

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

***REVIEW PETITION (ST.) NO.34389 OF 2018  
IN  
WRIT PETITION NO.13766 OF 2018***

1. Prakash Vithalrao Kavthekar )  
Age 38 years, Occ.Agril & Social Worker, )  
R/o. Ukhandra, Tq.Patoda, District Beed. )

2. Shivaji Eknath Pawar )  
Age 41 years, Occ. Agril. )  
R/o. At Zepewadi, Post Warni, )  
Tq.Shirurkasar, District Beed )

3. Smt.Ashwini W/o Dnyaneshwar Jarange )  
Age 30 years, Occ.Agril & Social Worker, )  
R/o. Kusllamb, Tq.Patoda, District Beed. )

4. Smt.Sangita W/o Ramhari Maharnor )  
Age 30 years, Occ.Agril & Social Worker, )  
R/o. Dadegaon (Mahadevwadi), )  
Tq.Patoda, District Beed. )

5. Smt.Ashwini W/o Amar Nimbalkar )  
Age 35 years, Occ.Agril & Social Worker, )  
R/o. At Ashta (Harinarayan) )  
Tq.Patoda, District Beed. )

.. Petitioners  
(Orig.Respt. Nos.4 to 7 & 9)

***Versus***

1. Bajrang Manohar Sonavane )  
Age 46 years, Occ.Agril & Social Worker, )  
R/o.At Sarni, Post Javal-ban, )  
Tq.Kaij, District Beed. )
2. Smt. Mangal w/o Prakashrao Solanke )  
Age 61 years, Occ.Agril & Social Worker, )  
R/o. Mohikhed, Tq.Dharur, Dist. Beed. )
3. Ajay Manikrao Munde )  
Age 32 years, Occ.Agril & Social Worker, )  
R/o.Nathra, Post.Kauthali, )  
Tq.Parali, District Beed. ) (Respt.Nos.1 to 3-Orig.  
Petitioners )
4. The State of Maharashtra )  
Through Secretary Rural Development )  
Mantralaya, Mumbai – 400 032. )
5. Hon'ble Cabinet Minister )  
Rural Development Department )  
Mantralaya, Mumbai – 400 032. )
6. Under Secretary State of Maharashtra )  
Rural Development Department )  
Mantralaya, Mumbai – 400 032. )

7. The Collector Beed. )

District Beed. )

8. The Chief Executive Officer, )

Zilla Parishad Beed, District Beed. )

9. Smt. Mangal w/o Ganpat Doifode )

Age 32 years, Occ. Agril. & Social Worker, )

R/o. Jeet, Post Pimpalner, )

Tq. & Dist. Beed. )

.. Respondents  
(Orig. Respondent  
Nos.1 to 3, 8, 10& 11)

**ALONG WITH  
REVIEW PETITION (ST.) NO.34391 OF 2018  
IN  
WRIT PETITION NO.13766 OF 2018**

1. Smt. Mangal w/o Ganpat Doifode )

Age 32 years, Occ. Agril. & Social Worker, )

R/o. Jeet, Post Pimpalner, Tq. & Dist. Beed. )

.. Petitioner  
(Orig.Respt. No.8)

***Versus***

1. Bajrang Manohar Sonavane )

Age 46 years, Occ.Agril & Social Worker, )

R/o.At Sarni, Post Javal-ban, )

Tq.Kaij, District Beed. )

2. Smt. Mangal w/o Prakashrao Solanke )

Age 61 years, Occ.Agril & Social Worker, )

R/o. Mohikhed, Tq.Dharur, Dist. Beed. )

3. Ajay Manikrao Munde )  
Age 32 years, Occ.Agril & Social Worker, )  
R/o.Nathra, Post.Kauthali, )  
Tq.Parali, District Beed. ) (Respt.Nos.1 to 3-Orig.  
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Mantralaya, Mumbai – 400 032. )
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Rural Development Department )  
Mantralaya, Mumbai – 400 032. )
7. The Collector Beed. )  
District Beed. )
8. The Chief Executive Officer, )  
Zilla Parishad Beed, District Beed. )
9. Prakash s/o Vithalrao Kavthekar )  
Age 38 years, Occ.Agril & Social Worker, )  
R/o. Ukhanda, Tq. Patoda, Dist. Beed. )

