ITEM NO.54 COURT NO.7 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 11280/2024

(Arising out of impugned final judgment and order dated 26-03-2024 in WP No. 2121/2024 passed by the High Court of Judicature at Bombay, Bench at Aurangabad)

BAJAJ AUTO LTD. Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS. Respondent(s)

(FOR ADMISSION and I.R. and
IA No. 117062/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 117064/2024 - EXEMPTION FROM FILING O.T.
IA No. 117061/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 14-05-2024 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s)
Mr. Kavin Gulati, Sr. Adv.
Mr. Shriraj Dhru, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Ankur Saigal, Adv.
Mr. Alok Yadav, Adv.
Mr. Devansh Srivastava, Adv.
Mr. Himanshu Saraswat, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s)
Mr. Sudhanshu Choudhari, Sr. Adv.
Ms. Pranjal Chapalgaonkar, Adv.
Ms. Gautami Yadav, Adv.
Mr. Prastut Mahesh Dalvi, Adv.
Ms. Vidhi Pankaj Thaker, AOR

UPON hearing the counsel the Court made the following

O R D E R

Applications for exemption from filing a certified copy of the impugned judgment and exemption from filing official translation are allowed.

Leave granted.

Ms. Vidhi Pankaj Thaker, the learned counsel takes notice on behalf of respondent No.6.

The learned senior counsel appearing for the appellant, on instructions, states that the principal amount of demand of tax has been paid and only the penalty remains to be paid.

For hearing on the prayer for interim relief, list on 22nd July, 2024.

In the meanwhile, we direct that no coercive action shall be taken against the appellant for recovery of the penalty amount.

(ANITA MALHOTRA)	**(AVGV RAMU)**
AR-CUM-PS	**COURT MASTER**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 2121 OF 2024

Bajaj Auto Ltd.
Registered Office at Akurdi,
Pune – 411 035
& Plant at Waluj MIDC, Aurangabad,
Tq. Gangapur, District Aurangabad
Through its Authorized Officer
Shri. Rajesh B. Wankhede
Age 59 years, Occu. Service,
(Divisional Manager) .. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Maharashtra State
Mantralaya, Mumbai

2. The Divisional Commissioner,
Aurangabad

3. The Chairman
Standing Committee, Zilla Parishad,
District Aurangabad

4. The Chief Executive Officer,
Zilla Parishad, Aurangabad at
Aurangabad

5. Block Development Officer,
Panchayat Samiti, Taluka Gangapur,
District Aurangabad

6. Grampanchayat Jogeshwari
Village Jogeshwari, Taluka Gangapur
District Aurangabad

7. Regional Officer,
Maharashtra Industrial Development
Corporation Aurangabad .. Respondents

Mr. Rajendrraa Deshmukh, Senior Advocate instructed by Mr. Ajay G. Talhar, Advocate along with Ms. Rakshanda Jaiswal, Advocate and Ms. Mona Wadhawa, legal representative of Petitioner;

Mrs. M. L. Sangit, A.G.P. for Respondents No.1 and 2;

Mr. S. D. Kaldate, Advocate for Respondents No.3 to 5;

Mr. V. D. Sapkal, Senior Advocate instructed by Mr. A. A. More, Advocate for Respondent No.6;

Mr. S. S. Deve, Advocate for Respondent No.7

CORAM : S. G. MEHARE, J.

DATE : 26-03-2024

ORAL JUDGMENT:-

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsels for the parties, heard finally.

2. The dispute has a chequered history of litigation for the payment of lump-sum contributions in lieu of taxes of the petitioner factory.

3. The case of the Petitioner, in short, is that the Petitioner is a public limited company situated within the territorial jurisdiction of Village Panchayat Jogeshwari, Taluka Gangapur, District Aurangabad. It is liable to pay the village panchayat taxes to the village panchayat. The Petitioner was paying the taxes regularly to the village panchayat. The Petitioner has provided amenities to the village panchayat, such as roads, street lights, drainage lines, water pipelines, sewage treatment, gardens, etc.

4. In 1987, an agreement for lump-sum contribution in lieu of tax under the Maharashtra Village Panchayats (Payment of lump-sum Contribution by Factories in Lieu of Taxes) Rules, 1961 (for short, "Rules"), was entered into between the Petitioner and respondent No.6/village panchayat. The said agreement was further renewed vide agreement dated 23.03.2002. In 2006, respondent No.6 issued the tax bill for Rs.2,11,77,054/-. The Petitioner had impugned the said demand bill in Writ Petition No.5864 of 2006 before this Court. Thereafter, another Writ Petition No.4382 of 2008 was filed. In both Writ Petitions, there was compromise. Then, an agreement was executed for a lump-sum contribution in lieu of tax. The agreement for lump-sum contribution was for the period up to 2011-2012. Thereafter, the petitioner and respondent No.6 entered into an agreement dated 23.10.2012 for the amount of Rs.41,52,000/- that was the same amount as was for the earlier period of three years. However, respondents No.2, 4 and 5, on their own, terminated the agreement/repudiated the contract duly executed by the petitioner and respondent No.6.

5. The Petitioner had impugned the said rejection in Writ Petition No.5101 of 2013. The Hon'ble Division Bench in the said Writ Petition held that the Government should consider the legality and validity of the agreement under Rule 10 of the Rules.

6. The Divisional Commissioner, respondent No.2, following the directions of this Court, after hearing respective parties determined the lump-sum contribution in lieu of taxes for Rs.83,03,984/- per year for the years 2012-13, 2013-14, and 2014-15.

7. Since 2008, the Petitioner has not been satisfied with the tax demand bills and instead prefers the appeals provided under the Maharashtra Village Panchayat Act 1959 ('The Act', for short) every time he filed Writ Petitions. He was claiming the benefit of the Scheme of Section 125 of the Act and Maharashtra village Panchayat (Payment of Lump Sum Contribution In Lieu of Taxes) Rules 1961 ('Rules', for short).

