

A CALCUTTA STATE TRANSPORT CORPORATION
v.
COMMISSIONER OF INCOME-TAX, WEST BENGAL

FEBRUARY 29, 1996

B [S.P. JEEVAN REDDY AND K.S. PARIPOORANAN, JJ.]

Income Tax Act, 1961 :

C Ss. 2(31)(vi), 10(20)—Income of a local authority—Exemption from tax—Calcutta State Transport Corporation—Held, not a local authority and cannot claim exemption.

General Clauses Act, 1897:

*S.3(31)—‘Local authority’—Calcutta State Transport Corporation—
Held, not a local authority.*

Road Transport Corporation Act, 1950 : ss. 18, 19—Calcutta State Transport Corporation Held, not a 'local authority'.

E The claim of the assessee-Cuttack State Transport Corporation that it was a local authority within the meaning of s.2(31)(vi) of the Income Tax Act, 1961 and as such its income was exempt under sub-section(20) of s.10 of the Act was rejected by the Income Tax authorities as well as by the Income Tax Appellate Tribunal. The High Court also decided the reference against the assessee.

F In appeal to this Court it was contended for the assessee that since it was entrusted by the Government with the control or management of a "local fund" it was a local authority within the meaning of Clause (31) of s.3 of the General Clauses Act, 1897.

Dismissing the appeal, this Court

G HELD : 1.1. The assessee-Corporation is not a "local authority" and, therefore, not entitled to claim exemption of its income by virtue of sub-section(20) of s.10 of the Income Tax Act, 1961. [55-G]

Union of India & Others v. R.C. Jain & Ors., [1981] 2 SCC 308, relied

1.2. The assessee is a Road Transport Corporation constituted to render road transport services in the State and is, as envisaged by ss. 18 and 19 of the Road Transport Corporations Act, meant mainly and only for the purpose of providing an efficient, adequate economical and properly co-ordinated system of road transport services. It has no element of popular representation in its constitution. It is more in the nature of a trading organisation. Merely because the assessee-Corporation has a fund or it is constituted to provide a public service and to employ persons in that connection, it cannot be said that its functions are similar to those of Municipal Council, District Board or Body of Port Commissioners. [54-E-F]

1.3. The assessee-Corporation stands no comparison with the D.D.A. which has *inter alia* power to prepare a Master Plan specifying the zones and the use to which each zone can be put to, power to order demolition of buildings, where development has been commenced or completed in contravention of the Master Plan, Zonal Plan or the permission, declaration of development areas and regulation of development in those areas and power to grant/refuse permission for development of land. Contravention of the orders of D.D.A. is also punishable with imprisonment and fine. *These are the indicia of government power - the power to affect persons and their rights even where they do not choose to deal with it, the power of compulsion.* A road transport organisation like the assessee has no such power. Unless one chooses to deal with it or avail its services - it cannot affect him or his rights; in this sense, it is like any other non-statutory Corporation.

[54-G-H; 55-A-B]

Union of India & Others v. Shri R.C. Jain & Others, [1981] 2 S.C.C. 308 and Andhra Pradesh State Road Transport Corporation v. The Income-Tax Officer and Anr., [1964] 7 S.C.R. 17, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 592(NT) of 1978.

From the Judgement and Order dated 29.3.76 of the Calcutta High Court in I.T.R.No.644 of 1972.

Tapas Ray, G.S. Chatterjee and Sukumar Basu for the Appellants.

Dr.V. Gaurishankar, S. Rajappa, and S.N. Terdol for the Respondents.

The Judgement of the Court was delivered by

A **B.P. JEEVAN REDDY, J.** This appeal is preferred on the basis of a certificate of fitness granted by the Calcutta High Court under Section 261 of the Income-tax Act. Two questions were referred for the opinion of the High Court under Section 256(1) of the Income Tax Act. They are :

B "(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is not a 'local authority' as contemplated by Section 2(31)(vi) of the Income-tax Act, 1961?

C (2) Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the assessee is not entitled to an allowance for its contribution to the employees' provident fund gratuity funds?"

The High Court answered both the questions in the affirmative - i.e., against the assessee and in favour of the Revenue. In this appeal, however, **D** Sri Tapas Ray, argued only one question, viz, question No.1.

The assessee, Calcutta State Transport Corporation, is a statutory corporation established under the Road Transport Corporation Act, 1959. It was constituted under a notification dated June 10, 1960. Prior to the constitution of the assessee, Road Transport was managed by a department **E** of the Government of West Bengal. For the first assessment year (1961-62) after its constitution, the assessee did not claim any exemption from tax. But for the next assess year (1962-63), the assessee contended that since it is a "local authority" within the meaning of Section 2(31)(vi) (definition of 'person'), its income is exempt under and by virtue of clause (20) of Section 10. Clause (20) of Section 10 reads thus:

F

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included.....