10. Shivaji Eknath Pawar )  
Age 41 years, Occ. Agril. )  
R/o. At Zepewadi, Post Warni, )  
Tq.Shirurkasar, District Beed )

11. Smt.Ashwini W/o Dnyaneshwar Jarange)  
Age 30 years, Occ.Agril & Social Worker, )  
R/o. Kusllamb, Tq.Patoda, District Beed. )

12. Smt.Sangita W/o Ramhari Maharnor )  
Age 30 years, Occ.Agril & Social Worker, )  
R/o. Dadegaon (Mahadevwadi), )  
Tq.Patoda, District Beed. )

13. Smt.Ashwini W/o Amar Nimbalkar )  
Age 35 years, Occ.Agril & Social Worker, )  
R/o. At Ashta (Harinarayan) )  
Tq.Patoda, District Beed. )

.. Respondents  
(Orig. Respt. Nos.1 to 7,  
9 to 11)

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Mr.Vasantrao D. Salunkhe a/w Mr.A.S. Kakade for the petitioners/  
original respondent nos.4 to 7 and 9 in Review Petition (St.) No.34389  
of 2018.

None for the petitioner/original respondent no.8 in Review Petition (St.)  
No.34391 of 2018.

Mr.S.S. Kanetkar for the respondents/original petitioners in both the  
review petitions.

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**CORAM : R.D. DHANUKA, J.**  
**RESERVED ON : 10<sup>th</sup> December 2018**  
**PRONOUNCED ON : 21<sup>st</sup> December 2018**

**Judgment :** -

. By these two review petitions, the original respondent nos.4 to 7, 9 and the original respondent no.8 have prayed for recall of the order dated 13<sup>th</sup> June 2018 passed by this Court rejecting the plea of territorial jurisdiction raised by the State of Maharashtra in Writ Petition No.13766 of 2018 and entertaining the said writ petition before the Principal Bench of Bombay High Court.

2. By consent of parties, both the review petitions were heard together and are being disposed of by common order. The respondent Nos. 1 to 3 herein were the original petitioners in Writ Petition No.13766 of 2018 whereas the review petitioners in Review Petition (St.) No.34389 of 2018 were the original respondent nos.4 to 7 and 9. The review petitioner in Review Petition (St.) No.34391 of 2018 was the original respondent no.8 in Review Petition (St.) No.34389 of 2018.

3. The election of the councilors of the Zilla Parishad, Beed took place on 16<sup>th</sup> February, 2017. The original petitioners contested the election of the Zilla Parishad, Beed for the post of councilor and were elected. The review petitioners also contested the said election of the Zilla Parishad, Beed. It was the case of the original petitioners that in the

meeting dated 7<sup>th</sup> March,2017 held by the Cabinet Minister, Rural Development Department, it was unanimously decided that the Gat/Front/Aghadi had to be established amongst the successful members/councilors of Nationalist Congress Party of Zilla Parishad, Beed and to elect the leader of Gat/Aghadi for the purpose of taking decision of the parties amongst the councilors of Gat in Zilla Parishad, Beed.

4. It was the case of the original petitioners that the name of the petitioner no.1 Mr.Bajrang Manohar Sonavane was decided to be elected/nominated as Gat Neta/Group Leader of the newly formed Gat/Aghadi named Nationalist Congress Party/Aghadi Zilla Parishad, Beed. The petitioner no.1 along with 26 councilors of the Nationalist Congress Party/Aghadi Zilla Parishad, Beed including the respondent no.9 remained present personally before the Collector, Beed on 8<sup>th</sup> March,2017. The learned Collector registered the said Aghadi and issued a letter dated 8<sup>th</sup> March,2017 to the Gat Neta informing that the Nationalist Congress Party of Aghadi of Zilla Parishad, Beed was formed and all 26 councilors were the members of the Aghadi including the respondent no.9. A whip was issued to all the 26 members of Gat/Aghadi that they should cast vote to Mangal Prakashrao Solanke and Shivkanya Shivaji Shirsath who were the candidates of the Nationalist Congress

Party of the Zilla Parishad, Beed for the post of President and Vice President respectively.

