**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1025 OF 2018**

1. The Secretary,
Rayat Shikshan Sanstha,
Satara, Dist. Satara

2. Head Master,
Laxmibai Bhaurao Patil Primary
and Secondary High School, Ahmednagar ..PETITIONERS

VERSUS

Ahmednagar Municipal Corporation,
Ahmednagar
Through it's Commissioner ..RESPONDENT

....

Mr. V.D. Sapkal, Senior Advocate for petitioners
Mr. K.N. Lokhande, Advocate for respondent

....

**CORAM : R.G. AVACHAT, J.**
**RESERVED ON : 18th FEBRUARY, 2022**
**PRONOUNCED ON : 10th OCTOBER, 2022**

**JUDGMENT :**

1. Heard.

2. The challenge in this writ petition, under Article 227 of the Constitution of India, is to the judgment and order dated 10th April, 2018 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No. 127 of 2012.

3. Petitioner No.1 herein is an educational institution. It is a charitable trust. It runs various schools in the State of Maharashtra. Petitioner No.2 is one of it's schools. The respondent is Ahmednagar Municipal Corporation (erstwhile Municipal Council).

4. The municipal council presented the petitioner tax bill (no. 78856) under Section 150 of the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965 ('the Municipal Council Act, 1965') for the period April 1995 to March 1996. It was a bill for Rs.29,665/- towards consolidated tax. The petitioner preferred appeal against the said bill before the Property Tax Appeal Committee, Municipal Council, Ahmednagar. The appeal committee, by its order dated 03rd May, 1999 partly allowed the appeal reducing the amount of tax to Rs.10,432/-. Still having not been satisfied with the decision given by the appeal committee, the petitioner – institution preferred Municipal Tax Appeal (No. 324 of 1999) under Section 169 of the Municipal Council Act, 1965 before the Court of Chief Judicial Magistrate, Ahmednagar. The learned Magistrate cum Joint Civil Judge, Senior Division, Ahmednagar allowed the appeal vide it's judgment and order dated 09th March, 2012. The said order reads thus :-

> *"Appeal is allowed with costs, as under :*
>
> *The impugned annual rateable value of suit property settled by the respondent is hereby quashed and set aside.*
>
> *The appellant – Institution is perpetually exempted from payment of property tax under Section 132 of the B.P.M.C. Act,*

*1949 and education cess etc., as per law, as stated supra.*

*Having regard to the peculiar nature of this matter, total amount towards property tax, education cess, etc. stated to have been herein before deposited under protest by the appellant right from the impugned assessment year 1995-96 till date shall be refunded back by respondent to the appellant – Educational Institution within a period of three months from today, failing which it shall carry interest at the rate of 6% p.a."*

5. Being aggrieved and dissatisfied by the judgment and order dated 09th March, 2012 passed in Municipal Tax Appeal No. 324 of 1999, the municipal council preferred Criminal Revision Application (No. 127 of 2012). It needs to be mentioned here that pending the municipal tax appeal, the Municipal Council was converted into Municipal Corporation. The revision application was, therefore, preferred by the Municipal Corporation through it's Commissioner. The learned Additional Sessions Judge, Ahmednagar allowed the criminal revision application in terms of following order :-

*"1) The revision petition is allowed.*

*2) The judgment and order passed by the learned Civil Judge, Sr. Division, Ahmednagar, dt. 09.03.2012 in Tax Appeal No. 324/99, is hereby quashed and set aside.*

*3) The decision of Tax Appeal Committee dt. 3.5.1999 fixing annual rateable value of suit property at Rs.86,935/- is hereby confirmed.*

*4) Inform lower Court accordingly."*

Present criminal writ petition has, therefore, been preferred by the Educational Institution.

6. The learned senior Advocate for the petitioner would submit that the revisional Court was right in relying on Section 493 and sub-clause 4 of Appendix IV of the Maharashtra Municipal Corporation Act, 1949. According to learned counsel, the petitioner, a charitable trust, runs educational institutions. It is, therefore, exempted from payment of education cess under Section 7(1)(e) of the Maharashtra Education and Employment Guarantee (Cess) Act, 1962. In support of his contentions reliance has been placed on judgment of this Court in case of ***Municipal Council, Ahmednagar Vs. Bhaskar Pandurang Hivale Education Society, Ahmednagar, 1994 (1) Mh.L.J. 948***.

