

The Commissioner Of Income Tax, Lucknow vs U.P. Forest Corporation on 2 March, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1125, 1998 (3) SCC 530, 1998 AIR SCW 937, 1998 ALL. L. J. 712, 1998 TAX. L. R. 338, (1998) 2 JT 205 (SC), 1998 (1) UPTC 500, 1998 (2) ADSC 438, 1998 (2) JT 205, (1998) 2 SCR 22 (SC), (1998) 97 TAXMAN 259, 1998 UPTC 1 500, (1998) 145 CURTAXREP 402, (1998) 230 ITR 945, (1998) 29 CORLA 292, (1998) 2 SCALE 138, (1998) 143 TAXATION 725, (1998) 2 SUPREME 290

Author: B.N. Kirpal

Bench: B.N. Kirpal

PETITIONER:

THE COMMISSIONER OF INCOME TAX, LUCKNOW

Vs.

RESPONDENT:

U.P. FOREST CORPORATION

DATE OF JUDGMENT: 02/03/1998

BENCH:

B.N. KIRPAL, A.P. MSIRA

ACT:

HEADNOTE:

JUDGMENT:

THE 2ND DAY OF MARCH, 1998 Present:

Hon'ble Mr. Justice B.N. Kirpal Hon'ble Mr. Justice A.P. Misra Ranbir Chandra, N.K. Aggarwal, B. Krishna Prasad, Advs. for the appellant S.P. Gupta, Sr.Adv., Sunil Gupta, H.K. Puri, Advs. with him for the Respondent J U D G M E N T The following Judgment of the Court was delivered:

KIRPAL. J.

The question involved in these appeals is whether the respondent is a local authority and, therefore, its income is exempt from tax under Section 10(20) of the Income Tax Act, 1961 (hereinafter referred to as 'The Act') The U.P. Forest Corporation, the assessee herein, was constituted by Notification issued under Section 3 of the U.P. Forest Corporation Act, 1974. This Corporation was established for better preservation, supervision, development of forest and better exploitation of forest produce within the state of Uttar Pradesh. It took over the work which was formerly done by the forest contractors and its income was from the exploitation of forest produce and sales thereof.

These appeals relate to the assessment year 1977-78, 1980-81 and 1984-85. During the course of assessment proceedings, the respondent had claimed its status to be that of 'local authority' and, therefore, its income was liable to be exempted from levy of tax by virtue of Section 10(20) of the Act. The assessing officer rejected the claim and, in respect to the assessment year 1977-78 and 1980-81, it taxed it in the status of "artificial jurisdictional person" and in respect to the year 1984-85, as a 'company'.

The respondent then filed appeals in respect to the year 1977-78, 1980-81 and the Commissioner of Income Tax (Appeal), following in earlier decision of the Allahabad High Court in Writ Petition No. 1568/1977 for the assessment year 1976-77, came to the conclusion that the respondent was a local authority and as such its income was exempted from tax. This order was challenged in appeal before the Tribunal which set aside the order of the Commissioner of Income Tax (Appeals) on the ground that the respondent was not a local authority in view of the decision of this Court in the case of Union of India Vs. R.C. Jain. 1981 (2) SCR 854.

Instead of following the procedure prescribed by the Act by way of a reference under Section 256 of the Income Tax Act, the respondent chose to file three writ petitions in the Allahabad High Court challenging the order of the Tribunal in respect to the assessment years 1977-78 and 1980-81 and order of the Assessing Authority for assessment year 1984-85 which had been made by it. These writ petitions were entertained by the High Court which allowed the same by coming to the conclusion that the respondent was a local authority and, therefore, its income was exempt from tax. Before the High Court, it was also contended by the respondent that it was a charitable Institution and, therefore, its income was in any case, entitled to exemption under Section 11(1) of the Act. This contention also found favour with the High Court.

