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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1651 OF 2014
WITH
CIVIL APPLICATION NO.2235 OF 2014

Oil Natural Gas Corporation Limited,
a company Incorporated under the
Companies Act, 1956, having its registered
office at Jeevan Bharti Tower-II, 124, Indira
Chowk, Connaught Palace, New Delhi and
one of its Plants at Uran, Dist. Raigad 400 702. ..Petitioner.

V/s.

1. Sarpanch, Grampanchayat Nagaon
Taluka Uran, Dist. Raigad,
New Mumbai - 400 702.
2. Gram Vikas Adhikari, Grampanchayat
Nagaon, Taluka Uran, District
Raigad, New Mumbai 400 702.
3. Block Development Office,
Nagaon, Taluka Uran, District
Raigad, New Mumbai 400 702.
4. Chief Executive Officer,
Raigad, Zilla Parishad,
Alibag, Dist. Raigad.
5. President / Chairman Standing
Committee, Raigad Zilla Parishad,
Alibag, Dist. Raigad.
6. State of Maharashtra ..Respondents.

Mr.A.A.Kumbhakoni, Senior Advocate with Mr.Sagar Gharge, Mr.S.A.
Bhalwal & Ms.Hemali Kurme i/b. Vyas and Bhalwal or the petitioner.

Mr.Chidambar Ganesh Gavnekqr for the respondent Nos.1, 3 to 5.

Mr.S.N.Patil, AGP for the respondent No.6.

**CORAM : A.S.OKA AND
A.K. MENON, JJ.**

DATED : 20TH FEBRUARY, 2015

ORAL JUDGMENT (PER A.S.OKA, J.)

1. Notice for final disposal was issued under the earlier order

2. An appeal was preferred by the petitioner under sub-section (5) of section 124 of the Maharashtra Village Panchayats Act, 1958 (for short 'the said Act'). The appeal was for challenging the demand made by the Village Panchayat, (the first respondent) for property taxes in respect of the year 2012-13. The demand was in the sum of ₹48,58,559/-. The said appeal preferred to the Panchayat Samiti was accompanied by an application for condonation of delay in preferring the same. The appeal came up for the consideration of the Panchayat Samiti in its meeting held on 6th December, 2012. By resolution No.77, the said appeal was disposed of. The English translation of the relevant part of the resolution reads thus :-

“(i) Appeal preferred by the petitioner is not within

limitation; and

- (ii) Assessment made by the Village Panchayat in accordance with sub-section (1) of section 129 of the said Act is proper. Hence, this meeting of Panchayat Samiti rejects the Appeal. “

3. Being aggrieved by the said order, the petitioner preferred a Second Appeal under sub-section (5) of section 124 before the Standing Committee of the Zilla Parishad. By a resolution dated 28th November, 2013, the Standing Committee of the Zilla Parishad dismissed the appeal.

4. The submission of the learned senior counsel appearing for the petitioner is that the law provides for two appeals, the first one is before the Panchayat Samiti and the second one is before the Standing Committee of the Zilla Parishad. He pointed out that firstly, the Panchayat Samiti vide resolution dated 6th December, 2012 while dismissing the appeal did not record any reasons. Secondly, though it is stated that the appeal was not filed within the limitation, in one sentence, it is observed that the assessment was proper. He pointed out that the first Appellate Authority had not even condoned the delay which is not noticed by the second

appellate authority. Moreover, no reasons have been recorded by the second Appellate Authority while dismissing the Second Appeal. The learned counsel appearing for the first respondent supported the impugned orders. Even the learned AGP supported the impugned orders.

5. We must note here that the challenge in this petition is to the original demand as well as to the orders of the first and second appellate authorities. There is a further challenge to the demand made in the year 2013-14. The learned senior counsel appearing for the petitioner states that the petitioner has filed a separate appeal challenging the demand for the year 2013-14. In view of this, this petition will remain confined to demand made for the year 2012-13 and the impugned orders.

