

(2023) 10 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 4985 Of 2023

M/S. Magnum Opus IT Consulting Pvt. Ltd	APPELLANT
Vs	
M/s. Artcad Systems	RESPONDENT

Date of Decision : 04-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 323B(2)(h)
Bombay High Court Appellate Side Rules, 1960 — Rule 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18(3), 18(4), 18(5), 18(6), 18(7), 18(8), 18(9), 18(10), 18(11), 18(12), 18(13), 18(14), 18(15), 18(16), 18(17), 18(18), 18(19), 18(20), 18(21), 18(22), 18(23), 18(24), 18(25), 18(26), 18(27), 18(28), 18(29), 18(30), 18(31), 18(32), 18(33), 18(34), 18(35), 18(36), 18(37), 18(38), 18(39), 18(40), 18(41), 18(42), 18(43), 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46
Code Of Criminal Procedure, 1973 — Section 156(3), 482
Electricity Act, 2003 — Section 3
Maharashtra Land Revenue Code, 1966 — Section 48(7), 48(8)

Citation : (2023) 10 BOM CK 0041

Hon'ble Judges : Nitin Jamdar, J;Bharati H. Dangre, J;Sandeep V. Marne, J

Bench : Full Bench

Advocate : Siddharth A. Mehta, Pushkara A. Bhonsle, Alankar Kirpekar, Sagar Kasar, Shekhar Bhagat, Ayush Tiwari, Rajas Panandikar, Chaitali Bhogle

Judgement

Nitin Jamdar, J

1. By order dated 11 April 2023 in this Writ Petition, the learned Single Judge (Sarang V. Kotwal, J.) directed the Registry to place the matter before the learned Chief Justice to consider constituting a Larger Bench to decide the issue formulated in the said order. Accordingly, the matter is placed before this Full Bench.

2. The issue formulated by the learned Single Judge is as follows:-

“Whether the Single Judge’s powers to finally dispose of applications under Article 226 or 227 as provided under Rule 18 of Chapter XVII of the Bombay High

Court Appellate Side Rules, 1960, are applicable to the specific Acts mentioned under sub-Rule 6 to 46 of the said Rule in relation to judicial or quasi-judicial orders or these powers extend to any judicial or quasi-judicial orders under any statute that is not mentioned under sub-Rule 6 to 46 of the said Rule.”

3. In this Writ Petition the Petitioner has challenged the order passed by the Arbitrator in Arbitration Petition No. 169 of 2016. The Petition is filed under Article 227 of the Constitution of India, which involves provisions of the Micro, Small and Medium Enterprise Development Act, 2006 and Arbitration and Conciliation Act, 1996. The Respondent raised a preliminary objection before the learned Single Judge that the Petition does not lie before the Single Judge and it should be listed before the Division Bench. The Respondent relied on two judgments and orders passed by the Division Benches in Writ Petition (St.) No. 24 of 2021 in the case of Shivaji Laxman Wadkar and Ors. v/s. Election Returning Officer and Anr. WP(St.) No.24/2021 dated 4/01/2021 and in Writ Petition Nos. 7056, 4268 and 7056 of 2018 (Nagpur Bench) in the case of Shri Hariom Krishi Kendra and Ors. v/s. State of Maharashtra and Ors. 2020(3) Mh. L.J. 118 The Petitioner, on the other hand, relied on the decision of the Full Bench of this Court in the case of Prakash Securities Pvt. Ltd. v/s. Life Insurance Corporation of India 2012(5) Mh.L.J. 312 dated 26 April 2021 to contend that the Petition would pertain to the Single Judge. The learned Single Judge, noticing a divergence of opinions on the subject, by order dated 11 April 2023, made a reference on the issue, reproduced above.

