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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.44 OF 2015

Budharam Ganpat Sarnobat ..Petitioner
Vs.
The State of Maharashtra & anr. ..Respondents

Mr. Devmani Shukla, Advocate, for the Petitioner

Mr. P. P. Kakade, AGP, for the Respondent No.1 – State

Mr. A. S. Rao, Advocate, for the Respondent No.2 - KDMC

CORAM : DR. MANJULA CHELLUR, C. J., & G.S.KULKARNI, J.

DATE : JANUARY 06, 2017

P. C.

1. The Petitioner, who at the relevant time was a Municipal Corporator of Respondent No.2 – Kalyan-Dombivali Municipal Corporation (for short "The Municipal Corporation"), has filed this Public Interest Litigation, challenging an order dated 02.12.2014 of the Municipal Commissioner, whereby a Scheme known as "Abhay Yojana 2014-15" (for short "The Scheme") came to be notified.

2. By this Scheme, the Municipal Commissioner permitted the citizens to deposit with the Municipal Corporation, the arrears of property taxes and water charges within a stipulated period. If such

arrears were to be deposited, then penalty under Rule 41 and issuance of warrant of attachment under Rule 50 of the Taxation Rules under Chapter VIII of Schedule D to the Maharashtra Municipal Corporation Act, 1949 (for short "The MMC Act") were to be waived off. The Scheme was put into operation for the period between 05.12.2014 to 31.01.2015 and was subsequently extended upto 14.02.2015.

3. The challenge to the said Scheme as raised by the Petitioner is on the ground that the Municipal Commissioner, in issuing the Scheme has exercised executive powers without prior approval and sanction of the General Body and/or Standing Committee, comprising of elected representatives. It is the Petitioner's case that the Scheme was issued in undue haste for extraneous reasons. It is contended that a substantial loss to the tune of Rs.25,57,48,846/- is caused to the public exchequer, inasmuch as, there was an exemption from payment of interest upon the arrears of taxes as recoverable by the Municipal Corporation. It is next contended that the Municipal Commissioner has acted contrary to the Section 128 and Section 152 of the MMC Act .

4. Respondent No.2 – Municipal Corporation has responded to this PIL by filing an affidavit of opposition of Ms. Trupti Umesh

Sarnobat, the Assessor and Collector. It is contended that the PIL is completely misconceived. There is no public interest involved in this Petition and in fact, the petition is a publicity interest litigation, in view of the ensuing elections of the Municipal Corporation, to be held in November, 2015. It is contended that under Rule 51 under Chapter VIII in Schedule D of the MMC Act, specific powers are conferred upon the Municipal Commissioner to remit whole or any part of the penalty as would be leviable under Rule 41 on the unpaid amount of the bills as also fees or cost of recovery as leviable under Rule 50. It is submitted that exercising these powers as conferred under Rule 51, the Municipal Commissioner notified the said Scheme for the financial year 2014-15 as bought into force on 05.12.2014 upto 31.01.2015 and thereafter extended upto 14.02.2015. It is contended that persons who had not paid property taxes or water charges were entitled to take benefit of the Scheme and on deposit of the arrears of property taxes and water charges in their entirety, then, the entire or part of the penalty to be levied under Rule 41 and the warrant, service charges and other cost of recovery which would be imposed under Rule 51 were to be waived off. This was subject to the person availing the benefit of the Scheme were to withdraw pending Appeals or any other proceedings unconditionally. The contention of the Petitioner that there is a loss to the tune of Rs.25,57,48,846/-, is denied to be incorrect. It is submitted that the Municipal Commissioner did not waive any taxes but the Municipal Corporation could recover taxes to the tune of Rs.81,59,48,247/- by implementing the Scheme. It is stated that by the end of the Scheme, there was recovery of taxes to the tune of Rs.94,13,23,172/-. It is contended that the power of remission was exercised by the Municipal Commissioner in accordance with the mandate of the Rules and under the statute. It is further contended that the Government of Maharashtra in its Sales-Tax Department, the Mumbai Municipal Corporation in its Water Supply Department, the Maharashtra State Electricity Board and the Maharashtra Jeevan Pradhikaran had also formulated similar Schemes for remission of fines. It is further pointed out that the Thane Municipal Corporation, the Ulhasnagar Municipal Corporation, the Bhiwandi-Nizampur Municipal Corporation too had promulgated such Schemes of waiver of interest till the end of March, 2015. The citizens, who had taken benefit of the Scheme, were granted opportunity of being heard and to pay the arrears at once in one go.

