IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.437 OF 2016

1) Father Agnel Industrial Training
Institute,

2) Society of St. Francis Xavier Pilar, ...Petitioners

Versus

1) The State of Maharashtra
Through its Secretary,
Food, Civil Supplies and Consumer
Protection Department.

2) The Controller of Legal Metrology,
Maharashtra State, Mumbai.

3) Deputy Controller of Legal
Metrology, Mumbai region.

4) The Inspector of Legal Metrology. ...Respondents

...

Mr. Samarth Moray for the Petitioners.
Mr. Abhay Patki, AGP for Respondent No.1 to 3.

CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 13th DECEMBER, 2016.

ORAL JUDGMENT (PER A.S. OKA, J.):

Considering the narrow controversy involved in this writ petition, the same is forthwith taken up for final hearing. Rule. The learned Additional Government Pleader waives service of notice for the

Respondents.

2. The first Petitioner is an Educational Institution. The second Petitioner is running the first Petitioner-Educational Institution. Reliance is placed in the petition on the communications dated 13th November, 1986 and 17th January, 2002 issued to the Principal of the first Petitioner by the Regional Transport Office appointing the first Petitioner as official meter testing agency in accordance with Rule 141 of Maharashtra Motor Vehicle Rules, 1989. It appears that on 8th January, 2015 an Inspector of Legal Metrology, Bandra Division, Mumbai, visited the premises of the first Petitioner. On the basis of the said visit and panchanama drawn during the visit, a communication dated 9th January, 2015 was issued by the Inspector of Legal Metrology, Bandra Division to the first Petitioner, in which it is alleged that the first Petitioner has not taken a license to repair of weights and measures (Auto and Taxi fare meters) which were being calibrated in the premises of the first Petitioner. It is also alleged that Pulse Counters kept in the said premises to caliberate Auto /Taxi Fare meters were not verified and stamped /sealed. Further part of the communication dated 9th January, 2015 reads thus:

"With reference to above, this office has reason to believe that you have prima facie contravened Section 23 and 24(1) of The Legal Metrology Act, 2009, which is punishable under Section 46 and 33 of the said Act. The said contravention is compoundable vide provisions of Section 48 of the above said Act by the Assistant Controller of Legal Metrology by the powers delegated to him. If you desire to compound the said contravention constituting an offence at departmental level your request for composition, should reach this office within 10 days. Your request in duplicate should contain specific mention about following points:-

i Your acceptance of the infringement of the provisions of the Act and Rule(s),

ii Your willingness to pay for credit to the Government of such sum as the compounding authority may specify by order,

iii Your declaration to the effect that the offence committed by you is the first offence under the Act & Rule(s),

iv You shall take due care hereafter,

v Name(s) of responsible/nominated person(s) along with authorization/resolution to that effect.

If you want to be heard in person, you may approach the compounding authority referred in this notice and seek appropriate date for hearing under intimation to this office. You are also requested to submit the documents related to 'Pulse meter' i.e. purchase bill, etc., if any, along with your say."

3. Thus, only a prima facie finding was recoded in the said communication of the first Petitioner having committed contravention of sections 23 and 24 of the Legal Metrology Act, 2009 (for short 'the said Act of 2009'). The first Petitioner replied to the said notice by a reply dated 22nd January, 2015. Firstly, it was contended therein that a Taxi fare Meter neither checks weight or volume within the meaning of the provisions of the said Act of 2009. Secondly, it is contended that no repairs or calibration of any meters is being carried out by the first Petitioner. Thirdly, it is contended that the first Petitioner was conducting a “rough test” of the meters with a view to ascertain whether the meters accurately register time and distance in relation to the fare. It was contended that the meters are being sent to the first Petitioner for conduct of the “rough test” as required under Rule 141 of the Maharashtra Motor Vehicles Rules, 1989. It is contended that the first Petitioner was not doing the work of recaliberation of the fare meters.

4. Being aggrieved by the said communication dated 9th January, 2015, an appeal was preferred by the Petitioners by invoking clause (d) of Sub Section 1 of Section 50 of the said Act of 2009. By the impugned order, the appeal has been dismissed by the Appellate

Authority (Controller of the Legal Metrology, Maharashtra State, Mumbai). The operative part of the said order reads thus :-

> "The appeal is set aside.
> The prosecution should be lodged. However, in case the Appellants are willing to compound the said offence, they should be given that opportunity prior to lodging of this prosecution."

5. After having heard the learned counsel appearing for the Petitioners and the learned Additional Government Pleader for the Respondents, for the reasons recorded hereafter, we find that the action of the Authorities under the said Act of 2009 is completely illegal and misconceived. It is pointed out that on the basis of the order of the Appellate Authority prosecution has been already launched against the first Petitioner. It is pointed out that the Trustees of the second Petitioner are being prosecuted for the offences punishable under sections 33 and 46 of the said Act of 2009.

