ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION

1964

March 5

v.

THE INCOME-TAX OFFICER AND ANR.

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.]

Income-tax—Income of State Road Transport Corporation whether income of the State—Whether exempt—Constitution of India, Art. 289—Income-tax Act, 1922 (11 *of* 1922), *s.* 22.

The Income-tax Officer (respondent No. 1) served a notice under s. 22 of the Income-tax Act on the appellant. Upon the receipt of the notice, the appellant appeared before the Income-tax Officer. The appellant pleaded before the Income-tax Officer that it did not fall under any of the five categories of assessees under s. 3 of the Income-tax Act. The appellant also raised the contention that it was a local authority exempt from income-tax. All these contentions were rejected by respondent No. 1 with the result that the impugned orders of assessment came to be passed.

The appellant filed Writ Petitions before the High Court in which it challenged the impugned orders of assessment passed by respondent No. 1. In its Writ Petitions, the appellant claimed an order, writ or other appropriate direction quashing the assessment orders passed by respondent No. 1. The High Court dismissed these writ petitions. The High Court held that the appellant could not claim the exemption under Art. 289(1) because it was not a state-owned Corporation. The High Court granted a certificate under Art. 133 of the Constitution and hence the appeal.

Held: (i) Art. 289 of the Constitution consists of three clauses. The first clause confers exemption from union taxation on the property and income of a State.

Clause (2) then provides that the income from trade or business carried on by the Government of a State or on its behalf which would not have been taxable under cl. (1), can be taxed, provided a law is made by Parliament in that behalf. In other words cl. (2) is an exception to cl. (1).

Clause (3) then empowers Parliament to declare by law that any trade or business would be taken out of the purview of cl. (2) and restored to the area covered by cl. (1) by declaring that the said trade or business is incidental to the ordinary functions of Government. In other words, cl. (3) is an exception to the exception prescribed by cl. (2).

(ii) A trading activity carried on by the corporation (appellant) is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf because according to statute the Corporation has a personality of its own and this personality is distinct from that of the State or other shareholders.

All the relevant provisions of the impugned Act also emphatically bring out the separate personality of the Corporation. Section 30 of the Act also does not suggest that the income of the

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Corporation is the income of the State. All that s. 30 requires is that a part of that income may be entrusted to the State Government for a specific purpose of road development. Therefore, the income derived by the appellant from its trading activity cannot be said to be the income of the State either under cl. (1) or cl. (2) of Art. 289.

The American doctrine of the immunity of State agencies or instrumentalities from Federal taxation has no application to the present case.

Akadasi Padhan v. *State of Orissa* [1963] Supp. 2 S.C.R. 691, distinguished.

Mark Graves, John J. Merrill and John P. Hennessy v. *People of the State of New York Upon the Relation of James B.O'keefe*, 83 Law. Ed. 927 and *Clallan County* v. *United States of America*, 68 Law Ed. 328, no application.

State of West Bengal v. *Union of India* [1964] 1 S.C.R. 371, relied on.

M'Culloch v. *Maryland*, (1819) 4 Wheat 316, *Bank of Toronto* v. *Lambe* (1887) 12 A.C. 575 and *Webb* v. *Outrim* [1907] A.C. 81, referred to.

Tamlin v. *Hansaford*, [1950] K.B. 18, relied on.

(iii) It is hardly necessary for the Act to make a provision that tax, if chargeable would be paid. In fact, the Companies Act which deals with companies does not make such a specific provision, though no one can seriously suggest that there would be repugnancy between the provisions of the Companies Act and the Income-tax Act. There is no repugnancy between the charging section of the Income-tax Act and ss. 29 and 30 of the Act. All that ss. 29 and 30 of the impugned Act purport to do is to provide for the administration of the funds vesting in the Corporation and their disposal. These provisions are not inconsistent with the liability to pay tax which is imposed by the Income-tax Act.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos.475—478 of 1963.

Appeal from the order dated July 14, 1961 of the Andhra Pradesh High Court in Writ Petition Nos. 516 to 519 of 1960.

D. Narsaraju, Advocate-General, Andhra Pradesh, P. R. Ramchandra Rao and *T. V. R. Tatachari*, for the appellant (in all the appeals).

K. N. Rajagopala Sastri, Gopal Singh and *R. N. Sachthey*, for the respondents (in all the appeals).

Rajeshwari Prasad and *S. P. Varma*, for Intervener No. 1 (in all the appeals).

