CASE NO.:
Appeal (civil) 4498 of 2002

PETITIONER:
Ramgarh Cantonment Board & Anr.

RESPONDENT:
State of Jharkhand & Ors.

DATE OF JUDGMENT: 11/03/2008

BENCH:
Ashok Bhan & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

Dalveer Bhandari, J.

1. This appeal is directed against the judgment passed in Letters Patent Appeal No.556 of 2001 dated 4th October, 2001 delivered by the High Court of Jharkhand at Ranchi.

2 The central question which arises for adjudication in this appeal is regarding the power, competence and authority of the Cantonment Board to levy entry tax on vehicles entering into the cantonment area.

3. Appellant No.1, Ramgarh Cantonment Board, a board constituted under the Cantonments Act, 1924 (hereinafter referred to as the Act), in exercise of the power vested in it under section 60 of the Act invited tender for collection of vehicle tax entering into Ramgarh Cantonment Area. Respondent no.3 in this appeal, Mukesh Prasad being the highest bidder was awarded the contract and was asked to realize vehicle tax at the rate of Rs.10/- from each goods vehicle entering into the Ramgarh Cantonment Area for a period of six months starting from 12.3.2001. Respondent no.3 deposited the earnest money. On 8.3.200, a formal agreement was executed between respondent no.3 and the Cantonment Board. The Cantonment Board immediately after executing the said agreement issued a letter dated 11.3.2001 restraining respondent no.3 from collecting vehicle entry tax on the directions of the Deputy Commissioner, Hazaribagh, Bihar.

4. The Secretary, Road Construction Department, Ranchi vide letter dated 30.5.2001 informed that prior permission of the Ministry of Road Transport and the National Highway, Government of India was necessary for the purpose of putting barriers to collect tax on the national highway. The Cantonment Board is entitled to collect only those taxes which can be realized by the municipality. In other words, the Cantonment Board cannot levy the tax which cannot be levied by the Municipality.

5. On 26.7.2001, the learned Single Judge allowed the writ petition filed by respondent No.3 by holding that the Deputy Commissioner, Hazaribagh could not restrain the Cantonment Board from levying of entry tax on goods vehicles passing through the Cantonment Board Area. The learned Single Judge quashed the order by which restriction on collecting entry tax was placed by the Deputy Commissioner, Hazaribagh.

6. The State of Jharkhand, aggrieved by the order of the learned Single Judge, preferred an appeal under clause 10 of the

Letters Patent. The Division Bench in the impugned judgment comprehensively examined the power, authority and competence of the Cantonment Board in levying entry tax on vehicles entering into the Cantonment Area. The Cantonments Act, 1924 is vested with section 60 which is the source of power, authority and jurisdiction for imposition of levy of tax. Section 60 reads as under:-

\02360. General power of taxation-(1) The Board may, with the previous sanction of the Central Government, impose in any cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated.

(2) Any tax imposed under this section shall take effect from the date of its notification in the Official Gazette or where any later date is specified in this behalf in the notification, from such later date.\024

7. A bare reading of sub-section (1) of section 60 clearly reveals that the power to levy any tax is dependent upon and co-extensive with any such corresponding power which may vest in the municipality being relatable to and dependent upon legislative enactment concerning, governing or regulating the powers of such municipality.

8. The Division Bench has rightly held that sub-section (1) of section 60 of the Cantonments Act, 1924 is not totally an independent provision by itself, in the sense that the power by itself has not been given to the Board to levy tax and the provision is related to and dependent upon any corresponding analogous provision in a legislative enactment of the municipality. In other words, if the municipality in an area has the power to levy tax under a relevant enactment, by virtue of the power created under sub-section (1) of section 60, the same power would vest in a Cantonment Board. In order to find out whether the Cantonment Board has any power to levy entry tax, it is necessary to find whether the municipality has similar power to levy entry tax.

