

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8274 OF 2016**

|                                                             |                      |
|-------------------------------------------------------------|----------------------|
| <b>Mr. Shaikh Mohammad Aslam Adam Shaikh</b>                | <b>..Petitioner</b>  |
| <b>Versus</b>                                               |                      |
| <b>The Grocery Markets &amp; Shops<br/>Board and others</b> | <b>..Respondents</b> |

**Shri. A. V. Bukhari, Senior Advocate a/w Shri. A. K. Jalisatgi i/by  
Shri. Ratnesh R. Mishra for the Petitioner.**  
**Shri. Sunil M. Chinchwadkar i/by Shri. Rahul D. Oak for the  
Respondent Nos.1 to 3.**  
**Shri. B. S. Mahamulkar for the Respondent No.8.**  
**Shri. V. P. Vaidya a/w Shri. Mahendra M. Agavekar for the Respondent  
No.9.**

**CORAM : R. M. SAVANT, J.  
DATE : 19<sup>th</sup> OCTOBER, 2016**

**PC.**

1           The writ jurisdiction of this Court is invoked against the order dated 01.06.2016 passed by the Secretary of the Grocery Board, Mumbai, by which order, the Review Application filed by the Respondent No.8 herein came to be allowed and resultantly, the “Warai” work relating to the Respondent Nos.6 and 7 was taken away from the Petitioner and allotted to the Respondent No.8.

2           It is not necessary to burden this order with unnecessary details. Suffice it would be to state that by the order dated 22.12.2015

the “Warai” work relating to the concerns of the Respondent Nos.4, 5, 6 and 7 was allotted to the Petitioner Toli which is Toli No.5039 by the Respondent No.3 herein. Against the said order dated 22.12.2015, the Respondent No.8 preferred an Appeal which was filed on 28.12.2015 purportedly under Clause 38 of the Grocery Scheme. On the notice being served on the Petitioner, the Petitioner filed its reply on 06.01.2016. It seems that in so far as the said Appeal is concerned, the matter has rested there. The Respondent again filed another Appeal on 13.04.2016 challenging the same order dated 22.12.2015. The said Appeal was also purportedly filed under Clause 38 of the Grocery Scheme. The said Appeal was forwarded to the Petitioner by the Secretary which was received by the Petitioner on 18.05.2016. The Petitioner on receipt of the said Appeal filed its reply on 24.05.2016 and inter-alia contended that having regard to Clause 38, the said Appeal was misconceived as an Appeal under the said provisions lies only against an order imposing punishment/penalty on a worker. The Petitioner in the said reply also further stated that he required time till 10.06.2016 to file a detailed reply. It seems that after the said reply came to be filed by the Petitioner a handwritten communication dated 30.05.2016 was addressed on behalf of the Respondent No.8 to the Secretary of the Grocery Board. Significantly, a copy of the said communication was not forwarded to the

Petitioner. It was stated in the said communication that the Appeal filed by the Respondent No.8 be treated as an application for Review and the said order dated 22.12.2015 passed by the Secretary be reviewed. It seems that thereafter the Secretary of the Grocery Board took cognizance of the said communication dated 30.05.2016 and passed the impugned order on the very next date i.e. on 01.06.2016.

3           The principal contention urged by the Learned Senior Counsel Shri. A. V. Bukhari on behalf of the Petitioner is that since the Petitioner has not been heard prior to the passing of the said order, the said order has been passed in violation of the principles of natural justice and would therefore have to be set aside.

4           Per contra, the Learned Counsel appearing for the Respondent Nos.1 to 3 Shri. Sunil M. Chinchwadkar made a valiant attempt to justify the passing of the impugned order by contending that though the Petitioner has not been heard, the prejudice caused to the Petitioner would have to be seen.

5           The Learned Counsel appearing on behalf of the Respondent No.8 also sought to contend that against the said order an Appeal would lie before the Chairman of the Grocery Board.

6           In my view, it is not possible to accept the contentions urged on behalf of the said Respondents. As indicated hereinabove, the Petitioner was noticed in the Appeals which were filed by the Respondent No.8 from time to time. However thereafter for the reasons best known to the Authority, the impugned order has been passed on 01.06.2016 without hearing the Petitioner and without even furnishing a copy of the application dated 30.05.2016 filed by the Respondent No.8 to the Secretary for treating the Appeal as a Review. Since the ground urged on behalf of the Petitioner is violation of the principles of natural justice, the contention urged by the Learned Counsel appearing on behalf of the Respondent No.8 cannot be accepted, as it is well settled that when the ground urged is of violation of the procedure and principles of natural justice, the existence of the alternate remedy would not come in the way of entertaining a Writ Petition.

7           In my view therefore the interest of justice would be served if the impugned order dated 01.06.2016 is set aside and the matter is relegated back to the Respondent No.3 for a de-novo consideration of the application now styled as Review. Needless to state that all the parties would have to be given proper opportunity by the Respondent No.3. Since the application dated 30.05.2016 is now with the Petitioner, the Petitioner to file a reply within four weeks from date. The Respondent

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No.3 to thereafter decide the application latest by 15.12.2016. All contentions of the parties on merits including the maintainability of the application are kept open for being urged before the Respondent No.3. In view of the setting aside of the impugned order, the status-quo ante as on 24.12.2015 would be maintained by the parties. With the directions as aforesaid, the above Writ Petition is disposed of.

**[R.M.SAVANT, J]**