

(2005) 10 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 1949 of 2005

Jyoti Ganeshpure

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-10-2005

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 1, 17, 18, 18(12), 18(3)
Constitution of India, 1950 — Article 130, 226, 226(3), 227, 228
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 16(1)
Sales Tax Act — Section 20(3), 20(4)

Citation : (2006) 2 ALLMR 196 : (2006) 3 BomCR 852 : (2006) 2 MhLj 173

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : R.L. Khapre and P.C. Madkholkar, in C.A. No. 3463 of 2005, for the Appellant; AGP for respondent Nos. 1 to 3, for the Respondent

Judgement

B.P. Dharmadhikari, J.—In this writ petition under Articles 226 and 227 of Constitution of India, petitioner who happens to be President of the Zilla Parishad, Washim has challenged the show cause notice dated 30-3-2005 served upon her by Commissioner, Amravati Region, Amravati, respondent No. 3 herein, u/s 16(l)(i) of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 (hereinafter referred to as "1961 Act"). On the 19-4-2005 after hearing Advocate Khapre for petitioner I have issued notice before admission and directed the petitioner to file her reply to the said show cause notice before respondent No. 3. After hearing learned AGP on 3-5-2005 said respondent No. 3 was permitted to proceed further with inquiry but was restrained from passing final orders to the prejudice of petitioner. Writ petition stands at same stage for last about four months. Advocate Priyadarshan Madkholkar has moved one application vide Civil Application No. 3463/2005 on behalf of a Sarpanch of Gram Panchayat and a citizen of said gram panchayat for vacation of interim orders stating that they have moved respondent No. 3 for declaration of disqualification under above-mentioned provisions and show cause notice has been issued at their instance.

The petitioner has filed reply opposing this application. It is in this background that matter is listed before me.

2. I have heard Advocate Khapre and Advocate Madkholkar. Advocate Madkholkar. contended that in view of provisions of Chapter XVII, Rule 18 of Bombay High Court Appellate Side Rules, 1960 (for brevity - High Court Rules, hereafter) challenge to "show cause notice" dated 30-3-2005 is not challenge to any "order" and as such, the Single Judge of this Court is not competent to take cognizance of writ petition. He argues that matter must be listed before Hon"ble Division Bench. Advocate Khapre for petitioner opposes this argument and according to him show cause notice is also an order as contemplated by explanation appearing at the end of Chapter XVII, Rule 18, and hence cognizance must be taken by Single Judge of this Court only. I have heard both the learned Counsels on 19-9-2005, 20-9-2005 and thereafter on 21-9-2005. Both the counsels requested the Court to initially decide the issue of jurisdiction of the Single Judge in the matter.

3. Advocate Khapre has invited attention of Court to provisions of Rule 18(3) to point out that challenge to orders passed by any quasi-judicial authority is provided for before Single Judge under High Court Rules. He also invites attention to explanation added in the year 1998 to show that explanation also contemplates challenge to all orders passed by any judicial or quasi-judicial authority whether by such orders there is any adjudication or not, before Single Judge. He relies upon the Division Bench judgment of this Court between Vasantadada Dugdh Vyavasaik v. Commissioner, Dairy Development reported at 1991 Mh.L.J. 734. He states that explanation has been added because of view taken in this judgment and as such, all orders of quasi-judicial authority including a order of notice to show cause can be challenged before Single Judge. He also places reliance upon judgment of Hon"ble Apex Court in case between Union of India and Another Vs. S.P. Anand and Others, . He states that even a formal notice is therefore to be treated as order.

4. Advocate Madkholkar for Sarpanch and citizen (applicants in Civil Application 3463/2005) argued that a notice to show cause cannot be treated as order and the word "order" has got definite significance in legal parlance. He states that only when judicial or quasi-judicial authority decides some issue after hearing other side/adversary, then only it can be said that an order has been passed. He argues that notice to show cause is not an order at all and, in support he invites attention to Black"s Law Dictionary (6th edition) to point out what is concept of "show cause order". He also invites attention to judgment of Calcutta High Court in case between Nepal Chandra Banerji v. Commercial Tax Officer, Jalpaiguri reported at 1977 STC (40) 23. He states that the Calcutta High Court has not treated a notice as an order. He argues that only show cause notice is issued to petitioner and it is not an order at all. According to him, challenge to such show cause notice is not covered under Chapter XVII, Rule 18(3) and in view of explanation appearing at the end of said rule, only Division Bench is authorised

by High Court Rules to take cognizance of such writ petition.

