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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13099 OF 2017

Sinhgad Technical Education Society … Petitioner
Versus
Deputy Commissioner Income Tax Central Circle 2(2), Pune & Another. …Respondents

Mr. Nitin Dhumal, for the Petitioner.
Mr. Sham Walve, for the Respondents.

CORAM: M.S.SANKLECHA, &
MR. RIYAZ I. CHAGLA, JJ.
DATED: 5TH JANUARY 2018

PC:-

1. This Petition under Article 226 of the Constitution of India challenges the order dated 10th November 2017 passed by the Income Tax Appellate Tribunal, Pune (Tribunal) on an application for stay under Section 254(2A) of the Income Tax Act, 1961(Act).

2. By the impugned order the Petitioner's application for stay of recovery of demand aggregating to Rs.142.98 Crores was granted on the condition of the Petitioner depositing Rs.18 Crores in three instalments i.e. Rs.6 Crores each on 30th November 2017, 30th December 2017 and 15th January 2018 pending the disposal of the Petitioner Appeals for Assessment Years 2009 – 2010 to 2014 – 2015 by the Tribunal. The impugned order dated

10th November 2017 also granted an out of turn hearing on 18th January 2018 subject to the payment of Rs.18 Crores. However impugned order further records that in the absence of complying with the condition of deposit, the stay would stand vacated and the appeals would be heard in the normal course and not on an expeditious basis on 18th January 2018 as a stay granted matter.

3. This Petition was first mentioned on 28th November 2017 seeking an ad-interim relief from depositing the sum of Rs.18Crores in three instalment as ordered by the Tribunal and a stay of recovery proceedings. However, at that time the Petitioner informed the Court that they are in no position to deposit any amount. Thus this court by order dated 28th November 2017 refused to grant any ad-interim relief and the Petition was directed to be placed on board for admission in its own turn.

4.. On 18th December 2017 at 5.00 p.m. this petition was mentioned by the Petitioner for variation of the order dated 28th November 2017 in view of events subsequent to the filing of the Petition viz. the threat of the teaching staff of the Petitioner institution going on strike for non-payment of its salaries. The consequent apprehension of the petitioner that the ongoing Pune University examination in the Engineering courses at which its students are appearing would be affected by the strike resulting in jeopardizing the career of the a large number of its students. In view of the above, we directed the petitioner to serve notice upon the Respondent-Revenue and placed the petition for consideration on board on 19th December, 2017.

5. On 19th December 2017, when the petition was taken up after notice to the Respondent- Revenue, one Mr. Prakash Patil, Constituted Attorney of the Petitioner filed a further affidavit in support of the petition dated 19th December 2017. The affidavit indicated that an amount of Rs.81 Crores is payable to the teaching and other staff of the petitioner institution. The Affidavit further points out although the teaching staff had gone on strike on 18th December 2017, this has not yet affected the Engineering examination being conducted by Pune University which had already commenced. It is further pointed out that the Petitioner is unable to pay the amounts due to its staff as all its bank accounts had been attached under Section 226 (3) of the Act. It further points out that the amount of Rs.9.27 Crores is expected to be received from the Social Welfare Department, Pune, State of Maharashtra before 22nd December 2017 and the Petitioner is desirous of paying the sum of Rs.8 Crores out of Rs.9.27 Crores

to be received from the State Government to its staff in its efforts to persuade them to end the strike. The amount of Rs.1.27 Crores was sought to be kept by it to meet essential expenses such as electricity, telephone, water, etc. charges. At that time, Mr. Walve, the learned counsel for the Respondent – Revenue informed the petitioner that he would inform his officers not to withdraw an amount of Rs.9.27 Crores which is expected to be received from the Social Welfare Department, State of Maharashtra in the attached Bank accounts. This he stated only to ensure that the students of the Petitioner institution do not suffer, particularly in view of the fact that the examination of Pune University of the Engineering course had already commenced. On that date, therefore there was no occasion to pass any order as the amounts had not yet been received by the petitioner in its accounts. Therefore all that the Petitioner requested was to place the Petition today for admission high on Board. This was granted.