7. According to learned senior Advocate, charitable trust has been exempted from payment of certain tax/s, details whereof has been given in Rule 10(2) of the Maharashtra Municipal Councils (Consolidated Property Tax) Rules, 1969. The rate of tax shall be half of the rate fixed under Rules 4 and 5. He, therefore, urged for allowing the petition.

8. Learned counsel for the respondent – corporation would, on the other hand, reiterates the reasons given by the learned Additional Sessions Judge for allowing the revision application.

9. Considered the submissions advanced. Perused the documents relied on. Petitioner No.2 is one of schools run by Petitioner No.1 – Rayat Shikshan Sanstha, a registered charitable trust. The erstwhile Ahmednagar Municipal Council issued a tax bill under Section 150 of the Municipal Council Act. The demand was for Rs.29,665/-. Break up thereof is as under :-

| Sr.No. | Particulars | Amount |
|---|---|---|
| 1. | Consolidated Tax | 14,903/- |
| 2. | Water Tax | 480/- |
| 3. | Tree Tax | 6,210/- |
| 4. | Educational Cess | 620/- |
| 5. | Employment Guaranty Cess | 7,452/- |
| | Total :- | Rs.29,665/- |

10. The petitioner trust preferred an appeal before the Property Tax Appeal Committee. The appeal committee by its order dated 03rd May, 1999 partly allowed the appeal holding the ratable value of the school premises of the petitioner at Rs.86,935/- and thus reduced the consolidated tax to Rs.10,432/-. Still having not been satisfied therewith, the petitioner institution preferred tax appeal before the Chief Judicial Magistrate cum Civil Judge Senior Division, Ahmednagar, who in turn, allowed the said appeal observing that on Municipal Council having been converted into Municipal Corporation, it would be governed by the provisions of Maharashtra Municipal Corporation Act, 1949 and, therefore, by virtue of Section 132 of the Maharashtra Municipal Corporation Act, 1949, the petitioner institution,

being a charitable institute, would have exemption in payment of property tax.

11. The revisional Court allowed the revision application observing that the appellate Court (Judicial Magistrate First Class) erred in relying on Section 493 of the Municipal Corporations Act, 1949 to allow the revision. This Court concurs with the findings recorded by the learned Additional Sessions Judge holding that reliance on Section 493 and specifically Appendix IV Clause 4 is misplaced. For better appreciation, the relevant provision of the Municipal Corporations Act, 1949 needs to be reproduced below :-

> *"4. (1) All debts and obligations incurred and all contracts made by or on behalf of the said municipality or local authority immediately before the appointed day and subsisting on the said day shall be deemed to have been incurred and made by the Commissioner for the said City in exercise of the powers conferred on him by this Act and shall continue in operation accordingly.*
>
> *(2) All proceedings pending before any authority of the said municipality or local authority on the said day which under the provisions of this Act are required to be instituted before or undertaken by the Commissioner shall be transferred to and continued by him and all other such proceedings shall, so far as may be, be transferred to and continued by such authority before or by whom they have to be instituted or undertaken under the provisions of this Act.*

*(3) All appeals pending before any authority of the said municipality or local authority on the said date shall, so far as may be practicable, be disposed of as if the area was constituted to be a City when they were filed.*

*(4) All prosecutions instituted by or on behalf of the said municipality or local authority and all suits and other legal proceedings instituted by or against the said municipality, local authority or any officer of the said municipality or local authority pending on the said date shall be continued by or against the Commissioner or the Corporation for the said City, as the case may be, as if the area was constituted to be a City when such prosecution, suit or proceeding was instituted."*

12. Learned Magistrate misread the provisions of Clause 3 and 4 of Appendix IV of the Maharashtra Municipal Corporations Act. Clause 4 of the Appendix IV makes only a deeming fiction to observe that all prosecutions, civil suits or other legal proceedings instituted by or against the municipal council and pending on the date on which the municipal council became municipal corporation, to continue to be so as if the municipal area was a city when such proceedings were instituted. Clause 3 (referred to above) unequivocally suggests that all sums due to municipality which has been constituted a city shall be recoverable by the Commissioner for the said city and for that purpose of such recoveries, the Commissioner is competent to take any measure or institute any proceeding which would have been open to the authority of such municipality to take or institute if this Act (Municipal

Corporations Act) had not come into operation. None of the clauses of Appendix IV speak of application of the provisions of the Maharashtra Municipal Corporations Act for the suits or litigations instituted by or against the municipal council before it became a Corporation, to be governed by provisions of the Maharashtra Municipal Corporations Act. Section 132 of the Maharashtra Municipal Corporations Act would, therefore, have no application. Learned Additional Sessions Judge has rightly upset the judgment and order passed by the learned Magistrate in tax appeal.

