PUNJAB & SIND BANK

v.

ALLAHABAD BANK AND ANR.

MARCH 28, 2006

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

Practice and Procedure—Civil dispute between banks—Dismissal of suit sought by one bank on the ground that procedure indicated by Supreme Court in **ONGC-I** *case that when parties are Government or its Undertakings, dispute is to be resolved before in-house committee not followed—High Court holding that decision in* **ONGC-I** *case was administrative in nature and has force to emasculate judiciary—On appeal, held: Order passed in judicial proceeding cannot be described to be administrative in nature—Thus, order of High Court set aside and matter remitted back to it.*

Respondent no.1-Bank filed suit for recovery and other reliefs against the appellant-Bank. Appellant-Bank filed application for dismissal of the suit on the ground that the procedure indicated by this Court in *Oil and Natural Gas Commission-I* case* that when parties are Government or its Undertakings dispute should be resolved before in-house Committee, were not followed. Single Judge of High Court held that the decision has to be read in the context in which it was passed and this Court never intended to extinguish the right to sue. Division Bench upheld the order with an additional view that the decision in the *ONGC-I* case is itself of an administrative nature and has force to emasculate the judiciary. Hence the present appeals.

Allowing the appeals and remitting the matters to High Court, the Court

HELD: The view expressed by the Division Bench of the High Court that the decision in the *ONGC-I* case is itself of an administrative nature and has force to emasculate the judiciary, is confusing and patently shows that the ratio of the various decisions has not been understood in the proper perspective. To say that the decision in the *ONGC-I* case was of an administrative nature though a judicial order, shows non-application of mind. Any order passed in a judicial proceeding, (much less an order passed by this Court) can by no stretch of imagination be described as one of "administrative nature". Therefore, the judgment of the Division Bench is

A **set aside and the matters are remitted back for fresh consideration.**

[496-B-C; C-E]

******Oil and Natural Gas Commission and Anr.* **v.** *Collector of Central Excise,* **[1992] Supp. 2 SCC 432;** *Oil and Natural Gas Commission* **v.** *C.C.E.* **[1995] Supp. 4 SCC 541;** *Oil and Natural Gas Commission* **v.** *C.C.E.,* **[2004]**
B **6 SCC 437;** *Chief Conservator of Forest* **v.** *Collector,* **[2003] 3 SCC 472;** *Mahanagar Telephone Nigam Ltd.* **v.** *Chairman, Central Board, Direct Taxes and Anr.,* **[2004] 6 SCC 431, distinguished.**

U.P.S.E.B. and Anr. **v.** *Sant Kabir Sahakari Katai Mills Ltd.,* **[2005] 7**
C **SCC 576, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9688-9689/ 2003.

From the Final Judgment and Order dated 25.6.2003 of the High Court
D of Calcutta in G.A. No. 2162/2002 in APOT No. 809/2002 arising out of Suit No. 60/1999.

Arun K. Sinha and G.S. Sistani for the Appellant.

C. Mukund, Bijoy Kumar Jain and Mrs. V.D. Khanna for the
E Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in these appeals is to the judgment delivered by a Division Bench of the Calcutta High Court, in an appeal filed
F by the appellant, the defendant in the suit filed by respondent no.1-Bank. Learned Single Judge in the said suit held that there was no need to adopt procedure indicated by this Court in *Oil and Natural Gas Commission and Anr.* v. *Collector of Central Excise,* [1992] Supp. 2 SCC 432 (described hereinafter case as *ONGC-I* Case). The Division Bench affirmed the view of learned Single Judge. The correctness of the view expressed by the learned
G Single Judge and the Division Bench forms the subject-matter of challenge in this appeal.

The suit was filed by the respondent no.1-Bank against the appellant-Bank along with 11 other defendants with the following prayers:-

H (a) Declaration that the Banker's cheque copy whereof is annexed

Marked A hereto is void and not binding on the plaintiff. A

(b) Decree of Rs. 5,62,66,671 against the defendants jointly and/or severally and/or such of them for such amount as this Hon'ble Court may deem fit and proper.

(c) Decree of Rs. 5,62,66,671 against the defendant no.1 together with interest. B

(d) Interest including interim interest as claimed in paragraph 29;

(e) Receiver;

(f) Costs; C

(g) Further any other reliefs.

An application was filed by the appellant-Bank for dismissal of the suit on the ground that the modalities indicated in *ONGC-I* case (supra) were not followed. Learned Single Judge held that the decision has to be read in the context which was passed. This Court never intended to extinguish the right D to sue. Intention was to avoid litigation when the parties are government or its undertakings.

The order was challenged before the Division Bench which, inter-alia, upheld view of learned Single Judge with some additional reasons. We shall deal with the reasoning in detail later. E

The view in *ONGC-I* case (supra) was further elaborated in *Oil and Natural Gas Commission* v. *C.C.E.,* [1995] Supp. 4 SCC 541 (For sake of convenience described as ONGC-II). It was noted in *Oil and Natural Gas Commission* v. C.C.E., [2004] 6 SCC 437 (for convenience described as ONGC-III) that some doubts and problems arose in the working out of the F arrangements in terms of the order of this Court dated 11.10.1991 *ONGC-II* case (supra). It was noted in *ONGC-III* case (supra) as follows:

> "There are some doubts and problems that have arisen in the working out of these arrangements which require to be clarified and some creases ironed out. Some doubts persist as to the precise import and G implications of the words "and recourse to litigation should be avoided". It is clear that the order of this Court is not to the effect that nor can that be done-so far as the Union of India and its statutory corporations are concerned, their statutory remedies are effaced. Indeed, the purpose of the constitution of the High-powered Committee H

A was not to take away those remedies. The relevant portion of the order reads: (SCC pp. 541-42 para 3)

> "3. We direct that the Government of India shall set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor
B disputes between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the Committee and its
C clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline."

