

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10343 of 2017
(Digamber s/o Karbhari Huse Vs. The State of Maharashtra and
others)

Mr.S.G.Jadhavar, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for the respondent/State.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 23/08/2017

PER COURT :

1. The petitioner is aggrieved by an order passed by the Hon'ble Minister, Food, Civil Supply and Consumer Protection, State of Maharashtra dated 10/08/2017 by which the revision filed by respondent Nos. 5 and 6 is entertained and the orders impugned therein have been stayed.

2. I have considered the submissions of the learned Advocate for the petitioner and the learned AGP on 18/08/2017 and I had passed the following order :-

"1. The petitioner points out the order passed by the Hon'ble Minister on 10/08/2017 and submits that the said order is apparently unsustainable in the light of the observations of this Court in the matter of Savitri Chandrakesh Pal Vs. State of Maharashtra [2009(4) Mh.L.J. 406].

2. *Learned AGP submits that he would collect instructions and inform the Court on 23/08/2017 as to the date of hearing in the matter before the Hon'ble Minister.*

3. *Stand over to 23/08/2017 for 'passing orders'."*

3. It is obvious from the impugned order that the Hon'ble Minister has practically passed a strange wordless order. A stamp is affixed on the first page of the revision application which contains 3 contingencies. The bottom contingency is pertaining to staying the impugned order and posting the matter for hearing. Since the pattern of the impugned order is shocking, the same is reproduced hereunder :-

“उपसचिव (अ.मा.पु.)

[] तपासुन सादर करावे

[] सुनावणी ठेवावी

[✓] स्थगिती देऊन सुनावणी ठेवावी

सही —

गिरीश बापट

मंत्री

अन्न, नागरी पुरवठा आणि ग्राहक संरक्षण

अन्न व औषध प्रशासन व संसदीय कार्य

महाराष्ट्र शासन, मंत्रालय, मुंबई ४०० ०३२”

This Court is yet to come across such a strange tick (✓) marked order.

4. It cannot be ignored that in the judgment delivered by this Court in Savitri Chandrakesh Pal Vs. State of Maharashtra and others [(2009) 4 Mh.L.J. 406], this Court has laid down procedural guidelines for quasi-judicial authorities and the parameters for passing an order keeping in view the parameters laid down by this Court in Lokmanya Nagar Priyadarshini Vs. State of Maharashtra 2007(1) BCR 929. It would be apposite to reproduce paragraph Nos. 17 and 18 of the Savitri Chandrakesh judgment (supra) hereunder :-

“PROCEDURAL GUIDELINES FOR QUASI-JUDICIAL AUTHORITY:

17. This Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India prescribes the following procedure to be adopted by quasi-judicial authorities including the Ministers, Secretaries, officials and litigants while hearing and determining appeals, revisions, review applications and interim applications etc.:

(1) Memo of appeal or revision, review and or any application shall specifically mention under which enactment and/or under what provisions of law the said appeal/ review/ revision or application is filed.

(2) The appellant/ applicant shall give a synopsis of concise dates and events along with the memo of appeal or revision.

(3) The appeal, revision and/or application shall be

filed within a period stipulated under the law governing the subject from the receipt of the order/ decision which is impugned in the above matter. In the event of delay, it should only be entertained along with application for condonation of delay.

(4) At the time of presentation of the appeal, review or revision, the applicant shall, if, filed in person, establish his identity by necessary documents or he shall file proceedings through authorised agent, and/or advocate.

(5) The application shall be accompanied by sufficient copies for every opponents/ respondents and also supply 2 extra copies for the authorities.

(6) For issuance of summons to the opponents/ respondents, court fees/ postal stamps of sufficient amount shall be affixed on the application form/ memo of appeal or revision as the case may be.

(7) In addition to service through the authority, appellant/ applicant may separately send the additional copies to each of the opponents/ respondents by registered post acknowledgement due and may file affidavit of service along with evidence of despatch. The postal and acknowledgment alone should be treated as evidence of service in the event of service through postal authority.