8. On 01.04.2015, respondent No.6 issued a tax demand bill for 2015-2016. The Petitioner replied to the demand notice by a letter dated 08.04.2015. Respondent No. 6, by a letter dated 22.04.2015, replied to the Petitioner saying that the dispute for the period from 2012 to 2015 was resolved long ago, and it has no concern with the taxes for 2015-2016. Therefore, the reason for refusing the bill has no concern with W. P. No. 5101/2013.

9. It is the contention of the Petitioner that on 07.05.2015, it sent a proposal for the lump sum contribution for the years 2015-16, 2016-17 and 2017-18. By the said proposal, he called upon Respondent No.6 to execute an agreement for a lump sum

contribution under Section 125 of the Act @ Rs 67,43,00/- per year, and by quoting the judgment of the Bombay High Court dated November 2014, he informed respondent No.6 that fixing the tax per sq ft has been declared illegal. The Village Development Officer replied to its proposal by letter dated 13.05.2015 and contended that the judgment mentioned in the proposal does not apply to the lump sum contribution. He gave its calculations for Rs. 2,69,71,901 per year and denied its proposal. However, it offered a proposal for an agreement for a lump sum contribution of Rs. 1,34,85,951 per year.

10. On 20.05.2015, the Petitioner sent a letter to respondent No. 2 contending that Respondent No.6 denied its new proposal dated 07.05.2015 for an agreement for lump sum contribution in lieu of tax. It also gave reference of W.P. No. 5101/2013. However, during the pendency of the said Writ Petition, Respondent No.6 again sent a tax demand bill for 2015-16. The Act provides for reference if a dispute arises over a lump sum contribution. Petitioner requested respondent No.2 to take an appropriate decision.

11. On 25.05.2015, the Petitioner wrote a letter to respondent No.6 and Village Development Officer giving reference to its proposal dated 07.05.2015 and its letters dated 13.05.2015 and 19.05.2015. By the said letter, the Petitioner threatened them that calculating the tax per square foot is not legal. As per the

Judgment in P.I.L. No.60 of 2011, the Maharashtra Government has amended the Village Panchayats Tax Rules, then calculation as per sq. ft. is illegal. Therefore, calculations should be made on rateable value. It amounts to contempt of the Court. Lastly, the Petitioner warned them to execute the agreement as per the proposal. Thereafter, the Petitioner, as usual, again filed Writ Petition No.5548 of 2015. However, they settled the dispute amicably and accordingly, said Writ Petition was disposed of by order dated 02.09.2017. The prayers in the said Writ Petition read thus;

> "**B)** By appropriate writ or direction, the respondent No.2 may kindly be directed to forward the proposal of the petitioner dated 07.05.2015 (Exhibit "I") to the State Government and further, the State Government may kindly be directed to decide the same in accordance with law."

12. Prayer clause (C) is also relevant, which reads thus;

> "By appropriate writ order or direction, the bill dated 1[s] April 2015 whereby the Respondent No.6 Grampanchayat has demanded a property tax to the tune of Rs.2,43,09,596/- and the demand (writ) notice dated 22 April 2015 and the further demand/ communication/reply dated 13 May 2015 for the amount of Rs.1,34,85,951/- issued by Respondent No.6 to the petitioner company be quashed and set aside.

13. The copy of the order of this Court in Writ Petition No.5548 of

2015, dated 29.09.2017, has also been placed on record. Admittedly, the settlement terms were not submitted before the Court. However, the Hon'ble Division Bench, observed in paragraph No.1 as under;

> "01. Petitioner – Bajaj Auto Ltd. and the concerned village panchayat agree that the matter in respect of recovery of village panchayat taxes for the disputed period has been settled amicably. It is agreed that the amount of Rs.67,43,000/-, which has been permitted to be withdrawn by the village panchayat, shall be appropriated by the village panchayat towards its taxes and the balance amount of Rs.7,57,000/- along with interest accrued thereon shall be permitted to be withdrawn by the Petitioner – Bajaj Auto Ltd.
>
> 02. Learned counsel appearing for respondent no.06 – village panchayat does not dispute the settlement arrived at, as referred to above."

14. The record reveals that on 02.04.2016, respondent No.6 again issued a writ of tax for the period from 2016-17, including the arrears subject to the judgment of the High Court for Rs.7,76,30,323/-, out of which Rs.6,00,63,727/- was for the current year. The Petitioner addressed a letter to the Village Development Officer and respondent No.6, dated 10.05.2016, mentioning that they have a meeting on the subject on 05.05.2016, and the copy of the resolution dated 31.05.2015 directing not to increase the taxes more than 30% of the preceding year was supplied to them.

Again, it has referred to the judgment of Writ Petition No.5101 of 2013. Further, it has been contended that in a discussion, it was decided that respondent No.6 will pursue the Zilla Parishad Officer to refer the proposal to respondent No.2. It was also agreed that respondent No.6 will not take coercive action for the recovery of the tax as per bill dated 02.04.2016. Respondent No.6 has agreed to his proposal to pay the tax of Rs.67,43,000/- for the year 2016-17. Further, the action is taken subject to the decision of respondent No.2. The Petitioner, by letter dated 16.05.2016, sent a cheque of Rs.67,43,000/- to respondent No.6 as ad hoc payment. By letter dated 13.06.2016, the Petitioner informed respondent No.5 Chief Executive Officer, giving reference of Writ Petition No.5101 of 2013 and requested to send a proposal with his comments to respondent No.2.