B. Sen, S. C. Bose and *P. K. Bose*, for Intervener No. 2 (in all the appeals).

M. C. Setalvad, S. C. Bose and *P. K. Bose*, for Intervener No. 3 (in all the appeals).

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March 5, 1964. The judgment of the Court was delivered by—

GAJENDRAGADKAR, C.J.—These four appeals arise from four writ petitions filed by the appellant, the Andhra Pradesh State Road Transport Corporation, in the High Court of Andhra Pradesh against the Income-tax Officer, and the Appellate Assistant Commissioner of Income-tax, Hyderabad, respondents 1 and 2 respectively, in which it claimed a writ of prohibition restraining them from collecting any tax, or taking any proceedings under the Indian Income Tax Act against them. In its writ petitions, the appellant further claimed an order, writ, or other appropriate direction quashing the assessment orders passed by respondent No. 1 on the 29th February, 1960. for the years 1958-59 and 1959-60. For the first year, a tax of Rs. 13,60,963.86 nP. has been imposed for the period 11-1-1958 to the 31-3-1958, and for the latter year, a tax of Rs. 34,44,430.48 nP. has been levied for the period 1-4-1958 to 31-3-1959. After hearing the parties, the High Court has dismissed the appellant's writ petitions with costs. The appellant then applied for and obtained a certificate from the High Court and it is with the said certificate that these four appeals have been brought to this Court.

It appears that the appellant was established under the Road Transport Corporations Act, 1950 (No. 64 of 1950) (hereinafter called the Act) by a notification issued by the Andhra Pradesh Government and it has been functioning with effect from the 11th January, 1958. Before the formation of the appellant Corporation, the road transport was a department of the Government of Hyderabad and after integration of Hyderabad with Andhra Pradesh, it was run by the Government of Andhra Pradesh. During the whole of this period, the road transport was treated as exempt from income-tax. After the appellant Corporation was, however, formed the Income-tax Department took the view that the income made by the appellant was liable to tax, and so, a notice under s. 22 of the Income-Tax Act was served on the appellant on the 29th January, 1959. In pursuance of the proceedings which were taken after service of the notice, the impugned orders of assessment were passed. Before the Income-tax Officer, it was urged by the appellant that since the appellant was an independent body carrying on the business of road transport, it did not fall under any of the five categories of assessees under s. 3 of the Income-tax Act; it was neither an individual, nor a Hindu undivided family, nor a firm, nor a company, nor an association of persons, and as it was outside the said five categories of assessees, no tax could be levied against it. It was further argued that the net income of the appellant ultimately goes to the State of Andhra Pradesh under s. 30 of the Act, and as such it was immune from Union taxation under

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Art. 289 of the Constitution. Yet, another contention was raised in support of the plea that the noice issued by respondent No. 1 was invalid, and that was that the appellant was a local authority exempt from income-tax. All these contentions were rejected by respondent No. 1, with the result that the impugned orders of assessment came to be passed. It is the validity of these orders that the appellant challenged before the Andhra Pradesh High Court.

The High Court has held that the appellant is not a State-owned Corporation and that it is not carrying on business on behalf of the Government. It has also observed that the trade or business which the appellant was carrying on was not incidental to the ordinary functions of government, and since no declaration had been made to that effect under Art. 289(3), the appellant could not rely on Art. 289(1). The contention that the appellant was a local authority which was urged before the High Court was rejected, and the argument that the charging section of the Income-tax Act was repugnant with the material provisions of the Act, such as sections 28, 29 and 30, was also held to be without any substance by the High Court. Thus, since none of the arguments urged by the appellant before the High Court was accepted, the writ petitions filed by it were dismissed.

The main point urged before us by the learned Advocate-General of Andhra Pradesh on behalf of the appellant is that the income in respect of which the impugned order of assessment has been passed by respondent No. 1, is exempt from Union taxation under Art. 289(1) of the Constitution, and that raises the question about the construction and effect of the provisions of the three clauses of Art. 289. Let us, therefore, read the said article:

> "289. (1) The property and income of a State shall be exempt from Union taxation.
>
> (2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied or any income accruing or arising in connection therewith.
>
> (3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government."