5. It is the case of the petitioners that the respondent nos. 4 to 7 and 9 however disobeyed the whip and had cast their votes in favour of the candidates of BJP for the post of President and Vice President. It is the case of the petitioners that the respondent no.8 abstained from voting intentionally and thereby the respondent nos. 2 to 9 had disobeyed the whip of the Gat Neta of Aghadi/Front. The proceedings bearing Cr. NO. 01/2017 were filed by the petitioners before the learned Collector, Beed. The learned Collector, Beed dismissed the preliminary objections raised by the respondent nos. 4 to 9 against the contesting respondents who are the review petitioners in these two review petitions. The review petitioners thereafter filed writ petition bearing nos.1482 of 2017 and 11429 of 2017 before the Aurangabad Bench of the Bombay High Court. The said writ petitions were however rejected.

6. The review petitioners thereafter filed written statement before the learned Collector. The learned Collector passed an order on 16<sup>th</sup> October,2017 disqualifying the review petitioners and informed the Chief Executive Officer, Zilla Parishad, Beed about the vacancy of the

post of the disqualified members from the respective constituency. The review petitioners filed an appeal before the learned Minister, Rural Development Department against the said order passed by the learned Collector, Beed and applied for stay of the order passed by the learned Collector, Beed. The learned Minister passed a stay order which was communicated by the Under Secretary to the Collector, Beed.

7. The original petitioners thereafter filed a writ petition bearing no.14213 of 2017 against the order dated 18<sup>th</sup> October,2017 before the Aurangabad Bench of Bombay High Court. The learned Single Judge of the Aurangabad Bench of Bombay High Court passed an order on 4<sup>th</sup> May, 2018 allowing the writ petition and setting aside the order dated 18<sup>th</sup> October,2017 passed by the learned Collector, Beed and remanded the matter to the learned Collector, Beed for hearing the parties afresh on the stay application. The original petitioners filed Special Leave Petition against the said order dated 4<sup>th</sup> May,2018 passed by the Aurangabad Bench bearing no. SLP (Civil) No.13575 of 2018 and also filed Writ Petition (St) No. 14841 of 2018 in this court for challenging the validity of the Maharashtra Local Authority Members Disqualification (Amendment) Act, 1986 (Maharashtra Act I of 2018) which was brought into force w.e.f. 1<sup>st</sup> July, 2017.

8. The Hon'ble Supreme Court passed an order on 11<sup>th</sup> May, 2018 remitting the matter back to the learned Minister for fresh consideration on the appeal filed by the respondent nos. 4 to 9 therein before the authority. The Hon'ble Supreme Court also observed that considering the controversy, the learned Minister may hear the appeal itself within reasonable time. The writ petition filed by the petitioners challenging the validity of the amending Act is still pending. The petitioners filed an application for framing preliminary issues before the learned Minister. The learned Minister passed an order dated 19<sup>th</sup> May, 2018 granting stay to the order of the learned Collector, Beed dated 16<sup>th</sup> October, 2017.

9. Being aggrieved by the said order dated 19<sup>th</sup> May, 2018 passed by the learned Minister, the original petitioners filed a writ petition bearing no.13766 of 2018 before the Principal Bench of the Bombay High Court. By an order dated 13<sup>th</sup> June, 2018, this court directed the Office to issue notice upon the review petitioners returnable on 11<sup>th</sup> July, 2018 and passed an *ad-interim* order that till next date, the review petitioners (original respondent nos. 4 to 9) are allowed to attend the meetings of Zilla Parishad, Beed held if any, but that they will not be entitled to cast their vote and or draw their remuneration during the said period. The

review petitioners were not present before this court when the said order was passed.

10. The learned A.G.P. raised an issue of territorial jurisdiction of the Principal Bench to entertain the writ petition. Learned counsel for the original petitioners however placed reliance on the judgment of this court in case of ***Haji Abdul Razak Yasim Patel vs. Bara Imam Masjid Trust & Ors. 2006(1) Mh.L.J.184.*** This court accordingly held that the Principal Bench will have jurisdiction to entertain the writ petition on the ground that the impugned order passed by the learned Minister was passed at Mumbai.