15. Respondent No.6 addressed a letter dated 01.04.2017 to the Petitioner by giving a reference to the order of respondent No.2 determining the tax for 2012-13 to 2014-15 and, on making further calculations asked it to pay the taxes for the year 2015-16, 2016-17 and 2017-18. Then, respondent No.6 passed a resolution to execute an agreement for the above period with the Petitioner. Before the letter above, the Petitioner addressed a letter dated 03.04.2017 to respondent No.6, referencing the demand notice dated 01.04.2017, and submitted the calculations from 2015-16. It has calculated the tax of Rs.2,15,95,558/- per year. The Petitioner

contends that the endorsement of the Village Development Officer and respondent No.6 is the acceptance of the proposal. The agreement was executed on 24.06.2017 for the year from 1 April 2015 to 31 March 2015. Then, the Petitioner again preferred Writ Petition No.13101 of 2022. In this Writ Petition, the following were the prayers;

> "(C) By appropriate writ, order or directions, the demand bill dated 05.11.2022 issued by respondent No.6 Jogeshwari Village Panchayat may kindly be quashed and set aside, and it be declared that respondent No.6 cannot claim property tax for the year 2015-2018.
>
> **OR IN THE ALTERNATIVE**
>
> (D) By appropriate writ, order or directions, the respondent Nos. 3 to 6 may kindly be directed to process the proposal of lump sum contribution dated 24.06.2017 with respondent No.2 Divisional Commissioner and further respondent No.2 Divisional Commissioner, Aurangabad may kindly be directed to decide the proposal within some stipulated time."

16. The above Writ Petition was decided on 20.12.2022 by the Hon'ble Division Bench as the Petitioner only pressed into service the prayer clause (D).

17. In view of the above prayer, the Hon'ble Division Bench, in paragraph No.2 of the decision/order dated 20.12.2022, has passed the order in the following words;

> "In view of the above we dispose of the writ petition by directing the Petitioner as well as respondent No.6 Grampanchayat to make appropriate proposal before the

respondent No.2 in tune with Section 125 (since deleted) and whereupon the respondent No.2 shall decide it in accordance with law.

18. After disposal of the above Writ Petition, respondent No.2 passed the impugned order which is under challenge in this Writ Petition. Besides the impugned order of respondent No.2, it has been prayed to quash and set aside the demand notice issued on 15.02.2024.

19. The pleadings of the Petitioner since beginning reveal that the first dispute arose in the year 2012-13. That dispute was resolved by the order of the Hon'ble Division Bench in Writ Petition 5101 of 2013 dated 13.04.2017. Following the directions of the Hon'ble Division Bench, respondent No.2 approved a sanction to the agreement for the payment of lump sum contribution in lieu of taxes for the years 2012-13, 2013-14 and 2014-15. However, when respondent No.6 issued a demand notice of taxes for the year 2015-16, the Petitioner objected again. The pleadings of the Petitioner reveal that though the dispute about taxes for 2012-2015 was solved, every time, it has referred to the same and objected the bills.

20. The Petitioner along with the petition had placed a letter dated 03.04.2017 and the so-called agreement on non-judicial stamp paper dated 24.06.2017. During the course of the

arguments, the Court directed both parties to submit a proposal presented to get the benefit under the Rules. Then, both learned senior counsels produced a bunch of documents. In a bunch of documents, a letter dated 07.05.2015 with a proposal of the same date was produced. It has been claimed that this was the first proposal for the years 2015-16 to 2017-18. In Writ Petition No.5548 of 2015, it was prayed that respondent No.2 should be directed to forward the proposal dated 07.05.2015 to the State Government. In Writ Petition No.13101 of 2022, a prayer was made to direct respondents No.3 to 6 i.e. Chairman, Standing Committee, the Chief Executive Officer, Block Development Officer, Gram Panchayat Jogeshwari to process the proposal of lump sum contribution dated 24.06.2017 with respondent No.2. He should be directed to dispose of the same within a stipulated time. The so-called agreement dated 24.06.2017 was claimed to be for the years from 2015-16 to 2017-18. Respondent No.2 disposed of the so-called proposal for the years 2015-16 to 2017-18.

21. Respondent No.6, by its affidavit-in-reply dated 06.03.2024 with a case that the Petitioner was delaying the payment of the taxes of the Grampanchayat, which adversely affects the financial planning and development of the village. The tax pertains to the years 2015-2018; by now, almost eight years have elapsed. The non-payment of tax for non-approval of the proposal forwarded by it (respondent No.6) could not be the reason to challenge the

demand of the tax in view of the earlier series of the petitions preferred by the Petitioner. The Petitioner indulges in assailing the tax demand for one reason or another, thereby delaying the tax payment. In view of the deletion of Section 125 of the Act, respondent No.2/Divisional Commissioner did not approve the proposal. Therefore, the Petitioner is liable to pay the taxes as of today. It is, thus, in arrears of Rs.7,53,48,346/-. After directions issued in Writ Petition No.13101 of 2022, Rs.2,00,00,000/- was deposited, which was considered while computing the presently unpaid/due amount of tax of Rs.7,53,48,346/-. Except for the subject matter of this Writ Petition and Writ Petition No.13101 of 2022, the Petitioner has deposited the tax as per the notices of respondent No.6. The demand notice may kindly not be stayed during the pendency of the Writ Petition. It prayed to dismiss the petition.

22. In addition to prayer for quashing and setting aside the order of respondent No.2/Divisional Commissioner dated 11.12.2023, it has also been prayed that the demand notice dated 13.12.2023 and another demand notice received to the Petitioner on 15.02.2024 may kindly be quashed and set aside. Further, the effect, operation, execution and implementation of the demand warrant (Writ) notice issued by respondent No.6 to the Petitioner may also be stayed, and respondent No.6/village Panchayat may kindly be restrained from taking any coercive action against the

petitioner/company on the basis of demand notice bill dated 13.12.2023.

23. The main dispute is about the proposal of lump-sum contribution in lieu of tax under Section 125 of the Act and Rules for 2015-16 to 2017-18. Further, the dispute was about taking an appropriate decision by the authority on the so-called agreement between petitioner and village panchayat/respondent No.6. The entire case revolves around the so-called agreement and its execution.

24. The core argument of the learned counsel for the Petitioner was that once village panchayat agrees for lump-sum tax in view of Section 125 of the Act and Rules. Respondent No.2 must approve it. His further arguments were that the Chief Executive Officer has no power to pass any remark, and respondent No.2 has only two options: either to say 'Yes' or 'No' to the proposal. However, he has incorrectly observed that since Section 125 of the Act has been deleted, the proposal for approval for 2015-18 is infructuous and illegal. The impugned order is again illegal as it was based upon the report of the Chief Executive Officer of the Zilla Parishad. The gist of his arguments was that in view of the saving clause to the deleted Section 125 of the Act, the agreements entered into or executed in pursuance thereof (Rules, 1961) have been saved and valid for a period mentioned in the

agreement and shall then expire.