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The learned Advocate-General concedes that the transport activity carried on by the appellant is strictly not incidental to the ordinary functions of government. It is true that in a modern democratic Welfare State, Government has to undertake several economic activities some of which are trade activities, while others are commercial activities, because the pursuit of the welfare policies inevitably requires that Government should help the process of economic improvement of its citizens. However desirable these socio-economic activities may be and however legitimate may be the attempt of the State Government to undertake them, there is no denying the fact that the ordinary functions of the Government to which clause (3) of Art. 289 refers must be distinguished from these socio-economic activities. The Advocate-General, however, urges that though the trade activities of the appellant may thus be distinguishable from the ordinary functions of government, they are nevertheless included in Art. 289(1) and income derived by the appellant from the said activities falls within the protection of Art. 289(1).

This argument proceeds on the assumption that clause (2) of Art. 289 is an exception or proviso to clause (1) and as such, whatever is included in clause (2) must be deemed to have been included also in clause (1); otherwise, the proviso cannot be logically explained. It is because the trading or commercial activities of the government of a State to which the said clause refers were originally included in clause (1) that it became necessary to provide by clause (2) that the said trading or commercial activities carried on by the Government of a State would not claim the benefit of exemption prescribed by clause (1). That is how the Advocate-General seeks to include trading or business activities mentioned in cl. (2) in cl. (1) itself. Logically, no exception can be taken to this approach.

The next stage in the argument urged by the Advocate-General is that clause (2) is wide enough to include the trading activities carried on by the appellant and as a result of the width of its scope, the appellant's activities can be treated as the commercial activities carried on by the Government of Andhra Pradesh itself. It will be noticed that clause (2) refers to a trade or business of any kind carried on by or on behalf of the Government of a State. The argument is that the first part of the clause refers to the trade or business carried on by the Government and that means, carried on by the Government either departmentally or by agents appointed by the Government in that behalf. Whether the department carried on the business or an agent specifically and exclusively appointed for that purpose carries it on, it is the business carried on by the State. The latter part of the clause refers to trade or business carried on on behalf of the Government of a State and it is

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suggested that this part of the clause is intended to take in trade or business carried on by a Corporation like the appellant which is either State-owned, or State-controlled. The appellant Corporation, says the Advocate-General, is undoubtedly State-controlled and he would suggest that it is also owned by the State of Andhra Pradesh. Therefore, the commercial activity carried on by the appellant must be deemed to be an activity carried on on behalf of the State of Andhra Pradesh, and it is with this postulate that the argument reverts to clause (1) of Art. 289 and urges that the income received by the appellant in respect of commercial activities carried on by it on behalf of the Government of Andhra Pradesh is exempt from Union taxation.

In support of this argument, the Advocate-General has relied on a recent decision of this Court in *Akadasi Padhan* v. *State of Orissa & Others*.(1) In that case, this Court had occasion to consider the scope and effect of the provisions contained in Art. 19(6). It will be recalled that Art. 19(6) authorises the State, *inter alia*, to make any law relating to the carrying on by the State or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. One of the points which fell to be considered in the *Akadasi Padhan* case was the effect of the words "a law relating to the carrying on by the State of any trade or business." Dealing with this question, this Court held that though normally, the trade specified in the clause would be carried on by the State departmentally or with the assistance of public servants appointed in that behalf, there may be cases of some trades or business in which it would be open to the State to employ the services of agents, provided the agents work on behalf of the State and not for themselves. Relying upon this decision, the Advocate-General argues that when clause (2) of Art. 289 refers to trade or business carried on by the Government of a State, it includes trade or business carried on by the Government either departmentally or with the assistance of agents appointed in that behalf, and so, he argues that these two categories of carrying on business having been included in the first part, what the second part is intended to cover is trade or business carried on by the Government of a State through the instrumentality of a corporation like the appellant, and so, the trade or business carried on by the appellant is trade or business carried on on behalf of the Government of Andhra Pradesh within the meaning of Art. 289(2) and that makes the income earned out of the said trade or business income of the State under Art. 289(1).

(1) [1963] Supp. 2 S.C.R. 691.

