



TEL HC: BIOSOT Performing Sovereign Welfare Functions Immune From Union Taxation U/A 289(1); Quashes Notice U/S 226(3)

Facts and Issue:

The High Court was seized of a writ petition and the question raised being 'whether the BIOSOT, being a body constituted and functioning as an instrumentality of the State of Telangana in discharge of sovereign and constitutional obligations u/a 48A of the Constitution, could be subjected to the provisions of the Act in the teeth of the constitutional immunity engrafted u/a 289(1) of the Constitution of India?'

Contentions of the Petitioner:

The petitioner ('BIOSOT') is a statutory society formed pursuant to the directives of the Hon'ble Supreme Court of India in the case of *T.N. Godavarman Thirumulpad v. Union of India* [W.P (C) 202 of 1995, dated 12-12-1996] to execute critical ecological and conservation mandates. It acted as a statutory proxy of the State in carrying out sovereign functions under State and Central environment laws. It had been functioning as an extended arm of the State, fulfilling constitutionally and legislatively mandated obligations concerning wildlife conservation, biodiversity protection and environmental restoration.

Further, BIOSOT's operations were funded through statutory contributions from user agencies and judicial mandates. It did not undertake commercial transactions or engage in trade and the principal corpus of its funds were maintained as untouchable, and only the 'interest accrued' was utilized for projects of larger interest concerning wildlife conservation, bio-diversity protection and environmental restoration for public interest conservation work, in strict compliance with the Government approved action plans and the amounts held in the petitioner's account were earmarked for specific, non-fungible public purposes, including disbursement of statutory compensations relating to 'human-wildlife conflict, operational costs of protected areas, and implementation of biodiversity conservation schemes'.

It drew legitimacy from the conservation obligations imposed by the Wildlife Protection Act, 1972, Forest Conservation Act, 1980, the Biological Diversity Act, 2002 and in compliance to the directions of Hon'ble Supreme Court. The statutory nature of its public function further reinforced its constitutional character.

It had never filed income tax returns under the Act and at no point had it accepted the applicability of the income tax provisions to its operations. It had consistently maintained that it was a State controlled body, constituted pursuant to the directions of the Hon'ble Supreme Court and was entitled to constitutional immunity from Union taxation u/a 289(1) of the Constitution of India.

It was submitted that the Constitution of India u/a 289(1) expressly declares that 'the property and income of a State shall stand exempted from Union taxation'. This provision was not merely an exemption clause; it is a constitutional embargo on the Parliament's competence to tax State income. It embodied the federal compact and preserved the fiscal autonomy of the States against Union intrusion and performing functions that are constitutional, sovereign and non-commercial. U/a 48A, its income becomes, in law and in substance, the "income of the State". At that point, Entry 82 of List I (Union power to tax income other than agricultural income) stands constitutionally excluded.



It was further submitted that where the Constitution declares immunity u/a 289(1), the statutory definition of "income" must yield, and any attempt to tax such receipts-directly or indirectly-stands vitiated for want of constitutional authority.

It was the case of the assessee that where Article 289(1) removes an area from the legislative field, the Act cannot venture upon it.

In such circumstances, no tax can be said to be "payable" by it under the Income-tax Act, and consequently it could not, in law, be treated as an 'assessee' within the meaning of section 2(7) of the Act. As a necessary corollary, it could not be subjected to issuance of notices, reassessment proceedings, attachment or coercive recovery u/ss 220-226, or garnishee proceedings u/s 226(3), or even the obligation to file returns u/s 139. To proceed against it as an assessee, despite a constitutional prohibition would amount to conferring jurisdiction upon the taxing authorities where the Constitution has expressly withdrawn it in direct violation of Articles 289(1) and 265.

Ruling of the High Court:

The HC examined Articles 289 and 48A of the Constitution of India relied upon by the petitioner.

Article 289(1) reads as under:

"289. Exemption of property and income of a State from Union taxation

(1) The property and income of a State shall be exempt from Union taxation. "

The HC noted that Parliament itself lacked competence to bring such income etc. within the charge of tax u/s 4 of the Income tax Act

Article 48A reads as under:

"48A. Protection and improvement of environment and safeguarding of forests and wild life.

The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. "

In the opinion of the HC, the above Article clearly reinforced the contention that the functions/activities undertaken by BIOSOT were sovereign.

In the totality of the facts of the case and the constitutional scheme narrated above, The HC upheld the contentions of the assessee that the BIOSOT, being an instrumentality of the State of Telangana within the meaning of Article 12 of the Constitution, discharging sovereign functions u/a 48A thereof, was entitled to the constitutional immunity engrafted u/a 289(1) of the Constitution.

In the opinion of the HC these were not activities undertaken in the pursuit of trade, commerce or profit; they were sovereign and welfare functions of the State delegated to and executed through the petitioner as its administrative vehicle.

The Court held that taxing statutes, however widely worded, must yield to an express constitutional prohibition, and cannot be construed so as to bring within their net what the Constitution itself has placed outside the taxing field.

The HC accordingly allowed the writ petition of the assessee.

Citation:

Biodiversity Conservation Society of Telangana (BIOSOT): [TS-1248-HC-2026(TEL)]

Our Comments:

The Constitution of India is supreme and its mandate overrides all other statutes. As held, property and income of the State is exempt from Union taxation.