5. On the above factual background, what falls for our consideration is a limited issue as to whether the Municipal

Commissioner of Respondent No.2–Municipal Corporation was within his authority and powers, under the MMC Act and the Rules to issue and implement the Scheme in question.

6. There is no dispute on the issue that the intention to issue the said Scheme, was to recover arrears of property tax and water charges without the Municipal Corporation and the assessees/Citizens, going through the rigors of adjudication of disputes till they attain finality as per the procedure contemplated by law. It is also not in dispute that the Municipal Corporation in this short span between 05.12.2014 till 14.02.2015, recovered an amount of Rs.94,13,23,172/-. It is also not in dispute that the other public bodies, as we have noted above, had also issued similar Schemes which include Municipal Corporations governed under the same Act.

7. As regards the powers of the Municipal Corporations to issue such a Scheme, we may observe that Section 128 and Section 152 of the MMC Act as relied by the Petitioner are provisions dealing with manner of recovering municipal taxes and writing off of irrecoverable taxes. These provisions may be noted for the sake of completeness. They read thus:-

*"**128. Manner of recovering municipal taxes.***

A municipal tax may be recovered by the following processes in the manner prescribed by rules :-

(1) by presenting a bill,

(2) [* *],*

(3) by distraint and sale of a defaulter's movable property,

(4) by the attachment and sale of a defaulter's immovable property,

(5) in the case of octroi and toll, by the seizure and sale of goods and vehicles

(6) in the case of property tax by the attachment of rent due in respect of the property,

(7) by a suit.

152. Writing off of irrecoverable taxes.

The Commissioner may, with the approval of the Standing Committee, from time to time write off any sum due on account of any tax or of the costs of recovering any tax, which shall, in his opinion, be irrecoverable."

8. In our opinion, the above provisions would not, in any manner, assist the Petitioner. This is for the reason that the opening words of Section 128 are clear to the effect that a municipal tax may be recovered by '*following processes in the manner prescribed by rules*' and then the provision enumerates the various modes which should be

required to be adopted. It is, thus, clear that it does not exclude applicability of other rules which may confer a power on the Municipal Commissioner to do certain other acts as the rules would provide. Chapter VIII of Schedule D to the MMC Act provide for the "Taxation Rules". The relevant rule as relied on behalf of the Municipal Corporation to notify the Scheme in question is Rule 51, which reads thus :-

> "**[51. Penalty, fees or cost of recovery may be remitted.**
>
> The Commissioner may, in his discretion, remit the whole or any part of penalty under rule 41, or fees or cost of recovery under rule 50]"

A plain reading of the above rule makes it clear that it would be the discretion of the Municipal Commissioner to remit the whole or any part of penalty leviable under Rule 41, or fees or cost of recovery as would be recoverable under Rule 50. For the appreciation of Rule 51(supra), we also note the provisions of Rules 41 and 50.

> "***[41. Levy of penalty on unpaid amount of bill.***
>
> (1) *The amount of first half-yearly tax as specified in the bill which has been served as aforesaid shall be paid within three months from the date of service of the bill and of the second half-yearly tax as specified in the bill shall be paid before the 31st December of each year; and if a person liable to pay tax does not pay the same as required as aforesaid, then he shall be liable to pay by way of penalty in addition to the amount of such tax or*

part thereof which has remained unpaid, a sum equal to two per cent. of such tax for each month or part thereof after the last date by which he should have paid such tax and shall continue to be liable to pay such penalty until the full amount as per the bill is paid:

Provided that, any property tax for which a bill is served under this Act before the date of commencement of the Bombay Provincial Municipal Corporations, the City of Nagpur Corporation, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships, the Maharashtra (Urban Areas) Protection and Preservation of Trees and the Maharashtra Tax on Buildings (with larger Residential Premises) (Re-enacted) (Amendment) Act, 2009 (hereinafter referred to as "the Amendment Act of 2009") has remained unpaid in full or in part, a person who has not paid such tax shall be liable to penalty as provided under this section, on and from the date of commencement of the said Amendment Act of 2009.

(2) If the other taxes or dues claimed in the bill are not paid by the date specified in the bill, the provisions of sub-section (1) shall mutatis mutandis apply to the amount which has so remained unpaid.]

50. Fees for warrants issued, etc.

For every warrant issued, distraint or attachment made and for the maintenance of any animal seized fees shall be charged at such rates as the Corporation may from time to time specify with the sanction of the (State) Government and such fees shall be included in the costs of recovery."