4. The Bombay High Court Appellate Side Rules, 1960, deals with various procedural aspects, as regards which writ petitions under Articles 226 and 227 of the Constitution of India are to be placed before the Division Bench and which are to be placed before the Single Judge. Having framed the Rules, the High Court can and has, from time to time, modified these Rules. Part 1 of the Rules deals with the conduct of business. Part 2 deals with Practice and Procedure. Chapter XVII of Part 2 of the Rules of 1960 regulates the filing of Petitions under Articles 226 and 227 of the Constitution of India. Rule 18, which is the subject matter of debate, reads 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—

(1) The orders passed by the Maharashtra Revenue Tribunal under any enactment,

(2) The orders passed by any Authority or Tribunal (other than the Maharashtra Revenue Tribunal) under the Bombay Tenancy and Agricultural Lands Act, 1948. or the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area)

Act, 1958, and the Hyderabad Tenancy and Agricultural Lands Act. 1950 or Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

(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 and orders passed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; the Administrative Tribunals Act, 1985; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000;

(4) The orders and decisions of the Courts constituted under the Code of Criminal Procedure, except the applications for quashing an F.I.R., C.R. Charge Sheet or an order directing investigation under Section 156(3) of the Cr.P.C. irrespective of whether such applications have been filed under Section 482 simpliciter or read with Article 226 and/or Article 227 of the Constitution.

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

(6) The orders passed by any authority under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 or the Central Provinces and Berar Letting of Houses and Rent Control Order, 1948 or the Hyderabad House (Rent, Eviction and Lease) Control Act, 1954;

(7) The orders passed under the Maharashtra Housing and Areas Development Act, 1976 and under the enactments repealed by the said Act;

(8) The orders passed by the Tribunal constituted under the Nagpur Improvement Trust Act, 1936;

(9) The orders passed under the Maharashtra Slum Areas (Improvements, Clearance and Re-Development) Act, 1971;

(10) The orders passed under the Industrial Disputes Act. 1947;

(11) The orders made in applications under the Bombay Industrial Relations Act, 1947;

(12) The orders passed under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974;

(13) The orders passed under the Maharashtra Co-operative Societies Act. 1961;

(14) The orders passed under Chapters VI and VII of the Maharashtra Recognition of Trade Unions and Prevention of Unfair labour Practices Act, 1972;

- (15) The orders passed by the Appellate Authority under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
- (16) The orders passed under the Payment of Gratuity Act, 1972;
- (17) The orders passed under the Workmen's Compensation Act, 1923;
- (18) The orders passed under the Payment of Wages Act. 1936;
- (19) The orders passed under the Minimum Wages Act, 1948;
- (20) The orders passed under the Bombay Prohibition Act, 1949;
- (21) The orders passed under the Maharashtra Land Revenue Code, 1966;
- (22) The orders passed under the Bombay Stamp Act, 1958;
- (23) The orders passed under the Bombay Police Act, 1951;
- (24) The orders passed under the Bombay Shops and Establishments Act, 1948;
- (25) The orders passed under the Bombay Port Trust Act, 1879;
- (26) The orders passed under the Bombay City (Inami and Special Tenures) Abolition and Maharashtra Land Revenue Code (Amendment) Act, 1969;
- (27) The orders passed under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (28) The orders passed under the Displaced Persons (Compensation and Rehabilitation) Act. 1954;
- (29) The orders passed under the Electricity (Supply) Act, 1948;
- (30) The orders passed under the Employees' Provident Funds and Misc. Provisions Act, 1952;
- (31) The orders passed under the Employees' State Insurance Act, 1948;
- (32) The orders passed under the Factories Act, 1948;
- (33) The orders passed under the Indian Railways Act, 1890;
- (34) The orders passed under Section 3 the Electricity Act, 2003;
- (35) The orders passed under the Motor Vehicles Act, 1939;
- (36) The orders passed under the Minimum Wages Act, 1948;
- (37) The orders passed under the Major Port Trust Act, 1963;
- (38) The orders passed under the Merchant Shipping Act, 1958;
- (39) The orders passed under the Wireless Telegraphy Act, 1933;
- (40) The orders passed under the Registration Act, 1908;