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 or 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, 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--

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

(4) 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 dispose 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 above-mentioned 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 Sub-rules 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.

6. In *Vasantadada Dugdh Sangh Maryadit v. Commissioner, Dairy Development* reported at 1991 Mh.L.J. 734, Hon'ble Division Bench has considered the provisions of Sub-rule (12) of Rule 18 which then read after amendment as "the decisions given in any proceedings in respect of disputes under the Maharashtra Co-operative Societies Act". Before this amendment Sub-

rule (12) was in fact Sub-rule (11) and it read as "the decisions given in proceedings in respect of disputes u/s 91 of Maharashtra Co-operative Societies Act". The Hon'ble Division Bench found that the amendment deleted the words "under Section 91" and hence the scope of amended Sub-rule (12) was wider than the earlier sub rule. It was held that the term "proceedings" occurring therein is not confined only to proceedings in a Co-operative Court. Ultimately, Division Bench found that main challenge in writ petition was to Government circular/resolution dated 26 December, 1990 and also to letter issued by Dairy Development Commissioner on 4th January, 1991 and such challenge does not fall within Rule 18(12). It found that challenge to the order setting aside the winding the order against one of the respondent society was only incidental and hence writ petition was required to be heard and finally decided by a Division Bench. Reliance on this judgment by petitioner for present purposes is thus misconceived. Said Sub-rule (12) has undergone further amendment on 16-10-1997 and currently it reads as - "the orders passed under the Maharashtra Cooperative Societies Act, 1961."

7. In *Union of India and Another Vs. S.P. Anand and Others*, , the Hon'ble Apex Court was considering order of issuing notice on writ petition by the learned judge of High Court of Madhya Pradesh. In writ petition direction was sought for appointing Indore (MP) as one of the places where Supreme Court shall commence sitting. It has been held in view of Article 130 of Constitution that no Court has jurisdiction to grant such relief. It was further found that there was no arguable issue raised in writ petition and even issuance of notice to respondents in writ petition was not warranted. Here, the M.P. High Court issued notice which was a judicial act and situation in this judgment cannot be compared with present facts. The proceedings before Madhya Pradesh High Court were judicial proceedings and the order passed was therefore a judicial order. The debate of present nature cannot arise for consideration in such circumstances. Hence, reliance upon this ruling by petitioner is unwarranted.

8. Advocate Madkholkar, has invited attention to Black Law Dictionary, 6th edition where at page 1379 meaning of phrase "show cause order" has been given as - "Court order, decree, execution etc to appear as directed and present to the Court such reasons and considerations as one has to offer why a particular order, decree, etc. should not be confirmed, taking effect, be executed or as the case may be. See e.g. 28 U.S.C.A. § 2243 (Habeas corpus) And order to a person or Corporation, on motion of opposing party, to appear in Court and explain why the Court should not take proposed action. If the person or Corporation fails to appear or to give sufficient reasons why the Court should take no action, the Court will take the action." According to learned Counsel, notice dated 30th March, 2005 impugned in present writ petition is only a show cause notice and not a show cause order. He has relied upon the judgment of Calcutta High Court in case between *Nepal Chandra Banerji v. Commercial Tax Officer, Jalpaiguri* reported at 1977 STC (40) 23. The petitioner in that case was supplying stones collected from riverbed to Public Works Department of Government of West

Bengal. He was paying royalty to government for the material collected and he was assessed to sales tax on the ground that such supplies constituted sale of goods. The petitioner filed a writ petition challenging the order of assessment and certain notices for assessment. The tenability of petition was challenged on the ground of Article 226(3) which came into force from 1st February, 1977 on the ground that other remedy of moving the Commissioner u/s 20(3) and (4) of relevant Sales Tax Act was available to the petitioner. These Sub-sections (3) and (4) used the words "assessment made" or "order". Thus, if the notices served upon petitioner were covered by phrase "order", then only petitioner had alternate remedy. The learned Single Judge of Calcutta High Court found that notice cannot come within the expression "order". It is observed, at page 32 of the report, that order "necessarily means a formal expression of some opinion or the determination of some right or liability affecting a party. A notice is clearly a communication to a party asking him either to show cause or to do something before and order is passed. In that view of matter, the impugned notices cannot be said to be "orders" made within the meaning of Section 20(3) or Section 20(4) of the Act. As such, it cannot be said that the petitioner has any other remedy for redress of his grievances against the impugned notices within the meaning of new Article 226(3) of the Constitution of India". The learned Single Judge has also relied upon earlier view in this respect where another learned Single Judge observed that such notices would not come within the category of orders finally determining the rights of petitioner. It was therefore concluded that challenge to such notice was not affected by Article 226(3) then in force.

