

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

905 WRIT PETITION NO. 6518 OF 2017

VIKAS MARUTI PANSARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Kale Ajeet B.
AGP for Respondents/State : Mr. S.G. Karlekar
...

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**
DATE : 21.06.2017.

P.C. :-

. This petition under Article 226 of the Constitution of India challenges the order passed by the Ombudsman dated 25.02.2015 and that of Appellate Tribunal dated 24.11.2015.

2. We have heard both sides at great length. We have found that the Appellate Tribunal has refused to hear the appeal only because the petitioner desired that his representative and practising advocate, duly enrolled with the Bar Council of Maharashtra and Goa, be allowed to appear before the Appellate Tribunal. Since several legal and complicated factual aspects are involved, the petitioner made this request. This request is turned down by holding that the Appellate

Tribunal cannot be directed or requested as of right by any appellant and to be heard through an Advocate. It is in these circumstances the appeal came to be dismissed.

3. We have already clarified that Mr. Kale, the learned Advocate appearing for the petitioner has given up the larger issue and challenge on instructions. On 08.06.2017, we passed the following order:

“1. Learned A.G.P. who accepts notice and waives service for respondent nos.1 and 2, to take instructions particularly from the Principal Secretary in the Department of Planning, Government of Maharashtra, as to whether appellate body – respondent no.3 to this petition is ready and willing to hear the petitioner in person, as it is stated by Shri Kale, learned advocate for the petitioner, on instructions, that the petitioner, who has presented the subject memo of appeal, would appear in person and, therefore, issue of permission to engage Advocate, so as to argue this appeal need not be gone into at this stage. The petitioner would be satisfied if the appellate tribunal grants him personal hearing on his appeal. On this limited request, let the instructions be taken and appropriate statement made on the next date.

2. List the Petition on 21st June, 2017 in urgent category on Supplementary Board.”

4. This order was passed after both sides were heard at some length. Today Mr. Karlekar informs that the third respondent though being communicated with this order has not given any instructions.

5. After noting the impugned order, we are of the view that it is vitiated by total non application of mind. It may be that the appellant desires that he should be heard through an Advocate but if that request is refused, the appeal cannot be dismissed. An opportunity will have to be given to the appellant by inquiring from him as to whether he is ready and willing to argue his appeal in person. It is the appellant's appeal and not the advocate's appeal. The appellant if ready and willing to argue the case in person he should be allowed such an opportunity not only in the larger interest of justice but also because fairness, equity are ingrained and part and parcel of the rule of law. Therefore, rule of law and administration of justice requires that such quasi tribunals who are empowered to hear appeals should not throw them out on frivolous grounds and without hearing the appellants or giving them an opportunity to argue their case on merits. Precisely, that has happened in this case.

6. In these circumstances, we quash and set aside the order

dated 24.11.2015. We restore the petitioner's appeal to the file of third respondent. The petitioner will himself argue this appeal and after giving him an opportunity of being heard, the Tribunal shall pass an order on merits and in accordance with law without being influenced by the impugned communications / orders which were quashed and set aside. We clarify that all contentions on merits are kept open. Writ petition stands disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]