



WPC 9877/2021

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

FRIDAY, THE 9TH DAY OF AUGUST 2024 / 18TH SRAVANA, 1946

WP(C) NO. 9877 OF 2021

PETITIONER/S:

SPICES BOARD, REPRESENTED BY ITS SECRETARY, MINISTRY OF COMMERCE AND INDUSTRY, GOVERNMENT OF INDIA, SUGANDHA BHAVAN, N.H.BY-PASS, P.B.NO.2277, PALARIVATTOM, COCHIN - 682025.

BY SHRI.P.VIJAYAKUMAR, ASG OF INDIA/ SHRI T C KRISHNA, SCGC

RESPONDENT/S:

- 1 THE PRINCIPAL SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA, 4TH FLOOR, SECRETARIAT, ANNEXE, GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001.
- 2 CORPORATION OF KOCHI, REPRESENTED BY SECRETARY, CORPORATION OFFICE, P.B. NO. 1016, ERNAKULAM, COCHIN - 682011.
- 3 VANDANMEDU GRAMA PANCHAYATH, REPRESENTED BY SECRETARY, VANDANMEDU P.O- 685551, IDUKKI DISTRICT.
- 4 UDUMBANCHOLA GRAMA PANCHAYATH, REPRESENTED BY SECRETARY, P.O, UDUMBANCHOLA, IDUKKI DISTRICT, PIN - 685554.

BY ADVS.SHRI.K.JANARDHANA SHENOY, SC, KOCHI CORPORATION, JOMY K. JOSE FOR R3

OTHER PRESENT:

SC SRI. LIJI.J. VADAKKEDOM FOR R4, GP SRI BIMAL K NATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

(Dated this the 9th day of August 2024)

The Spices Board, represented by its secretary has approached this court to call for the records leading to Exts.P1(a) to P1(c) and to quash the same. A declaration is also sought that the property and buildings owned and held by the Spices Board are not liable to be taxed in the light of exemption under Article 285 of the Constitution of India and relevant statutory exemptions.

2. The petitioner is a statutory Board, constituted under the Spices Board Act, 1986 (for short 'the Act, 1986') to provide promotion of export of spices and regulation of Cardamom cultivation and related industry. On the formation of the Spices Board, all the assets and liabilities which earlier stood with Spices Exports Promotion Council and Cardamom Board stood vested



with the Spices Board. The Spices Board is a statutory organisation formed under the Act, 1986 and remains under the control of the Central Government. Section 18 of the Act clearly provides that the Board shall be bound by the directions issued by the Central Government. The Board shall run under the directions and policy of the central Government. Annual reports and Performance of the Board are to be placed before the Central Government. The Spices Board, thus is a Central Government statutory board and the assets and properties of the Board are the properties of the Central Government. Being the buildings and properties owned by the Board, being a statutory Board under the exclusive control of the Central Government, the buildings of the petitioner are exempted from the tax liability under Article 285 of the Constitution and also under Section 3 of the Kerala Building Tax Act, 1975. Without looking into these aspects, respondent



Nos.2 to 4 have made illegal demands for the remittance of the property tax at the concerned local body. Ext.Nos.P1(a) to P1(c) are the demand notices. It is also averred in the Writ Petition that the apex court had an occasion to consider an identical issue in respect of Food Corporation of India and the apex court has held that under Article 285 of the Constitution, the Central Government organisations are exempted from demand of property tax demanded by the Corporation.

3. The Board has made a representation dated 20.11.2020 to the 1st respondent for necessary orders/clarifications to the local bodies to ensure that there are no illegal demands of property tax or building tax from the petitioner. But till date no such clarification has been issued and therefore, the petitioner has approached this court seeking the reliefs.

4. A counter affidavit is filed by the 3rd respondent. The



main contention is that the notice issued by the Secretary is appealable under Section 276(1) of the Kerala Panchayat Raj Act, 1994 ('the Act, 1994') and the petitioner ought to have availed statutory remedy and therefore, this Writ Petition is not maintainable under Article 226 of the Constitution of India. The Board is constituted under the Act, 1986 and Section 3(2) of the said Act specifically states that the Board shall be a body corporate by name having perpetual succession and a common seal with power, subject to the provisions of the Act to contract and shall, by the said name, sue and be sued. The property against which demand notices are issued is not owned by the Union of India and therefore, the Board is not entitled to exemption under Article 285 of the Constitution.

5. The Government department has to be an organisation, which is not completely controlled and financed by the



Government but has also no identity of its own. The money earned by such department goes to exchequer of the Government and losses incurred by the department are the loss of the Government. The petitioner Board is an autonomous body capable of acquiring, holding and disposing the properties and having power to contract.

6. Section 6 of the Act, 1986 deals with **Transfer of Assets and Liabilities of the Cardamom Board and the Spices Export Promotion Council to the Board**. From a reading of the section, it is clear that the property vested in the Spices Board under the provisions of the Act, 1986 cannot be called the properties of the Union of India and therefore, not exempted from all taxes.

7. In **Food Corporation of India v. Municipal Committee, Jalalabad [1999 (6) SCC 74]**, it was held that the Corporation is its body corporate having attributes of the



company and cannot claim exemption of taxation imposed by the State of any authority within the State. The petitioner is a Board which cannot claim exemption under Section 285 of the Constitution of India.

