Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.103/2022

UNITED SPIRITS LTD.,
(ERSTWHILE MCDOWELL
AND CO. LTD.)
A Company incorporated under the
Companies Act, 1956
With its registered Office at
9″ Floor, U.B. Tower,
U.B City, 24, Vittal Mallya Rd.,
Bengaluru-560001
With its Manufacturing Plant
At Bethora, Ponda Goa

Represented by its Authorized Officer,
Dr. Huma Ali,
major of age, married,
resident of Flat No. EHA 706,
Essen Horizon Block A, Phase II,
Jairam Nagar, Dabolim, Goa … PETITIONER

Versus

1. STATE OF GOA, THR. THE
CHIEF SECRETARY,
Government of Goa
With office at the Secretariat,
Porvorim, Goa

2. VILLAGE PANCHAYAT OF
BETHORA, NIRANKAL,
CONXEM, CODAR
through its Secretary, with office at
Bethora, Ponda, Goa. …RESPONDENTS

Mr. Sudesh Usgaonkar with **Ms. Marie Rosette Pereira, Advocates** *for the Petitioner.*
Mr. D. Pangam, Advocate General with **Ms. M. Correia, Additional Government Advocate** *for the State*.
Mr. Ryan Menezes, Advocate *for the Respondent No.2-Panchayat*.

CORAM: M. S. SONAK &
R. N. LADDHA, JJ.

DATED: 12th April 2022

ORAL JUDGMENT: (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties. Learned counsel for the respondents waive service.

3. In this matter, on 02.11.2020 we had made the following order:-

"Heard Mr. Sudesh Usgaonkar, learned counsel for the Petitioner, Mr. D. Pangam, learned Advocate General for Respondent No.1 and Mr. R. Menezes, learned counsel for Respondent No.2-Panchayat.

2. The learned Advocate General states that the State, shall, within a period of two months from today prescribe the maximum rate of tax and fees in terms of the provisions of

Section 153(3) of the Panchayat Raj Act, 1994. This statement is accepted.

3. Mr. Menezes states that the Panchayat will file response to the petition within a period of one week from today. Copy of the response to be furnished to the learned counsel for the Petitioner.

5. Considering the challenge in this petition, we issue Rule.

6. Mr. Usgaonkar presses for interim relief in terms of prayer clause (D) of this petition which reads as follows :-

"(D) Pending the hearing of the petition, the Notice dated 17/02/2020 issued by the Respondent No.2 be stayed and Respondent No.2 be restrained from taking any coercive against the Petitioner for recovery of the amount under the said notice".

7. Mr. Usgaonkar points out that as of now the State has not prescribed the maximum rate in terms of Section 153(3) of the Panchayat Raj Act, 1994. He points out that there may also be constitutional embargo for levy tax or fees in excess of Rs.500/- per year.

8. Mr. Menezes disputes the aforesaid contention and points out that in matters of recovery of tax or fees there should not be any unconditional stay.

9. In the facts of the present case, we feel that the Petitioner should be granted interim relief in terms of prayer clause (D) subject to the Petitioner depositing in this Court 50% of the demanded amount within a period of six weeks from today. Once this amount is deposited, the same to be invested by the registry in terms of norms.

10. Depending upon the maximum rate fixed by the State Government in terms of Section 153(3) of the Panchayat Raj Act, liberty is granted to the Petitioner to vary this condition subject to this interim relief is granted. However, such application for *variation to be considered only if the Petitioner deposits 50% of the amount within six weeks from today in this Court. In case of failure on the part of the Petitioner to deposit 50% of the demanded amount, the interim relief which we have granted today to stand vacated without any further reference to this Court.*

11. Ms. Maria Correia, learned Additional Government Advocate and Mr. Menezes, waive service on behalf of respective Respondents."

4. The main relief in this petition is to be found in prayer clause A which reads as follows:-

*"**A.** By way of writ of mandamus or any other appropriate writ, Order or direction to the Respondent No.1 direct to specify the maximum rate of professional/trade tax in Schedule III to Sec.153(3) of the said Act in consonance with Art276(2) of the Constitution of India."*

5. Learned Advocate General has placed on record notification no.26/DP/PAN/Schedule-III/Rules/2021/766 dated 15.02.2022 issued in exercise of powers conferred by Section 241 of the Goa Panchayat Raj Act, 1994 and all other powers enabling in this behalf, amending Schedule III appended to the said Act thereby prescribing *inter alia* the maximum professional tax payable to the Panchayats at ₹2,500/- p.a.

6. Mr. Usgaonkar, on instructions, states that the main grievance of the petitioner stands redressed upon the Government issuing the aforesaid notification. Mr. Ryan Menezes, learned counsel for the Panchayat, based on instructions from the Panchayat states that now the Panchayat will have to abide by the above notification and proceed further.

7. The Panchayat, will now have to re-work its demands consistent with the above notification and raise fresh demands upon the petitioner. In the meanwhile, the petitioner, is also at liberty to pay the professional tax consistent with this notification.

8. If any amounts have already been paid by the petitioner, it is open to the petitioner to seek refund from the Panchayat and if any amounts are required to be paid then, it is open to the Panchayat to seek recoveries of such amounts from the petitioner. All contentions of all parties in this regard are now kept open.

9. The Registry to refund the deposit of ₹5 lakhs together with interest that shall have accrued on this amount to the petitioner. The petitioner to submit necessary bank details so that the amount can be directly remitted to the petitioner's bank account.

10. The Rule in this petition is disposed of in the aforesaid terms without any order for costs.

R. N. LADDHA, J. **M. S. SONAK, J.**

SUCHITRA NANDAN SINGBAL Digitally signed by SUCHITRA NANDAN SINGBAL Date: 2022.04.12 16:59:42 +05'30'