6. Exhibit-F to the petition shows that along with the appeal preferred before the Panchayat Samiti, an application for condonation of delay was tendered. The impugned resolution dated 6th December, 2012 does not even refer to the application for condonation of delay. The said application is not even considered. The Panchayat Samiti ought to have firstly decided the application for condonation of delay and

only after the delay was condoned, the appeal could have been taken up for final hearing. However, without considering the application for condonation of delay, while dismissing the appeal on the ground that the same was barred by limitation, in one line, the Panchayat Samiti has observed that the impugned assessment was legal and proper.

7. A perusal of the resolution No.420 dated 28th November, 2013 passed by the Standing Committee of the Zilla Parishad shows that the Standing Committee was aware of the ground on which the appeal preferred by the petitioner before the Panchayat Samiti was dismissed. A substantial part of the said resolution refers to the factual position and the contentions of the parties. In the last paragraph, it is stated that demand made by the Village Panchayat was legal and proper. However, no reasons have been assigned for coming to the conclusion that the demand was legal.

8. As stated earlier, the delay in filing the first appeal was not condoned. The second Appellate Authority did not notice that the first Appellate Authority had not even decided the application for condonation of delay. If the second Appellate Authority was satisfied that the delay ought to have

been condoned, instead of deciding the Second Appeal on merits, the appeal ought to have been remanded to the First Appellate Authority. However, that was not done. Moreover, both the orders do not record reasons. Hence, both the orders are illegal.

9. The bill demanding taxes was served upon the petitioner on 9th August, 2012. For challenging the said demand an appeal was preferred on 13th September, 2012 along with the application for condonation of delay. Having perused the application for condonation of delay and in particular paragraphs 9 and 10 thereof, we find that there were sufficient reasons set out in the application for not filing the appeal within the specified period of 30 days. Therefore, by condoning the delay, a direction will have to be issued to the Panchayat Samiti to decide the appeal on merits. It is obvious that while deciding the appeal on merits, both the first and the second Appellate Authority will have to record brief reasons on merits. That has not been done in the present case. The demand is for a sum of ₹48,58,559/-. Out of the said amount, the petitioner has deposited ₹9,65,807/- with the Village Panchayat. In terms of the ad-interim order of this Court, the petitioner has deposited a sum of ₹25 lacs in this

Court. We propose to direct the first Appellate Authority to consider the appeal expeditiously. We, therefore, propose to direct that the amount of Rs.25 lacs shall be retained in this Court for a period of six months. After the first appeal and the second appeal, if any, are decided, at appropriate stage, the parties will be entitled to apply to this Court seeking permission to withdraw that amount.

10. Hence, we pass the following order:-

- (i) The resolution dated 6th December, 2012 passed by the Panchayat Samiti, Uran and the resolution dated 28th November, 2013 passed by the Standing Committee of the Raigad Zilla Parishad are hereby quashed and set aside;
- (ii) The delay in preferring the appeal by the petitioner before the Panchayat Samiti, Uran stands condoned;
- (iii) We direct the Panchayat Samiti, Uran to decide the Appeal as expeditiously as possible and preferably within a period of two months from today;

- (iv) We make it clear that reasons will have to be assigned while disposing of the appeal;
- (vi) In view of the deposit of Rs.25 lacs in this Court, we restrain the first respondent from taking any steps for recovery of the amount which is the subject matter of challenge in the said appeal;
- (vii) We make it clear that as the appeal is confined to the demand made on 9th August, 2012, the demand which is not the subject matter of the challenge in the aforesaid appeal, will not be the subject matter of the protection granted by this Court under this order and the Village Panchayat is free to proceed with the execution of the said demand subject to the orders which may be passed by the Appellate Authorities in the appeal preferred by the petitioner against the subsequent demand ;
- (viii) The amount of Rs.25 lacs deposited in this Court by the petitioner shall be invested in fixed deposit with any nationalised Bank for the time being for the period of 6 months from today;

- (ix) On expiry of period of six months from today, the parties may apply in this Court for refund and / or for withdrawal of the said amount;
- (x) All contentions on the merits of the appeal are kept open;
- (xi) The petition is disposed of in the above terms;
- (xii) In view of the disposal of the petition, the Civil Application No.225 of 2014 does not survive and hence is disposed of as such.

(A.K.MENON, J.)

(A.S.OKA, J.)