8. The respondents also rely on a judgment of the apex court in **Food Corporation of India v. Brihanmumbai Mahanagar Palika** [(2022) 14 SCC 733], wherein the apex court had an occasion to consider earlier judgment of the **Food Corporation of India v. Municipal Committee, Jalalabad** (supra) and held that in the present case, the property originally belongs to the Central Government and the Food Corporation was only occupying it. In the said circumstances, the apex court held that the appellant is exempted under payment of tax by virtue of Article 285 of the Constitution of India.



9. Heard the counsel for the petitioner Shri.T.C.Krishna, the senior Government Pleader Sri.Bimal K.Nath, the standing counsel for the 2nd respondent Shri.K Janardhana Shenoy, the counsel for respondent 3rd respondent Shri.Jomy K.Jose and the standing counsel for 4th respondent Shri.Liji J.Vadakkedam.

10. The only question to be decided is whether the petitioner Spices Board can claim exemption under Article 285 of the Constitution of India. The Spices Board Act, 1986 was promulgated to provide for the Constitution of a Board for the development of export of spices and for the control of cardamom including the control of cultivation of cardamom and matters connected there with. Section 3 deals with the **Constitution and incorporation of the Board**, which prescribes that the Central Government shall, by notification in the official Gazette, constitute, for the purpose of this Act, a Board, to be called the



Spices Board and shall be a body corporate by the name having perpetual succession and a common seal with power, subject to the provisions of the Act, to contract and shall, sue and be sued in the name. When the Spices Board Act was enacted in 1986, the assets and liabilities of the Cardamom Board and Spices Export Promotion Council stood vested with the Board. All debts, obligations and liabilities and things engaged to be done by the Cardamom board or the Spices Export Promotion Council before the commencement of the Act, shall be deemed to be incurred or entered into and engaged to be done by, with, or for the Board.

11. Section 19 deals with **Power of the Central Government to supersede the Board**, as follows:-

- (1) If at any time, the Central Government is of opinion-
 - (a) that on account of grave emergency, the Board is



- unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or
- (b) that the Board has persistently made default in complying with any direction issued by the Central Government under the Act or in discharge of the functions and duties imposed on it by or under the provisions of the Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or
 - (c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government, may, by notification in the Official gazette, supersede the Board, for such period, not exceeding six months, as may be specified in the notification.

Though the grants and loans are by the Central Government and the Board had a separate fund, the Spices Board stands on a different footing than that of the Central Government.

12. The counsel for the 3rd respondent relied on a judgment



of this court in **Bharat Sanchar Nigam Ltd., Thrissur v. State of Kerala [2017 (3) KHC 999]**, where the question that came up for consideration was whether the municipal property tax can be accrued from BSNL which is a company registered under the Companies Act and wholly owned by the Central government and whether the BSNL can claim exemption under Section 285 of the Constitution. This court, relying on a judgement of a constitution bench of the apex court in **Electronics Corporation of India Ltd. v. Secretary, Revenue Department, Government of A.P. (AIR 1999 SC 1734)** clearly distinguished between a company and shareholders even though a shareholder may be only one i.e, either Central Government or the State Government. In the eye of law, the company registered under the Company Act is a distinct legal entity other than the legal entities of that hold its shares.



13. The contention raised was that the company was a Government company and the shares are held by the Union of India and therefore, the State Legislature is barred by imposing any tax. It was held that the BSNL property and building are not owned by the Government of India and therefore, they are liable to pay the building tax. The judgment was taken in appeal in Writ Appeal No.2620 of 2017, but the same was also dismissed.

14. The counsel for the 4th respondent relied on a judgment of this court in **Food Corporation of India v. Thikkodi Panchayat (1994 KHC 378)**, wherein it was held by a Division Bench of this court that the FCI is not a department of the central Government and hence it is not immune from tax under Article 285(1) of the Constitution of India. In view of the judgments mentioned above, more particularly, **Food Corporation of India v. Municipal Committee, Jalalabad** (supra) as well as **Food**



Corporation of India v. Thikkodi Panchayat (supra), I am of the firm opinion that the building and the property owned by the petitioner Board cannot be termed as one owned by the Central Government and cannot claim exemption under Article 285(1) of the Constitution of India, and hence, the Writ Petition fails.

In the result, the Writ Petition is dismissed.

Sd/-
BASANT BALAJI
JUDGE



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APPENDIX OF WP(C) 9877/2021

PETITIONER EXHIBITS

EXHIBIT P1 (A) TRUE COPY OF THE DEMANDS NOTICE ISSUED BY CORPORATION OF COCHIN DATED 20.08.2020.

EXHIBIT P1 (B) TRUE COPY OF THE DEMANDS NOTICE ISSUED BY UDUMBANCHOLA GRAMA PANCHAYAT DATED 21.01.2021.

EXHIBIT P1 (C) TRUE COPY OF THE DEMANDS NOTICE ISSUED BY VANDANMEDU GRAMA PANCHAYAT DATED 22.01.2021.

EXHIBIT P1 NIL

EXHIBIT P3 TRUE COPY OF THE LETTER DATED 18.02.2020 ISSUED TO THE 4TH RESPONDENT.

EXHIBIT P4 TRUE COPY OF THE REPLY DATED 21.01.2021 ISSUED BY VANDANMEDU PANCHAYATH.

EXHIBIT P2 TRUE COPY OF THE REPRESENTATION DATED 20.11.2020 SUBMITTED ON BEHALF OF THE BOARD.

RESPONDENTS' EXHIBITS:

EXT.R3 (a) A TRUE COPY OF THE JUDGMENT IN FOOD CORPORATION OF INDIA V.BRIHANMUMBAI MAHANAGAR PALIKA IN CIVIL APPEAL NO.9350 OF 2019 IN SUPREME COURT OF INDIA.