UNION OF INDIA

v.

PURNA MUNICIPAL COUNCIL AND ORS.

SEPTEMBER 19, 1991

[MADAN MOHAN PUNCHHI AND K. RAMASWAMY, JJ.]

Indian Railways Act, 1890—Section 135 read with Article 285 of the Constitution of India, 1950—Municipal Council claiming tax by way of "Service charges" —Legality of.

The Union of India, the appellant, approached the High Court under Article 226 of the Constitution, challenging notices of demand issued by the Municipal Council, respondent No.1, claiming tax to the tune of Rs.28,400 by way of "Service charges" due for the period 1954 to 1960, under Article 285 of the Constitution read with Section 135 of the Indian Railways Act, 1890.

The High Court dismissed the writ petition negativing the claim, against which, this appeal by special leave was filed.

Allowing the appeal, this Court,

HELD 1. Section 135 of the Indian Railways Act, 1890 gets saved under Article 285(1) of the Constitution itself. The said Article provides that property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by the State or by any authority within a State. [185 A-B]

2. Section 135 of the Railways Act permits taxation of Railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a central enactment has no role to play in sub-Article (2) of Article 285, for that is a sphere in which the State legislation operates. [186 A-B]

3. The reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-Article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-Article (1) of Article 285. The interplay of the constitutional

A **and legal provisions being well cut and well defined required no marked elaboration to stress the point. [186 B-C]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.903 of 1978.

From the Judgment and Order dated 5/6-12-1977 of the Bombay High Court in Special Civil Application No.1937 of 1971.

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V.C. Mahajan, B.K. Prasad, Smt. Sangeeta Aggarwal and C.V. Subba Rao (NP) for the Appellant.

K.R. Chowdhary for the Respondent.

The following Order of the Court was delivered

C This appeal by special leave is directed against the judgment and order of the Bombay High Court passed in Special Civil Application No. 1937 of 1971 decided on December 5, 1977.

The Union of India, the appellant herein, approached the High Court under Article 226 of the Constitution challenging notices of demand issued by the Municipal Council, Purna, respondent No. 1 herein, claiming D tax to the tune of Rs. 28,400/- by way of "Service charges" due for the period 1954 to 1960. The claim of the Union of India primarily was based under Article 285 of the Constitution read with Section 135 of the Indian Railways Act, 1890. The High Court interplaying the two provisions negatived the claim of the appellant by holding as follows:

E "In terms of Article 285(2) these properties will continue to be liable to such taxes 'until Parliament by law otherwise provides. Mr. Govilkar has not drawn our attention to any specific law made by the Parliament providing otherwise. He, however, relied on section 135 of the Indian Railways Act, but, as indicated earlier, provisions of section 135 cannot have any overriding effect against the continuance of such laws when F authorised by Article 285 (2) of the Constitution. It is not possible for us to hold that Railways Act is an Act made by the Parliament as contemplated under sub-Article (2) of Article 285 of the Constitution"

The High Court further observed that:

G "As Section 135 of the Railways Act is now substituted by the corresponding provisions of the above enactment, it is unnecessary to consider the contention of Mr. Govilkar as to effect of the absence of any Notification. We have already indicated how section 135 or the corresponding section of the new enactment can have no overriding effect as against the saving of laws con- H templated under Article 285 (2) of the Constitution."

The view expressed by the High Court is obviously erroneous. Section 135 of the Indian Railways Act, 1890 gets saved under Article 285(1) of the Constitution itself. The said Article provides that property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by the State or by any authority within a State. Section 135 of the Railways Act provides as under:

> "Taxation of railways by local authorities:– Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways from railways administrations in aid of the funds of local authorities, namely:-
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> (1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the (Central Government) has, by notification in the official gazette, declared the railway administration to be liable to pay the tax.
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> (2) While a notification of the (Central Government), under clause (1) of this Section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, if any as an officer appointed in this behalf by the (Central Government) may having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.
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> (3) The (Central Government) may at any time revoke or vary a notification under clause (1) of this Section:
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> (4) Nothing in this Section is to be construed as debarring any railway administration from entering into contract with any local authority for the supply of water or light or for the scavenging of railway premises or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.
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> (5) 'Local Authority' in this section means a local authority as defined in the General Clauses Act, 1887 and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for conservancy of a river".

A The aforesaid provision, existing as it is, in terms permits taxation of Railways by the local authority in the manner given therein; the Central Government being the controlling and the regulating authority permitting liability at a given point of time, its extent and manner. The Indian Railways Act being a central enactment has no role to play in sub-Article (2) of Article 285, for that is a sphere in which the State legislation operates. The B reasoning of the High Court to oust the applicability of Section 135 of the Indian Railways Act on the test of sub-Article (2) of Article 285 was totally misplaced, as also in not venturing to create room for it in sub-Article (1) of Article 285. The interplay of the constitutional and legal provisions being well cut and well defined requires no marked elaboration to stress the point. Accordingly, we allow this appeal, set aside the judgment and C order of the High Court and issue the writ direction asked for in favour of the Union of India restraining the respondent council from raising demands on the railway in regard to service charges. We make it clear that the rights of the local authority as flowing under Section 135 of the Indian Railways Act, 1890 stand preserved in the event of the Central Government moving into the matter, if not already moved. In the circumstances of D the case, however, there will be no order as to costs.

V.P.R Appeal allowed.