

(2008) 08 BOM CK 0146

In the Bombay High Court

Case No : Writ Petition No's. 812 of 2007 and 2236 of 1999

Ajabrao Mahadeorao Choudhary

APPELLANT

Vs

The Principal, Kala Vanijya Mahavidyalaya, Vidya Bharti
Shikshan Prasarak Mandal and Rashtra Sant Tukdoji Maharaj
Nagpur University
 Shri Shivaji Education Society Vs
Kumar Keshavrao Kale and Presiding Officer, University and
College Tribunal

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 1, 17, 18, 18(3), 2
Constitution of India, 1950 — Article 14, 226, 227, 228
Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of
Letters Patent Appeals) Act, 1986 — Section 3
Maharashtra Universities Act, 1994 — Section 59(1)

Citation : (2008) 6 ALLMR 33 : (2008) 6 MhLj 436

Hon'ble Judges : C.L. Pangarkar, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Anand Parchure, in Writ Petition No. 812/2007 and A.M. Ghare, in
Writ Petition No. 2236/1999, for the Appellant; M.I. Khan and S.Z. Qazi for
respondent Nos. 1 and 2 in Writ Petition No. 812/2007 and M.M. Sudame, in Writ
Petition No. 2236/1999, for the Respondent

Judgement

1. In both these petitions under Article 226 and 227 of the Constitution of India, challenge is to the judgment and order dated 25.09.2006 and 19.02.1999 passed by Presiding Officer, University and College Tribunal, Nagpur.

2. In writ petition No. 812/2007 by an order dated 01-02/04/2007, the learned Single Judge has passed the order, which is reproduced as under:

The Division Bench of this High Court (Coram:- R.M. Lodha and R.S. Mohite, JJ) in W.P. No. 1983/2003; Shreemati Nathibai Damodar Thackersey (SNDT) Women's University and Anr. v. Dr. (Mrs.) Nita S. Dodd and Ors. has held that the order passed by the University and College Tribunal is covered by Clause (40)

of Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules and amenable to the jurisdiction of the learned Single Judge. However, the another Division Bench of this High Court (Coram:- B.H. Marlapalle & J.H. Bhatia, JJ) in Civil Writ Petition No. 2011/2006; Prof. Shashikant B. Kulkarni v. The Principal, BPCS College of Physical Education, Mumbai and Ors. in para No. 2 held as follows:

At the threshold, Mr. Anturkar submitted that the petition would lie before the Single Bench. Admittedly, the impugned decision is that of the University and College Tribunal constituted under the Maharashtra Universities Act, 1994 and presided over by a retired Judge of this Court. We have no doubt in our mind that the decisions of the University and College Tribunal, Appellate Tribunal, DART, the State of Maharashtra Consumer Dispute Redressal Commission under the Consumer Protection Act, 1986 as well as the decision rendered by the Tribunal under the Administrative Act, 1985 should be challenged before the Division Bench and such petitions would not lie before the Single Bench as per the existing Appellate Side Rules of this Court. Hence, we over rule the first contention that the petition should be placed before the Single Bench.

In view of above, Office is directed to place the present writ petition before appropriate Division Bench for appropriate orders.

3. As we have noted that the Division Bench (Coram:- R.M. Lodha and R.S. Mohite, JJ) while dealing with Clause (40) of Rule 18 in question, in Writ Petition No. 1983/2003, Shrememati Nathibai Damodar Thackersey (SNDT) Women's University and Anr. v. Dr. (Mrs.) Nita S. Dodd and Ors.; passed an order on 06.04.2005, based upon the same rule and in para 2, to 6 observed as under:

2. We are unable to countenance the view of the learned Single Judge. The learned Single Judge overlooked Clause (40) of Rule 18 of Chapter XVII of the Bombay High Court, Appellate Side Rules, 1960 which specifically refers to the orders passed under the Maharashtra Universities Act, 1994. As per Clause (40) of Rule 18 of Chapter XVII, the orders passed under Maharashtra Universities Act, 1994 are amenable to the jurisdiction of the learned Single Judge. The reference to Clause (39) by the learned Single Judge in the impugned order is wholly irrelevant.

3. The view of the learned Single Judge that the University and College Tribunal is presided over by a retired Judge of this Court and its decision, therefore, cannot be termed as a decision of the Court or Tribunal subordinate to this Court as contemplated under Clause (3) of Rule 18 of Chapter XVII of the High Court, Appellate Side Rules is also erroneous. Rule 18 (3) and (4) read thus.

