

(1998) 03 DEL CK 0108

Delhi High Court

Case No: Civil Miscellaneous Appeal No's. 1680 and 1884 of 1998 and Civil Writ No. 1091 of 1998

Oil and Natural Gas Corporation
Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: March 10, 1998

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 226, 226(3)

Citation: (2000) 246 ITR 211 : (1999) 103 TAXMAN 331

Hon'ble Judges: R.C. Lahoti, J; Mukul Mudgal, J

Bench: Division Bench

Advocate: Shanti Bhushan and Jayant Bhushan, for the Appellant; R.D. Jolly and Alpana Poddar for respondent Nos. 2 to 4 and 6 and V.P. Sharma, for the Respondent

Judgement

1. Though we had passed an interim order on 2nd March, 1998, the petitioner has come up with yet another application complaining of orders u/s 226(3) of the Income Tax Act, 1961, having been issued by respondent No. 3 to the banks and the purchasers from the petitioner owing amounts due and payable to the petitioner, withholding whereof may paralyse the working of the petitioner.

2. We have heard learned counsel for the parties.

3. Oil and Natural Gas Commission was taken over by Oil and Natural Gas Corporation Ltd. (the petitioner herein) on February 1, 1994, consequent to the enactment of the Oil and Natural Gas Commission (Transfer of Undertaking and Repeal) Act, 1993. Relevant to the assessment year 1994-95, the petitioner has been assessed on 27th March 1997, resulting in tax liability of Rs. 843 crores plus interest of Rs. 575 crores making a total demand of Rs. 1,418 crores. The petitioner preferred an appeal before the Additional Commissioner of Income Tax and also

sought for stay of the demand. The application was rejected on 22nd August, 1997. The appeal preferred before the CIT (Appeals) against the order declining stay of recovery was also rejected. However, the petitioner was allowed facility of payment in three installments.

4. The petitioner has preferred an appeal to the ITAT on 16th January, 1998, and made an application for stay of the demand on 23rd January, 1998. Written submissions in support of the application for stay have also been filed at the time of hearing. However, no order has been passed till this day, as stated by learned counsel for the petitioner at the Bar.

5. The present petition was filed on 2nd March, 1998.

6. Inasmuch as the hearing on the petitioner's application for stay took place before the ITAT, but no orders were passed on that application, on 3rd February, 1998, the petitioner submitted an application to the Committee on Disputes, through the Under Secretary (Co-ordination), Cabinet Secretariat, Rashtrapati Bhavan, New Delhi, pursuant to the directions of the Supreme Court in 1992 (61) ELT 3 (SC) and [Oil and Natural Gas Commission and Another Vs. Collector of Central Excise](#), .

7. It is not disputed that the petitioner has complied with the procedure of reference to the Committee on Disputes on 3rd February, 1998. We have asked learned counsel appearing for respondents Nos. 1 and 5 as to what is the stage at which the reference made by the petitioner stands and within how much time the Committee on Disputes is likely to meet and give decision on the reference made by the petitioner ? Learned counsel has regretted his inability to make available any information to the court for want of instructions from respondents Nos. 1 and 5 as on the day, inasmuch as he submits that the next date for hearing appointed is 2nd April, 1998, by which time he may have instructions.

8. Learned counsel for the petitioner has invited our attention to the observations made by the Supreme Court in ONGC v. Collector of Central Excise (Civil Appeal Nos. 2058-59 of 1988 by order dated 7th January, 1994} (see pages 100-105 of the paper book). Their Lordships have observed :

"It is only after such reference to the High Power Committee is made in the manner indicated that the operation of the order or proceedings under challenge shall be suspended till the High Power Committee resolves the dispute or gives clearance to the litigation. If the High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation."

9. The above observations go to show prima facie that even the ITAT may feel inhibited in proceeding further with the appeal filed by the petitioner and may have to await the decision by the High Power Committee.