In these appeals, by special leave, apart from contending that the High Court ought not to have exercised its jurisdiction under Article 226 of the Constitution, as the respondent should have availed of the alternative remedy open to it under the Act, it has been submitted on behalf of the appellant that the decision of the High Court on

merits is clearly contrary to the law laid down by this Court and the respondent cannot be regarded as being a local authority. In support of this contention, strong reliance was placed by the counsel for the appellant on the aforesaid decisions in R.C. Jain's (supra) as well as the decisions in Valjibhai Muljibhai Soneji & Anr. Vs. The State of `Bombay (now Gujarat) and others, 1964 (3) S.C.R. 686 and Calcutta State Transport Corporation Vs. Commissioner of Income Tax, 219 L.T.R. 515.

On behalf of the respondent, Shri S.P. Gupta, learned counsel submitted that the respondent Corporation had been set up to discharge Governmental functions and it was a local authority within the meaning of that expression in Section 3(31) of the General Clauses Act. It was also submitted that the Section 3(3) of the U.P. Forest Corporation Act provides that the Corporation shall for all purposes be a local authority and further more according to Section 17, the fund of the Corporation is regarded as a local fund. It was contended that the respondent satisfied the criterion of local authority as laid down by this Court in R.C. Jain's case (supra) and, therefore, the decision of the High Court calls no interference. On the question whether the Corporation exists and functions under a legal obligation for charitable purposes as defined by Section 2(15) of the Act and, therefore, it's income exempt under Section 11(1)(a) of the Act reliance was placed on the decision of this Court in Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Andhra Pradesh State Road Transport Corporation, Hyderabad, 1986(1) SCR 570.

We will first consider the question as to whether the respondent is entitled to exemption under Section 10(20) of the Act. The said sub-clause reads as under:

"The income of a local authority which is chargeable under the head "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".

The expression `local authority' is not defined in the Income Tax Act Section 3(31) of the General Clauses Act, however, defines `local authority' as under:

" `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."

This expression came up for consideration in the aforesaid cases of Valjibhai Muljibhai Soneji's (supra), R.C. Jain's (supra) and Calcutta State Transport Corporation's (supra). In Valjibhai Muljibhai Soneji's case (supra), a contention had been urged that the State Transport Authority was a local authority, in the context of proceedings arising out of challenge to acquisition under the Land Acquisition Act. It had been contended that the State Transport Corporation was not a local authority but a Company and that the provisions of Part VII of the Land Acquisition Act not having been complied with, the acquisition was bad. Dealing with this contention, it was observed by this Court at page 696:

"The definitions given in the General Clauses Act, 1897, govern all Central Acts and Regulations made after the commencement of the Act".

While perusing the expression 'local authority', as defined under Section 3(31) of the General Clauses Act, it was observed at page 697 that the funds of the Corporation could not be regarded as local fund. Dealing with the contentions that the Bombay State Transport Act, 1950 itself provided that the Corporation shall for all purposes be deemed to be local authority, it was observed that "No doubt, that is so. But the definition contained in this Act cannot override the definition contained in the General Clauses Act of 1897 which alone must apply for construing the expression occurring in a Central Act like the Land Acquisition Act unless there is something repugnant in the subject or context."

Applying the above principle in the present case, even though Section 3(3) of the U.P. Forest Corporation Act regards the Corporation as being the local authority but for the purposes of the Act, the meaning of expression 'local authority' as contained in General Clauses Act, which is the Central Act, has to be seen. Merely because the U.P. Forest Corporation Act regards the respondent as a local authority, would not, in law, make the respondent a local authority for the purposes of Section 10(20) of the Act. Whether the respondent is a local authority or not has to be examined without regard to the fact that Section 3(3) of the U.P. Forest Corporation Act regards it as a local authority. The test for determining whether a body is local authority had been laid down by this Court in R.C. Jain's case (supra). In the context of applicability of the Bonus Act, 1965, the question which arose there was whether the Delhi Development Authority was a local authority. In constructing the meaning of the expression 'local authority' as defined in Section 3(3) of the General Clauses Act, it was observed by this Court at page 857-858 as follows:

"Let us, therefore, concentrate and confine our attention and enquiry to the definition of 'local authority' in Section 3(31) of the General Clause Act. A proper and careful scrutiny of the language of Section 3(31) suggests that an authority in order to be social 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 Commissioner, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First the authorities must have separate legal existence as Corporate bodies. They must not be mere Governmental agencies but must be legally independent entitles. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. `Next they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciate measure of the autonomy there must be. Next, they must be entrusted by Statute with such

Governmental functions and duties as are usually entrusted to municipal bodies, such as these connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planing and development, roads, markets, transportation, social welfare services etc. etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be Governmental duties and functions. Finally, they must have the power to funds for the of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority. " (emphasis added) This Court then examined the provisions of the Delhi Development Act and came to the conclusion that the said Authority had the above mentioned attributes of local authority as defined by Section 3(31) of the General Clause Act.