6. Today, when the petition was called out Mr. Mistry the learned Senior Counsel who was appearing for the petitioner informed us that he is not appearing and the Petitioner has briefed another Advocate to appear for it. However as an officer of the Court he desired to bring to the notice of the Court the following

three communications addressed after the petition had been adjourned on 19th December, 2017:

(a) Letter dated 20 December 2017 addressed by one Mr. M. N. Navale the President of the petitioner society to the Tax Recovery Officer;
(b) Letter dated 21 December 2017 addressed by one Mr. M. N. Navale the President of the petitioner society to the Branch Manager, Punjab National Bank, Nana Peth, Pune; and
(c) Letter dated 21 December 2017 addressed by one Mr. M. N. Mokashi the Tax Recovery Officer(Central) Pune to the Branch Manager, Punjab National Bank, Nana Peth, Pune;

All the above three communications are taken on record and marked A, B and C respectively for identification.

7. Mr. Dhumal for the petitioner and Mr. Walve for the Respondent-Revenue do not dispute in any manner the above three letters which have been marked as A, B and C for identification.

8. The letter dated 20th December 2017 by the Petitioner addressed to the Tax Recovery Officer, Central Pune, reads as under:-

To,
Tax Recovery Officer
Central – Pune
Bodhi Tower, Salisbury Park,
Pune.

Dear Sir,

Sub.: Writ Petition No. 13099 of 2017.

The above writ petition came up for urgent hearing before Hon'ble Bombay High Court yesterday i.e. on 19.12.2017. At the time of hearing Shri Sham V. Walve, Pleader for Income Tax Department was also present.

Shri J.D. Mistri, Senior Counsel appeared on behalf of our Society and pointed out that in view of delay in payment of salaries some staff members of our Engineering and Pharmacy Colleges have commenced strike. He also elaborated on the contents of the affidavit filed by our Society in view of instructions of the Hon'ble Bench on 18.12.2017.

After hearing both the parties, Hon'ble Bench gave following oral directions:-

1. That the amount of which is to be received by our Society from Social Welfare Department in all the bank accounts mentioned in the Affidavit will not be appropriated by Income Tax Department towards its dues till further orders from the Court.

2. That our Society, after receipt of the amounts from Social Welfare Department, should file an affidavit indicating the names of the employees, amounts to be paid to each of them etc. to whom the salary dues will be paid out of the amounts received in the aforesaid accounts.

3. It instructed your pleader to communicate these directions to your honour.

4. It posted the matter to 05.01.2018 for further hearing on merits of the case.

This is for your information please.

Thanking you,

Yours faithfully

M.N. Navale
Principal.

9. The letter dated 21st December 2017 by the Petitioner addressed to the Branch Manager, Punjab National Bank, Nana Peth, Pune (wherein its bank accounts have been attached) reads as under :-

To,
The Branch Manager
Punjab National Bank
Nane Peth, Pune

Madam,

Sub.:- Attachment of bank accounts.

Income Tax Department has issued notices to your Bank under Section 226(3) of Income Tax Act and attached our Bank accounts with your Bank. We have already filed writ petition before the Hon'ble Bombay High Court seeking directions for stay of demand raised by Income Tax Department. The matter was heard on 18/12/2017 and 19/12/2017 and accordingly we have filed affidavit specifying the details of Bank accounts with your branch where the amounts are likely to be received from Social Welfare Department.

The Hon'ble Court orally directed that the amounts which are to be received in these accounts as per the affidavit are not to be withdrawn by Income Tax

Department till further instructions. The advocate of the department who was present in the Court agreed to this.

We are enclosing herewith photocopies of letter no.247 and 250 dated 20.12.2017 by which the copy of the affidavit and the court directions were was forwarded to the Tax Recovery Officer and the Assessing Officer. The letters are self-explanatory.

In view of the above circumstances you are requested not to remit the amounts to be received in these accounts to Income Tax Department till further directions of the Hon'ble Court.

Thanking you,

Yours faithfully,

M.N. Navale

President

Encl.:- as above.

