

# **SUPREME COURT OF INDIA**

Municipal Corporation of Delhi

Vs.

North Delhi Power Ltd

C.A.No.5653 of 2014

(Anil R.Dave and L.Nageswara Rao,JJ.,)

09.08.2016

## **JUDGMENT**

**L.Nageswara Rao,J.,**

1. Leave granted in Special Leave Petition (Civil) No.17317/2015. The issues in these three Civil Appeals are the exigibility and incidence of property tax over a plot of 8,080 square meters of land.

2. On 26.03.2003, the Assessment and Collection Department of the Delhi Municipal Corporation determined the rateable value of a vacant plot of 8,080 sq. meters allotted to North Delhi Power Limited at Rs.58,53,960/- with effect from 01.04.2002. M/s North Delhi Power Limited filed an appeal under Section 169 of the Delhi Municipal Corporation Act, 1957 before the District Judge, Delhi challenging the order dated 26.03.2003. By a judgment dated 03.01.2004 in H.T.A. No.164/2003, the Additional District Judge, Delhi held that the land in dispute stood transferred to the Delhi Government and hence it was entitled for exemption from payment of property tax in view of Section 119 (1) of Delhi Municipal Corporation Act, 1957. It was also held that M/s North Delhi Power Limited was a licensee of the Government. On the basis of the above findings, the District Judge allowed the appeal and quashed the assessment order dated 26.03.2003. Aggrieved by the said judgment dated 03.01.2004 of the District Judge, Delhi, the Municipal Corporation Delhi approached the High Court of Delhi by filing Writ Petition No.3193/2004. A Single Judge of the Delhi High Court allowed the writ petition holding that the North Delhi Power Limited is liable to pay the tax. The Single Judge held that the provisions of Section 120 (1) (c) of the Delhi Municipal Corporation Act, 1957 are applicable as North Delhi Power Limited was entitled to let out the properties on which basis it became liable to pay taxes. With reference to the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 which would be dealt in detail later, the Single Judge held that North Delhi Power Limited is an effective and full successor in respect to all matters relating to all liabilities and assets and further held that there is no material to establish that the Delhi Electricity Reforms (Transfer Scheme), 2001 ruled out liability of North Delhi Power Limited from municipal taxation. North Delhi Power Limited filed L.P.A.No.2630/2005, challenging the judgment dated 25.07.2005 passed by the Single

Judge in Writ Petition No.3913/2004. A Division Bench of the High Court of Delhi held that Delhi Power Company Ltd. was the owner of land and land rights during the relevant assessment years i.e. 2002-2003 and 2003-2004, that the statutory transfer scheme creates a licence in favour of the Delhi Power Company Ltd. and that the distribution licence issued by Delhi Electricity Regulatory Commission under Section 20 of the Delhi Electricity Reforms Act, 2000 is distinct from the licence for land granted in its favour. As Delhi Power Company Ltd. was not a party with the proceedings before the Division Bench, the matter was remanded back to the Deputy Assessor and Collector of the Respondent-Municipal Corporation of Delhi for determination as to whether North Delhi Power Limited or Delhi Power Company Ltd. is liable to pay property tax. The Deputy Assessor and Collector of Municipal Corporation, Delhi was directed to give a hearing to both North Delhi Power Limited as well as to Delhi Power Company Ltd. before passing any final order.

3. Aggrieved by the said judgment dated 09.12.2013 in L.P.A. No.2630/2005, Tata Power Delhi Distribution Limited (formerly North Delhi Power Limited referred to as 'Distribution Company' hereinafter) filed Civil Appeal No.5654/2014. The Municipal Corporation of Delhi referred to as 'Corporation' hereinafter for convenience, also filed Civil Appeal No.5653/2014, aggrieved by certain findings in favour of the Distribution Company. Civil Appeal No. of 2016 (arising out of Special Leave Petition (C) No.17317 of 2015) was filed by Government of NCT of Delhi (hereinafter referred to as 'Government' ), challenging the findings recorded by the Division Bench of the High Court that the vacant land stood transferred to Delhi Power Company Ltd. and the Government is not owner of the vacant land.