25. It is the vehement argument of the learned counsel for the Petitioner that in an earlier litigation between the same parties, the Hon'ble Division Bench of this Court in Writ Petition No.5101 of 2013 decided on 13.04.2016 has laid down the law that the Chief Executive Officer, Zilla Parishad has no authority to reject the proposal. He is just a postman who forwards the agreement received from the village panchayat to the Government (the then law), now respondent No.2.

26. He further argued that the parties have settled the dispute amicably in Writ Petition No.5548 of 2015. Reading the compromise terms recorded by the Hon'ble Division Bench, he submits that an agreement was made thereafter, and it was referred to the Zilla Parishad for further referring to the Divisional Commissioner. The delay was caused due to one Public Interest Litigation (PIL). However, he admitted that when Writ Petition No.5548 of 2015 was decided, the said PIL, which was a hurdle in making appropriate decision was disposed of. Referring to various documents, he submits that though Section 125 of the Act was decided, the previous proposal for the year 2015-2018 ought not to have been rejected on the sole ground that the said section and scheme 1961 were deleted. He also referred to the Rules and argued that there was an agreement between the petitioner and

respondent No.6. Respondent No.6 agreed to the proposal for a lump-sum contribution in lieu of taxes. The proposal was correctly submitted within a requisite period as provided under Rule 3 of the Rules.

27. Referring to Rule 10 of the Rules, he further argued that such a proposal would only refused if it is against public policy. Therefore, the agreement referred to by the Divisional Commissioner ought to have been approved. He referred to a letter dated 08.01.2021 addressed to the Village Development Officer and Sarpanch and pointed out that on 24.06.2017, an agreement for the period up to 31 March 2018 was executed. The letter mentions that the Petitioner deposited taxes every year from 2015-2016 to 2017-2018. As per the law then in force, the village panchayat, after passing the resolution, has to place the agreement before the Zilla Parishad within a month for approval. Then, the Zilla Parishad was to refer it to the Divisional Commissioner for approval. From time to time, inquiries have been made about it, but no explanation has been provided. He has re-iterated the demand for the taxes' arrears for Rs.3,23,93,337/-. Again, he requested that an explanation be submitted and the taxes for said period be shown as nil. Further, he referred to a letter of the Village Development Officer addressed to the Block Development Officer, dated 01.02.2022. Reading the letter's contents appears irrelevant to the arguments in the context of a

letter dated 08.01.2021. He also referred to the demand bill dated 05.04.2021. It was a demand bill for 2021-2022. As Mr. Deshmukh, the learned senior counsel for the Petitioner, has argued that the proposal was dated 07.05.2015, both parties have produced it, and many of the documents/papers have also been placed on record. Learned senior counsel for the Petitioner has vehemently argued that an agreement was executed pursuant to the letter dated 07.05.2015.

28. Learned senior counsel for the Petitioner has referred to the endorsement on a letter dated 03.04.2017 signed by the Sarpanch to respondent No.6 and Village Development Officer. He further argued that pursuant to the endorsement, the agreement on stamp paper of Rs.500/- was executed on 24.06.2017. These two documents were referred to as proposals and agreements for getting benefits under the rules for the period of 2015-2018. Lastly, it has been prayed that an order of respondent No.2 declaring the approval to the proposal and agreement for 2015-2018 has been infructuous in view of the deletion of Section 125 of the Act, is incorrect and illegal. Hence, the matter should be remitted to respondent No.2 to decide it afresh.

29. Per contra, Mr. Sapkal, learned senior counsel for respondent No.6 has vehemently argued that there was no agreement as required under the Rules. He assailed the submissions of the

learned senior counsel for the Petitioner that the endorsement below the letter dated 03.04.2017 is not an agreement and so-called agreement dated 24.06.2017 is also not an agreement as required under the Rules. He also submits that the village panchayat never approved the proposal and there was no agreement as such. Referring to the impugned order, he submits that in view of deletion of section 125, there was no reason to process the earlier request for lump-sum taxes. He has vehemently argued that the so-called agreement is not an agreement in the eye of law. The term' agreement' has been defined under the Rules and such an agreement is subject to the approval of the Government as well as Zilla Parishad. Whatever agreement executed between the village panchayat and the Petitioner is not a final agreement. He has referred to paragraphs No.5, 6 and 7 of the impugned order and vehemently argued that the reasons mentioned therein are legal, correct and proper. He also referred to the earlier order of respondent No.2 dated 10.03.2017. It was pertaining to approval to the agreement of one time tax for the year 2012-2015. He submits that the so-called proposal was not voidable. Rule 3 of the Rules has not been followed. Whatever agreement allegedly executed was not enforceable. He has specifically argued that there was no settlement. Unless, the Government sanctions the agreement between occupier and the village, it is not "agreement" as defined under the Rules. The assessment bill was for the year 2018-2019 onwards. Against the said bill, appeal has been provided, but instead of impugning the said demand bill by way of appeal, the Petitioner has wrongly filed writ petition. He also referred to the documents filed by respondent No.6.

30. Lastly, he argued that saving clauses are only to the extent of Government sanctioned agreements When there was no agreement as per the Rules, there is no question to grant benefit of saving clause. He prayed to dismiss the petition.

31. Learned A.P.P. supports the impugned order.

32. Learned counsel for respondent No.3 to 5 argued that the proposal sent to the Zilla Parishad was defective. The Chief Executive Officer placed the proposal before the standing Committee. He submits that the standing Committee observing the directions of this Court in Writ Petition No.13101 of 2022 has referred the proposal to respondent No.2 for approval.