(8) *In the event of an urgency of obtaining an interim relief like stay, injunction/ other interim order or direction or status-quo etc, a specific case of urgency should be made out in the application, which the authority may entertain subject to the brief reasons recorded. The said order shall also be communicated immediately to all the effected persons. The proof of timely despatch of the Registered A.D.s and all the acknowledgments shall be separately maintained.*

(9) *If there is real urgency, the concerned authority may grant ex parte interim/ ad-interim relief for the reasons to be recorded for a particular period only within which time the service on the concerned opponents/ respondents shall be effected. Appellant/ applicant should file affidavit of service, if such party requires early hearing or continuation for interim relief or of an appeal, revision or review.*

(10) *The competent authority shall also communicate the next date of hearing to all the parties along with time and place and shall, as far as possible, adhere to the said date and time of hearing.*

(11) *The concerned official in every department should be asked to remain present at the time of hearing and assist the concerned authority in the matter.*

(12) Reasonable sufficient time be provided between the date of receipt of notice and the actual date of hearing. If any party is unable to remain present at the time of hearing for a sufficient cause, one further opportunity should be given to such party for hearing.

(13) The authority hearing quasi-judicial matters shall duly fix a date, time and venue for such hearing. Such authority shall refrain from interacting with third party during the course of hearing either in person or on phone and shall not do any act which would tend to affect or prejudice fair hearing.

(14) A speaking order shall be passed by the authority hearing the matter as early as possible after the hearing is concluded and, as far as possible, within a period of four to eight weeks from the conclusion of the hearing, on the basis of the record before it as well as the submissions made at the hearing. The order must contain reasons in support of the order.

(15) The authority shall not receive information or documents after the hearing is concluded and/or shall not pass the speaking order on the basis of such documents and/or information unless such material is brought to the notice of the parties to the proceedings following rules of natural justice.

(16) *The order passed by the quasi-judicial authority on the hearing shall be forthwith communicated to all the parties by Registered A.D.*

(17) *No application or request or prayer from the political worker, Member of Legislative Assembly, Member of Parliament or third party shall be entertained in the quasi-judicial proceedings unless such person is a party respondent or intervenor in the proceedings.*

(18) *The order pronounced shall be communicated to the parties immediately.*

(19) *Record of hearing shall be meticulously maintained in a separate Roznama.*

(20) *The notings of concerned officials/ law assistants to assist the authority shall include only content of facts and legal provisions along with case laws, if any.*

(21) *The notings made by the law officials/concerned officials shall not be in the form of order.*

18. *In addition to the above guidelines, the quasi-judicial authorities shall also follow the parameters laid down by this Court in the case of Lokmanya Nagar Priyadarshini v. State of Maharashtra, 2007 (1) Bom.C.R. 929, which read as under:*

PARAMETERS

“(a) While considering the stay application, the authority concerned should at least briefly set out case of the applicant/ appellant, as the case may be.

(b) While granting the ex parte order, it should be granted for a shorted duration with short notice to the opponent(s).

(c) If ex parte stay is to be granted, then the authority passing the order should specify the reasons in short for grant of ex parte order.

(d) The Authority passing the order should,
(i) record its findings as to whether or not a prima facie case is made out with short reasons in support of the finding;
(ii) record its finding as to in whose favour balance of convenience lies, and
(iii) record its finding whether non-grant of interim relief would cause any prejudice to the person seeking interim relief.

(e) The ingredients at (d) (i) to (iii) should be discussed and positive finding should be recorded while granting or refusing to grant interim relief.”

5. The learned AGP submits on instructions from the Tahsildar, Ambad Mr.Datta Narhari Bharaskar that the Hon'ble Minister has

posted the matter on 29/08/2017 for the appearance of the petitioner.

6. Considering the same, I deem it appropriate to dispose of this matter by giving liberty to the petitioner to submit his written say/arguments on 29/08/2017 in the said proceedings before the Hon'ble Minister. Thereafter, as the stay application is pending, the Hon'ble Minister shall hear the litigating sides and by passing a reasoned order on the interim application, shall decide the said application on or before the 29/09/2017. Since the above directions are being issued, which are not prejudicial to the interest of any of the litigating sides, I have not issued notices to respondent Nos. 5 and 6.

7. This matter is disposed of with the above directions and by observing that Hon'ble Minister would not henceforth pass an order as like the impugned order and shall abide by the law laid down in the Savitri judgment (supra)

(Ravindra V.Ghuge, J.)