9. Chapter IV of the Bihar and Orissa Municipal Act, 1922 (for short 1922 Act) deals with the subject of municipal taxation. Part-I of Chapter IV deals with the subject of imposition of taxes. The relevant portion of section 82 reads as under:-

\02382. Power to impose taxes.-(1) The Commissioners may, from time to time at a meeting convened expressly for the purpose, of which due notice shall have been given subject to the provisions of this Act and with the sanction of the State Government, impose within the limits of the municipality the following taxes and fees, or any of them \026

xxx xxx xxx

xxx xxx xxx

(f) a tax on the vehicles, horses and other animals named in the First Schedule.

xxx xxx xxx.\024

10. Under section 82 taxes and fees can be imposed on vehicles and other animals named in the First Schedule. Therefore, it is imperative for us to find out what has been incorporated in the First Schedule. First Schedule of the Municipality Act 1922 is extracted as under:-

\023The First Schedule\024

TAX ON VEHICLES, HORSES AND OTHER ANIMALS

per quarter
Rs. P.

For every four-wheeled vehicle drawn by two horses.

10.00
For every four-wheeled vehicle other than those specified above.

5.00
For every two-wheeled vehicle including a Shampani, but excluding a bicycle.

4.00
For every bicycle
1.00
For every cycle rickshaw
2.50
For every jin rickshaw
2.00
For every horse other than a pony
2.00
For every pony, mule, or donkey
1.00
For every elephant
6.00
For every camel
2.00\024

11. Part IV of Chapter IV deals with tax on vehicles, horses and other animals. It would be appropriate to notice the relevant portion of section 137, which deals with tax on vehicles, horses and other animals The relevant portion of section 137 reproduced as under:-
\023137. Tax on vehicles, horses and other animals.\027 (1) When it has been determined that a tax on the vehicles, horses and other animals specified in the First Schedule shall be imposed, the Commissioners at a meeting shall, subject to the provisions of section 138, make an order that the owner of every vehicle, horse and every other animal of the kind specified in the said schedule, which is kept or is used in the ordinary course within the municipality, or which is kept without the municipality and is used in the ordinary course within it, shall pay the tax in respect of such vehicle, horse or other animal and shall cause such order to be published in the manner described in section 356.

(2) xxx xxx xxx

(3) Such tax shall not be payable in respect of \026

(a) xxx xxx xxx

(b) vehicles and animals registered under Chapter X;

(c) xxx xxx xxx

xxx xxx xxx\024

12. Sub-clause (3) of section 137 clearly lays down that such tax shall not be payable in respect of vehicles and animals registered under Chapter X. Chapter X deals with \021Vehicles plying for hire\022. Section 326 of the 1922 Act deals with power to make bye-laws to regulate motor cars and vehicles plying for hire. Therefore, it is necessary to reproduce section 326 also. The relevant portion of section 326 reads as under:-
\023326. Power to make bye-laws to regulate motor-cars and vehicles plying for hire \026 (1) The Commissioners at a meeting may make bye-laws to regulate motor cars and vehicles used for the conveyance of passengers which are kept or are offered or ply for hire within the municipality whether by times or by distance, and may by such bye-laws provide for all matters relating to such motor cars and vehicles in respect of which this Act makes no provision or insufficient provision and provision is declared by the Commissioners, with the sanction of the State Government, to be necessary :

Provided that such bye-laws shall not \026

(a) apply to any vehicle used on a railway or tramway; and

(b) impose any fees for the registration of motor cars or for the grant of a licence to drive a motor car.

xxx xxx xxx\024

13. According to section 326, all vehicles plying for hire have been specifically excluded from levying of such tax by the municipality and consequently the Cantonment Board also has no power or competence to levy entry tax on vehicle which ply for hire.

14. The \021vehicle\022 and \021motor car\022 have been defined in sections 3(30) and 3(30-A) respectively of the 1922 Act. The definitions contained in sections 3(30) and 3(30A) read as under:-
\0233(30). \023Vehicle\024 means a wheeled conveyance, other than a motor car capable of being used on a road and includes a tricycle, bicycle, cycle rickshaw, a jinrickshaw and a shampani.\024

\0233(30-A). \023Motor car\024 means any mechanically propelled vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner.\024

15. Therefore, from the bare reading of the relevant provisions and definition of vehicle and motor car given in the Act, it is abundantly clear that the municipality has no power to levy any entry tax on mechanically propelled vehicles. When the municipality has no power or competence to levy entry tax on mechanically propelled vehicles, obviously the Cantonment Board cannot exercise this power because taxing power of the

Cantonment Board is dependent upon and co-extensive with any such corresponding power vested in the municipality.