11. The review petitioners thereafter filed affidavit in reply in the writ petition and raised various objections including the issue of territorial jurisdiction of the Principal Judge to hear the writ petition filed by the original petitioners on the ground that the entire cause of action had arisen at District Beed and thus the writ petition could be entertained only by the Aurangabad Bench of the Bombay High Court. By an order dated 27<sup>th</sup> November 2018, the review petitioners were granted permission to file the review petition seeking recall of the order dated 13<sup>th</sup> June, 2018. Pursuant to the liberty granted by this court, the review

petitioners have filed two separate review petitions.

12. Mr.Salunke, learned counsel for the review petitioners in Review Petition (St) No.34389 of 2018 invited my attention to various annexures to the writ petition and also to the review petition. It is submitted by the learned counsel that the original petitioner nos.1 to 3 and the respondent nos. 4 to 9 are the residents of Beed District. The respondent nos. 10 and 11 are the collectors of Beed and the Chief Executive Officer of the Zilla Parishad, Beed. The petitioner nos. 1 to 3 and the respondent nos. 4 to 9 in the writ petition were the elected members of the Zilla Parishad, Beed in the elections held in the year 2017. The original petitioners had filed proceedings under sections 7 and 3 of the Maharashtra Local Authorities Members Disqualification Act, 1986 to disqualify the review petitioners as councilors of Zilla Parishad, Beed. All the parties in the application are from Beed District. The proceedings were filed before the statutory authority i.e. the collector Beed. The entire cause of action had thus arisen at Beed.

13. Learned counsel invited my attention to the order passed by this court on 19<sup>th</sup> September, 2017 in Writ Petition No.11482 of 2017 which was filed by some of the review petitioners before the Aurangabad

Bench of Bombay High Court challenging the order passed by the learned collector in Writ Petition No.1 of 2017. He also invited my attention to the order dated 20<sup>th</sup> September,2017 passed by the Aurangabad Bench of this court in Writ Petition No.11429 of 2017 filed by some of the review petitioners challenging the order passed by the learned collector. Learned counsel also invited my attention to the order and judgment dated 4<sup>th</sup> May, 2018 passed by the Aurangabad Bench of Bombay High Court in Writ Petition No.14213 of 2017 filed by the original petitioners thereby impugning the order dated 18<sup>th</sup> October,2017 passed by the learned Minister (Rural Development), State of Maharashtra granting stay to the decision rendered by the learned collector, Beed on 16<sup>th</sup> October,2017.

14. It is submitted that the said writ petition was filed by the original petitioners before the Aurangabad Bench of Bombay High Court though the said order dated 18<sup>th</sup> October,2017 was passed by the learned Minister (Rural Development), State of Maharashtra at Mumbai. The said writ petition filed by the original petitioners was disposed of by an order and judgment dated 4<sup>th</sup> May, 2018 remanding the matter back to the learned Minister so as to take steps in accordance with law after giving due opportunity of hearing to the original petitioners and keeping all issues raised in the writ petition open.

15. It is submitted by the learned counsel that the earlier petitions were rightly filed by the parties before the Aurangabad Bench of Bombay High Court. The last petition filed by the original petitioners was also filed at the Aurangabad Bench of Bombay High Court. He submits that the Principal Bench could not have entertained the writ petition filed by the original petitioners having no territorial jurisdiction to entertain the said writ petition. He submits that the original petitioners obtained the said order *ex-parte* insofar as the review petitioners are concerned. He submits that the entire cause of action had arisen at Beed District. No cause of action had arisen at Mumbai. The earlier order passed by the learned Minister was though passed at Mumbai, the original petitioners had rightly filed writ petition before the Aurangabad Bench since the disputes arising in the Beed District was within the territorial jurisdiction of the Aurangabad Bench of Bombay High Court.

16. Learned counsel appearing for the review petitioners placed reliance on Rule 2 of the Bombay High Court Appellate Side Rules Chapter XXXI and would submit that the dispute arising out of the Beed District would fall within the jurisdiction of the Aurangabad Bench of the Bombay High Court and not before the Principal Bench. It is submitted by the learned counsel that the original petitioners were served with the

caveats filed by the review petitioners which were filed before the Aurangabad Bench of the Bombay High Court arising out of the stay order granted by the learned Minister (Rural Development), State of Maharashtra. He submits that after service of the caveats filed by the review petitioners before the Aurangabad Bench of the Bombay High Court, the original petitioners deliberately filed the proceedings before the Principal Bench of this court which was totally without jurisdiction.