4. It would be useful to refer to the provisions, Statutes and the Rules for better appreciation of the dispute involved in this case. Chapter VIII of the Delhi Municipal Corporation Act, 1957 deals with taxation. Section 114 provides for imposition of tax on land and buildings in Delhi. Section 119 of the Delhi Municipal Corporation Act exempts lands and buildings being properties of the Union from the property tax specified in Section 114. Section 120 of the Delhi Municipal Corporation Act deals with the incidence of property tax according to which the property tax shall be primarily leviable on the lessor if the land or building is let, upon the superior lessor if the land or building is sub-let and if the land or building is un-let upon the person in whom the right to let-out the same vests. The Delhi Electricity Reforms Act, 2000 was enacted for restructuring the electricity industry, to increase the avenues for participation of private sector of the electricity industry and generally for taking measures conducive to the development and the management of the electricity industry in an efficient, commercial, economic and competitive manner in the National Capital Territory of Delhi. The process of unbundling of the Delhi Vidyut Board was dealt with in Sections 14 and 15 of the Act which are as follows:-

#### “PART V “REORGANISATION OF ELECTRICITY INDUSTRY

14. Incorporation of companies for the purpose of generation, transmission or distribution of electricity.

(1) The government may, as soon as may be after the commencement of this Act, cause one or more companies to be incorporated and set up under the provisions of the Companies Act, 1956 for the purpose of generation, transmission or distribution of electricity, including companies engaged in more than one of the said activities, in the National Capital Territory of Delhi and may transfer the existing generating stations or the transmission system or distribution system, or any part of the transmission system or distribution system, to such company or companies.

(2) The Government may designate any company set up under sub-section (1) to be the principal company to undertake all planning and coordination in regard to generation or transmission or both; and such company shall undertake works connected with generation or transmission and determine the requirements of the territory in consultation with the other companies engaged in generation or transmission for the National Capital Territory of Delhi, the Commission, the Regional Electricity Board and the Central Electricity Authority and any other authority under any law in force for the time being, or any other Government concerned.

(3) The companies incorporated and set up under sub-section (1) shall undertake the functions specified in this section and such other functions as may be assigned to them by the Government.

(4) Subject to the provisions of this Act and of the duties and functions assigned to the companies incorporated and set up under sub-section (1), other companies engaged in generation, transmission or distribution of electricity, or more than one of the said activities, may be incorporated and set up in the National Capital Territory of Delhi.

(5) The Government may, in consultation with the Commission, determine the lines that shall be treated as transmission or distribution lines for the purpose of division of responsibilities between the companies incorporated and set up under this section, having regard to the voltage levels of such lines and any other factor, which it may consider relevant.

(6) The Government may convert the companies set up under this Act to joint venture companies through a process of disinvestment, in accordance with the transfer scheme prepared under the provisions of this Act.

(7) Upon the transfer of all functions of the Board to corporate entities in terms of this Part, the Government may appoint an administrator for the purpose of finalisation of the accounts of the Board for all the pending years till the date of such transfer and thereafter for winding up the Board in such manner as the Government may direct.

15. Reorganization of Delhi Vidyut Board and transfer of properties, functions and duties thereof.

(1) With effect from the date on which a transfer scheme prepared by the Government to give effect to the objects and purposes of this Act, is published or such further date as may be specified by the Government (hereinafter referred to as “the effective date” ), any property, interest in property, rights and, liabilities which immediately before the effective date belonged to the Board shall vest in the Government.

(2) The Government may transfer such property, interest in property, rights and liabilities to any company or companies established under section 14 for the purpose in accordance with the transfer scheme prepared therefore.

(3) Such of the rights and power to be exercised by the Board under the Electricity (Supply) Act, 1948 (54 of 1948), as the Government may, by notification in the official Gazette, specify, shall be exercisable by a company or companies established as the case may be, under section 14, for the purpose of discharge of the functions and duties with which it is entrusted.