33. Prayer clause (b) was brought to the notice of the learned senior counsel for the Petitioner, and a question was put to him whether, in view of the terms of settlement mentioned by the High Court in its order dated 29.09.2017 in the W.P. No 5548/ 2017, is a waiver of prayer clause (b). Further, the question was put to him when the dispute was amicably settled finally in 2017: what

compelled the Petitioner to seek again the similar relief that was prayed for in clause (D) in another Writ Petition No.13101 of 2022? He replied that in paragraph No.11 in Writ Petition No.13101 of 2022, he pleaded for settlement in Writ Petition No.5548 of 2015. Therefore, it is not the suppression of fact. He replied that since the proposal was not kept pending, respondent No.6 started issuing demand notice/bills repeatedly, and the Petitioner was forced to file the above Writ Petition No.13101/2022. Therefore, a similar prayer was made in that case.

34. Per contra, learned senior counsel for respondent No.6 submits that the cause of action to file Writ Petition No.13101 of 2022 was primarily the demand notice of the taxes dated 05.11.2022, against which the appeal was the remedy. He also pointed out that an alternative prayer was made to issue the direction to respondent No.2 to decide the proposal dated 24.06.2017 by respondent No.2 Divisional Commissioner.

35. The important question is whether a legal and valid proposal was submitted to the village panchayat as required under the Rules.

36. The learned senior counsel for the Petitioner finally submitted that a letter dated 03.04.2017 addressed to the Village Development Officer is a proposal and endorsement of village panchayat Sarpanch of respondent No.6 and Village Development

Officer, was the acceptance of the proposal and the terms written on non-judicial stamp paper dated 24.06.2017 is an agreement. The contents of the document show that the proposal was asked to be accepted retrospectively from 2015-16 onwards.

37. The contention of the Petitioner reveals that treating the endorsement below a letter dated 03.04.2017 is a proposal, and the agreement dated 24.06.2017 is an agreement. In the said agreement, respondent No.6 agreed to receive half of the tax amount as a lump-sum contribution in lieu of the taxes.

38. The copy of the said letter is placed on record. Its contents are re-produced for ready reference which reads thus;

> ''पत्रात नमुद केल्याप्रमाणे कंपनीने नियमानुसा कर आकारणीस प्रतिसाद दिला आहे, त्यामुळे ग्रामपंचायतील वरील रक्कम रूपये 2,15,95,558/– प्रति वर्षे प्रमाणे स्विकारण्यास हरकत नाही. (सन 2015–16, 2016–17, 2017–18 या वर्षांकरीता)
>
> तरी, रूपये 2,15,95,558/– प्रति वर्षे प्रमाणे मागील थकबाकीसहीत लवकरात लवकर भरणा कराल अशी आपणाकडुन अपेक्षा बाळगतो.
>
> सरपंच
ग्रुप ग्रामपंचायत जोगेश्वरी
ता.गंगापूर, जि.औरंगाबाद
>
> ग्रामविकास अधिकारी
ग्रुप ग्रामपंचायत जोगेश्वरी
ता.गंगापूर, जि.औरंगाबाद ''

39. The above contents mention that the Company has, as mentioned in the letter, responded to the tax assessment; therefore, Grampanchat has no objection to receiving the above

amount of Rs. 2,15,95,558 per year (for the years from 2015-16, 2016-2017 and 2017- 2018) However we hope you would pay the tax with arrears at the earliest.

40. The so-called agreement on non-judicial stamp paper dated 24.06.2017 reflects that it was an agreement for lump-sum tax of Rs.1,07,97,779/- and the agreement would be in force from 01.04.2015 to 31.03.2018. The agreement is silent about passing the resolution in the village panchayat and many other relevant proceedings. The contents of the endorsement on a letter dated 03.04.2017 simply appear that respondent No.6 and the Village Development Officer have accepted the calculations proposed by the Petitioner for the disputed period. In the said letter, it was submitted that the taxes imposed by respondent No.6 should not be hiked/enhanced by more than 30% of the taxes imposed for the preceding assessment year as per the Government resolution dated 31.12.2015. It also gave a reference to the order of respondent No.2, dated 18.03.2017, determining the annual tax of Rs.1,66,11,968/- and further gave calculations based upon those findings that the yearly assessment would be Rs.2,15,95,558/-. On making the calculations, he requested the Village Development Officer / Sarpanch of the Grampanchayat/ respondent No.6 that if they are agreeable to the calculations made by them, they should inform it. If he would inform, the necessary approval of the management would be obtained for further action on the same

page in the endorsement signed by Sarpanch and Village Development Officer, and there is a reference to the above letter and in reference to the above proposal, they agreed to accept the tax of Rs.2,15,95,558/- per year. The years 2015-2016, 2016-2017 and 2017-2018 were mentioned in the endorsement. It has also been endorsed that the Petitioner would clear tax arrears at Rs.2,15,95,558/- per year.

41. After the direction of this Court, the Petitioner has submitted a few more documents, including a proposal for the lump-sum tax for the year 2015-2018, dated 07.05.2015. By referring to this proposal, it has been pointed out that it is the proposal as required under the Rules. In the said application, it has been proposed that the taxes for the year 2015-2018 be assessed for Rs.67,43,000/- under Section 125 of the Act. The Village Development Officer received the said application on the same day. In response to the said proposal, the Village Development Officer wrote a letter on 13.05.2015 to the Deputy General Manager of the Petitioner. In specific words, it has been informed to the Petitioner that the amount proposed could not be accepted. He also quoted the relevant provisions of the law. He further informed the Petitioner that one-time tax shall not be less than Rs.1,34,85,951/-. He gave an offer that the Petitioner should come forward and show readiness to execute the agreement, and if the Petitioner is not agreeable, an action for recovery under Section 129 of the Act

would be initiated.

42. After rejecting the proposal mentioned above, the Petitioner addressed the letter dated 20.05.2015 to respondent No.2, admitting that village panchayat has declined the proposal. He also contended in the said petition that if there is a dispute about the execution of the agreement between the occupier and the village panchayat, the State Government has power to decide the dispute. Hence, the proposal is sent for appropriate decision. He requested respondent No.2 to make a proper decision. Then, the Petitioner addressed a letter dated 25.05.2015 to respondent No. 6 and Village Development Officer, giving reference to its letters dated 13.05.2015 and 19.05.2015 and threatened them as mentioned above.