In substance, this argument is really based on the American doctrine of the immunity of State agencies or instrumentalities from Federal taxation. When this doctrine was accepted by American decisions, it was normally confined to such State agencies as were concerned with functions which were essentially governmental in character. But, says the Advocate-General, since Art. 289(2) takes in trade activities carried on by a corporation like the appellant, the question as to whether the trade is a function which is essentially governmental in character is irrelevant. In support of his contention, the Advocate-General has relied upon two American decisions; first of these is the decision in the case of *Mark Graves. John J. Merrill and John P. Hennessy* v. *People of the State of New York Upon the Relation of James B. O'keefe*(1). In that case Stone J. who spoke for the Supreme Court of America, has observed that when the national government lawfully acts through a corporation which it owns and controls, those activities are governmental functions entitled to whatever tax immunity attaches to those functions when carried on by the government itself through its departments. In other words, this observation shows that the Court was inclined to take the view that for the purpose of claiming exemption from taxation, it did not make a material difference whether the operation was carried on by the State departmentally or with the assistance of a corporation.

In *Clallan County* v. *United States of America,* (2) it was held by the Supreme Court of America that a State cannot tax the property of a corporation organised by the Federal government to produce material for war purposes, the property of which is conveyed to it by, or bought with the money of, the United States, and used solely for the purposes of its creation. Holmes J. who delivered the opinion of the Court emphasised the fact that in the case before the Court not only the agent was created, but all the agent's property was acquired and used for the sole purpose of producing a weapon for the war. "This is not like the case of a corporation," added the learned Judge, "having its own purposes as well as those of the United States, and interested in profit on its own account. The incorporation and formal erection of a new personality was only for the convenience of the United States, to carry out its ends, and so, it is unnecessary to consider whether the fact that the United States owned all the stock and furnished all the property to the corporation, taken by itself, would be enough to bring the case within the policy of the rule that exempts property of the United States."

(1) 83 Law. Ed. 927.

(2) 68 Law. Ed. 328, 331.

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Both these decisions would not assist us in determining the question as to whether the income received by the appellant is the income of the State of Andhra Pradesh within the meaning of Art. 289(1), because the decision of the problem raised before us by the appellant must be reached not on any academic considerations of the claims for exemption from taxation which the State instrumentalities can put forward, but on the construction of Art. 289 itself. Art. 289(1) exempts from Union taxation the property and income of a State, and the Advocate-General can succeed only if he is able to establish that the income derived by the appellant in respect of which the impugned assessment order has been passed is the income of the State of Andhra Pradesh. Therefore, the American doctrine on which strong reliance was placed by the Advocate-General would be of no assistance to his case. If the trading activity carried on by the appellant is sought to be brought into Art. 289(1) solely as a result of the construction of Art. 289(2), the test on which the validity of the Advocate-General's argument must necessarily be judged, is whether or not the requirement of Art. 289(1) is satisfied and that requirement clearly is that the income like the property for which exemption from Union taxation is claimed must be the income or property of a State.

Besides, there is another reason why the Advocate-General cannot derive any assistance from the American doctrine of the exemption from taxation in regard to State instrumentalities. The said doctrine has been categorically rejected by this Court in *State of West Bengal* v. *Union of India*[1] Speaking for the majority of the Court, Sinha C. J. observed that "it was futile to attempt the resuscitation of the now exploded doctrine of the immunity of instrumentalities which originating from the observations of Marshall, C. J., in *M' Culloch* v. *Maryland*,[2] has been decisively rejected by the Privy Council as inapplicable to the interpretation of the respective powers of the States and the Centre under the Canadian and Australian Constitutions (*vide Bank of Toronto* v. *Lambe*,[3] and *Webb* v. *Outrim*[4]) and has practically been given up even in the United States." Thus, it is necessary to revert to the construction of Art. 289 in deciding whether the appellant is right in claiming immunity from Union taxation.

We have already seen that Art. 289 consists of three clauses, the first clause confers exemption from Union taxation on the property and income of a State. In Special Reference No. 1 of 1962. *In re. Sea Customs Act* (1878), *Section*

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(1) [1964] 1 S.C.R. 371, 407.
(2) (1819) 4 Wheat, 316 at p. 436.
(3) (1887) 12 A.C. 575.
(4) [1907] A.C. 81

20(2),[1] a Special Bench of this Court by a majority has held that the immunity granted to the States in respect of Union taxation, under Art. 289(1) does not extend to duties of customs including export duties or duties of excise. In that case, the question which directly arose for decision, was to determine the scope and effect of the nature of taxation from which exemption could be claimed by the property and income of a State under Art. 289(1). With that aspect of the matter, however, we are not concerned in the present appeals.