9. It is apparent that before Calcutta High Court question whether proceedings were of quasi-judicial nature and whether any order was passed in it before issuing the impugned notices to the petitioner before it did not arise for consideration. Further that petitioner had challenged the order of assessment and also notices. Hence, I find that the Hon'ble Calcutta High Court considered the controversy in entirely different background and no support can be drawn from this ruling for considering the present controversy. Here, the character of respondent No. 3 as quasi-judicial authority is not in dispute. It is further apparent that applicants in Civil application 3465/2005 made application to respondent number three for removal of present petitioner on the ground that she has incurred disqualification u/s 16(1)(i) of the 1961 Act. Respondent No. 3 is competent authority under said Statute to take cognizance of such disqualification and to initiate action therefor. Thus, said respondent has judicially applied his mind to the complainant received and prima facie, was satisfied that the case for initiation of proceedings for removal of petitioner has been made out. Therefore only said respondent issued notice to show cause as to why action u/s 40(2) of 1961 Act should not be taken against her to petitioner. Thus, the judicial process started when respondent No. 3 applied his mind and took cognizance in the matter. Even if latter on he finds that petitioner is not disqualified, it would be a order exonerating petitioner and applicants would be entitled to challenge it. In such circumstances, show cause notice is not a plain

simple administrative step taken by respondent No. 3. He has set into motion a quasi-judicial inquiry and, hence, the show cause notice in the matter is like a "show cause order" as clarified in Black Law Dictionary (supra). In such circumstances, I find that the view expressed by Hon"ble Calcutta High Court is not relevant and applicable in the facts and circumstances of the present case.

10. The explanation (supra) as appearing at the end of Rule 18 of High Court Rules here did not fail for consideration before Calcutta High Court. The said explanation defines the expression "order" and definition though uses the word means is not exhaustive. It also uses the word "any" which precedes the word "order". Not only this the wide sweep given to expression "order" is also apparent from last words in this explanation clause. These words are empowered to adjudicate under the abovementioned statutes." The explanation clause could have very well been brought to an end just before these words i.e. it could have read "the expression border appearing in Clauses (1) to (41) means any order passed by any judicial or quasi-judicial authority." Thus the use of word "any" or the words "empowered to adjudicate under the abovementioned statutes" at the end of clause seems to be deliberate and any or every order/step taken by such authority in process of adjudication is included in expression "order" by this wide definition. Thus, any order of authority empowered to adjudicate is covered by this explanation clause. The only requirement appears to be that there must be some proceedings for adjudication before such authority and the order should be passed in such proceedings.

11. The parties have brought to my notice judgment delivered by Hon"ble Division Bench of S/Shri Khandeparkar and Kakade JJ. in Ramchandra Raghu Naik Vs. State of Maharashtra, . The judgment is on Prisons (Bombay Furlough and Parole) Rules, 1969. After considering the provisions of the Rule 2-II(K) in Chapter I of Bombay High Court Appellate Side Rules which deals with matters to be disposed of by Single Judge and provisions or Rule 18 of chapter XVII thereof, the Division Bench in paragraph 8 of judgment observed that explanation to Rule 18 clarifies that only judicial and quasi-judicial orders can be subjected to challenge before Single Judge and Clause (k) of Rule 1 of Chapter I cannot override the provisions of Chapter XVII. The finding reached is Chapter I contains general provisions while Chapter XVII contains specific provisions and hence latter are to be read as carving out exception to the general provisions. It has been therefore held that matter relating to furlough and parole leave cannot be disposed of by Single Judge. Thus, controversy of present nature did not arise for consideration before Hon"ble Division Bench and it is therefore not useful for examining present controversy.

12. In the facts of present case, there is no dispute that such proceedings are pending and after taking cognizance of Complaint/application moved by applicants, the respondent No. 3 thought it fit to issue notice to the petitioner. Thus decision to issued notice has been reached by said respondent and as such, the show cause notice which is evidence of that decision, is an order which can

be challenged before Single Judge of this Court. I therefore find no substance in the preliminary objection raised by Advocate Madkholkar on behalf of applicants. It is held that the matter is covered by Chapter XVII, Rule 18(3) read with explanation thereto of High Court Rules and Single Judge of this Court appointed by Hon Chief Justice is competent to take cognizance of such writ petition and matter does not pertain to domain of Hon"ble Division Bench.