(4) Notwithstanding anything contained in this section or any other Act, where:

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the Government, the scheme shall give effect to the transfer only after asset valuation;

(b) where any transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties, even if such persons have not consented to it.

(5) The Government may require any transmitting or distributing company established under the provisions of sub-section (1) of section 14 (hereinafter referred to as “ the transferor licensee” ) or any generating company to draw up a transfer scheme to vest in a further licensee or licensees (the “transferee licensee or licensees” ), or any generating company, any property, interest in property, rights and liabilities which have been vested in the transferor licensee or generating company, as the case may be, under this section and publish the same in the official Gazette. The transfer scheme to be notified under this sub-section shall have the same effect as a transfer scheme under sub-section (2) .

(6) A transfer scheme may-

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements;

(b) define the property, interest in property, rights and liabilities to be allocated-

- (i) by specifying or describing the property, rights and liabilities in question,
  - (ii) by referring to all the property, interest in property, rights and liabilities comprised in a specified part of the transferor's under-taking, or
  - (iii) partly in one way and partly in the other : Provided that the property, interest in property, rights and liabilities shall be subject to such further transfer as the Government may specify;
  - (c) provide that any rights or liabilities specified or described in the scheme shall be enforceable by or against the transferor or the transferee;
  - (d) impose on any licensee an obligation to enter into such written agreements with, or execute such other instruments in favour of any other subsequent licensee as may be specified in the scheme;
  - (e) make such supplemental, incidental and consequential provisions as the transferor licensee considers appropriate including provision specifying the order in which any transfer or transaction is to be regarded as taking effect;
  - (f) provide that the transfer shall be provisional subject to the provisions of section 18.
- (7) All debts and obligations incurred, all contracts entered into and all matters and things done by, with or for the Board, or a company or companies established as the case may be, under section 14 or generating company or distribution company or companies before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by, with or for the Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, continued or instituted by or against the Government or concerned transferee, as the case may be.
- (8) In the event a licensee is required to vest any part of its undertakings in another licensee pursuant to sub-section (5), the Government shall amend the transferee licence in accordance with section 24 or revoke its licence in accordance with section 23.
- (9) The Board shall cease to exist with the transfer of functions and duties specified and with the transfer of assets as on the effective date.
- (10) The exercise by a licensee of any of Board's rights and powers may be made on such conditions as shall be specified in the transfer scheme including a condition that such rights and powers shall be exercised by the licensee only with the approval of the Commission/Government” .

5. The Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 were notified on 20.11.2001 and were given effect from 01.07.2002. As per Rule 3 all the assets of the Delhi Vidyut Board stood transferred and vested in the Government absolutely. Rule 4 classified the undertakings. In this case, we are concerned with the distribution undertakings as set out in Schedule 'F' thereof and the holding company as set out in Schedule 'G'. The assets set out in Schedule 'F' stood transferred and vested in DISCOM-3 and the assets and liabilities set out in Schedule 'G' stood transferred to the Holding Company. Sub-rule 5 of Rule 5 provides that the distribution companies shall issue shares and instruments in favour of the holding company as specified in Schedules A to F, in consideration of the vesting of the undertakings. Rule 9 postulates that the classification and transfer of the undertakings, unless otherwise specified in any other order made by the Government shall be provisional and shall become final upon the expiry of three months from the date of transfer. According to Rule 12 (1) if any doubt, dispute, difference or issue arises in regard to transfer under the said Rules, the decision of the Government shall be final and binding on all the parties.

6. Schedule F of the Rules deals with the assets and liabilities and proceedings concerning distribution and their transfer. There is a proviso to items I, II and III of part I of Schedule 'F' which is as follows:-

“PROVIDED THAT notwithstanding I, II and III above and that the land was being used immediately before date of the transfer exclusively or primarily for the business of the transferee, no part of the land shall form part of the assets transferred under these rules. The transferee shall be entitled to use such land as a licensee of the government on payment of a consolidated amount of one rupee only per month during the period the transferee has the sanction or licence or authorization to undertake the transmission business. As and when such licence or sanction or authorization is revoked or cancelled or not renewed or the area of supply where the land is situated is withdrawn from the transferee, the licence to the transferee in respect of such land shall be cancelled’ ’. Schedule 'G' gives details of the assets and liabilities transferred to the holding company which includes land and land rights.

