

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 986 OF 2017
WITH
WRIT PETITION NO. 987 OF 2017

MOHANLAL KISANLAL AGRAWAL
VERSUS
STATE MINISTER FOR COOPERATION AND OTHERS

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Advocate for Petitioner : S/Shri V A Pawar & P B Salunke
AGP for Respondents 1 to 3 : Shri S K Tambe
Advocate for Respondent 4 : Shri Ajinkya Deshmukh
h/f Shri A V Hon
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 26, 2018
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PER COURT :-

1. Though this Court refused interim relief to the petitioners while issuing notices on 25.1.2017, it has considered the submissions of the petitioners, which are reflected in its order, that reads as under:-

“1. Heard learned counsel for the petitioners. He submits that, the appeal has been decided by the Hon'ble Minister without hearing to the petitioners on merits of the case at a stage when their delay condonation application was to be heard and decided. He further submits that, since the charge made against the petitioners was specifically denied by them, it was necessary for the Society to adduce evidence to

enable the authorities to record any finding about the responsibility of the petitioners in respect of the charge alleged against them and quantifying to the extent of their responsibility. He further submits that, no such evidence was adduced and only because the petitioners were the ex-Directors of the Society, an inference about their liability having been arisen vicariously has been drawn. He submits that, it is now well settled law that, in order to make the office bearers of the Directors of the Society personally liable, it is necessary to pin-point the role played by them in committing the alleged consequences arising therefrom. He also submits that, there was, however, no evidence whatsoever in this regard and, therefore, the impugned order is perverse.

2. Issue notice to the respondents for final disposal at admission stage, returnable on 15th February 2017. Learned A.G.P. waives service for respondent Nos.1 and 3.

3. Learned counsel for the petitioners prays for grant of interim relief. However, there seems to be no urgency in the matter as the impugned order dated 7/3/2016 has been sought to be challenged after passage of long time. Therefore, the question of involvement of laches in filing the petition would also have to be considered. Of course, learned counsel for the petitioners submits that, notice of attachment has been received by the petitioners and, therefore, now the urgency has arisen. The argument can be considered after giving an opportunity of hearing to the petitioners. ”

2. The learned AGP points out from the impugned order that the petitioners remained absent before the Honourable Minister, when the appeals filed by them were heard after four years of their lodging. He expresses an apprehension that in several cases, the Honourable Minister had granted ad-interim protection and as such, several appellants were delaying the matter. Recoveries of huge amounts are to be effected against such petitioners after the conclusion of Section 88 enquiry and the liability has been fixed. These petitioners, therefore, stood to gain an advantage by delaying the matter.

3. Shri Hon, learned Advocate on behalf of respondent No.4 strenuously submits that the petitioners are responsible for delaying the matters and remaining absent. Now, they cannot plead that principles of natural justice have been violated. These petitions deserve to be dismissed by imposing heavy costs and the costs may be donated to a humane cause.

4. I find from the record available that these petitioners have been subjected to the due procedure laid down under the Maharashtra Cooperative Societies Act. The proceedings have travelled upto Section 88 enquiry and liabilities have been fixed.

Going by the Section 88 report, huge amounts are to be recovered from these petitioners. It cannot be ruled out that these petitioners gained an advantage by delaying the matters and remaining absent in the hearing before the Honourable Minister. However, it also cannot be ignored that they have lost an opportunity of hearing. By imposing heavy costs, they could be penalised and their right for a hearing can be restored.

5. At this juncture, the learned counsel for the petitioners prays for a lenient view and submits that each of these petitioners would deposit an amount of Rs.10,000/- as costs.

6. Considering the above and for the reasons stated, these petitions are partly allowed. The impugned orders of the Honourable Minister dated 7.6.2013 in Appeal Nos.793 and 741 of 2012 are set aside and both these proceedings are restored before respondent No.1 with the following directions:-

(A) Each of these petitioners would deposit an amount of Rs.10,000/- (Rs. Ten Thousand only/-) on/or before 10.7.2018 with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of

“Dean, Government Medical College and Hospital, Aurangabad - CSR Fund”).

(B) After deposit of the amount as aforesaid, the petitioners shall appear before respondent No.1 on 17.7.2018 at 3.00 pm. Formal notices need not be issued.

(C) Only after these petitioners produce the receipts of deposit before respondent No.1 on 17.7.2018, he would commence the hearing of the matter. If receipts are not produced, the impugned orders dismissing the appeal of the defaulting appellants shall be restored and no hearing would be granted by the Honourable Minister.

(D) These petitioners and the contesting respondents shall file their written notes of arguments on 17.7.2018 before respondent No.1 and shall not seek an adjournment.

(E) After the Honourable Minister closes the matter, he shall proceed to deliver a reasoned order within four weeks on any particular date, which he would post for pronouncement of the order.

(F). Since this Court has refused interim relief on 25.1.2017, there shall be no orders on this count.

(RAVINDRA V. GHUGE, J.)

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