43. The application of the Petitioner dated 20.05.2015 was claimed to be filed under Rule 9 of the Rules. For ready reference, it would be useful to reproduce Rule 9, which reads thus;

> "*Manner of referring dispute in reaching agreement. - In the event of failure on the part of a panchayat and the occupier to arrive at an agreement, the matter shall be referred either by the Panchayat or the occupier to the State Government through the Chief Executive Officer concerned, who shall submit the same after obtaining the views of the Standing Committee of the Zilla Parishad to the State Government for decision through the Commissioner with all the necessary documents.*"

44. The so-called reference of the dispute on failure to arrive at an agreement between them is directly addressed to respondent No.2. The condition to refer the dispute through the Chief Executive Officer and obtaining the views of the Standing Committee of the Zilla Parishad appears to have not been complied with. Therefore, it is difficult to accept the contention of the Petitioner that it was a reference of the dispute under Rule 9 of the Rules to respondent No.2.

45. Learned counsel for respondent No.6 made a statement that they did not receive any notice from the office of respondent No.2 pursuant to the letter dated 20.05.2015.

46. It has been argued that thereafter a settlement was arrived at in Writ Petition No.5548 of 2015. In the said writ petition, in the synopsis, a history of litigation on the same issue between Grampanchayat and the Petitioner was disclosed. In the synopsis, there was a mention of a letter dated 13.05.2015 and a proposal submitted to respondent No.2, dated 20.05.2015. It appears that without pursuing the so-called alleged dispute referred under Rule 9 of the Rules, the Petitioner had directly preferred Writ Petition No.5548 of 2015. In the said Writ Petition, there was no mention of the reference dated 20.05.2015, though the said writ petition was filed on 26.05.2015. There was no explanation at all about the progress on the said application, which claimed to be a dispute

under Rule 9 of the Rules. There was no prayer in the said writ petition that respondent No.2 be directed to decide the dispute referred to him filed under Rule 9 of the Rules. The Petitioner directly jumped to pray to issue writ order or direction to respondent No.2 to forward the proposal of the Petitioner dated 07.05.2015 to the State Government.

47. There was no explanation whether the proposal dated 07.05.2015 was reached in time before respondent No.2 when the village panchayat had unequivocally denied the proposal.

48. The remedy under Rule 9 of the Rules has been claimed to be exhausted. This Court has already discussed its legality. It has been tried to argue that in view of the settlement, it was agreed to refer the proposal of the Petitioner dated 07.05.2015 to respondent No.2 fora decision. However, before recording the findings on the arguments about the compromise or the amicable settlement, it is to be observed that there was no specific prayer against respondent No.2 to decide the said proposal or agreement.

49. Reading the order passed in Writ Petition No.5548 of 2015 about the settlement, one could easily understand what has been settled. The settlement was about the recovery of village panchayat taxes for the disputed period. They agreed to pay the amount to be paid or recovered by respondent No.6 and refund to the Petitioner. There is no whisper at all about settlement or

agreement for lump-sum taxes as provided under the Rules. Therefore, the argument of the learned counsel for the Petitioner that this settlement includes referring the proposal dated 07.05.2015 to the appropriate authority for approval/sanction appears not relevant.

50. On the contrary, reading the settlement terms recorded by this Court in the absence of mentioning in prayer clauses from the writ petition, the only inference would be drawn that the Petitioner had waived the claims under the Rules. In other words, the Petitioner waived all other rights and simply settled the dispute of the tax assessment for the disputed period. Therefore, the submission of Mr. Sapkal, learned senior counsel for respondent No.6, that there is no dispute about the taxes for the period of 2015-2018, appears correct.

51. Respondent No.6 again issued a tax demand dated 15.11.2022 for a further period, against which another Writ Petition No.13101 of 2022 was filed, and in that petition, the prayer again was made to direct respondent No.2 to process the proposal of lump-sum contribution dated 24.06.2017. The argument of the learned senior counsel for the Petitioner reveals that the proposal dated 24.06.2017 was pursuant to the letter dated 03.04.2017. It seems that the Petitioner has mixed two causes of action in the said writ petition; in the alternative, it was

prayed that respondents No.3 to 6 be directed to process the proposal of lump sum contribution dated 24.06.2017. The main prayer in Writ Petition No.13101 of 2022 was about the demand notice dated 05.11.2022, including the arrears of the tax for the period 2015-2018. In Writ Petition No.5548 of 2015, the dispute was for the same period, i.e. from 2015 to 2018. In such circumstances, the Petitioner was not expected to dispute the taxes for the same period in a subsequent Writ Petition.

52. Learned counsel for respondent No.6 has rightly submitted that the appeal has been provided against the tax demand bill, and the Petitioner did not avail it. Be that as it may, this Court is not dealing with the quantum of the tax for 2015-2018.

53. In Writ Petition No.13101 of 2022, it has been pleaded that on 24.06.2017, an agreement was entered into between the petitioner and respondent No.6 village panchayat as per the then Section 125 of the Act and the Rules. The so-called agreement was placed before the Court on which this Court has already recorded the findings.

54. However, the learned counsel for respondent No.6 submits that it was further agreed that the compromise about the tax for the disputed period done in Writ Petition No.5548 of 2015 was subject to the approval of respondent No.2. Therefore, sending of the proposal to respondent No.2 was not seriously disputed.

Further, it has been argued for respondent No.6 that the agreement was subject to the approval by respondent No.2.

55. Learned counsel for respondent No.6 has vehemently argued that neither the letter dated 03.04.2017 is an application nor the so-called agreement dated 24.06.2017 executed on non-judicial stamp paper of Rs.500/- is in the requisite format, i.e. form 'A' Rule 5 of Rules, 1961.

56. The pleadings speak of the fact that, on the one hand, the Petitioner says the proposal was dated 07.05.2015; on the other hand, it says that the agreement was executed on 24.06.2017. In the present petition, the Petitioner claimed that a letter dated 03.04.2017 Exhibit-"J" is an application.