7. Mr. Dhruv Mehta, Senior Advocate, Ms. Madhu Tewatia and Ms. Avani Ahlawat, Advocates appeared and made their submissions on behalf of the Distribution Company, the Corporation and the Government respectively.

8. Mr. Dhruv Mehta, submitted that the Government continues to be the owner of the land in question and hence there is an exemption from payment of property tax as per Section 119 of the Delhi Municipal Corporation Act, 1957. It is his further submission that, in any event, the Distribution Company is a licensee under the Government as per the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 and hence it does not fall within the preview of Section 120 of the Delhi Municipal Corporation Act, 1957. He also submitted that the Government of NCT of Delhi has taken a categorical stand that the land belongs to the

Government. He relied upon the Cabinet decision dated 06.01.2001 and other clarifications issued by the Government in this regard. Mr. Mehta relied upon Rule 12 (1) of the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 to contend that the opinion of the Government regarding the ownership of the land is final and binding. Mr. Mehta also submitted that the Division Bench committed an error in remanding the matter back to the Authority after recording the finding that Tata Power Delhi Distribution Ltd. is only a licensee.

9. Ms. Madhu Tewatia, Advocate appearing for the Corporation submitted that the land belongs to Delhi Power Company Ltd. which is the holding company in accordance with Schedule G of the Transfer Scheme Rules. She further submitted that Rule 120 (1) (c) of the Delhi Municipal Corporation Act, 1957 would be clearly applicable to the facts of the instant case as the Distribution Company has the right to let out the land in dispute. This liability to pay the property tax under Section 120 (1) (c) is irrespective of the fact that the land belongs to the Government or to the holding company i.e. Delhi Power Company Ltd. Ms. Tewatia contended that the clarifications issued by the Government and the Cabinet decision relied upon by the Distribution Company would not fall within the preview of Rule 12(1) of the Transfer Scheme Rules. She contended that the findings recorded by the Division Bench to the effect that the Distribution Company is a licensee and that the licence relating to land alone would be a decisive factor to determine ownership without reference to the distribution licence are not correct.

10. Ms. Avanish Ahlawat, Advocate, appearing for the Government submitted that the Government is the owner of the land, there is no transfer of land to the holding company and that the entry land and land rights as found in Schedule G should not be given too much importance and has to be read in conjunction with the other provisions of Schedule F and the other Rules.

11. We have carefully considered the submissions made and examined the material on record. The first point that falls for our consideration is exigibility of tax over the land of 8,080 sq. meters. Section 119 of the Delhi Municipal Corporation Act exempts the properties of the Union from taxation. We entertained a doubt about the properties of Union Territories being treated as properties of the Union. The administration of Union Territories is by the Central Government but that does not mean that Union Territories become merged with the Central Government. They are centrally administered but retain their independent entity. [See: *Satyadev Bhushari Vs. Padam Dev & Ors*<sup>1</sup>. *Government of NCT Delhi and ors. Vs. All India Central Civil Accounts, JAO 's Association and ors*<sup>2</sup>. *Chandigarh Administration and Anr. Vs. Surinder Kumar and Ors*<sup>3</sup> But, we refrain from adjudicating this issue as constitutional questions are not decided unless they directly arise for consideration.