17. Learned counsel for the review petitioners distinguished the judgment of this court in case of ***Haji Abdul Razak Yasim Patel*** (supra) which was referred to and relied upon by the learned counsel for the review petitioners before this court on 13<sup>th</sup> June, 2018 and would submit that in respect of the trust property which was situated at Ahmednagar which district was within the territorial jurisdiction of the Aurangabad Bench of the Bombay High Court, the applicant had sought to apply for permission for sale of the said trust property under section 36 of the Maharashtra Public Trust Act, 1950 which was required to be made before the Charity Commissioner at Pune which was within the ordinary territorial limits of the Appellate Side of the Principal Seat at Mumbai. The learned Single Judge of this court held that the locus of the property would not determine the jurisdiction. The first proceedings itself was

filed at Pune. Thus this court held that the writ petition could be entertained by the Appellate Side of the Principal seat of the Bombay High Court. It is submitted that in this case, the first proceeding was filed before the learned collector, Beed. The said judgment in case of **Haji Abdul Razak Yasim Patel** (supra) is thus not applicable to the facts of this case.

18. Learned counsel for the review petitioners placed reliance on the judgment of the Hon'ble Supreme Court in case of **Rajasthan High Court Advocates Association vs. Union of India, 2001 AIR (SC) 416** and in particular paragraphs 17 and 18 in support of the submission that since the entire cause of action had arisen within the territorial jurisdiction of District Beed which was within the territorial jurisdiction of the Aurangabad Bench of the Bombay High Court, the writ petition filed by the original petitioners before the Principal Bench could not have been entertained by this court.

19. Learned counsel for the review petitioners also placed reliance on the judgment of the Hon'ble Supreme Court in case of **Union of India vs. Adani Exports Limited, 2002 AIR (SC) 126** and in particular paragraph (21) in support of the submission that since the parties had to

undergone one round of litigation before the Aurangabad Bench of Bombay High Court, this writ petition filed by the original petitioners before the Principal Bench could not be entertained having no territorial jurisdiction.

20. Learned counsel for the review petitioners placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Monnet Ispat and Energy Limited vs. Jan Chetna & Others, 2013 (10) SCC 574*** and in particular on paragraph 15 in support of the submission that the every Bench of the High Court should scrupulously follow the relevant rules and should not violate statutory provisions specifying its jurisdiction, otherwise the rules relating to the distribution of cases between the Single, the Division Bench and larger Benches would be lost and the matters assigned to the different Benches depending upon the District would be lost.

21. Learned counsel for the review petitioners placed reliance on the judgment of the Division Bench of this court in case of ***Mohamed Rizwan Memon and others vs. State of Goa and others, 2017(6) Mh.L.J.(Cri.) 204*** and in particular paragraphs 14, 21 and 24 in support of the submission that in view of the entire cause of action having arisen

at District Beed, the Principal Bench of this court could not have entertained the writ petition filed by the original petitioners.

22. Learned counsel for the review petitioners placed reliance on the judgment of Hon'ble Supreme Court in case of ***Ramchandra Ganpat Shinde and another vs. State of Maharashtra and others, AIR 1994 SC 1673*** in support of the submission that since the order dated 13<sup>th</sup> June, 2018 passed by this court was without jurisdiction, this court has ample power to recall the said order.

23. Mr. Kanetkar, learned counsel for the original petitioners on the other hand submits that none of the mandatory conditions prescribed under Order 47 Rule 1 of the Code of Civil Procedure, 1908 for seeking review of the order passed by this court are satisfied by the review petitioners in these two review petitions. He submits that in this case neither it is pleaded by the review petitioners that the review petitioners had discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the review petitioners or could not be produced by them at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason and

thus order dated 13<sup>th</sup> June, 2018 cannot to be recalled. He submits that both the review petitions filed by the review petitioners shall be dismissed on that ground itself.