18. Single Judge's powers to finally dispose of applications under Article 226 or 227.

Notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or

applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of (3) the decrees or the orders passed by any Subordinate Court (or by any quasi-judicial authority) in any suit or proceeding (including suits and proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court. (4) The orders passed under the Maharashtra Universities Act, 1994.

4. The University and College Tribunal constituted under the Maharashtra Universities Act is amenable to the supervisory jurisdiction of this Court. It hardly matters who presides over such tribunal. Merely, because it is presided over by the retired Judge of the High Court does not put it on higher pedestal. In any case, in the light of the specific Clause (4), the orders passed under the Maharashtra Universities Act, 1994 are amenable to the jurisdiction of the learned Single Judge under the Bombay High Court, Appellate Side Rules, 1960.

5. In our considered view, the impugned order passed by the University and College Tribunal in the present writ petition is covered by Clause (40) of Rule 18 of Chapter XVII and is amenable to the jurisdiction of the learned Single Judge.

6. The writ petition shall now be posted before the learned Single Judge having assignment of such matters.

4. The Division Bench of Bombay High Court in Principal, Micky School, English Medium Vs. The State of Maharashtra and Others, ; while considering the Appellate Side Rules, Chapter XVII and Rule 18 in question has already reiterated and elaborated the scheme in following words:

10. Then comes Rule 18 of Chapter XVII which provides that notwithstanding anything contained in Rules, 1, 4 and 17 this Chapter-i.e. Chapter XVII applications under Article 226 and 227 or under Articles 226 and 227 may be disposed of by the learned Single Judge of this Court and proceeds to enumerate the categories of orders or enactments which are to be dealt with by the learned Single Judge. It will thus be seen that provisions of Rule 18 of Chapter XVII is a provision made in relation to rules in Chapter XVII and therefore are rules which as contemplated by Rules 1 and 2 Chapter 1 provide for hearing by a learned Single Bench. As we have noticed above that Rules 1 and 2 both of Chapter 1 provide for exception in cases where it is otherwise provided for by these rules. Language of Rules 17 and 18 in the circumstances is required to be noted. Rule 18 of Chapter XVII says notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter i.e. Chapter XVII the following applications mentioned in the said rule are to be heard by the learned Single Judge. It means Rule 18 is a provision which is a case where it is otherwise provided by these rules that the matters can be heard by the learned Single Judge. Clauses 1 to 43 of this Rule 18 provide various categories of orders passed by under various enactments which are required to be dealt with by a learned Single Judge of this Court. Sub-Clause (3) however is omnibus clause which reads thus:

The decrees or the orders passed by any Subordinate Court (or by any quasi-

judicial Authority) in any suit or proceedings (including suits and proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court.

According to these provisions therefore any decree or order passed by any subordinate Court or quasi judicial Tribunal in any suit or proceedings including suit or proceedings in any suit or legal law are to be dealt with by a Single Judge. It will thus be clear from the conjoint reading of all the relevant provisions that according to Rule 18 of Chapter XVII all petitions mentioned in that rule in Sub-clauses 1, 2 and 4 to 43 are to be dealt with by a Single Judge and this will not present any difficulty in classification. The problem as has been raised in the present case arises on interpretation of Chapter XVII, Rule 18 Clause 3 quoted above. We have explained how this Rule 18 operates.

11. In our opinion, the position in regard to hearing of writ petitions under Bombay High Court Appellate Side Rules, 1960 is clear. All writ petitions under Articles 226 and/or 227 or under Article 226 or under Article 227 are to be heard by learned Single Judge of this Court.

5. A Division Bench of Bombay High Court, Nagpur Bench Nagpur, by an order dated 31.03.2008 in Writ Petition No. 5823, 5824, and 227 of 2008 has dealt with Chapter XVII of the High Court Appellate Side Rules in para 5 and 8 as under:

5. Chapter XVII of High Court Rules deals with "Petitions under Articles 226 and 227 and Applications under Article 228 of the Constitution and Rules for issue of writs and orders under the said Articles." Rule 18 deals with "Single Judge's powers to finally dispose of applications under Article 226 and 227". The entire rule contains about 44 different heads and its portion relevant for present adjudication reads:

Notwithstanding anything contend in Rules 1, 4 and 17 of this Chapter, application sunder Article 226 or under Article 227 of the Constitution (or applications styled as application sunder Article 227 of the Constitution read with Articles 226 of the Constitution) arising out of (1) the orders passed by the Maharashtra Revenue Tribunal under any enactment.