12. Dismal performance of the Electricity Boards led to a decision of unbundling generation, transmission and distribution activities which were separated for increasing efficiency. Private participation in the Electricity industry was also envisaged. Broadly understood, the scheme contemplated by the Delhi Electricity Reforms Act and the Rules framed therein is

that the assets of the erstwhile Delhi Vidyut Board initially stood transferred and vested absolutely in the Government. The undertakings were transferred to generation, transmission and distribution companies. The shares of these companies were allotted to the Holding Company which is Delhi Power Company Ltd. which is a wholly owned Government company. Land and land rights also were transferred to the Holding Company. Thereafter the process of privatization takes place by divesting shares in the distribution companies. It is clear that the transfer of all the assets including land to the Government is a transitory step as the Holding Company is to be in total control. In the above background, the question is whether the land belongs to the Government and exempt from tax. No doubt, all the assets of Delhi Vidyut Board stood transferred and vested in the Government. It is also clear that the distribution undertaking with assets mentioned in Items I, II & III of Part I of Schedule F were transferred to the Distribution Company. The proviso to Items I, II & III of Part I of Schedule F to the Transfer Scheme Rules contemplates that land which was exclusively and primarily being used for business purpose by the transferee before the transfer does not form part of the assets transferred and the transferee would be a licensee of the Government for the said land on payment of a nominal amount. Schedule 'G' deals with transfer in favour of the Holding Company and land and land rights is one of the entities therein. Mr. Mehta submits that the transfer of assets and liabilities are dealt with in Schedule F and it is clear from the said Schedule that the Distribution Company is a licensee of the Government. He further submitted that Government continues to be the owner of land and the entry land and land rights is vague and has to be ignored as it is not applicable to the land already covered by Schedule F. Whereas, the case of the Corporation is that there is no ambiguity in Schedule G. Land was transferred to the Holding Company and Section 119 of the Delhi Municipal Corporation Act is not applicable. The High Court held that the initial transfer and vesting of land is in the Government, then Distribution Company becomes licensee of the Government qua land and finally there is a transfer of land to the Holding Company. In view of the fact that Government was not to hold any asset and the vesting of land in the Government was only transitory in nature, we uphold the findings of the High Court that Holding Company is the owner of land.

13. We proceed to deal with the point as to whether there is any contradiction in Schedule 'F' and 'G' pertaining to the ownership of land. We see no conflict in the two Schedules. The proviso to items I to III in Part I of Schedule 'F' refers to land which was exclusively and primarily being used for the purpose of business by the transferee on the date of transfer not forming part of the assets transferred to Distribution Company. Such land would be subject matter of a licensee by the Government in favour of the transferee. Only such land which satisfies the condition as stated above will be treated as licensed to transferee. All other lands would be part of land transferred to the Holding Company as contemplated in Schedule 'G'. Hence, we see no conflict in the Schedules.

14. Another issue connected to the ownership of the land is the stand of the Government that the land continues to be vested in the Government. Reference was made to the Cabinet decision dated 06.01.2001. M/s SBI Capital Market Limited (referred to as 'SBI Caps' hereinafter) was appointed by Delhi Vidyut Board for restructuring of the Board. A report

was submitted by the SBI Caps by which they recommended that the land in possession of Delhi Vidyut Board which were earmarked for the purpose of electricity generation, transmission and distribution cannot be used for any other purpose without bringing about a change in land use by the Competent Authority. The SBI Caps further recommended that the ownership of the land should be retained by the State Government and land should be provided on licence to the successor entities. This recommendation made by the Consultant i.e. SBI Caps was approved in the Cabinet decision on 06.01.2001. Apart from the said Cabinet decision, we were also shown some material which indicated that the Government was maintaining its stand that the land belongs to them. As we have interpreted the provisions of the Act, Rules and the Transfer Scheme to conclude that the land transferred and vested in the Holding Company, the Cabinet decision dated 06.01.2001 which was much prior to the Statutory Scheme cannot be taken into consideration to reach a different conclusion.

15. Another issue that calls for consideration is relating to the scope of Rule 12 (1) of the Transfer Scheme Rules. Rule 12(1) of the Rules reads as under:-

“Decision of Government final:- (1) If any doubt, dispute, difference or issue shall arise in regard to the transfers under these rules, subject to the provisions of the Act, the decision of the Government thereon, shall be final and binding on all parties.”