57. Rule 3 of the Rules provides for the application to be filed by the occupier of the factory to the Gram Panchayat desiring to arrive at the agreement. Such an application should be presented not later than 60 days of the commencement of the financial year. Rule 3 further provides that the application shall state the amounts paid by him to the Panchayat with respect to taxes levied by the Panchayat during three financial years immediately preceding the year or as the case may be. During the period of less than three years, the factory has been functioning immediately preceding the financial year in which the application is made. The following information to be mentioned in the application is about the

amount payable by the occupier to the Panchayat with respect to all or any of the taxes levied by the Panchayat during the financial year in which the application was made. (The amount payable with respect to each tax will be indicated separately.) Further, the application shall mention the details of the amenities provided by the occupier in the factory and which the Panchayat within the limits of its jurisdiction. Further information about the expenditure incurred by the occupier on each amenity provided during the period in sub-clause (1) of clause (a) up to the date of application and also mention the lump-sum amount which the occupier proposes to pay to the Panchayat in lieu of the taxes levied by Panchayat having regard to the amenities provided by the Panchayat. The information under Rule 3 of the Rules is mandatory to understand the proposal. If the application dated 03.04.2017 is an application under Rule 3 of the Rules, it does not mention the requisite information. However, subsequently, the Petitioner has submitted on record another application/proposal dated 07.05.2015, along with the Writ Petition, the said application was not filed. However, again, this application does not meet the requirements of Rule 3 of the Rules.

58. Rule 5 of the Rules provides for the execution of an agreement between the Panchayat and occupier and its submission to the Chief Executive Officer. It provides that where the Panchayat agrees to accept the lump sum amount proposed by

the occupier under clause (d) of Rule 3 of the Rules, 1961, an agreement in form 'A' appended to those Rules shall be executed between the Panchayat and occupier. The Panchayat then shall submit such agreement to Chief Executive Officer, Zilla Parishad, within one month of its execution, along with the application submitted by the occupier and the resolution passed by the Panchayat. Form 'A' under Rule 5 of the Rules mentions that the occupier of the factory shall agree to pay, and the Village Panchayat shall agree to receive a lump-sum contribution in lieu of tax + / taxes specified under the different heads by Panchayat under the Act. Further, the condition of this agreement is that the agreement shall be subject to the provisions of the Rules and shall be effective for the period commencing from as agreed. The so-called agreement dated 24.06.2017 does not disclose the taxes calculated under the different heads. It is also silent about the peculiar amount under different heads of the taxes. Rule (5) provides a mandatory provision that the agreement shall be in the form 'A'. Examining the so-called agreement dated 24.06.2017, it does not match the format.

59. Rule 7 of the Rules reflects that there are different rates of concessions on the different heads of the taxes. In other words, the said Rule provides the limitations for arriving at the agreement. So, it also requires specification. None of the documents relied upon by the Petitioner reflects the specification.

60. A vehement argument or objection of the Petitioner is that neither the Zilla Parishad nor the Commissioner has the power to apply their minds to test or examine the legality or validity of the agreement arrived at between the occupier of the factory and the village panchayat.

61. Rule 5 of the Rules, 1961, as discussed above, provides for the submission of the agreement between the Panchayat and the occupier to the Chief Executive Officer. Such a proposal should comply with Rule 3 and be in the form 'A'. After receipt of such proposal, the Chief Executive Officer shall, with remarks of the Standing Committee of the Zilla Parishad, forward to respondent No.2, who is authorized to decide the same.

62. The learned counsel for respondent No.6 further argued that the term 'agreement' has been defined under the Rules. The occupier cannot dictate to the authorities to accept the proposal as it is. It is always subject to the scrutiny and the application of mind. A bare agreement between the occupier of the factory and the village panchayat is not conclusive and enforceable under the law. It is always subject to the sanction of the Government (now respondent No.2). The so-called agreement is subject to the test of the feasibility and compliance with the Rules.

63. The term' agreement' has been defined in clause (a) of Rule

2 of the Rules, which reads thus;

> "*(a) "agreement" means the agreement which a panchayat may arrive at with any factory with the sanction of the State Government to receive lump sum contribution in lieu of all Section 125 of the Act.*"

64. The definition has unequivocally put a condition for the sanction of agreement. When the Standing Committee has to put its remarks, that itself discloses that it shall apply its mind to verify the legality of the agreement between the occupier of the factory and the village panchayat.

65. The matter does not rest there. The decision of the Standing Committee is also not conclusive. However, the Standing Committee of the Zilla Parishad has a right to put its remarks, either positive or negative, and further forward them to respondent No.2 for sanction. On reading Rules 5 and 6 of the Rules together, it is hard to digest an argument of the learned senior counsel for the Petitioner that neither the Standing Committee nor the Commissioner has the right to examine the legality and validity of such agreement.

66. The Hon'ble Division Bench in Writ Petition No.5101 of 2013 decided on 13.04.2016 has observed in paragraph No.18 that Section 125 of said Act and the Rules is itself a complete code in deciding the payment of lump-sum contribution by the factories in

lieu of taxes. If the Standing Committee of the Zilla Parishad before whom such agreement is placed is of the view that the agreement arrived at between the Gram Panchayat and the occupier of the factory is not in the public interest or contrary to the provisions of any rules or for any other reason, the same should not be given sanction, it can record its view/objection in the form of its remark while forwarding such agreement to the State Government through the Commissioner. Similarly, the Commissioner can also record his comments as regards such agreement received by him while forwarding the same to the State Government as provided under Rule 6 of the Rules. It is ultimately for the State Government to consider the matter in its entirety while taking the decision and the Government can consider such remarks recorded by the Standing Committee and the comments, if any, recorded by the Commissioner. After examining the proposal and satisfying that the proposal is in order and in due compliance with all the rules and further satisfy itself after considering the remark/comments, if any, recorded by the Standing Committee of the Zilla Parishad and the Commissioner, that agreement deserves to be sanctioned, then in that eventuality the State Government has to obtain the views of the Chief Executive Officer of concerned Zilla Parishad before taking final decision in the matter. Only after considering the views of the Chief Executive Officer, the Government is expected to take the final decision in the matter. If the State

Government finds that the agreement arrived at between the Panchayat and the factory is not in the public interest or is not in accordance with Rule 10, it can always refuse to grant sanction, but such powers are required to be exercised by the State Government and not by Chief Executive Officer of the Zilla Parishad. Under the Scheme very limited role has been provided to the Chief Executive Officer, i.e. to place such agreement together with the documents before the Standing Committee within the period prescribed and thereafter to forward the same with the remarks of the Standing Committee to the Commissioner, who in turn, to forward the proposal to the State Government with his own comments.

