

Siliguri Municipality and Others

Vs

Amalendu Das and Others

Civil Appeal No. 762 of 1984

(A. P. Sen, M. P. Thakkar JJ)

06.01.1984

ORDER

1. This appeal by special leave is directed against an interlocutory order dated August 25, 1983 passed by the Calcutta High Court restraining the Siliguri Municipality, the appellant herein, from recovering a graduated consolidated rate on the annual value of the holdings in terms of the amended provisions in Sections 123 and 124 of the Bengal Municipal Act, 1932, as amended by the Bengal Municipal (Amendment) Act, 1980.

2. We are constrained to make the observations which follow as we do feel dismayed at the tendency on the part of some of the High Courts to grant interlocutory orders for the mere asking. Normally, the High Courts should not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax save under very exceptional circumstances. The grant of stay in such matters, should be an exception and not a rule.

3. It is needless to stress that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. So also there is no warrant for presuming the levy to be bad at the very threshold of the proceedings. The only considerations at that juncture is to ensure that no prejudice is occasioned to the rate payers in case they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate or a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. On the other hand, the Court cannot be unmindful of the need to protect the authority levying the tax, for, at that stage the Court has to proceed on the hypothesis that the challenge may or may not succeed. The Court has to show awareness of the fact that in a case like the present a municipality cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining the municipality from recovering the taxes as per the impugned provision. And that the municipality has to maintain essential civic services like water supply, street lighting and public streets etc., apart from running public institutions like schools, dispensaries, libraries etc. The grant of an interlocutory order of this nature would paralyze the administration and dislocate the entire working of the municipality. It seems that these serious ramifications of the matter were lost sight of while making the impugned order.

4. We will be failing in our duty if we do not advert to a feature which causes us dismay and distress. On a previous occasion, a Division Bench had vacated an interim order passed by a learned single Judge on similar facts in a similar situation. Even so when a similar matter giving rise to the

present appeal came up again, the same learned Judge whose order had been reversed earlier, granted a non-speaking interlocutory order of the aforesaid nature. This order was in turn confirmed by a Division Bench without a speaking order articulating reasons for granting a stay when the earlier Bench had vacated the stay. We mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court in stressing the need for self-discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and width of the powers of the High Court to grant interim relief. The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed.

5. For these reasons, the appeal must be allowed. The order passed by the High Court dated August 25, 1983 restraining the Siliguri Municipality from recovering a graduated consolidated rate on the annual value of the holdings in terms of the amended provisions contained in Sections 123 and 124 of the Bengal Municipal (Amendment) Act, 1980 is set aside. We wish to place on record that Shri Venugopal, appearing with Shri Naro Narayan Gooptu has given an undertaking on behalf of the Siliguri Municipality that the Municipality shall refund the difference between the revised and the old reacted within three months of the order of the High Court in case the writ petition is finally allowed by the High Court.

6. There shall be no order as to costs.

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