6. We have already made a reference to the contents of the communication dated 9th January, 2015. As noted therein, only a prima facie observation was recorded by the Inspector of the Legal Metrology, Bandra Division, Mumbai, in the said communication regarding the contravention of sections 23 and 24(1) of the said Act of

2009. Sections 23 and 24 of the said Act of 2009 read thus:-

> “Section 23
> (1) No person shall manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure unless he holds a licence issued by the Controller under subsection
> (2) : Provided that no licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State other than the State of manufacture of the same.”

> “Section 24
> (1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.”

7. Section 33 provides for punishing a person, who uses unverified weights or measures. Section 46 provides for a penalty for carrying out repairs of weights and measures without a license. Thus, section 46 prescribes penalty for the contravention of sub section 1 of section 23 and section 33 prescribes penalty for the contravention of sub section 1 of section 24 of the said Act of 2009.

8. Perusal of the communication dated 9th January, 2015 as well as the impugned order of the Appellate Authority shows that none

of the Authorities under the Act of 2009 have made any adjudication on the issue whether the first Petitioner has contravened the provisions of sub section 1 of section 23 and sub section 1 of section 24 of the said Act of 2009. After recording only a prima facie observation regarding the contravention, the first Petitioner was called upon to compound the offence by taking recourse to section 48 of the said Act of 2009 by approaching the Competent Authority. The said approach on the part of the Inspector of Legal Metrology Department, Bandra Division, Mumbai, is completely illegal. Without recording any final finding or without coming to the conclusion that there is a contravention made by the first Petitioner of the provisions of sections 23 and 24 of the said Act of 2009, the first Petitioner is given threat of prosecution and straightaway the first Petitioner is called upon to compound the offence.

9. The sub section 1 of Section 50 and in particular clause (d) show that if there is a violation of sections 23 and 24, a decision or order in that behalf is contemplated.

10. Coming back to the facts of the case there is a detailed reply submitted by the Petitioners raising several contentions, which we have

noted above. There is no adjudication made by any Authority under the said Act of 2009 on the basis of the contentions raised by the first Petitioner in its reply dated 22nd January, 2015. The basic contention was that the first Petitioner was not doing the work of repairs or calibration of Auto and Taxi fare meters and it was only conducting "rough test" on the meters with a view to ascertain whether the meters accurately register time and distance in relation to the fare.

11. As the first Petitioner was threatened with prosecution, all concerned proceeded on the footing that the communication dated 9th January, 2015 was an order or a decision under sections 23 and 24 under the said Act of 2009 and therefore, recourse was taken of preferring an appeal.

12. We have carefully perused the order of the Appellate Authority. We have already quoted the operative part of the order of the Appellate Authority. Clause 1 of the operative part of the order of the Appellate Authority which purports to "set aside" the Appeal indicates the approach of the Appellate Authority. The Appellate Authority has not decided the basic issues. The first issue was whether the first Petitioner was repairing the meters or whether it was doing the

work of only testing of the meters. The second issue was whether there is any violation or contravention of sections 23 and 24 of the said Act of 2009 made by the first Petitioner. Both the issues have not been addressed by the Appellate Authority.

13. Coming back to the communication dated 9th January, 2015, we are of the view that without recording any specific finding regarding the contravention of sections 23 and 24 under the said Act of 2009, the Inspector could not have called upon the first Petitioner to compound the alleged offences. The principles of the natural justice require that parties should be given an opportunity of being heard before recording a finding of the contravention of sections 23 and 24 of the said Act of 2009.

14. Hence, in our view, both the communication dated 9th January, 2015 and the order of the Appellate Authority dated 18th March, 2015 are completely illegal and deserve to be set aside. Consequently, the prosecution of the Petitioners must be quashed and set aside and a direction will have to be issued to the Inspector to return all the articles, which were seized under the panchanama dated 8th January, 2015.

Accordingly, we pass the following order :-

(i) The impugned notification dated 9th January, 2015(Exhibit -E to the petition) and the impugned order dated 18th March, 2015 (Exhibit-L to the petition) are hereby quashed and set aside;

(ii) Consequently, the prosecution of the Petitioners on the basis of the aforesaid impugned communication and order is hereby quashed and set aside;

(iii) We direct the Inspector, Legal Metrology Department, Bandra Division, Mumbai, to unseal all the articles sealed under the panchanama on 8th January, 2015. This action shall be taken within a period of one week from the date on which an authenticated copy of the judgment and order is produced in his office;

(iv) We make it clear that this judgment and order will not preclude the Respondents from initiating action in accordance with law against the Petitioners under the said Act of 2009;

(v) We, however, clarify that any finding regarding the contravention of the provisions of the said Act of 2009 shall not be recorded without giving adequate opportunity of being heard to the Petitioners;

(vi) Rule is made absolute in above terms;

(vii) All concerned to act on authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.) **(A.S. OKA, J.)**