G

(20) the income of a local authority which is chargeable under the head "Interest on securities," "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area;"

H

The Income-tax Officer rejected the assessee's contention which was affirmed on appeal by the Appellate Assistant Commissioner. On further appeal, the Tribunal also agreed with the Income Tax Officer. A

The expression "local authority" is not defined in the Income Tax Act. Its definition is, however, contained in the General Clauses Act in Clause (31) of Section 3. It reads : B

"Local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund." C

The contention of Sri Ray is that inasmuch as the assessee is entrusted by the Government with the control or management of a "local fund", it is a local authority within the meaning of the said definition. Sri Ray placed strong reliance upon the judgement of this Court in *Union of India & Others v. Shri R.C. Jain & Others*, [1981] 2 S.C.C. 308. The question in the said decision was whether the Delhi Development Authority (D.D.A.) constituted under the Delhi Development Act, 1957 is a "local authority". The question had arisen under the provisions of the Payment of Bonus Act. Chinnappa Reddy, J., speaking for the Bench, laid down the following test for determining whether a particular body is a "local authority" within the meaning of Section 3(31) of the General Clauses Act: "An authority, in order to be a local authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board or Body of Port Commissioners, but possessing one essential feature, viz., that it is legally entitled to or entrusted by the government with, the control and management of a municipal or local fund." The learned Judge elaborated the said test saying that to be characterised as a "local authority", the authority must have separate legal existence as a corporate body, it must not be a mere government agency but must be legally independent entity, it must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. It must also enjoy a certain degree of autonomy either complete or partial, must be entrusted by statute with such government functions and duties as are usually entrusted to Municipal Bodies such as those connected with providing amenities to the inhabitants of the locality like health and education, water and sewerage, town planning and development, roads, markets, H

- A transportation, social welfare services etc. Finally it was observed-such body must have the power to raise funds for furtherance of its activities and fulfilment of its objects by levying taxes, rates, charges or fees. Applying the said tests, it was held that D.D.A. is a "local authority". In particular, it was pointed out that Section 37 of the Delhi Development Act empowers the D.D.A. to levy betterment charges on the owners of the properties and
- B that other provisions provide for its assessment and collection. The arrears of betterment charges are recoverable as arrears of land revenue. There is an element of popular representation in the constitution of D.D.A.; representatives of the inhabitants of the locality, three elected from among the members of the Delhi Municipal Corporation and two elected from among the members of the Delhi Metropolitan Council figured among the members of the D.D.A. The functions of the D.D.A., it was pointed out, are more akin and similar to the functions of the Municipality including the power of zonalisation, prescribing the use to which each zone is to be put to, demolition of constructions made contrary to zoning regulations, in short, it was pointed out, the functions of the D.D.A. are similar in nature.
- C D to the functions of a Municipality which is undoubtedly a local authority.

We do not think that the said decision is of any help to the assessee herein. The assessee is a Road Transport Corporation constituted to render road transport services in the State. Sections 18 and 19 of the Road Transport Corporations Act which set out the general duty and powers of

- E the Corporation establish clearly that the Corporation is meant mainly and only for the purpose of providing an efficient, adequate, economical and properly coordinated system of road transport services in the State or part of it, as the case may be. It has no element of popular representation in its constitution. Its powers and functions bear no relation to the powers and functions of a Municipal Committee, District Board or Body of Port Commissioners. It is more in the nature of a trading organisation. Merely because it has a fund or for that matter merely because it is constituted to provide a public service and to employ persons in that connection, it cannot be said that its functions are similar to those of Municipal Council, District Board or Body of Port Commissioners. The assessee-corporation stands no comparison with the D.D.A. which has inter alia power to prepare a Master Plan for Delhi specifying the zones (zonalisation), can be put to, power to order demolition of buildings, where development has been commenced or completed in contravention of the Master Plan, Zonal Plan or the permission, declaration of development areas and regulation of development in those areas and power to grant/refuse permission for
- F
- G
- H development of land Contravention of D.D.A. 's orders is also punishable

with imprisonment and fine on conviction in a criminal court. *These are the indicia of governmental power - the power to affect persons and their rights even where they to not choose to deal with it, the power of compulsion.* A road transport organisation like the assessee herein has no such power. Unless one chooses to deal with it or avail its services - it cannot affect him or his rights; in this sense, it is like any other non-statutory Corporation. In this context, it is relevant to notice that though Section 45 of the Road Transport Corporation Act confers the power to make regulations upon the Corporation, that power is confined to "the administration of the affairs of the Corporation" Sub-section (2) of Section 45, which elucidates the said power also shows that the said power is confined to internal management of the Corporation and the service conditions of its employees only.

In view of the above, it is not necessary to go into the question whether the assessee is an "authority" within the meaning of Article 12 of the Constitution, a question which appears to have attracted a good amount of attention before the High Court. Even if it is an "authority" within the meaning of Article 12, it would not be enough to attract the exemption in Section 10(20) of the Income Tax Act. It must be a "local authority". The decision of this Court in *R.C. Jain* was not available to the High Court when it decided the present matter and hence, it did not have the, guidance provided by the said decision. Even so, the conclusion arrived at by it is the correct one in law.

Dr. Gauri Shankar, learned counsel for the Revenue, submitted that the decision of this Court in *Andhra Pradesh State Road Transport Corporation v. The Income-Tax Officer and Anr.*, [1964] 7 S.C.R. 17 is sufficient to conclude the issue against the assessee. Learned counsel submitted that in the said case too, the Andhra Pradesh State Road Transport Corporation raised an identical contention which was negatived by the High Court and it chose not to pursue it before the Supreme Court. Sri Ray says that the said point has not been adjudicated upon by this Court. He may be right but that does not advance his case. Applying the test evolved by the decision of this Court in *R.C. Jain*, we hold that the assessee-corporation is not a "local authority" and, therefore, not entitled to claim exemption of its income by virtue of clause (20) in Section 10 of the Income Tax Act.

The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.