

PETITIONER:
SILIGURI MUNICIPALITY & OTHERS

Vs.

RESPONDENT:
AMALENDU DAS & OTHERS

DATE OF JUDGMENT 06/01/1984

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
THAKKAR, M.P. (J)

CITATION:
1984 AIR 653 1984 SCR (2) 344
1984 SCC (2) 436 1984 SCALE (1)278
CITATOR INFO :
F 1985 SC 330 (1,2,6)
F 1985 SC1289 (2)
R 1986 SC 614 (5,6)

ACT:
Constitution of India 1950, Articles 136 & 226
High Court-Proceedings under Article 226-Validity of
tax or levy questioned-Stay of recovery of tax or levy
claimed-Factors to be considered by High Court before grant
of interim stay.
Supreme Court-Interference with interlocutory order of
High Court granting stay of recovery of tax-When arises.

HEADNOTE:
The appellant Municipality in its Appeal by Special
Leave impugned the interlocutory order of the High Court
restraining the Municipality 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.

Allowing the Appeal,

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HELD: 1. The High Court should not 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. [345F]

2. The levy or impost does not become become bad as
soon as a Writ Petition is instituted to assail the validity
of the levy. There is no warrant for presuming the levy to
be bad at the very threshold of the proceedings. The main
purpose of passing an interim order is to evolve a workable
formula of a workable arrangement to the extent called for
by the demands of the situation. The only consideration at
that juncture is to ensure that no prejudice is occasioned
to the rate payers in case they ultimately succeed. This
object can be attained by requiring the authority levying
the impost to give an undertaking to refund or adjust the
levied amount against future dues, in the event of the
entire levy or a part thereof being ultimately held to be
invalid by the Court. [345 G-H; 346 A]

3. 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 is 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. [346H; 347A]

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4. The Court has to show awareness of the fact that in the case of the fact that in the case of a Municipality it cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining it from recovering the taxes as per the impugned provision. The Municipality has to maintain essential civic services, run public institutions, purchase supplies and pay the salaries of its employees etc. The grant of an interlocutory order would paralyze the administration and dislocate the entire working. These serious ramifications were lost sight of by the High Court in the instant case while making the impugned order. [346 C-D]

JUDGMENT:

CIVIL APPELLANT JURISDICTION: Civil Appeal No. 762 of 1984.

Appeal by special leave for an interlocutory order dated August 25, 1983 of the Calcutta High Court.

K.K. Venugopal, N.N. Gooptu and H.K. Puri for the Appellants.

S.L. Aneja for the Respondent.

The Order of the Court was delivered by

SEN, J. 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 ss. 123 and 124 of the Bengal Municipal Act, 1932, as amended by the Bengal Municipal (Amendment) Act, 1980.

We are constrained to make the observations which follows as we do feel dismayed at the tendency on the part of some of the High Court to grant interlocutory orders for the mere asking. Normally, the High Courts should not, as a rule, in proceedings under Art. 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.

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 consideration 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

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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. What is more, supplies have to be purchased and salaries have to be paid. 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.

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 nonspeaking 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 obedience 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

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balance after considering the pros and cons of the matter last larger public interest is not jeopardized and institutional embarrassment is eschewed.

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 ss. 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 Goptu has given an undertaking on behalf of the Siliguri Municipality that the municipality shall refund the difference between the revised and the old rates within three months of the order of the High Court in case the writ petition is finally allowed by the High Court.

There shall be no order as to costs.

N.V.K.

Appeal allowed.

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JUDIS