16. In the impugned judgment, the Division Bench observed that a combined reading of sections 82 and 137 and also a bare look at the First Schedule of 1922 Act clearly suggest that the Municipality in Bihar under 1922 Act has the power, authority and jurisdiction to levy tax on the vehicles as are enumerated in the First Schedule, but such tax is leviable only in respect of such vehicles which are kept or are used in the ordinary course within the municipality. This is fortified by the fact that in the First Schedule the tax rate is with respect to per quarter.

17. Section 150 of 1922 Act defines \023used in the ordinary course\024. The same is reproduced as under:

\023A vehicle, horse or other animal shall be deemed to be used in the ordinary course within the meaning of section 137 if it is used on an average thrice a week.\024

18. In section 137 it has been determined that a tax on the vehicles, horses and other animals specified in the First Schedule alone can be imposed and the First Schedule, as extracted above clearly excludes all mechanically propelled vehicles.

19. According to section 137, the words that the tax can be levied on every vehicle, horse or other animal of the kind specified in the Schedule which is kept or is used in the ordinary course within the municipality, means that the vehicle, horse or other animal which is kept or used in the ordinary course within the municipality would be obliged to pay such tax. This obviously does not include levy of entry tax for mechanically propelled vehicles. Thus, Sections 82 and 137 or any other provision of the 1922 Act does not permit the municipality to levy any entry tax on mechanically propelled vehicles. Since the municipality has no such power, competence or authority to levy tax on entry of mechanically propelled vehicles, the Cantonment Board, Ramgarh, Bihar obviously cannot exercise those powers.

20. The learned counsel for the appellants placed reliance on the case of Cantonment Board, Mhow & Another v. M.P. State Road Transport Corporation (1997) 9 SCC 450. This case was cited for the proposition that since the Cantonment Board in Madhya Pradesh has been permitted to levy entry tax on motor vehicles, therefore, the Cantonment Board, Ramgarh, Bihar in the instant case, is also justified in levying entry tax on motor vehicles. In order to avoid any confusion or misunderstanding, we deem it appropriate to deal with the said case of Madhya Pradesh in detail.

21. The Madhya Pradesh State Legislature has specifically given power under section 127 of the M.P. Municipalities Act, 1961 to the municipalities of Madhya Pradesh to levy entry tax on the vehicle. It may be pertinent to observe that no power to levy entry tax has been given to the municipalities in Bihar under the 1922 Act.

22. Relevant portion of section 127 of the M.P. Municipalities Act, 1961 reads as under:-

\023127. Taxes which may be imposed.\027(1) A Council may, from time to time, and subject to the provisions of this Chapter, and any general or special order which the State Government may make in this behalf,

impose in the whole or in any part of the Municipality any of the following taxes, for the purposes of this Act, namely:

(i) * * *

(ii) * * *

(iii) a tax on vehicles, boats and animals used as aforesaid entering the limits of the Municipality but not liable to taxation under clause (ii).\024

23. Therefore, the vehicle entry tax levied by the municipalities in Madhya Pradesh is because of the specific power given by the Legislature to the municipalities in Madhya Pradesh to levy such tax. Once the municipality is invested with the power to levy entry tax, the Cantonment Board can also exercise the same power. No such power is given to the municipalities in Bihar under the 1922 Act and consequently, the Cantonment Board, Ramgarh, Bihar cannot levy vehicle entry tax for the vehicles entering into the Ramgarh Cantonment Board area. On the analogy of the Madhya Pradesh case, it cannot be concluded that the Ramgarh Cantonment Board is also justified in levying the vehicle entry tax.

24. We make it clear that levying tax on motor vehicle used or kept for use is entirely different from levying vehicle entry tax. We deem it appropriate to extract para 14 of the judgment of Madhya Pradesh case (supra) which will further clarify the legal position.