- (41) The orders passed under the Maharashtra Universities Act, 1994;
- (42) The orders passed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977;
- (43) Orders passed under Bombay Primary Education Act, 1947 (Bombay Act No. LXI of 1947);
- (44) Orders passed under the Land Acquisition Act, 1894 for acquiring land for re-settlement of the Project affected Persons in accordance with the provisions of Maharashtra Resettlement of Project Displaced Persons Act, 1976 (Mah. Act No. XLI of 1976) or Maharashtra Project Affected Persons Rehabilitation Act, 1986 (Mah. Act No. XXXII of 1986);
- (45) Orders passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971;
- (46) Orders passed under Bombay Public Trusts Act, 1950, 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 application shall be heard and disposed of by a Division Bench to be appointed by the Chief Justice:

Provided further that the Chief Justice may assign any petition or any category of petitions falling under Clauses 1 to 46 or any Clause that may be added hereinafter to, a Division Bench:

Provided also that all petitions/applications under Article 226 and/or 227 of the Constitution of India arising out of or relating to an order of penalty or confiscation or an order in the nature thereof or an order otherwise of a penal character and passed under any special statute shall be heard and decided by a Division Bench hearing Writ Petitions.

Explanation – The expression “order” appearing in clauses (1) to (46) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the abovementioned statutes.”

(emphasis supplied)

The First Proviso to this Rule stipulates that when the matter in dispute relates to challenging the validity of any statute or any Rules or Regulations, such application shall be heard and disposed of by the Division Bench. The Second Proviso lays down that the Chief Justice may assign any Petition or any category of Petitions falling under Clauses 1 to 46 or any Clause that may be added hereinafter to, a Division Bench. The Third Proviso stipulates that all petitions and applications arising from an order of penalty, confiscation or an order in the nature thereof or an order otherwise penal in character and passed under any special statute shall be heard and decided by a Division Bench.

5. The Explanation to Rule 18 is under consideration. Rule 18 had five clauses providing that the orders passed under the Rules and legislations specified therein may be challenged in the writ petition before the Single Judge. Subsequently several clauses came to be added to Rule 18. By Notification dated 16 October 1997, the Explanation came to be added. It was thereafter by notification dated 15 July 1999 that Clause (3) of Rule 18 came to be amended to insert the words "or by any quasi-Judicial Authority".

6. The ambit of amended Explanation to Rule 18, was considered by the Full Bench of this Court (M.S. Shah, C.J., A.A. Sayed and N.M. Jamdar, JJ.) in the case of Prakash Securities. Division Bench had made a reference to larger bench by the order dated 15 November 2011 on the question as to whether a writ petition arising from an order passed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 should be placed before the Single Judge of this Court in accordance with Rule 18(3) of Chapter XVII of the Rules of 1960 or should it be placed before the Division Bench. Reference was made by the Division Bench on account of the view expressed by another Division Bench of this Court in Nusli Neville Wadia v/s. New India Assurance Company Ltd. 2010(2) Mh.LJ 928 that the Act of 1971 deals with a subject that is covered by Article 323-B(2)(h) of the Constitution of India and, therefore, directions of the Hon'ble Supreme Court in the case of L. Chandra Kumar v/s. Union of India and Ors. 1997(3) SCC 261 will apply. Supporting the view taken by the Division Bench in Nusli Neville Wadia, the respondents therein urged before the Full Bench that since the Public Premises Act is not covered by any of these Acts prescribed in Rule 18 of Chapter XVII; this Petition will have to be heard by the Division Bench.

7. It was contended before the Full Bench in Prakash Securities, that the orders passed by only those quasi-judicial authorities under the enactments specifically mentioned in Clauses 1 to 43 of sub-Rule 18 in Chapter XVII will only be governed by Rule 18, and the Explanation will not cover the orders passed by any other quasi-judicial authority. It was submitted that any other interpretation would make Clauses 4 to 18 of Rule 18 of the Rules, 1960 otiose and nugatory. This contention was specifically negated by the Full Bench in the case of Prakash Securities, observing thus:-