10. Consequent to the aforesaid communication dated 20th December 2017 to the Tax Recovery Officer from the Petitioner's, a letter dated 21st December 2017 was addressed by the Tax Recovery Officer to the Punjab National Bank, Nana Peth, Pune (where the bank accounts of the Petitioner had been attached) reads as under:-

To,

The Branch Manager,
Punjab National Bank,
Nana Peth, Pune.

Sir / Madam,

Sub.:- Bank attachment made in the case Sinhgad Technical Education Society in order to recover the outstanding tax demand-reg.

Kindly refer to the above

2. In this regard, it is intimated that the undersigned has put a restraint on withdrawals from the following bank accounts held by the respective institutions of Sinhgad Technical Education Society (The Assessee) by issue of notice u/s. 226(3) of the Act as per the annexure attached. Now, the assessee, Sinhgad Technical Education Society has approached the Hon'ble High Court stating that it is in dire need of funds receivable from Social Welfare Department to run the educational institutions and to pay the salary of agitating employees.

2. *The Hon'ble High Court was pleased to pass oral orders directing the department to allow the assessee to withdraw the funds received by the assessee from Social Welfare Department.*

3. *In view of the above facts, you are requested to allow the assessee to withdraw the amounts received from the Social Welfare Department only. The restraint put on withdrawal in respect of funds receivable from Social Welfare Department stands withdrawn. However, the restraint to withdraw any other amounts credited is still in force till further orders. The amounts expected to be received also mentioned in the annexure. Kindly take a note of the same."*

Yours faithfully

Sd/-

(Sadashiv Mokashi)
Tax Recovery Officer (Central),
Pune.

11. Both Mr. Dhumal the learned Advocate for the Petitioner

and Mr. Walve the learned Advocate for the Respondent Revenue who were both present and participants at the hearing held on 19 December 2017 agreed that no oral instructions were given by this Court on 19 December 2017. In fact at no time did we give any oral directions as claimed in the above communications. These oral communications as claimed by the petitioners would in effect vary a written order dated 28 November 2017 of this Court, which can never be done by oral directions.

12. Mr. Dhumal, the learned counsel appearing for the Petitioner states that an amount of Rs. 9.24 Crores which were released by the Social Welfare department of the State Government was received by the Petitioner between 22nd to 26th December 2017 in the attached bank accounts at Punjab National Bank, Nana Peth, Pune. Further on instructions he states that an amount of Rs.9.18 Crores has been withdrawn between 28th December 2017 to 2nd January 2018 by the Petitioner from the attached Bank accounts at Punjab National Bank, Nana Peth, Pune.

13. At this stage Mr. Dhumal, the learned counsel appearing for the Petitioner seeks two days time so as to brief a new counsel to

appear for the Petitioner. However, we decline to grant any adjournment in view of the above conduct of misrepresenting of facts by the Petitioner. This conduct disentitles the Petitioner from any prerogative writ under Article 226 of the Constitution being issued in its favour by our exercising our extraordinary jurisdiction.

14. It is undisputed, rather an agreed position between the Advocates of the parties that on 19th December 2017 no oral directions were given by this Court. In fact we passed no order on that date i.e. 19 December 2017 and only adjourned the petition at the instance of the parties to today. All that happened on 19 December 2017 was that Mr. Walve, the learned counsel for the Respondent – Revenue had after hearing the Petitioner's counsel stated that he would instruct his officers not to withdraw the amount of Rs.9.27 Crores which is likely to come into the Petitioner’s attached bank accounts from the State Government. There was no mention by Mr. Walve, the Advocate for the Respondent- revenue, that the petitioner would be allowed to withdraw the amounts. Nor did we pass any oral directions as stated in the letters or even otherwise. Thus the communication dated 20th December 2017 to the Tax Recovery Officer as reproduced hereinabove as also the communication dated 21

December 2017 of the Petitioner to the Branch Manager, Punjab National Bank, misrepresent that on 19 December 2017 the Court had given oral directions. This coupled with the withdrawal of an amount of Rs. 9.18 Crores from the attached bank accounts without any order/direction from the Court establishes an attempt to overreach the court and disentitles the petitioner to any relief. In fact Mr. Dhumal the learned Advocate for the petitioner submitted that neither of its two letters i.e. letter dated 20th December 2017 to the Tax Recovery Officer or letter dated 21st December 2017 to the Punjab National Bank speaks about allowing the petitioner to withdraw the amount. This is of no solace as by withdrawing the amount of Rs.9.14Crores without any order of the Court, the petitioner's wrongful conduct stands exposed.

