that it is merely a office memorandum/instructions issued by Central Government. Therefore, in the light of provisions contained in Article 285(1) of the Constitution of India and as per judgments rendered by the Supreme Court in above-mentioned case, the office memorandum is not helpful to the respondent-Corporation.

13. Since there is no provision for recovery of service charges in the Chhattisgarh Municipal Corporation Act, 1956 and in view of Article 285(1) of the Constitution of India read with Section 184 of the Act of 1989, respondent-Municipal Corporation, Raipur is not entitled to recover service charges from the petitioner-Union of India against the property of the Union of India.
14. For the foregoing reasons, the impugned demand notice dated 6.9.1998 followed by demand bill issued by the respondent raising demand of ₹ 15,00,000/- per year for five years from 92-93 to 96-97, total ₹ 75,00,000/- as service charges (Annexure-A) is hereby quashed.
15. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-