

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.2849 OF 2008 WITH
CIVIL APPLICATION NO.13900 OF 2012 WITH
CIVIL APPLICATION NO.3487 OF 2014

Tukaram s/o Namdeorao Hanumante
(Died), through L.Rs.

1. Chandrakalabai w/o Tukaram Hanumante,
Age 65 years, Occu. Household,
R/o 1-6-883, Prabhat Nagar,
Near Nagsen High School, Nanded.
2. Sow. Triveni w/o Prabhu Khave,
Age 42 years, Occ. Household,
House No.1-10-133, Prabhat Nagar,
Near Nagsen High School, Nanded.
3. Ravikant s/o Tukaram Hanumante,
Age 40 years, Occu.Nil,
House No.1-6-883, Prabhat Nagar,
Near Nagsen High School, Nanded.
4. Sow. Rekha w/o Jalit Kamble,
Age 38 years, Occu. Service
5. Sow. Sharda Sanjay Narbag,
Age 35 years, Occu. Service.
6. Sow. Pushpa w/o Pravin Kankate,
Age 36 years, Occu. Household,

Nos.4 to 6 R/o Ambedkar Nagar,
Parbhani.
7. Smt. Jyotsana Sudarshan Shelke,

Age 33 years, Occu. Household,
R/o Prabhat Nagar, Near Nagsen
High School, Nanded. ... PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Road Transport and Highways Department,
Mantralaya, Mumbai - 32
(Copy served on G.P. High Court of
Judicature of Bombay, Bench at Aurangabad)
2. The Divisional Controller,
M.S.R.T.C., Nanded..
3. The Regional Manager,
M.S.R.T.C., Region Office,
CIDCO, Aurangabad.
4. The Depot Manager,
M.S.R.T.C.S, Depot Degloor,
Tq. Degloor, District Nanded. ... RESPONDENTS

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Shri K.J. Suryawanshi, Advocate for petitioners
Mrs. Y.M. Kshirsagar, A.G.P. for State
Shri B.S. Deshmukh, Advocate for respondent No.2
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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 5th May, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. Mr. Suryawanshi, learned counsel for the petitioners
submits that the petitioner was not at all responsible for the non

appearance before the Consumer Forum. According to the learned counsel, even the notice of proceedings were not served upon the petitioner, the petitioner has been made partially responsible by the Enquiry Officer. The amount of Rs.50,000/- has been withheld. The learned counsel submits that, even the Depot Manager has submitted report stating that one Mr. Bogulwar is responsible and the petitioner is not responsible. According to the learned counsel, even Mr. Bogulwar has stated that the notice received from the Consumer Forum was shown to one Mr. John and the same was directed to be given to one Mr. Kadam. The same was also given to Mr. Kadam and the petitioner is not at all responsible. Even the information was sought by wife of Mr. Ubale, which was also produced before the Consumer Forum. According to the learned counsel, the responsible Officer, did not appear before the Consumer Forum and the matter was decided ex parte. Even in appeal filed, initially stay was granted but as none appeared for M.S.R.T.C., the appeal came to be dismissed. The petitioner is not at all negligent nor any default can be attributed on the part of petitioner.

2. Mr. Deshmukh, the learned counsel for respondent No.2 submits that the petitioner was having knowledge of the

proceedings before the Consumer Forum being an Accountant. It was the responsibility of the petitioner to give the details about the absence of Mr. Ubale and as Mr. Ubale was absent, the premium could not be deducted from the salary. If this fact had been brought to the notice of the Consumer Forum, then the M.S.R.T.C. would not have been responsible to pay Rs. 1 Lakh with interest. The learned counsel submits that, there is willful negligence on the part of the petitioner. The enquiry officer, after considering the reply, has held that the petitioner is partially responsible.

3. We have considered the submissions canvassed by learned counsel for the respective parties. It appears that, there is appeal filed by the M.S.R.T.C. against the order of Consumer Forum. Initially stay was granted, however, as none appeared for the M.S.R.T.C., the appeal came to be dismissed in absence of the appellant i.e. the M.S.R.T.C. The petitioner was not responsible to attend the proceedings in the Court. The only allegation against the petitioner is that the petitioner did not provide for the information about the absence of Mr. Ubale from duty. It would appear that the petitioner was not served with the notice of the Consumer Forum at any point of time. The same would be clear from the statement of Mr. Bogulwar and Mr. John.

Even the report of the Depot Manager says that even if the M.S.R.T.C. would have prosecuted the appeal diligently, the M.S.R.T.C. would have been in a position to bring all the facts before the appellate forum. However, none appeared before the appellate forum in the appeal. On the letter received from Consumer Forum, the Depot Manager has endorsed the same to the Depot Accountant to give details. The said letter was inward and was given to one Mr. John Vincent. There is no record to show that the said letter was given to Mr. Hanumante, i.e. the present petitioner.

4. Considering the aforesaid aspects of the matter, even the enquiry officer has not held the petitioner to be fully responsible but has only observed that he is partially responsible.

5. It appears that, nobody appeared before the Consumer Forum on behalf of the M.S.R.T.C. and as such, the exparte order came to be passed. Even the letter of the Depot Manager, calling details was not received by the petitioner.

6. Considering the above aspects of the matter, the order imposing penalty of Rs.50,000/- is quashed and set aside. Respondent No.2 shall pay back the amount of Rs.50,000/-

retained by it to the legal representatives of the deceased petitioner within eight weeks. Writ Petition accordingly disposed of. Rule made absolute in above terms. No costs.

7. In view of disposal of the Writ Petition, Civil Application Nos.13900/2012 and 3487/2014 are disposed of.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)