The stand of the Government that the land continues to vest in it would not amount to a decision by the Government in resolving a dispute between the parties to the Transfer Scheme. Rule 12(1) will not be applicable in the instant case as the interpretation of the provisions of the statute and the rules is involved in adjudication of the dispute.

16. A similar provision fell for consideration before this Court in *Municipal Commissioner of Dum Dum and Ors. Vs. Indian Tourism Corporation and ors.. reported in*<sup>5</sup> The issue in that case was whether the properties vested in the International Airport Authority of India could be called as properties of the Union, within the meaning of Article 285 of the Constitution of India and exempted from tax. The Government of India asserted that the properties of the Authority are the properties of the Union and reliance was placed on certain letters of the Government for the above assertion. Section 12(3) of the International Airport Authority of India Act, 1971 provided that decision of the Central Government shall be final, if any dispute or doubt arises, as to which of the properties, rights or liabilities of the Central Government have been transferred to the Authority. Interpreting the said provision, this Court held that a dispute under Section 12(3) should be between the Union of India and the Authority. It was also held that the decision would not bind the Municipal Corporation. In addition to the points mentioned above, Ms. Madhu Tewatia submitted that there was no opportunity given to the Municipal Corporation by the Government before taking such stand. In view of the above discussion, we uphold the findings recorded by the Division Bench in the impugned judgment that the Government is not the owner of the land.

17. Having answered the point about the exigibility of tax, the point which remains to be decided is the incidence of tax. Section 120(1) of the Delhi Municipal Corporation Act reads as follows:-

“120. Incidence of property taxes

(1) The property taxes shall be primarily leviable as follows:-

(a) if the land or building is let, upon the lessor;

(b) if the land or building is sub-let, upon the superior lessor;

(c) if the land or building is unlet, upon the person in whom the right to let the same vests: Provided that the property taxes in respect of land or building, being property of the Union, possession of which has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), shall be primarily leviable upon the transferee.”

18. The High Court remanded the matter back to the Deputy Assessor and Collector of Municipal Corporation of Delhi for determination as to whether the Distribution Company or the Holding Company i.e. Delhi Power Company Ltd. is liable to pay the property tax. The High Court also said that Holding Company was not a party to the case and in view of the findings recorded in the judgment that the Holding Company is the owner of the land, the matter has to be decided by the Assessing Authority after giving an opportunity to the Holding Company.

19. According to Section 120 (1) (c), the person who has a right to let would be liable to pay tax for un-let land. Admittedly, this land is un-let. Incidence of tax has to be decided by the Authority after taking into consideration the provisions of the Act, rules and the licences, including the distribution licence. The High Court held that the licence pertaining to land as per the Transfer Scheme would show that the Distribution Company is only a licensee and not a lessee. The High Court further held that the distribution licence under Section 20 of the Delhi Electricity Reforms Act, 2000 is distinct and separate from the licence for land. It was further held by the High Court that the distribution licence can neither govern nor be used as a tool to interpret the licence for land. We do not agree with the said findings of the High Court. Section 120 (1) (c) contemplates that a person who has the right to let out un-let land is liable to pay tax. His status as a lessor or licensee is irrelevant. If the distribution licence empowers the Distribution Company to let out the land, notwithstanding the fact that the Distribution Company is a licensee as per Schedule ‘F’ of the Transfer Scheme Rules, it would still have to pay the tax. For the reasons afore-stated, we confirm the order of remand passed by the High Court in the impugned judgment with a direction to the Deputy Assessor and Collector of Municipal Corporation of Delhi to consider the provisions of Delhi Municipal Corporation Act, Delhi Electricity Reforms Act, Transfer Scheme Rules and the Distribution licence issued under Section 20 of the Delhi Electricity Reforms Act for

deciding the matter pertaining to the incidence of tax. The appeals are disposed of in terms of the above directions.

<sup>1</sup>(1955) 1 SCR 0549

<sup>2</sup>(2002) 1 SCC 0344

<sup>3</sup>(2004) 1 SCC 0530

<sup>4</sup>(1995) 5 SCC 0251