The scheme of Art. 289 appears to be that ordinarily, the income derived by a State both from governmental and non-governmental or commercial activities shall be immune from income-tax levied by the Union, provided, of course, the income in question can be said to be the income of the State. This general proposition flows from clause (1).

Clause (2) then provides an exception and authorises the Union to impose a tax in respect of the income derived by the Government of a State from trade or business carried on by it, or on its behalf; that is to say, the income from trade or business carried on by the Government of a State or on its behalf which would not have been taxable under clause (1), can be taxed, provided a law is made by Parliament in that behalf. If clause (1) had stood by itself, it may not have been easy to include within its purview income derived by a State from commercial activities, but since clause (2), in terms, empowers Parliament to make a law levying a tax on commercial activities carried on by or on behalf of a State, the conclusion is inescapable that these activities were deemed to have been included in cl.(1) and that alone can be the justification for the words in which cl. (2) has been adopted by the Constitution. It is plain that cl. (2) proceeds on the basis that but for its provision, the trading activity which is covered by it would have claimed exemption from Union taxation under cl. (1). That is the result of reading clauses (1) and (2) together.

Clause (3) then empowers Parliament to declare by law that any trade or business would be taken out of the purview of cl. (2) and restored to the area covered by cl. (1) by declaring that the said trade or business is incidental to the ordinary functions of government. In other words, cl. (3) is an exception to the exception prescribed by cl. (2). Whatever trade or business is declared to be incidental to the ordinary functions of government, would cease to be governed by cl. (2) and would then be exempt from Union taxation. That, broadly stated, appears to be the result of the scheme adopted by the three clauses of Art. 289.

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(1) [1964] 3 C.S.R. 787.

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Reading the three clauses together, one consideration emerges beyond all doubt and that is that the property as well as the income in respect of which exemption is claimed under cl. (1), must be the property and income of the State, and so, the same question faces us again: is the income derived by the appellant from its transport activities the income of the State? If a trade or business is carried on by the State departmentally and income is derived from it, there would be no difficulty in holding that the said income is the income of the State. If a trade or business is carried on by a State through its agents appointed exclusively for that purpose, and the agents carry it on entirely on behalf of the State and not on their own account, there would be no difficulty in holding that the income made from such trade or business is the income of the State. But difficulties arise when we are dealing with trade or business carried on by a corporation established by a State by issuing a notification under the relevant provisions of the Act. The corporation, though statutory, has a personality of its own and this personality is distinct from that of the State or other shareholders. It cannot be said that a shareholder owns the property of the corporation or carries on the business with which the corporation is concerned. The doctrine that a corporation has a separate legal entity of its own is so firmly rooted in our notions derived from common law that it is hardly necessary to deal with it elaborately; and so, *primà facie,* the income derived by the appellant from its trading activity cannot be claimed by the State which is one of the shareholders of the corporation.

It may that the statute under which the notification has been issued constituting the appellant corporation may provide expressly or by necessary implication that the income derived by the corporation from its trading activity would be the income of the State. The doctrine of the separate entity or personality of the corporation is always subject to the exceptions which statutes may create, and if there is a statutory provision which clearly indicates that despite the concept of the separate personality of the corporation, the trade carried on by it belongs to the shareholders who brought the corporation into existence and the income received from the said trade likewise belongs to them, that would be another matter. It would then be possible to hold that as a result of the specific statutory provisions the income received from the trade carried on by the corporation belongs to the shareholders who have constituted the said corporation, and so, we must look to the Act to determine whether the income in the present case can be said to be the income of the State of Andhra Pradesh.

In this connection, we may usefully refer to the observations made by Lord Denning in *Tamlin* v. *Hansaford*: (1). "In

(1) [1950] K.B. 18.

the eye of the law," said Lord Denning, "the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government." These observations tend to show that a trading activity carried on by the corporation is not a trading activity carried on by the State departmentally, nor is it a trading activity carried on by a State through its agents appointed in that behalf.