67. The impugned order mentions that the subject was kept before the Standing Committee of the Zilla Parishad on 23.06.2023. It was discussed in the meeting at subject Serial No.6, and then it was referred it to the Commissioner. All papers, including the decision of the Standing Committee, were sent by the Chief Executive Officer. Therefore, it cannot be said that the Chief Executive Officer took the decision and referred it to the Commissioner. In paragraph No.7 of the impugned order, it has been specifically observed that the Chief Executive Officer, Zilla Parishad, Sambhajinagar, sent the agreement with a decision of the Standing Committee of the Zilla Parishad rejecting the proposal.

68. In view of that matter, the Court does not agree with the submission of the learned senior counsel for the Petitioner that those are incorrect findings of the Chief Executive Officer.

69. Further, the learned senior counsel for the Petitioner has referred to Rule 10 of the Rules and argued that the said proposal is in the form of a renewal of the earlier agreement for a further period. This seems to be the argument for the first time. However, the record reveals that the Petitioner himself has submitted various letters for its fresh proposal for the period from 2015 to 2018.

70. He further argued that the Commissioner can refuse the sanction only if the agreement is against public policy. The observations recorded above from paragraph No.18 of the Judgment of the Hon'ble Division Bench in Writ Petition No.5101 of 2013 relied upon by the Petitioner itself gave the answer to the objections. The reason for rejection is not restricted to the public policy, but it also includes the agreement if contrary to the provisions or any rule or any other reason. The observations of the Hon'ble Division Bench have clarified that the Standing Committee of the Zilla Parishad and the Commissioner have the right to examine the legality and validity of the agreement executed between the Village Panchayat and the occupier of the factory. On

reading the definition of 'agreement', as discussed above, it does not restrict or withdraw the powers to refuse the sanction to the agreement by the Standing Committee of the Zilla Parishad as well as by the Commissioner. Rules regarding submission of the application for the agreement in form 'A' are mandatory. Those must have been strictly complied with.

71. It is also the vehement argument of the learned counsel for respondent No.6 that Section 125 of the Act has been deleted. Therefore, the proposal for the year 2015-2018 is ineffective and cannot be implemented.

72. A copy of the Maharashtra Act. No.XI of 2018 has been placed on record. However, the agreements entered into or executed in pursuance of Section 125 of the Act and the Rules were saved and held valid for a period mentioned in the agreement and shall then expire. This Act No.XI of 2018 was brought into force on 16.01.2018.

73. The plain reading of the saving clause indicates that the agreements executed before the repeal of the Sections and the Rules in existence were saved till the completion of its period. Soon after the period is over, the agreements shall expire. The words of the said saving clause further reveal that there shall be no further renewal of the existing agreement.

74. It is the contention of the Petitioner that the so-called agreement was executed before the Repealing Act of 2018. The most important contention of the Petitioner is that respondent No.2 ought not to have rejected the proposal since Section 125 of the Act has been repealed with retrospective effect. The reasons for rejecting the proposal on the grounds that Section 125 of the Act has been deleted by respondent No.2 is incorrect to that extent only. However, respondent No.2 took the reference of the resolution of the Standing Committee, which had rejected the proposal/agreement.

75. This Court has already held that the so-called proposal and agreement do not comply with the Rules. Therefore, the findings of respondent No.2 on the objections raised above would not seriously affect its legality.

76. The Petitioner has a case that a proposal for agreement was placed on 03.04.2017, and the agreement was executed on 24.06.2017. Referring to these dates, the objection of respondent No.6 that the proposal was not submitted within 60 days of the financial year has been strongly opposed.

77. Both documents mentioned above are the proposals for the lump sum contribution in lieu of taxes were for the year 2015-16 to 2017-18. If the definition of 'financial year' is considered, the proposal should have been submitted on or before 30 May 2015.

Considering prayer clause (D) and directions sought in Writ Petition No.13101 of 2022, the findings of respondent No.2 are not incorrect as regards the non-submission of the proposal within 60 days from the commencement of the financial year. If the proposal submitted on 07.05.2015 is considered, then the finding of respondent No.2 cannot be held correct. In the Writ Petition, the proposal dated 07.05.2015 was not mentioned. Respondent No.2 acted according to the directions of this Court issued in Writ Petition No.13101 of 2022. Therefore, his findings cannot be held faulty or illegal. The proposal dated 07.05.2015 is for the year 2015-2018. Considering the letter dated 20.05.2015, the proposal was never forwarded to the C.E.O. Zilla Parishad. Therefore, it is difficult to accept that it was the proposal for consideration before any court of law. As against this, respondent No.6 has filed a copy of the proposal dated 02.05.2017. It was again for the year 2015-2018.

78. The question was whether (after examining the law in detail) again the matter would be remitted to the Commissioner for a fresh decision. The impugned judgment is not completely wrong. This Court is of the view that when the Court examined the legality and validity of the so-called proposal and agreement, it would be inappropriate to remit the matter for a fresh decision. Hence, this Court declines the prayer to remit the matter for a fresh decision.

79. In view of the above discussion, the Writ Petition stands dismissed.

80. Rule stands discharged with no order as to costs.

81. Learned senior counsel for the Petitioner submits that he has instructions from the Petitioner to impugn this order before the Hon'ble Supreme Court. Hence, the order may be stayed for eight weeks from today. Learned counsel for respondent No.6 strongly opposed the request.

82. Considering the issue involved in the matter and the desire of the Petitioner to impugn this judgment and order before the Hon'ble Supreme Court, it would be inappropriate to reject the prayer to stay this order. Accordingly, it is stayed for eight weeks from today.

(S. G. MEHARE)
JUDGE

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