D It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house committee."

The matter was again examined in the case of *Chief Conservator of Forest* v. *Collector*, [2003] 3 SCC 472. In Para 14 and 15 it was noted as
E follows:

> "Under the scheme of the Constitution, Article 131 confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India. It was not contemplated by the framers of the
F Constitution or the C.P.C. that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various
G departments of the Government are its limbs and, therefore, they must act in co-ordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary
H to the basic concept of law which requires that for suing or being

sued, there must be either a natural or a juristic person. The States/ Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy. In the case of disputes between public sector undertakings and Union of India, this Court in *Oil and Natural Gas Commission* v. *Collector of Central Excise,* [1992] Suppl. 2 SCC 432 called upon the Cabinet Secretary to handle such matters. In *Oil and Natural Gas Commission & Anr.* v. *Collector of Central Excise,* [1995] Suppl. 4 SCC 541, this Court directed the Central Government to set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor dispute between Ministry and Ministry of the Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. The Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

The facts of this appeal, noticed above, make out a strong case that there is felt need of setting up of similar committees by the State Government also to resolve the controversy arising between various departments of the State or the State and any of its undertakings. It would be appropriate for the State Governments to set up a Committee consisting of the Chief Secretary of the State, the Secretaries of the concerned departments, the Secretary of Law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a committee shall be binding on all the departments concerned and shall be the stand of the Government."

The directions as noted above were quoted in *Mahanagar Telephone Nigam Ltd.* v. *Chairman, Central Board, Direct Taxes and Anr.,* [2004] 6 SCC 431 and were adopted in paragraph 8. It was noted as follows:

"Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. The majority of such

A cases pertain to Government Departments and/or public sector undertakings. As is stated in *Chief Conservator of Forests'* case [2003] 3 SCC 472 it was not contemplated by the framers of the Constitution or the Civil Procedure Code that two departments of a State or Union of India and/or a department of the Government and a public sector undertaking fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this court is not, as suggested by Mr. Andhyarujina, only to conciliate between Government Departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/public sector undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done."

The *ONGC I to III* cases (supra), *Chief Conservator's* case (supra) and *Mahanagar Telephone's* case (supra) deal with disputes relating to Central Government, State Government and Public Sector Undertakings. They have no application to the facts of these cases as the High Court has not indicated any reason for its abrupt conclusion that the writ petitioners are Public Sector Undertakings. In the absence of a factual determination in that regard, the

decisions can have no application. A

These aspects were recently highlighted in *U.P.S.E.B. and Anr.* v. *Sant Kabir Sahakari Katai Mills Ltd.*, [2005] 7 SCC 576.

The Division Bench of the High Court did not adopt the modalities indicated by this Court in the various decisions referred to above with the B following reasoning:

> "Mr. Mitra supported the judgment of the Hon'ble Mr. Justice Dilip Kumar Seth delivered in the court below and, with respect; we do not find anything to differ from His Lordship's views in this matter. We C would, however, have to add only one point thereto which we consider to be the deciding factor.
>
> The respondent/plaintiff here has alleged that the Punjab & Sind Bank (no doubt vicariously, and because of persons working of the Bank) acted fraudulently, or at least negligently, and sent for clearing D a cheque which was worthless, and thus brought into circulation Rs.3.10 crore which should not have been brought into circulation at all.
>
> These allegations have not yet been pronounced upon by any Civil Court. E
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> If the above decision of the Government Committee for settlement of disputes is binding on the High Court, then and in that event, the High Court is not entitled to try the suit, and must exonerate the Punjab & Sind Bank (and therefore indirectly all its then concerned employees) of both fraud and negligence. F
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> Mr. Chatterjee submitted that one is not remedy less, and in case the decision is not reasonable, it could be challenged in appropriate writ proceedings.
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> *But the point which falls for decision is, can a Government* G *Committee, which is only a part of the administrative machinery of the Union of India, stop by its administrative decision, the judicial process of adjudication, which is the job of that wing of the Union of India, which is known as the judiciary.*
>
> *We are of the opinion that the dicta in the ONGC's case, if given* H *their interned meaning, would, have the above effect, of impeding the*

A *judicial process by having recourse to decision of an administrative body, as the first and permanent deciding body.*

We are of the opinion, and we say this with the greatest of respect, which is at our command, that this is wholly unconstitutional. It is not necessary to enlarge on a matter so fundamental because the B separation of the legislature, the judiciary and the executive is more basis than anything else in our Constitution as it stands today. We are accordingly of the opinion, and this is again said with as much respect before, *that the decision in the ONGC's case is itself of an administrative nature and has the force to emasculate the judiciary.*"

C (Underlined for emphasis)

To say the least the view expressed by the Division Bench of the High Court is confusing and patently shows that the ratio of the various decisions has not been understood in the proper perspective. To say that the decision D in the *ONGC-I* case (supra) was of an administrative nature though a judicial order shows non-application of mind. Any order passed in a judicial proceeding, (much less an order passed by this Court) can by no stretch of imagination be described as one of "administrative nature".

In the circumstances we set aside the judgment of the Division Bench, E remit the matter to the High Court for fresh consideration keeping in view the modalities and principles set out by this Court in the various decisions referred to above.

Appeals are allowed to the aforesaid extent with no order as to costs.

F N.J. Appeals allowed.