

Food Corporation Of India vs Municipal Committee, Jalalabad And ... on 27 July, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2573, 1999 AIR SCW 2766, (1999) 3 PUN LR 530, 1999 (123) PUN LR 530, 1999 (5) KANT LD 491, 1999 (6) SCC 74, 1999 HRR 404, 1999 (4) SCALE 282, 1999 (6) ADSC 605, 1999 (8) SRJ 45, 1999 ADSC 6 605, 1999 (2) UJ (SC) 1282, (1999) 5 JT 124 (SC), (2000) 3 LANDLR 469, (1999) 2 LACC 474, (1999) 5 ANDHLD 11, (1999) 6 SUPREME 232, (1999) 4 ICC 231, (1999) 4 SCALE 282, (1999) 2 ANDHWR 185, (1999) 98 COMCAS 824, (1999) 3 CURCC 172, (1999) 1 CURLJ(CCR) 696, (1999) 3 RECCIVR 605

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Bench: D.P.Wadhwa, M.B.Shah

PETITIONER:
FOOD CORPORATION OF INDIA

Vs.

RESPONDENT:
MUNICIPAL COMMITTEE, JALALABAD AND ANOTHER

DATE OF JUDGMENT: 27/07/1999

BENCH:
D.P.Wadhwa, M.B.Shah

JUDGMENT:

D.P. Wadhwa, J.

Food Corporation of India ('Corporation' for short) is aggrieved by the judgment dated December 13, 1994 of the Division Bench of the Punjab and Haryana High Court dismissing its writ petition challenging the order of assessment of its properties under the Punjab Municipal Act by the second respondent, the Municipal Committee, Jalalabad, District Ferozpur in the State of Punjab.

It is contended before us that the Corporation is exempt from taxation under Article 285 of the Constitution and that valuation and assessment of the properties has been completed without taking into account the provisions of Section 3 of the Punjab Municipal Act under which house tax is to be

arrived at on the basis of the "annual value" on which the properties can be let.

High Court has held that assessment of the property tax was based on agreed fair rent as stated by the Municipal Committee. There is no challenge to this averment by the Corporation. It is, therefore, difficult for us to hold that the agreed rent is not the fair rent and that there has been any violation of the provisions regarding fixation of annual value. This contention of the Corporation must fail.

The appellant Corporation is constituted by the Food Corporation Act, 1964 (for short the 'Act'). Under Section 3 of this Act, the Corporation shall be body corporate with that name, having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property and to contract and may, by that name, sue and be sued. If we refer to Section 42 of the Act, the Corporation is a company within the meaning of the Income-tax Act, 1961 and liable to tax on its income, profits and gains. However, under Section 43, provision of law relating to winding up of companies or corporations do not apply to the Corporation and it cannot be placed in liquidation save by order of the Central Government. It is, thus, apparent that the Corporation is a distinct entity from the Union of India.

It is submitted before us that the Corporation is nevertheless a statutory corporation incorporated by an Act of parliament and runs entirely on the subsidies provided by the Central Government and in fact it has taken over the role earlier performed by the Directorate of Food in the Government of India and further that the Corporation has no profit motives. Lastly, it is submitted that the Corporation is obliged to follow directions/instructions issued by the Central Government from time to time and its management is also provided by the Central Government. It was, thus, submitted that for all intent and purposes, the Corporation is nothing but an extended arm of the Central Government and it is thus exempt from taxation under Article 285 of the Constitution.

Article 285 of the Constitution is set out as under :

"285. 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 provides, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provided, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

The question that arises before us is: If the property of the Corporation is property of the Union of India and, thus, exempt from taxation imposed by the State or any authority within a State. Authority in the present case would include local authority. A Constitution Bench of this court in *Electronics Corporation of India Ltd. & Ors. vs. Secretary, Revenue Department, Government of Andhra Pradesh* [(1999) 4 SCC 458 = 1999 (3) SCALE 123] has held that a Government company is distinct from the Central Government and cannot claim exemption from taxation under Article 285 of the Constitution. The case of the Corporation cannot be any different. The Act under which it is

constituted specifically makes the Corporation a body corporate having the attributes of a company.

In *State of Punjab & Ors. vs. Raja Ram & Ors.* [AIR 1981 SC 1694 = (1981) 2 SCC 66] the question raised was if acquisition of land under the Land Acquisition Act, 1894 for the Food Corporation of India was valid as it was said that Corporation is not a company to which the provisions of that Act would apply.

Before its amendment in 1984, Section 3(e) of the Land Acquisition Act defined the expression 'company' as under:

"the expression 'company' means a company registered under the Indian Companies Act, 1882 or under the (English) Companies Act, 1862 to 1890 or incorporated by an Act of parliament of the United Kingdom or by an Indian Law, or by Royal Charter or Letters patent and included a society registered under the Societies Registration Act 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force in any State."

The expression 'corporation' had not been defined earlier which now finds place in clause (cc) of Section 3 of the Land Acquisition Act. Clause (e) which defined the expression 'company' has also thus been amended. However, we are concerned with the old definition of 'company'. In this case land was acquired for the Corporation and the question was if the Corporation was a company within the meaning of Section 3(e) (old) of the Land Acquisition Act. This Court after referring to Section 3 of the Act observed that sub-section (2) thereof clothes the Corporation with the attributes of a company and it cannot, therefore, be contended that the Corporation is not a company within the meaning of the definition of that term appearing in clause

(e) of Section 3 of the Land Acquisition Act. This Court also did not accept the argument that Corporation is a Government Department. It said :

"A Government department has to be an organisation which is not only completely controlled and financed by the Government but has also no identity of its own. The money earned by such a department goes to the exchequer of the Government and losses incurred by the department are losses of the Government. The Corporation, on the other hand, is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the Government does not figure in any litigation to which it is a party. It is true that its original share capital is provided by the Central Government (S.5 of the F.C. Act) and that 11 out of 12 members of its Board of Directors are appointed by that Government (S.7 of the F.C. Act) but then these factors may at the most lead to the conclusion (about which we express no final opinion) that the Corporation is an agency or instrumentality of the Central Government."

The Court further said that even if the Corporation is an agency or instrumentality of the Central Government, that did not lead to the inference that the Corporation is a Government department. The reason is that Act has given the Corporation an individuality apart from that of the Government.

Thus we hold that the Corporation is not exempt from taxation under Article 285 of the Constitution.

The appeal fails and dismissed with costs.