That takes us to the provisions of the Act which will assist us in determining the question as to whether the income in question can legitimately be held to be the income of the State of Andhra Pradesh. The Act was passed to provide for the incorporation and regulation of Road Transport Corporations. Section 3 authorises the State Government to issue a notification in the Official Gazette establishing a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification, after taking into account considerations specified by clauses (a), (b) and (c). Section 4 then provides that every corporation shall be a body corporate by the name notified under s. 3 having perpetual succession and a common seal, and shall sue or be sued by the said name. Section 5 deals with the constitution of Road Transport Corporation; sub-section (3) provides for the representation both of the Central Government and of the State Government in the Corporation in such proportion as may be agreed to by both the Governments and of nomination by each Government of its own representatives therein; it also contemplates that if capital is raised by the issue of shares to other parties, provision has to be made for the representation of such shareholders. Section 17 authorises the appointment of Advisory Councils. Section 18 prescribes the general duty of the corporation. Section 23(1) provides for the capital of the corporation; under this sub-section, the capital contributed by the Central Government and the State Government is in the proportion of 1: 3. Sub-section (3) authorises the division of the capital of the corporation into such number of shares as the State Government may determine; and it provides that the number of shares which shall be subscribed by the State Government, the Central Government and other parties shall also be determined by the State Government in consultation with the Central Government. This provision contemplates the possibility of other shareholders joining the State Government and the Central Government. Section 24 permits additional capital of the corporation to be raised. Section 25 requires that

the shares of the corporation shall be guaranteed by the State Government as to the payment of the principal and the payment of the annual dividend at such minimum rate as may be fixed by the State Government. Section 26 confers powers of borrowing on the corporation. Section 27 constitutes a fund of the Corporation. Section 28 provides for the payment of interest and dividend. Section 29(1) requires the Corporation to make such provisions for depreciation and for reserve and other funds as the State Government may, from time to time, direct. Section 29(2) provides that the management of the said funds, the sums to be carried from time to time to the credit thereof and the application of the moneys comprised therein shall be determined by the Corporation. There is a proviso to this sub-section which prohibits the utilisation of these funds for any purpose other than that for which it was created without the previous approval of the State Government. Section 30 deals with the disposal of net profits: it says that after provision is made as required by sections 28 and 29, the Corporation may utilise such percentage of its net annual profits as may be specified in this behalf by the State Government for the purposes therein specified, and it adds that out of the balance, such amount as may, with the previous approval of the State Government and the Central Government, be specified in this behalf by the Corporation, may be utilised for financing the expansion programmes of the Corporation and the remainder, if any, shall be made over to the State Government for the purpose of road development. Section 31 gives power to the Corporation to spend such sums as it thinks fit on objects authorised by the Act. Section 32 deals with the budget; s. 33 with accounts and audit; and s. 34 provides that the directions issued by the State Government after consultation with the Corporation shall be followed by the Corporation, and it adds that such directions may include instructions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks. Under Section 38, power is conferred on the State Government to supersede the Corporation for reasons specified by s. 38(1). On supersession, all property vested in the Corporation vests during the period of supersession, in the State Government; that is the effect of s. 38(2)(c). Section 39 deals with the liquidation of a Corporation and clause (2) of this section provides that in the event of such liquidation, the assets of the Corporation, after meeting the liabilities, if any, shall be divided among the Central and the State Government and such other parties, if any, as may have subscribed to the capital in proportion to the contribution made by each of them to the total capital of the Corporation. That, in brief, is the position of the relevant provisions of the Act.

There is no doubt that the bulk of the capital is contributed by the State Government and a small proportion by the Central Government, and in that sense, the majority of shares are at present owned by the State Government. There is also no doubt that the Corporation is a State-controlled corporation in the sense that at all material stages and in all material particulars, the activity of the Corporation is controlled by the State; but it is clear that other citizens may be admitted to the group of shareholders, and from that point of view, the Act contemplates contribution of the capital for the Corporation not only by the Central and the State Governments, but also by the citizens. The main point which we are examining at this stage is: is the income derived by the appellant from its trading activity, income of the State under Art. 289(1)? In our opinion, the answer to this question must be in the negative. Far from making any provision which would make the income of the Corporation the income of the State, all the relevant provisions emphatically bring out the separate personality of the corporation and proceed on the basis that the trading activity is run by the corporation and the profit and loss that would be made as a result of the trading activity would be the profit and loss of the corporation. There is no provision in the Act which has attempted to lift the veil from the face of the corporation and thereby enable the shareholders to claim that despite the form which the organisation has taken, it is the shareholders who run the trade and who can claim the income coming from it as their own. Section 28 which provides for the payment of interest clearly brings out the duality between the Corporation on the one hand, and the State and Central Governments on the other. Take, for instance, the case of supersession of the corporation authorised by s. 38. Section 38(2)(c) emphatically brings out the fact that the property really vests in the Corporation, because it provides that during the period of supersession, it shall vest in the State Government. Similarly, s. 39(2) which deals with the distribution of assests in case of liquidation, brings out the same feature. It has been urged before us by the Advocate-General that s. 50 contemplates that after provision is made as required by sections 28 and 29 and funds are utilised as prescribed by s. 30, the balance has to be given to the State Government for the purpose of road development, and that, it is suggested, indicates that the income belongs to the State Government. This argument is clearly not well-founded. When we are deciding the question as to whether the income derived by the Corporation is the income of the State, the provision made by s. 30 for making over to the State Government the balance that may remain as indicated therein, is of no assistance. The income is undoubtedly the income of the Corporation. All that s. 30 requires is that a part of that income may be entrusted to the

