

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an application under
Article 140 of the Constitution for a
mandate in the nature of Writs of
Certiorari, Prohibition and Mandamus.

1. Sri Lanka Telecom PLC,
Head Office,
Lotus Road,
Colombo 1.

And another.

Petitioner

C.A. (Writ) No.269/10

Vs.

1. A.L.A.A. Siriwardena,
Municipal Commissioner,
Municipal Council, Town Hall,
Galle.
2. H.K. Hemalatha,
Deputy Municipal Commissioner.
3. W. Kelum Seneviratne,
Former Mayor.
4. Methsiri de Silva, Mayor
5. Galle Municipal Council
All of: Municipal Council,
Town Hall, Galle.

Respondents

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**
COUNSEL : Manohara R de Silva PC with Pubudini Wickremasinghe,
 for the Petitioner,
 W.Dayaratne PC with R. Jayawardene,
 for the 1st to 5th Respondents

Argued on : 09.11.2012

Decided on : 22.02.2013

S.Sriskandarajah, J,

The 1st Petitioner is a public company, and is the successor of the Department of Sri Lanka Telecommunication. The Petitioner conducts its business after obtaining a licence under Section 17(1) of the Sri Lanka Telecommunication Act No.25 of 1991. The Petitioner is issued a licence for fixing telephone lines and, under the said licence, it is empowered to provide services stipulated in clause 1(b) of the 2nd Schedule to the said licence. The Petitioner contended that the said licence is issued to carry out the trade of operating telecommunication system, and authorized the 1st Petitioner to carry out, perform various activities necessary for the carrying out of the said trade. The Petitioner further contended that the imposition of trade licence or taxes to the said industry by the local authority cannot be considered as authentic, as the Petitioner has already paid for the said trade a licence fee.

The Petitioner submitted that the 1st Respondent informed the 2nd Petitioner that a sum of Rs.86,250/-, being trade licence, taxes/trade taxes for the year 2007 is payable to the Municipal Council of Galle in respect of the trades specified in the said letter which are being carried out at No.8, Wakwella Road, Galle. In the said letter the following taxes were imposed:-

Telecommunication Tower: Rs.50,000.00

Telecommunication Company:	Rs. 5,000.00
Providing Telephone Communication:	Rs. 5,000.00
Sale of Telephones:	Rs. 5,000.00
Repair of Telephones:	Rs. 5,000.00
Collection of Telephone Bills:	Rs. 5,000.00
Value Added Tax:	<u>Rs. 11,250.00</u>
Total:	Rs.86,250.00

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It is the contention of the Petitioner that Section 247B of the Municipal Council Ordinance only empowers the Municipal Council to impose a tax on a trade which is carried on in any premises within its administrative limits, and does not empower levying of tax on different activities within a single trade. Section 247B provides as follows:-

1. A Municipal Council may impose and levy a tax on any trade carried on within the administrative limits of that Council;
2. The tax levied under sub-section (1) shall be an annual tax determined by the Council according to the annual value of the premises on which that trade is carried on;

provided that the annual value of such premises falls within the limits of any item in Column 1 set out below.

“The tax levied shall not exceed the sum set out in the corresponding entry in Column 2.”

It is the contention of the Petitioner that Section 247B, too, specifically provides that the trade tax levied under sub-section (1) shall be annually taxed, determined by

the Council, according to the annual value of the premises on which that trade is carried on and, hence, the tax levied imposed necessarily relates to the annual value of the premises on which the trade is carried out, and it has not permitted to levy tax for any activity within a single trade.

The Petitioner submitted that the annual value of premises No.8, Galwala Road, Wakwella, Galle, is Rs.313,043/-. In terms of Section 247B(2), the maximum tax that could be levied in respect of the said premises is only Rs.5,000/- and, when taxes are levied under Section 247B, Section 247C does not apply and, hence, taxes cannot be levied under Section 247C. In the above circumstances, the Petitioner contended that levying of taxes by telecommunication and transmission towers, providing telecommunication, sale of telephones, repairing of telephones, collection of telephone bills are arbitrary and contrary to the provisions of the Municipal Council Ordinance and, in those circumstances the Petitioners are seeking a writ of certiorari to quash the decision of the 1st to 5th Respondents contained in letter marked P2 and P8 to levy taxes mentioned as aforesaid, and a writ of prohibition prohibiting the 1st and 5th Respondents from levying more than Rs.5,000/- as taxes from the said premises as stipulated in Section 247B of the Municipal Council Ordinance.

The Respondent's contention is that under the Municipal Council Ordinance, the 5th Respondent is entitled to levy taxes on any business after passing a resolution in terms of Section 247C of the Municipal Council Ordinance. Section 247C(3)(a) provides: "business" includes any trade or profession or calling or the business of a manufacturer, or any person taking commission or fees in respect of any transaction or service rendered or

Section 247B empowers the Municipal Council to impose and levy a tax on any trade carried on within the administrative limits of that Council. Section 247B also provides a column by which the annual value of the properties are given in Column 1,

and the taxes levied are given in the corresponding Column 2. According to the said column, the maximum annual value mentioned is, that in any annual value, excess of Rs.2,500/-, the tax that could be imposed is Rs.5000/-. This schedule that is introduced in Section 247B was enacted in the Municipal Council Ordinance as far back as 1979. The annual value of the properties has increased rapidly and, as such, the corresponding tax duty should also have to correspondingly increase, but there is no provision made for such increase in the said Municipal Council Ordinance. In these circumstances, the provisions in the said Act, i.e., "the tax levied shall not exceed the sum set out in the corresponding entry in the Column 2" have to be read not as mandatory, but as directory. In the present case, the annual value is mentioned as Rs.313,043/-. In those circumstances it is reasonable for the relevant local government authority to impose a tax corresponding to the annual value that may exceed the Rs.5,000/- that is fixed for the annual value, a Rs.2,500/-. In these circumstances there is no unreasonableness in passing a resolution to impose taxes corresponding to the present annual value of the properties concerned.

The Petitioner also contended that the Municipal Council has imposed tax on various trades that are part of a particular trade, and these taxes cannot be imposed as the trade is being carried out in one premises, i.e., No.8, Wakwella Road, Galle. The Municipal Council, under Section 247B of the Municipal Council Ordinance, is entitled to impose and levy a tax on any trade, and it could also impose and levy annual tax on every person who, within administrative limits of the Council, carries on any business. The 'business' is defined in the said section, and that includes any services rendered. Therefore, providing services could also be taxed under Section 247(b), but under Section 247(b), several trades can be carried on within a particular premises. Whether the Petitioner has been carrying on several trades in the said premises, and whether the items listed in the gazette notification has several trades, are matters of fact and not matters of law and, therefore, this court cannot arrive at a decision whether those trades can be separated and taxed by the authorities. In the above circumstances, the

notification of tax published in the gazette by the Municipal Council, and the imposition of tax as per the notification published by the Municipal Council on the Petitioner's trade cannot be said as illegal or ultra vires the provisions of the Municipal Council Ordinance. In those circumstances I dismiss the said Application without cost.

President of the Court of Appeal