"5. Having heard the learned Counsel appearing for parties, we find that Clause (3) of Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960, is wide enough to include the orders passed by any quasi-judicial authority under any enactment, even if such Explanation is not covered by clauses 1,2 and 4 to 43 of Rule 18. It is necessary to note that the original Rule 18 had 5 clauses providing that the orders passed under the Rules and legislations specified therein may be challenged in the writ petition before the Single Judge. It appears that subsequently several clauses came to be added to Rule 18. In the year 1997 by Notification dated 16.10.1997, the Explanation came to be added. It was thereafter by Notification dated 15.07.1999 that Clause (3) of Rule 18 came to be amended to insert the words "or by any quasi-Judicial Authority". It appears

to us that this amendment to Clause (3) of Rule 18 was made in the year 1999 to cover orders of any quasi-Judicial Authority under any other legislation which may not have been specified in Clause (1) to (43). Hence, the order passed by the quasi-judicial Authority under the Public Premises Act, 1971 is also covered by Rule 18(3) so as to indicate that the petitions under Articles 226 or 227 of the Constitution challenging the order of quasi-Judicial Authority under the Public Premises Act, 1971 is to be heard and decided by the learned Single Judge of this Court.”

(emphasis supplied)

The Full Bench, therefore, clearly held that the amendment to Rule 18 made in the year 1999 was made to cover orders of any quasi-judicial authority under any legislation which may not have been specified in Clauses 1 to 43, and therefore the effect cannot be restricted to the clauses added.

8. The learned Single Judge in the referral order has noted the decision of the Division Bench (R.D. Dhanuka and Madhav J. Jamdar, JJ.) in the case of Shivaji Laxman Wadkar. The Bench was considering the challenge to the order passed by the Election Returning Officer of Gram Panchayat rejecting written objections filed by the petitioner in respect of a nomination form of a candidate. The issue arose before the Division Bench as to whether the petition was to be placed before the learned Single Judge or could be heard by the Division Bench. The petitioner therein relied on the ad-interim order passed by the learned Single Judge in the Vacation Court, and the matter was moved before the Division Bench for vacating the ad-interim order. The petitioner contended that as per Rule 18(3) of Chapter XVII of Rules of 1960, the petition pertained to a Single Judge as the challenge arose from a quasi-judicial order. The Division Bench took the view that even if the impugned order was passed by a quasi-judicial authority, that would not be a criteria to decide that the learned Single Judge could hear a Writ Petition under Article 226/227 of the Constitution of India, unless the impugned order is passed by any quasi-judicial authority empowered to adjudicate under one of those Acts specified in Rule 18. Accordingly, the Division Bench disposed of the Writ Petition by order dated 4 January 2021. This view is directly contrary to the binding dicta of the Full Bench in Prakash Securities. The decision of the Full Bench in Prakash Securities rendered on 26 April 2012 was not brought to the notice of the Division Bench. The Division Bench has rendered its opinion without noticing the judgment of the Full Bench in Prakash Securities.

9. Second decision referred to in the referral order is of the Larger Bench of two learned Judges (R.K. Deshpande and Amit B. Borkar, JJ.) (Nagpur Bench) which considered the reference arising from the divergent opinions of two learned Judges in the case of Hariom Krishi Kendra. The issue was a challenge to the order passed by the Additional Collector in the exercise of powers under Section 48(7) of the Maharashtra Land Revenue Code imposing a penalty for unauthorizedly extracting minor mineral. The learned Single Judge (S.C. Gupte,

J.) in the case of M/s. Bhandara Traders,

Bhandara, through its Proprietor v/s. State of Maharashtra 6 (Writ Petition No. 4401 of 2017) in paragraph 2(3) observed that the Land Revenue Code could not be considered as a special statute in terms of the Third Proviso below Rule 18 of Chapter XVII so as to exclude it from the jurisdiction of the Single Judge. Order dated 31 July 2018. Another learned Single Judge (S.B. Shukre, J.) held that Section 48(8) of the Maharashtra Land Revenue Code is to be considered as a special statute in terms of the Third Proviso to Rule 18 of Chapter XVII of the Rules of 1960, the matter is to be decided by the Division Bench. Therefore, before the Larger Bench in Hariom Krishi Kendra the question for consideration was Section 48(8) of the Maharashtra Land Revenue Code was a special statute or not because if it was to be so then the order of penalty or confiscation would fall within the Third Proviso to Rule 18(3) of Chapter XVII of Rules of 1960. The Larger Bench answered the Reference, holding that Section 48(8) cannot be considered a special statute and, therefore, required to be dealt with by the Single Judge. This decision is rendered in a different context.