9. As seen from the reading of Rule 51(supra), this rule uses the word 'remit' in conferring discretion on the commissioner to remit whole or part of the penalty under Rule 41 or Rule 50. The meaning

attributed to the word “*remit*” or for that matter the word “remission” as used under Rule 51 can be seen from what these words mean; In the **Black's Law Dictionary, Eighth Edition** as under :-

> “**remit**, vb. **1**. To pardon or forgive ……..
>
> **remission. 1.** A cancellation or extinguishment of all or part of a financial obligation; a release of a debt or claim.”

The **Advanced Law Lexicon**, P RAMANATHA AIYAR, *3rd Edition Reprint 2007* would describe remission as under :-

> **“Remission”**
>
> The action of remitting or giving up partially or wholly a tax, debt, penalty, etc., [S.227, I.P.C. (45 of 1860) and Art. 110(1)(a), Const.]; remission of land revenue, etc.

In the **Concise Oxford ENGLISH Dictionary, Indian Edition** would give the meaning to the word “remit”;

> “**remit v.** /ri'mit/ (**remits, remitting, remitted**)
>
> **1** refrain from exacting or inflicting (a debt or punishment)

10. On the above background, it is clear that a penalty which is imposable under Rule 41 or fees or cost which would be recoverable under Rule 50 can be waived off by the Municipal Commissioner at his discretion by exercising power under Rule 51. A perusal of the said

Scheme clearly indicates that the same has been issued in exercise of the powers under Rule 51 (Supra). It also categorically refers to the benefit of waiver in Clause 2 and charges leviable under Rule 40 and Rule 51 respectively. The scope of the Scheme is, therefore, limited to the extent of waiver of levy of penalty under Rule 41 and the charges under Rule 50 and nothing else. If this be the case, then the contention of the Petitioner that the Municipal Commissioner has acted arbitrarily and contrary to the powers vested under the Acts, Rules certainly cannot be accepted. We, therefore, reject the contention of the Petitioner that the Municipal Commissioner has, in any manner, abrogated his powers under the Corporation Act or the Rules framed thereunder. We also cannot sustain the contention of the Petitioner that prior approval of the General Body or Standing Committee was required to be taken, in view of the clear mandate of Rule 51, which does not require any such approval and as such, waiver is solely under the discretion of the Municipal Commissioner.

11. It is thus quite clear that what has been waived by the Municipal Commissioner is the amount of penalty which was payable under Rule 41 and the action under Rule 50, and not the tax, as permissible to be done by the Municipal Commisioner under Rule 51

(supra). The Petitioner's contentions are also oblivious of the clear distinction of the concept of tax, interest and penalty which are distinct from each other in their purport and character. In this context, we may usefully refer to the decision of the Supreme Court in the case of ***Pratibha Processors and others v. Union of India and others***, reported in ***AIR 1997 SC 138,*** wherein, their Lordships have examined the import of the words "tax", "interest", "penalty", etc. as appearing in fiscal statutes. In para 13 the Court observed thus :-

> "**13**. In fiscal Statutes, the import of the words - "tax", "interest", "penalty", etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. <u>Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute.</u> Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. <u>The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty – which is penal in character</u>."
>
> (emphasis supplied)

12. We also see much substance in the contention as urged on behalf of the Municipal Corporation that this PIL is not bonafide Public Interest Litigation. This is for two fold reasons, firstly, we do not find that in invoking the jurisdiction under Article 226 of the Constitution of India and that too in PIL, the Petitioner has approached the

Municipal Corporation or any other authority by a proper representation. Secondly, the PIL was filed on 11.02.2015 when the extended Scheme was almost coming to an end. These are also the objections as raised on behalf of the Municipal Corporation. There is no denial to these assertions of the Municipal Corporation as taken in their affidavit of opposition. The Municipal Corporation has asserted that this PIL has been filed in view of the ensuing Municipal elections which were to be held in October, 2015. The Petitioner is an elected Municipal Corporator who is completely conversant with the provisions of law and the intricate issues touching the Municipal Corporation. It also cannot be overlooked that the Petitioner was also aware about such Schemes being adopted by the other Municipal Corporations which are also governed under the same Corporation Act. In the circumstances, we are quite convinced that this PIL is not bonafide.

13. Resultantly we have no hesitation but to dismiss this PIL, however, with costs of Rs.50,000/- to be deposited by the Petitioner with the Maharashtra State Legal Services Authority within a period of two weeks from today.

(G.S.KULKARNI, J.) **(CHIEF JUSTICE)**