(2) not reproduced here,

(3) the decrees or the orders passed by any Subordinate Court (or by any quasi-judicial authority) in any suit or proceeding (including suits and proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court.

(4) the decrees or the orders passed by any Subordinate Court in appellate or revisional proceeding arising from suits or proceedings mentioned in Clause (3) above, or

(5) to (44)- not reproduced here. May be heard and finally disposed of by a

Single Judge appointed in this behalf by the Chief Justice:

(Provided when the matter in dispute is or relates to the challenge to the validity of any statute or any rules or regulations made thereunder, such applications shall be heard and disposed of by a Division Bench to be appointed by the Chief Justice.)

Explanation.- the expression "order" appearing in Clauses (1) to (41) means any order passed by any judicial or quasi-judicial authority empowered to adjudicate under the abovementioned statutes.)

It is to be noted that the underlined portion in bracket in Sub-rule (3) has been added by notification dated 15-7-1999 while the underlined portion at the end in bracket is added on 16-10-1997. The clauses which are not reproduced deal with the orders passed under various enactments like Payment of Gratuity Act, Bombay Prohibition Act, Maharashtra Land Revenue Code, Bombay Stamp Act, Electricity (Supply) Act, 1948, Indian Railways Act, Motor Vehicles Act, Maharashtra Universities Act etc.

The relevant portion of Section 53 of the 1998 Act, reads as follows:

1) There shall be a Grievance Committee in each university to deal with the grievance of teachers and other employees of the university, colleges, institutions and recognised institutions and to hear and settle grievances as far as may be practicable within six months, and the committee shall make a report to the Management Council.

2) It shall be lawful for the Grievance Committee to entertain and consider grievances or complaints and report to the Management Council to take such action as it deems fit and the decision of the management Council on such reports shall be final.

8. ...It is not in dispute before us that orders impugned in all these Writ Petitions are passed by Grievance Committee in exercise of quasi-judicial powers. Thus subject to express provisions made by Clause 2 B of Chapter I of Appellate Side Rules and writ petitions challenging orders of Administrative Tribunals or Special Tribunals created under the Constitution of India, all other matters are required to be heard and decided by the Single Judge. In view of these judgments & our findings, present Writ Petitions also need to be placed before appropriate Single Bench.

6. The Division Bench in Writ Petition No. 2011 of 2006; Prof. Shashikant B. Kulkarni v. The Principal BPCS College of Physical Education Mumbai and Ors. by its order dated 19.12.2006, without referring to the earlier Division Bench judgment interpreting Clause (40) in question in Shrememati Nathibai Damodar (supra) observed as under:

2. At the threshold, Mr. Anturkar submitted that the petition would lie before the Single Bench. Admittedly, the impugned decision is that of the University and

College Tribunal constituted under the Maharashtra Universities Act, 1994 and presided over by a retired Judge of this Court. We have no doubt in our mind that the decisions of the University and College Tribunal, Appellate Tribunal, DART, the State of Maharashtra Consumer Dispute Redressed Commission under the Consumer Protection Act, 1986 as well as the decision rendered by the Tribunal under the Administrative Act, 1985 should be challenged before the Division Bench and such petitions would not lie before the Single Bench as per the existing Appellate Side Rules of this Court. Hence, we over rule the first contention that the petition should be placed before the Single Bench.

7. Even earlier to this, in Writ Petition No. 1983 of 2003 Shreemati Nathibai Damodar (supra) by order dated 01.03.2005, same view was taken by the learned Single Judge by observing as under:

This petition filed under Articles 14, 226 and 227 of the Constitution of India, impugns the judgment and order dated 15.1.2003 of the Mumbai University and College Tribunal of Mumbai in Appeal No. 24 of 2002 and the appeal was filed u/s 59(1) of the Maharashtra Universities Act, 1994. The University and College Tribunal has also been established under the said Act. Under Sub-clauses 39 of Rule 18 in Chapter XVII of the appellate Side Rules, 1960, as published in Correction Slip No. 22 and approved by the Govt. of Maharashtra, the orders passed under the Maharashtra Universities Act, 1994 do not find place. In addition the University and College Tribunal is presided over by a retired Judge of this Court, unlike the School Tribunal and therefore, the decision impugned in this petition, cannot be termed as a decision of the Court or Tribunal subordinate to this Court as contemplated under Rule 18(3) of Chapter XVII of the Appellate Side Rules. The petition, therefore, does not lie before the Single Bench.