10. The above narration is self-explanatory to answer the Reference. The decision of the Division Bench in the case of Shivaji Laxman Wadkar is rendered without noticing the binding decision in the case of Full Bench in Prakash Securities. The decision of the Division Bench in the case of Shivaji Laxman Wadkar, therefore, is clearly per incuriam. The decision in the case of Hariom Krishi Kendra was in the context of the third Proviso to Rule 18(3) and dealt with a completely different aspect.

11. The Full Bench in Prakash Securities took note that various clauses came to be added in the Rules from 1960 onwards, and observed that by the amendment to the Explanation, the High Court intended to cover all the quasi-judicial orders irrespective of whether they are included in the Acts contained in Rule 18. The Full Bench in Prakash Securities, having taken note of the source of the framing of these Rules, the fact that they regulate procedural aspect and necessity of effecting amendment to Rule 18 from time to time, interpreted the Explanation to cover all orders by quasi-judicial authorities even though they are not covered in the clauses stipulated under Rule 18. It may also be noted that under Section 2 of Maharashtra High Court (Hearing of the Writ Petition by Division Bench and abolition of Letters Patent Appeals) Act, 1986 and its Amendments Act of 2008, the provision of Letters Patent Appeal against the order passed by the learned Single Judge to the Division Bench in the High Court stood abolished. Prior to abolition of Letters Patent Appeal, an appeal would lie before the Division Bench from the order of the Single Judge.

12. In the referral order the learned Single Judge has not stated that the Full Bench's judgment in the Prakash Securities is in contravention of any binding decisions, such as of another special bench or the Hon'ble Supreme Court, or whether any directly applicable statutory provision had been overlooked. The learned Single Judge could have followed the decision in Prakash Securities being

binding law holding that decision of the Division Bench in Shivaji Laxman Wadkar was per incuriam. However, the learned Single Judge was of the opinion that the matter needs to be referred to for consideration of the Larger Bench as a matter of judicial propriety. As the reference order suggests, even the learned Single Judge was of the opinion that, the order passed by the Division Benches would be per incuriam of the decision of Full Bench in Prakash Securities, The Full Bench's decision in Prakash Securities, being a decision by a Larger Bench of three Judges, limits the scope of consideration by this Full Bench to affirming the pre-existing position. The Single Judge's decision to refer the matter primarily arose from the difference between the decisions of the Full Bench and the Division Benches. The Respondent's argument in the reference order, which mentions the addition of two more Acts to the Rules, does not justify doubting or revisiting the Full Bench's ruling in Prakash Securities. In fact, in view of Full Bench's decision in the Prakash Securities case, there was no need to amend Rule 18 to add more enactments to the list. The Explanation to Rule 18 still stands and is not amended, changed, or deleted. The decision in Prakash Securities interpreting the Explanation to Rule 18(3) in present form would hold the field.

13. In conclusion, it is declared that the decision of the Division Bench in the case of Shivaji Laxman Wadkar, which holds that only those quasi-judicial orders and enactments specified under Rule 18(3) of Chapter XVII of the 1960 Rules fall under the purview of a Single Judge, is per incuriam of the Full Bench decision in the case of Prakash Securities and, therefore, does not constitute a binding precedent. The decision in the case of Hariom Krishi Kendra pertained to an entirely different aspect. The existing pronouncement of the Full Bench in the case of Prakash Securities, which has held that the Explanation to Clause (3) of Rule 18, added in 1999, encompasses orders of any quasi-judicial authority under any other legislation, even if not specified in Clauses (1) to (43), is binding.

14. The nature of the Rules in question needs to be noted. These Rules are framed by the High Court regulating the procedural aspects and which Writ Petitions are to be placed before the Division Bench and which before Single Judge. Prakash Securities has interpreted the Explanation to the Rule as it stands today. Prakash Securities has not intended and nor denudes the High Court of its powers to amend these Rules to bring about a different position.

15. With this conclusion on the question framed, let the Petition be placed before the Single Judge for disposal on merits.