15. It is axiomatic that the extraordinary writ jurisdiction of issuing prerogative writs would not be exercised when the conduct of the petitioner is not clean. A petitioner seeking an extra ordinary relief from the Court is not only expected to come with clean hands but so keep it, till the disposal of the petition. In the above facts we are of the view that the conduct of the petitioner during the pendency of the petition disentitles it to any relief under Article 226 of the Constitution of India. Therefore we dismiss the petition.

16. In view of the facts stated hereinabove, we *prima facie find* that the conduct of the President of the Petitioner viz, Prof. M.N. Navale, who is author of the letters dated 20th and 21st December 2017 to the Tax Recovery Officer and to the Branch Manager, Punjab National Bank, which are reproduced hereinabove (particularly the underlined portion) would amount to wilful disobedience of the order dated 28th November 2017 of this Court in as much as its application for ad interim relief restraining the Respondent - Revenue from adopting any recovery proceedings(prayer clause (d) of the petition) was rejected. Thus *prima facie* a civil contempt under Section 2(b) of the Contempt of Courts Act 1971. Further the above two letters dated 20th December 2017 and 21st December 2017 are letters which *prima facie* interfere or tend to interfere with the due course in judicial proceedings and / or interfere with the administration of justice, Therefore, *prima facie* a criminal contempt under Section 2 (c) (ii) and (iii) of the Contempt of Courts Act, 1971. We thus take suo moto notice of contempt and direct the Registry to issue two separate notices under the Contempt of Courts Act, 1971 read with Appellate Side Rules one for Civil Contempt and the other for Criminal Contempt to Mr. M.N Navale the President of the Petitioner Society returnable after 8 weeks on 5 March 2018, to

show cause why action for civil and criminal contempt under the Contempt of Courts Act, 1971 should not be taken.

17. We also find *prima facie* that the letter dated 21st December 2017 addressed by Mr. Sadashiv Mokashi, the Tax Recovery Officer to the Branch Manager, Punjab National Bank, Nana Peth, Pune as reproduced hereinabove (particularly the underlined portion) would amount to wilful disobedience of the order dated 28th November 2017 of this Court in as much as its application for ad interim relief restraining the Respondent- Revenue from adopting any recovery proceedings (prayer clause (d) of the petition) was rejected. Thus *prima facie* a civil contempt under Section 2 (b) of the Contempt of Courts Act 1971. Further the above communication dated 21 December 2017 (particularly the underlined portion) *prima facie* misrepresenting the order of the Court, interferes or tend to interfere with the due course of judicial proceedings and / or interfere with the administration of justice. Therefore, *prima facie* a criminal contempt under Section 2 (c) (ii) and (iii) of the Contempt of Courts Act, 1971. We thus take *suo moto* notice of contempt and direct the Registry to issue two notices under the Contempt of Courts Act, 1971 read with Appellate Side Rules one for Civil Contempt and the other for

Criminal Contempt to Mr. Sadashiv Mokashi the Tax Recovery Officer, (Central) Pune returnable after 8 weeks on 5 March 2018 to show cause why action for civil and criminal contempt under the Contempt of Courts Act, 1971 should not be taken.

18. Before parting we would like to place on record our appreciation of Mr. Mistry, the learned Senior Counsel who has as an officer of the Court brought to our notice the above facts. This is particularly so as the Revenue has not filed any affidavit bringing the above facts to the notice of this Court.

(RIYAZ I. CHAGLA J.) **(M.S. SANKLECHA, J.)**