IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1266 OF 2019

Tushar Tanaji Bhilare ... Petitioner
V/s.
Office of the General (Audit) II
Maharashtra, Nagpur and Another ... Respondents

Mr. N.P. Deshpande, for the Petitioner
Mrs. P.P. More, Agp for the Respondents-State.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.
DATE : 8th FEBRUARY 2019.

P.C.:

. The Petitioner is objecting to the Demand Notice issued by the Tahsildar, Haweli, Dist. Pune on 5th November, 2018 calling upon the Petitioner to pay the sum of Rs. 1,20,48,862/-. The Demand Notice is issued in pursuance to certain objections raised by the Senior Auditor in the office of the Accountant General- II, Maharashtra Nagpur. It is recorded in the Demand Notice that certain objections as regards the recovery of the amount towards Nazrana/ un-earned income is raised in the Auditor's Report/ Inspection Report which necessities the Tahsildar, Haweli, Pune to recover the amount from the Petitioner.

2. It is the contention of the Petitioner that before issuance of the notice calling upon him to deposit the amount, no opportunity of hearing was given to the Petitioner to explain as regards the computation of the amount towards un-earned income as claimed by the Tahsildar. The Petitioner states that had he been extended opportunity of hearing, he would have satisfied the authorities as regards his liability towards the payment of the amount. Apart from this, objections raised by the Auditor in the C.A.G. report, in itself, shall not form the basis for raising the demand.

3. In this context, the explanation tendered in affidavit in reply by one Astha Luthra, functioning as Senior Deputy Accountant General/ Admn. in the office of Accountant General (Audit) - II, Maharashtra, Nagpur presented in Writ Petition No. 720 of 2017 is relevant. In paragraph Nos. 2 to 8 it is recorded thus :

> *"2. At the outset I submit that the Office of the Accountant General (Audit) – II, Maharashtra, Nagpur, conducts the audit of the accounts of the State Government of Maharashtra for and on behalf of the Comptroller and Auditor General of*

India (hereinafter referred to as CAG for short), an independent constitutioinal authority, under the provisions of Article 148 to 151 of the Constitution of India and the CAG's (Duties Powers and Conditions of Service) Act, 1971.

3. I say that the audit report of CAG relates to matters arising from performance audit of selected programmes and activities and compliance audit of Govt. Departments. The compliance audit refers to examination of transactions relating to expenditure and revenue receipts of the audited entities to ascertain whether the provisions of the Constitution of India, applicable laws, Rules, Regulations and various orders and instructions issued by competent authorities are being complied with whereas Performance Audit examines whether the objective of an organization, programme or a scheme have been achieved economically, efficiently and effectively.

4. In Compliance Audit, initially the Audit Party test checks the records/ documetns etc. of the auditee units and brings out the irregularities noticed during such test checks to the notice of the Head of the Auditee Unit for examination and reply. In case reply of the Head of the Unit is convincing, the audit objection is settled on the spot. The irregularities which cannot be settled based on the replies of the Head of the Auditee Unit are included in the Inspection Report incorporating the views of the Head of Auditee Unit are included in the Inspection Report incorporating the views of the Head of Auditee Unit to be issued by the O/o. Accountant General (Audit) – II, Maharashtra, Nagpur to the Head of Auditee Unit as well as its higher authorities for examination and reply.

5. Major Irregularities in the form of audit objections in the Inspection Report, which are not settled due to replies of the executives bearing unconvincing or there being no reply are again brought to the notice of the highest authority of the State Government in the form of Draft Paragraph for examination.

6. Such Draft Paragraphs and replies of the State Government thereto are considered by the Office of the CAG and are included in the Audit Report to be submitted to the Governor of Maharashtra for laying before the State Legislature in accordance with the provisions of Article 151 of the Constitution of India after approval by the CAG.

7. In performance Audit, the irregularities noticed by Audit party are brought to the notice of head of auditee units for examination and reply. In case reply of the Head of the Unit is convincing , the audit objection is settled on the spot. The irregularities which cannot be settled based on the replies of the Head of the Auditee Unit are included in the Draft Performance Audit Report, incorporating the views of the Head of Auditee Unit is issued by the Audit to the concerned Ministry of Government for comments/ compliance. On receipt of Ministry's comments the objection are included in the Audit Report of the C & A.G. of India to be submitted to the Governor of the State for laying before the State Legislature, in case the reply of Ministry is not convincing or no reply is received from the Ministry.

8. Audit Paragraph from the Audit Reports of the CAG are examines by the Public Committee, a Parliamentary Committee constituted by the State

> *Legislature in accordance with the provisions of the Rules of Procedures and Conduct of Business in State Assembly. Accordingly, the CAG of India presents the Audit Report to the Governor of State which is laid before the State Legislature."*

4. On consideration of the procedure and the purpose of conducting the audit by the Accountant General in respect of the Government Accounts, the Petitioner would be justified in contending that mere raising of objections by the Auditor in the Audit Report/ Inspection Report itself shall not form the basis for recovery of the amount. The concerned authorities have to independently apply mind and arrive at appropriate decision as regards the admissibility of claim of amount towards the revenue recovery.

5. In the instant matter, it appears that authorities have not independently applied mind nor have conducted the assessment independently as regards the objections stated to have been raised by Auditor. In the circumstances, we direct that the demand issued by Tahsildar, Haweli, Dist. Pune impugned in this Petition shall be construed as a notice and the Petitioner shall be

extended an opportunity of hearing before confirming the said demand. The Tahsildar, Haweli shall after extending the opportunity of hearing to the Petitioner proceed to pass a reasoned order and may take steps as permissible in law.

6. It is needless to state that if at all the Tahsildar passes an order adverse to the interest to the Petitioner, it would be open for the Petitioner to take steps for challenging the said order as permissible in law.

7. In view of direction as above, the Writ Petition is disposed of.

(V. L. ACHLIYA, J.) **(R. M. BORDE, J.)**