10. We are prima facie of the opinion that the law laid down by their Lordships of the Supreme Court in the two decisions referred to hereinabove and to which

incidentally the petitioner itself happens to be a party and also, the cases related to the recovery of revenue to the Central Government, binds the parties and has to be followed by this court.

11. Though the written counter and reply to the CMs is yet to be filed by the respondents, Mr. R. D. Jolly, learned senior standing counsel for respondents Nos. 2 to 4 and 6 and Mr. Sandeep Chauhan, Assistant Commissioner of Income Tax (Dehradun), personally present in the court have objected to the petition being entertained by this court submitting that the territorial jurisdiction is available only to the Allahabad High Court and not to this court inasmuch as the assessing authorities, the authority making the recovery and the Commissioner hearing the appeal are all situated in Allahabad.

12. We find it difficult to agree with them. The principal grievance raised by the petitioner herein is failure on the part of the High Power Committee to meet and take a decision on the petitioner's reference complaining of its dispute and the failure on the part of the Income Tax Appellate Tribunal to dispose of the petitioner's application for stay, which is its statutory obligation to do and both these authorities are situated in Delhi within the territorial jurisdiction of this court.

13. Other reliefs sought for are incidental to the main issue and necessarily flow as a consequence to failure of redresses of the principal grievance of the petitioner.

14. Learned counsel for respondents Nos. 2, 3, 4 and 6 relied on the order dated October 11, 1990, passed by a Division Bench of this court in the case of [Oil and Natural Gas Commission Vs. Union of India and others](#), (CW No. 1677 and CM No. 2603 of 1990) wherein an objection to the territorial jurisdiction of the Delhi High Court was upheld by the Division Bench. Suffice it to observe that in each case the availability of territorial jurisdiction depends on the facts and circumstances of the case and the pleadings raised therein. The Division Bench in the cited order dated October 11, 1990, observed, inter alia, that though the Union of India and the Central Board of Direct Taxes have been imp leaded as respondents in this writ petition, there is no relief claimed against the said two respondents.

15. In the case at hand, we find the Committee on Disputes and the Income Tax Appellate Tribunal having been imp leaded as the principal parties and specific relief having been sought for against them. The order relied on by learned counsel for the respondents is clearly distinguishable and has no applicability to the facts of the present case.

16. Following the law laid down by the Supreme Court in the three cases of ONGC referred to hereinabove the following directions are made :

(A) The Committee on Disputes shall meet at the earliest to take a decision on the reference of dispute made by the petitioner and shall either settle the dispute or give clearance to the petitioner to prosecute its statutory legal remedy (in terms of

the directions of the Supreme Court dated January 7, 1994, referred to hereinabove).

(B) Till the date of decision by the Committee on Disputes the operation of the impugned order of assessment dated March 27, 1997, shall remain suspended.

(C) Inasmuch as the impugned order is the subject-matter of reference before the High Power Committee constituted in terms of the directions of the Supreme Court and taking the same view, we have passed an interim order dated March 2, 1998, it is clarified and directed that the operations of the orders u/s 226(3) issued by respondent No. 3 shall remain suspended and those orders shall not be given effect to.

18. We may, reiterate, as we have said in the order dated March 2, 1998, that the petitioner is a company wherein the Government has 96.5% shareholding. It is undisputedly a public sector undertaking providing an essential service to the community and inasmuch as coercive recovery under the impugned orders and issuance of orders u/s 226(3) of the Income Tax Act for that purpose, is allowed, it is likely to bring to an end the day-to-day functioning of the petitioner-company or at least make it extremely difficult. Interim protection to the petitioner is justifiably well-deserved.

19. Though the matter is listed for April 2, 1998, at the request of Mr. Jolly we appoint an interim date and direct learned counsel for respondents Nos. 1 and 5 to apprise us of the progress made by the Committee on Disputes on the reference made by the petitioner and the time which it is likely to take to resolve the same, also whether it proposes to make any interim direction. For that purpose, the matter shall come up for hearing on March 23, 1998.

20. Copy dusty to all the parties.