24. Insofar as reliance placed on the order passed by the Aurangabad Bench of this court by the learned counsel for the review petitioners is concerned, it is submitted by the learned counsel that when those petitions were filed either by the review petitioners or by the original petitioners before the Aurangabad Bench of Bombay High Court, the proceedings were pending before the collector, Beed or before the learned Minister and thus the writ petitions were at that stage were rightly filed before the Aurangabad Bench of the Bombay High Court. He submits that Aurangabad Bench of the Bombay High Court had remanded the matter back before the learned Cabinet Minister (Rural Development), State of Maharashtra who admittedly passed order at Mumbai and thus Writ Petition No.13766 of 2018 was rightly filed by the original petitioners before the Principal Bench of the Bombay High Court and could not have been filed before the Aurangabad Bench.

25. Mr.Kanetkar. Learned counsel for the original petitioners distinguished the judgment of the Hon'ble Supreme Court in case of

***Union of India vs. Adani Exports Limited, 2002 AIR (SC) 126*** on the ground that the facts before the Hon'ble Supreme Court in the said judgment were totally different. He submits that the Hon'ble Supreme Court had held that the High Court at Ahmedabad has jurisdiction to entertain the writ petition on the ground that since the party had already undergone one round of litigation before the High Court at Ahmedabad and thereafter in the appeals before the court, it is appropriate to request the High Court to dispose of these appeals as early as possible.

26. It is submitted by the learned counsel that since the impugned order passed by the learned Minister was admittedly passed at Mumbai, the material cause of action had arisen at Mumbai and thus the original petitioners had rightly filed writ petition before the Principal Bench of this court. Learned counsel for the original petitioners distinguished the judgment of this court in case of ***Mohamed Rizwan Memon and others***(supra) on the ground that in that case the maternal place of the one of the party was at Pune whereas after her marriage, the said party had come to reside at Margao. He submits that in this case, the material cause of action had arisen at Mumbai and thus the said judgment of this court of Division Bench of this court in case of ***Mohamed Rizwan Memon and others***(supra) would not assist the case of the review

petitioners.

27. Mr.Salunke, learned counsel for the review petitioners in rejoinder submits that the basic order which was impugned before the learned Minister was passed by the learned collector at Beed District and if the learned Minister would have remanded the matter back, the said remand would be only before the learned collector at Beed. He once again distinguished the judgment of this court in case of ***Haji Abdul Razak Yasim Patel*** (supra) which was strongly relied upon by the learned counsel for the original petitioners on the ground that in this case, the ordinary territorial jurisdiction was Beed District and thus the same was within the territorial jurisdiction of the Aurangabad Bench of this court. The convenience of both the parties was at Aurangabad.

28. The original order was admittedly passed by the learned collector, Beed. Merely because the learned Minister, Maharashtra State had passed the impugned order at Mumbai arising out of the order passed by the learned District Collector, Beed, the Principal Bench of this court cannot have territorial jurisdiction only on that ground.

### **REASONS AND CONCLUSIONS**

29. A perusal of the record clearly indicates that it is not in dispute that the review petitioners and the original petitioners have been residing at Beed District. The election in question was for the post of members of the Zilla Parishad, Beed. The original order was passed by the learned collector, Beed out of the four petitions arising out of various orders passed by the learned collector, Beed and the learned Minister (Rural Development), State of Maharashtra at Mumbai. Three petitions were admittedly filed before the Aurangabad Bench of this court. The third petition was admittedly filed by the original petitioners arising out of the order passed by the learned Cabinet Minister (Rural Development), State of Maharashtra at Mumbai, however, at the Aurangabad Bench of this court. I am not inclined to accept the submission of the learned counsel for the original petitioners that any cause of action had arisen at Mumbai or that other three petitions were filed before Aurangabad Bench of this court in view of the fact that the proceedings were pending before the learned collector.

30. Learned counsel for the original petitioners could not explain before this court as to why the original petitioners themselves had filed

the writ petition impugning the order passed by the learned Cabinet Minister, (Rural Development), State of Maharashtra at Mumbai before the Aurangabad Bench of this court. It is not the case of the original petitioners that the writ petition filed by the original petitioners before the Aurangabad Bench was not maintainable and was wrongly filed before the Aurangabad Bench and the order passed by the Aurangabad Bench was without jurisdiction.