13. It is true that the petitioner is a registered charitable trust. It is an educational institution as well. The premises/property in respect of which a tax demand bill was issued, is used for a school. The consolidated property tax demand bill issued under Section 150(3) of the Municipal Council Act has already been referred to hereinabove. Admittedly, the applicant preferred a tax appeal to property tax appeal committee. The appeal was partly allowed. The amount of consolidated tax came to be reduced to Rs.10,432/-. In view of Section 105(2) of the Municipal Council Act, 1965, the consolidated tax on property shall include :-

(a) a general tax;
(b) a general water tax;
(c) a lighting tax;
(d) a general sanitory tax;
(e) a special latrine tax;
(f) a fire tax;
(g) an environment tax;
(h) water benefit tax;
(i) sewerage benefit tax;
(j) street tax;

14. In the consolidated tax demand bill referred to hereinabove, an amount under the separate head as Education and Employment Guarantee Cess has been quoted separately. This component do not include in the term of consolidated tax. By virtue of Section 7 Clause (e) of the Maharashtra Educational and Employment Guaranty (Cess) Act, 1962, land and buildings belonging to the public trust exclusively occupied for public worship or charitable purpose are exempted from payment of such tax. Perusal of the decision given by the property tax appeal committee would indicate that the consolidated tax was substantially reduced from Rs.29,665/- to Rs.10,432/-. This leads to infer that although the Property Tax Appeal Committee has not given reasons in support of it's decision, the tax under the head viz. Education Cess and Employment Guarantee Cess has not been charged. After deducting the said amount, the consolidated tax amount comes to Rs. 21,593/-. The tax committee reduced it to 50% i.e. to Rs.10,432/-. Under Section 105 read with Rule 10(2) of the Maharashtra Municipal Councils (Consolidated Property Tax) Rules, 1969, following properties shall be exempted from levy of tax :-

> *"10. Exemptions.- (1) The following properties shall be exempt from the levy of the tax, -*
>
> *(a) any building or land, which is a protected monument or protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (XXIV of 1958), or the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 (Mah. XII of 1961);*

*(b) any building or land belonging to the Council used exclusively for the purposes of the Council.*

*(2) In the case of any building or land which is exclusively used for educational, religious or for giving free medical treatment, the rate of tax shall be one-half of the rate fixed under Rule 4 or 5, as the case may be.*

*[Explanation 1. - Such building or land or portion thereof, belonging to religious institutions or institutions giving free medical treatment as is it let out on rent or is used for purposes other than those mentioned above, shall not be entitled to any exemption under this sub-rule].*

*[Explanation 2. - Such building or land or portion thereof, belonging to educational institutions as is it let out on rent or is used as hostel for students or otherwise (other than Backward Class Students hostels which are being subsidised by Government) or the residential quarters of the staff, shall not be entitled to any exemption under this sub-rule]."*

15. Although the Property Tax Appeal Committee has not in so many words granted 50% of exemption in consolidated property tax in terms of Rule 10(2), the same has to be inferred since the consolidated property tax demanded under the bill issued under Section 150(3) came to be reduced from Rs.29,665/- to Rs.10,432/-. It needs to be noted that record and proceedings indicates that the petitioner appears to have not relied on this provision either before the learned Magistrate, who decided the appeal and/or the learned Additional Sessions Judge, who passed the order

impugned herein. Be that as it may. The petitioner, being a registered charitable trust running an educational institution in the premises in respect of which a consolidated tax bill was issued, appears to have been given due exemption i.e. 50% therein and a complete exemption in payment of Education Cess and Employment Guaranty Cess.

16. This Court, therefore, finds no merit in the present petition. Same is, therefore, dismissed.

**( R.G. AVACHAT, J. )**

SSD