The Supreme Court in the case of Pandurang v. State of Maharashtra reported in 89 BLR 21, has reminded us in the following words: "When a matter is required to be decided by a Division Bench of a High Court under a relevant rule of that High Court is decided by a Single Judge, the judgment would be a nullity, the matter having been heard by a Court which had no competence to hear the matter, it being a matter of total lack of jurisdiction. Even a right decision by a wrong forum is no decision. It is non-existence in the eye of law and hence, a nullity." The Registry is directed to take appropriate steps as this petition cannot be decided by a Single Bench.

8. In another matter, the learned Single Judge, again based upon judgment in Jamshed N. Guzdar Vs. State of Maharashtra and Others, by an order dated 14.08.2006 in Writ Petition Nos. 4512 of 2005 with 6781 of 2005 observed as under:

1. These petitions arise from the Judgment and Order of the University and College Tribunal which is presided over by a retired Judge of this Court and constituted under the Maharashtra Universities Act, 1994. I have already taken a view that pursuant to the law laid down by the Apex Court in the case of

Jamshed N. Guzdar Vs. State of Maharashtra and Others, , the petitions arising from the orders of the said Tribunal cannot be placed before the Single Bench unless the Maharashtra Universities Act, 1994 is added in Rule 18 Chapter XVII of the Appellate Side Rules and the said entry is approved by the State. What has been approved by the State Government on 18/2/2005 after the decision in the Gazdar's case was pronounced is the list of the Acts in Notification No. 1617/90.

2. Hence, the Registrar (Judicial) is directed to place these petitions before the appropriate Division Bench as and when circulated.

9. The order dated 14.08.2006 is based upon Jamshed N. Gazdar (supra). In that matter the issue was about the Constitutional validity of the Bombay City Civil Court and Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986 (Maharashtra Act XV of 1987) and Maharashtra High Court (Hearing of Writ Petitions By Division Bench and Abolition of Letters Patent Appeals) Act, 1986 Maharashtra Act XVII of 1986, which has received the assent of the President on 28.02.1986. The relevant observations are in para 93 and 85 are as under:

85. ...As indicated in paragraph 18 of this judgment, it is open to the State of Maharashtra to take necessary steps to amend Section 3 of the 1986 Act for providing an appeal.

93. In view of the discussion made and reasons recorded above, we uphold the constitutional validity of 1987 Act, 1986 Act and the Adhiniyam. The Notification dated 20-801991 issued by the State of Maharashtra shall not be implemented without further orders from this Court in the light of what is stated in para 85.

10. In these circumstances, at this stage, unless the Apex Court decision in Jamshed N. Gazdar (supra) is implemented fully. The present position as stand need to be considered based upon the existing Clause (40) of Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules as referred to above. The relevant Clause (40), which specifically refers to the orders passed by the Tribunal under the Maharashtra Universities Act amenable to the jurisdiction of the learned Single Judge. The clause and the words used therein are clear. There is no ambiguity.

11. The Division Bench in Shreemati Nathibai Damodar (supra) has, in fact, dealt with the said issue by observing that merely because it is presided over by a retired Judge of the High Court, that does not put it on the higher pedestal. As per this rule any order passed by the Tribunal need to be placed before the learned Single Judge, who presides over such Tribunal, in view of the present rule, loses its importance. In view of the plain reading of this Clause (40) it is very clear that in an order, judgment passed by such a Tribunal, writ lies before the Single Judge or in other way, the Single Judge has only jurisdiction to decide/entertain a writ petition under Article 226 and 227 of the the Constitution of India against the order/judgment passed by the Tribunal.

12. In view of the consistent view taken by the Division Benches of this Court, interpreting the scheme and purpose of Rule 18 Chapter XVII including Clause (40) we are inclined to follow the earlier Division Bench Judgment in Shrememati Nathibai Damodar (supra). We are also of the same view, in view of the specific provisions and the reasons as elaborated by the Division Bench of this Court (Nagpur Bench) in Writ Petition Nos. 5823 and 5824 of 2007 and 227 of 2008 and Principal, Micky School; (supra).

13. In view of above, the writ petitions against the order passed by the University and College Tribunal under the Maharashtra Universities Act, 1994 be placed before the learned Single Judge.