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State Government for a specific purpose of road development. It is not suggested or shown that when such income is made over to the State, it becomes a part of the general revenue of the State. It is income which is impressed with an obligation and which can be utilised by the State Government only for the specific purpose for which it is entrusted to it. Therefore, we are satisfied that the income derived by the appellant from its trading activity cannot be said to be the income of the State under Art. 289(1), and if that is so, the fact that the trading activity carried on by the appellant may be covered by Art. 289(2), does not really assist the appellant's case. Even if a trading activity falls under cl. (2) of Art. 289, it can sustain a claim for exemption from Union taxation only if it is shown that the income derived from the said trading activity is the income of the State. That is how ultimately, the crux of the problem is to determine whether the income in question is the income of the State, and on this vital test, the appellant fails.

There is one more point which was faintly argued before us by the learned Advocate-General. He frankly told us that he did not propose to challenge the correctness of the conclusion recorded by the High Court that the appellant is not a local authority; but he was not prepared to give up his contention that there is repugnancy between the charging section of the Income-tax Act and sections 29 and 30 of the Act. He suggested that in view of the repugnancy on which he relied, the Act which is Act No. 64 of 1950 should prevail over the Income Tax Act which is an enactment of 1922. None of the assumptions made by the learned Advocate-General in support of this plea can be said to be valid. Though the original Income-tax Act was passed in 1922, as is well-known, every year a fresh Finance Act is passed and it is by virtue of such successive Finance Acts that income-tax is assessed from year to year, and so, the argument that the Act on which the appellant relies is later in point of time must fail. Besides, there is really no repugnancy at all. Basing himself on the provisions of sections 29 and 30, the Advocate-General contends that these two provisions show that the Act did not contemplate the payment of income-tax. This argument is entirely misconceived. It is hardly necessary for the Act to make a provision that tax, if chargeable, would be paid. In fact, the Companies Act which deals with companies does not make such a specific provision, though no one can seriously suggest that there would be repugnancy between the provisions of the Companies Act and the Income Tax Act. All that sections 29 and 30 purport to do is to provide for the administration of the funds vesting in the Corporation and their disposal. It is clearly far-fetched, if not fantastic, to suggest that these provisions are inconsistent with the liability to pay tax which is imposed by the Income Tax Act. The Advocate-General, no doubt, attempted to derive some support

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to his argument by relying on section 43 of the State Financial Corporations Act, 1951 (No. 63 of 1951), as well as s. 43 of the Damodar Valley Corporation Act, 1948 (No. 14 of 1948). Section 43 which occurs in both the said Acts provides that the Corporation shall be liable to pay any taxes on income levied by the Central Government in the same manner and to the same extent as a company. It is urged that where the legislature wanted to provide for the liability of the Corporation to pay the taxes on income levied by the Central Government, it has made specific provisions in that behalf and since no such provision has been made in the Act, it follows that the legislature intended that no tax should be levied on the income earned by the Corporation established under the Act. We do not think there is any substance in the argument. The whole object which section 43 is presumably intended to achieve is to provide that the tax should be levied on the basis that the Corporation is a company and nothing more. If no such provision was made in the Act, that has no bearing on the liability of the Corporation to pay the tax on its income. Therefore, we are satisfied that the High Court was right in rejecting the argument that by virtue of the repugnancy between the material provisions of the Act and the charging section of the Income Tax Act, it should be held that the appellant was not liable to pay tax on its income.

The result is, the appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.