\02314. The tax leviable on motor vehicles when used or kept for use under Section 3(2) of the Madhya Pradesh Motor Vehicles Taxation Act is different from the tax leviable on motor vehicles entering the limits of the Municipality under Section 127(1)(iii) of the Madhya Pradesh Municipalities Act, 1961 and there is no repugnancy between the two and both the provisions can therefore operate in their own fields. Since under Section 127(1)(iii) of the Municipalities Act, Municipality could levy a tax on motor vehicles entering the limits of the Municipality, the same could be levied by the Cantonment Board in exercise of its power under Section 60 of the Cantonments Act with the previous sanction of the Central Government. Consequently, notifications issued by the Cantonment Boards of Mhow, Jabalpur and Saugor were valid notifications issued under Section 60 of the Cantonments Act and imposition of tax on motor vehicles entering into the limits of the Cantonment Boards cannot be said to be invalid or inoperative. The High Court in our opinion committed error in striking down those notifications on the ground of repugnancy with this special legislation, namely, the Madhya Pradesh Motor Vehicles Taxation Act.\024

25. In the said judgment this court held that the Cantonment Board is entitled to levy entry tax on motor vehicles within the limits of the Cantonment Board. This was justified on the ground that similar power was vested in the concerned municipality. It is again reiterated that, in the instant case, the Bihar legislature has not given powers to the municipalities to levy entry tax, therefore, the Cantonment Board, Ramgarh lacks an authority or competence to levy entry tax on motor vehicles entering into the Cantonment Board area. In this view of the matter, Madhya Pradesh case (supra) has no application as far as the instant case of the appellants is concerned.

26. The learned counsel for the appellants has also placed reliance on Avinash & Others v. State of Maharashtra & Others [2004(2) Mah. L.J. 511] and The Secunderabad Cantonment Board, Secundereabad v. M/s Allied Trading Corporation & Another [1997 (1) Andhra Weekly Reporter 160]. Since we have already dealt with the Madhya Pradesh case in detail, therefore, it is not necessary to deal with the facts of the aforementioned cases in detail, but on the same analogy it is reiterated that these cases have no application to the controversy involved in the present case. The Division Bench in the impugned judgment rightly observed that the Deputy Commissioner, Hazaribagh was fully justified in objecting to levy of impugned tax by the Cantonment Board since similar powers were not given to the concerned municipalities in Bihar to levy vehicle entry tax. In view of the legislative scheme, the Cantonment Board was precluded from levying such an entry tax.

27. We have heard the learned counsel for the parties at length and perused the relevant provisions. It is abundantly clear that the power to levy tax under section 137 for vehicle which is used in the ordinary course within the municipality or which is kept without the municipality and is used in the ordinary course within it, is different from levying vehicle entry tax. What is permissible according to Act is imposing tax within the parameters of section 137 for vehicles, horses and other animals for being kept in the ordinary course within municipality and is used in the ordinary course within it than levying entry tax by the Cantonment Board. The Cantonment Board did not have any authority or competence to levy tax on the entry of vehicles in the Cantonment area under section 60 of the Cantonment Act, 1924. The conclusions arrived at by the impugned judgment of the Division Bench are quite justified and no interference is called for.

28. Before we part with the judgment we would like to observe that, according to respondent No. 3, the Cantonment Board authorised respondent no.3 vide order dated 3.3.2001 to realize the vehicle entry tax and in pursuance to an agreement between the Cantonment Board and respondent no.3, respondent no.3 deposited Rs.25,000/- and in the auction respondent no.3, being the highest bidder, deposited Rs.3.35 lacs as per the resolution of the Board of the Cantonment Board dated 28.2.2001. In the peculiar facts and circumstances of this case, whatever amount has been deposited by respondent no.3 shall be refunded to him within eight weeks because according to respondent no.3 in view of the restraint order, respondent no.3 could not collect any amount towards the levy of entry tax on vehicles. This direction is given while keeping the well known Legal Principle of equity, fairness and good conscience in view. No further directions are necessary.

29. This appeal is accordingly dismissed with costs.