The decision in R.C. Jain's Case (supra) was then followed in Calcutta State Transport Corporation's case (supra) where the assesses had contended that it was a local authority. While holding that the definition of the Corporation was not similar to the definition of the Delhi Development Act, it was observed as follows:

We do not think that the said decision is of any help to the assesses herein. The assesses is a road transport corporation constituted to render road transport services in the State.

Sections 18 & 19 of the Road Transport Corporations Act which set out the general duty and powers of 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 Delhi Development Authority which has, inter alia, power to prepare a Master Plan for Delhi specifying the zones (zonalisation), specifying 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 Delhi Development Authority's orders is also punishable with imprisonment and fine on

conviction as a criminal Court. These are the indicia of governmental 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 herein has no such power. Unless one chooses to deal with it or avail of its services- it cannot affect him or his rights; in its sense, it is like any other non-

statutory corporation. In its 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".

(emphasis added) Applying the ratio of the aforesaid decisions to the facts of the present case, we find that it is not possible to hold that the Corporation is a local authority within the meaning of that expression contained in Section 3(31) of the General Clauses Act, 1857. In R.C. Jain's case (supra), it has been held that the 'local authority' must have the nature and character of a Municipal Committee, District Board, Body of Port Commissioners. We are unable to accept the contention of Shri Gupta that in interpreting the scope and extent of the expression 'other authority' in the definition of 'local authority' in Section 3(31) of the General Clauses Act the principle of ejusdem generis is not applicable because there is no distinct genus or category running through the bodies named earlier. The local authorities which are specifically mentioned in Section 3(31) of the General Clauses Act clearly can be regarded as local bodies which are interred to carry on self-government. It is for this reason that this definition states that such a authority must have control or management of a Municipal or local fund. Municipal Committee, District Board. Body of Port Commissioner are entities which carry on government affairs in local areas and they would give color to the words 'other authorities' occurring in Section 3(31). To put it differently. 'other authority' referred to in Section 3(31) must be similar or akin to municipal committee, district board or body a Port Commissioners. In R.C. Jain's case (supra), at least five attributes of characteristics of an authority falling under Section 3(31) of the General Clauses Act have been mentioned. At least three of the five attributes mentioned in the passage quoted above from R.C. Jain's case (supra) are absent here. Firstly; the members of the respondent Corporation are not wholly or partly, directly or indirectly, elected by the inhabitants of the area. According to Section 4 of the U.P. Forest Corporation Act, the Corporation is consisted of a Chairman and eight members. The chairman as well as the members are nominated by the State Government. Five members, so appointed, must be officers serving under the State Government and three non- officials members appointed by the State Government must be belonging to the category, who in the Government's opinion, possess experience in matter relating to preservation and development of forests. It is too tenuous to contend as was sought to be done by Shri Gupta, that because the State Government is a democratically elected body, therefore, persons nominated by the Government to be members of the Corporation must be regarded as being indirectly elected by the inhabitants. This contention is clearly unacceptable. The second essential attribute, which is lacking in the present case, is that the respondent do not have the functions and

duties which are usually entrusted to the Municipal bodies such as providing civil amenities to the inhabitants of the locality like health, education, town planning, markets, transportation etc. Finally and which is most important, the respondent does not have the power to raise funds by levying taxes, rates, charge or fees. The expression 'local fund' occurring in Section 3(31) of the General Clauses Act would mean the fund of a local self- government. In deciding whether Delhi Development Authority was a local authority, the Court had to examine as to whether it's said consisted of any funds flowed directly from any taxing power vested in the D.D.A. It was observed in R.C. Jain's case (supra) at page 863 as follows:

"In the first place when it is said that one of the attributes of a local authority is the power to raise funds by the method of taxation, taxation is to be understood not in any fine and narrow sense as to include only those compulsory exaction's of money imposed for public purpose and requiring no consideration to sustain it, but in a broad generic sense as to also include fees levied essentially for services rendered. It is now well recognised that there is no generic difference between a tax and a fee; both are compulsory exaction of money by public authority. In deciding the question whether an authority is a local authority, our concern is only to find out whether the public authority is authorised by statute to make a compulsory exaction of money and not with the further question whether the money so exacted is to be utilised for specific or general purposes. In the second place the Delhi Development Authority is constituted for the sole purpose of the planned development of Delhi and no other purpose and there is a merger, as it were, of specific and general purposes. The statutory situation is such that the distinction between tax and fee has withered away. In the third place we see no reason to hold that the charge contemplated by Sec 37 is a fee and not a tax". (emphasis added) In the case of respondent Corporation, the Act does not enable it to levy any tax, cess or fee. It is the income from the sale of the forest produce which goes to augment its funds. It has no power under the Act of compulsory exaction such as taxes, fees, rates or charges. Like any commercial organisation it makes profit from sale of forest produce and it has been given the power to raise loans.

Whereas municipal or local funds are required to be spent for providing civic amenities, there is no such obligation on the respondent to do so. Merely because Section 17 of the U.P. Forest Corporation Act states that the fund of the Corporation "shall be a local fund" would not make it a local fund as contemplated by Section 3(31) of the General Clauses Act.

In our opinion, therefore, the High Court was not correct in coming to the conclusion that the respondent was a 'local authority' and entitled to exemption under Section 10(20) of the Act.

Coming to the question whether the income of the respondent is held for charitable purposes and, therefore, exempt from tax by virtue of Section 11(1) of the Act, we find no such contention was raised by the respondent before the Income-tax Authorities. In order to take advantage of the provisions of Section 11 of the Act, a trust or the institution has to get itself registered. Whether the income of the Institution can be regarded as being held for charitable purposes and whether the

institution is entitled to registration under Section 12(A) of the Income Tax Act requires investigation of facts. In the absence of this contention having been raised before the Income Tax Authorities, the High Court, in our opinion, ought not to have itself embarked upon examining this issue for the first time and then coming to a conclusion favorable to the respondent. We do realise that the respondent did not raise this contention before the Income Tax Authorities because it had contended that it was liable to exemption being a local authority. Perhaps a contention in the alternative ought to have been raised, but this was not done. If the High Court had wanted this issue to be decided, proper course would have been to have reminded the case to the Tribunal or to the Assessing Authority for a decision. This was perhaps not done because the High Court had already come to the conclusion, in our opinion wrongly, that the respondent was a local authority. Inasmuch as the respondent cannot, in our opinion, be regarded as being a local authority, interest of justice would demand that the question as to whether its income is liable to be exempted from tax under Section 11(1) of the Act should be investigated and examined by a proper forum under the Act.

These proceedings arise out of the writ petitions which have been filed challenging the correctness of the decision of the Tribunal in respect of the assessment year 1977-78, 1980-81 and that of the Assessing Authority for the assessment year 1984-85. In our opinion, the proper course to adopt, while allowing these appeals, would be to require the assessing authority to examine the question as to whether the respondent is entitled to the benefit under Section 11(1) of the Act. Before concluding, we would like to observe that the High Court ought not to have entertained the writ petitions when adequate alternative remedy was available to the respondent. Under peculiar facts and circumstances of the present case and inasmuch as the litigation between the parties has been going on for a number of years, we do not think it will be appropriate to dismiss these appeals on this ground all this late stage. We, however, emphasise that petitioners should not normally short circuit the procedure provided by the taxing statute and seek the redress by filing a petition under Article 226 of the Constitution of India.

For the aforesaid reasons, these appeals are allowed and the decision of the High Court is set aside. While holding that the respondent is not a local authority whose income is exempted from tax under Section 10(20) of the Act, we, however, direct the assessing authority to consider the claim of the respondent that its income is not liable to be taxed in view of the provisions of Section 11(1)(A) of the Act. This question should be decided by the assessing authority within six months from today and the liability of the respondent to pay tax would be subject to the outcome of that decision. There shall be no order as to costs.