31. Chapter XXXI Rule 2 of the Bombay High Court Appellate Side Rules, 1960 clearly provides that all the appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Ahmednagar, Aurangabad, Beed, Jalgaon, Jalna, Nanded, Osmanabad, Parbhani and Latur which lie to the High Court at Bombay shall be presented to the Additional Registrar at Aurangabad and shall be disposed of by the Judges sitting at Aurangabad. The said proviso to the said Rule however provides that Chief Justice may, in his discretion, order that any case or class of cases arising in any such District shall be heard at Bombay. Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Aurangabad.

32. It is not the case of the original petitioners that the Hon'ble Chief Justice had exercised any discretion to hear the writ petition which ought to have been filed before the Aurangabad Bench to be heard before the Principal Bench. In my view, since no part of cause of action had arisen at Mumbai or in any event the material cause of action had arisen at Beed District which District falls within the territorial jurisdiction of the Aurangabad Bench of this court, the writ petition filed before the Principal Bench by the original petitioners is thus *ex-facie* without jurisdiction.

33. The Hon'ble Supreme Court in case of ***Rajasthan High Court Advocates Association*** (supra) has held that the expression 'cause of action' has acquired a judicially settled meaning in the restricted sense. Cause of action means the circumstances forming the infraction of the right of the immediate occasion for the action. It is held that in the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right but the infraction coupled with the right itself. The Hon'ble Supreme Court held that in case of a dispute arising whether an individual case or cases should be filed and heard at one of the Benches of the High Court, the same has to be found out by applying the test from which district the case arises, that is, in

which district the cause of action can be said to have arisen and then exercising the jurisdiction under Article 226 of the Constitution. In my view the principles of law laid down by the Hon'ble Supreme Court in case of ***Rajasthan High Court Advocates Association*** (supra) squarely applies to the facts of this case. In my view since the principle and the original cause of action had arisen within the Beed District, under Rule 2 of the Chapter XXXI of the Bombay High Court Appellate Side Rules, the writ petition could be filed only before the Aurangabad Bench and not before the Principal Bench.

34. The Hon'ble Supreme Court in case of ***Monnet Ispat and Energy Limited*** (supra) has held that every Bench of the High Court should scrupulously follow the relevant rules and should not violate statutory provisions specifying its jurisdiction, else the sanctity of the rules relating to distribution of cases between the Single, the Division Bench and larger Benches will be lost. In my view the principles of law laid down by the Hon'ble Supreme Court in case of ***Monnet Ispat and Energy Limited*** (supra) would apply to the facts of this case. Since the cause of action in this case had arisen within the territorial jurisdiction of the Aurangabad Bench and Rule 2 of Chapter XXXI of the Bombay High Court Appellate Side Rules clearly provides that the writ petition arising

out of such district could be filed only before the Aurangabad Bench, the Principal Bench cannot entertain such petition falling within the territorial jurisdiction of the Aurangabad Bench unless the Hon'ble Chief Justice exercises its discretionary power. This court cannot violate the statutory provisions relating to distribution of cases between different Benches.

35. The Hon'ble Supreme Court in case of ***Union of India vs. Adani Exports Limited*** (supra) has held that the petitioners were carrying on business of export and import from Ahmedabad. The orders for export and import were placed from and executed from Ahmedabad. The documents and payments for export and imports were sent/made at Ahmedabad. The substantial cause of action had arisen within the jurisdiction of the High Court at Ahmedabad and thus the proceedings ought to have been filed at Ahmedabad and not at Chennai merely because the credit of the duty claimed in respect of export were made from Chennai.

36. Division Bench of this Court in the case of ***Mohamed Rizwan Memon & Ors. (supra)*** held that in that matter, the FIR had been lodged at Pune and the consequent charge-sheet and the criminal case was pending before the Court at Pune. Cause of action could thus

be said to have arisen within the territorial jurisdiction of the Principal Seat of Bombay. It is held that this Court would be slow in entertaining matters which have arisen within the jurisdiction of another Bench/ Principal Seat as per the Appellate Side Rule. It is accordingly held that the petitioners could approach the Principal Seat and there were no exceptional circumstances shown for exercising jurisdiction before the Goa Bench. In my view, the principles of law laid down by the Division bench of this Court in the said judgment would squarely apply to the facts of this case. In this case also, the entire cause of action and more particularly original proceedings were filed before the Collector, Beed and thus the only Aurangabad bench of this Court could entertain the petition filed by the original petitioner and not the Principal Bench.

37. In so far as the judgment of this Court in the case of ***Haji Abdul Razak Yasim Patel (supra)*** relied upon by the learned counsel for the original petitioner is concerned, this Court held that the impugned order was passed at Pune which was within the ordinary territorial jurisdiction of the Appellate Side of the Principal Seat of this Court. In that matter, the property was situated at Ahmednagar. Trustees had applied for permission under Section 36 of the Bombay Public Trusts Act, 1950 which could be filed before the Charity Commissioner,

Pune only and not before any other authority. The said permission was rejected only by the Charity Commissioner, Pune. The original cause of action having arisen at Pune, the said matter was rightly filed before the Appellate Side of Principal Bench of this Court. In my view, the said judgment is clearly distinguishable in the facts of this case. In my view, in this case, both the parties were admittedly the resident of Beed. Election was also held at Beed. The original proceedings were filed before the learned Collector, Beed. The Aurangabad Bench only thus could have entertained the writ petition.

38. The Hon'ble Supreme Court in the case of ***Ramchandra Ganpat Shinde & Anr. (supra)*** has held that it is the primary duty and highest responsibility of the Court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the courts and take recourse to extra-constitutional remedies which is a death-knell to the rule of law.

39. The Hon'ble Supreme Court in the case of ***Municipal Corporation of Greater Mumbai & ANR. Vs. Pratibha Industries Ltd.***

**& Ors.** in Civil Appeal No. 11822 of 2018 delivered on 4<sup>th</sup> December 2018 has held that the constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. In my view, the original petitioner not having brought to the notice of this Court when the matter appeared before this Court on 13<sup>th</sup> June 2018 that the earlier three petitions were filed by the parties before the Aurangabad bench of this Court and out of those three petitions, one of the petition was filed by the original petitioners themselves arising out of the order passed by the learned Cabinet Minister, Rural Development Department, Mantralaya, Mumbai – 400 032. The review petitioners were not present before this Court when the said matter was heard. In view of extreme urgency shown to this Court, this Court only heard the petitioner and the learned AGP. In my view, since the Principal Bench could not have entertained the said writ petition in view of the Principal Bench having lack of territorial jurisdiction to entertain, try and adjudicate upon the said writ petition, the order passed by this Court on 13<sup>th</sup> June 2018 deserves to be recalled.

40. This Court has ample power to recall its own order in view of the fact that the said order was passed without jurisdiction to entertain, try and adjudicate upon the said writ petition. There is an error

apparent on the face of the record. There are also sufficient reasons for recall of the order dated 13<sup>th</sup> June 2018 in view of the said order having been passed without jurisdiction by the Principal Bench of this Court. I am not inclined to accept the submission made by the learned counsel for the original petitioner that none of the conditions prescribed in Order XLVII Rule 1 of the Code of Civil Procedure, 1908 are satisfied by the review petitioners in this case.

41. In so far as the submission of Mr.Kanetkar, learned counsel for the original petitioner that the earlier three writ petitions could be filed by the parties at Aurangabad on the ground that the proceedings were at that stage pending before the learned Collector, Beed is concerned, in my view, there is no substance in this submission of the learned counsel for the original petitioner. In my view, all three writ petitions were rightly filed before the Aurangabad Bench of this Court in view of the fact that the entire cause of action had arisen at District Beed which was within the territorial jurisdiction of the Aurangabad Bench of this Court.

42. Learned counsel for the original petitioner could not dispute that the writ petition filed by his client before the Aurangabad Bench

of this Court was also arising out of the order passed by the learned Cabinet Minister, Rural Development Department, Mantralaya, Mumbai which order was admittedly passed at Mumbai. In my view, if the submission of the learned counsel for the original petitioner is accepted, it would be in ex facie violation of the Rule 2 of Chapter XXXI of the Bombay High Court (Appellate Side) Rules, 1960 and also in gross violation of Articles 226 and 227 of the Constitution of India. The Court while entertaining the writ petition has to consider the place of the original cause of action and not the place of the order passed by the Appellate authority or the revisional authority.

43. In so far as the Review Petition (St.) No.34389 of 2018 in Writ Petition No.13766 of 2018 is concerned, though the learned counsel for the petitioner was absent when these two review petitions were heard, learned counsel for the original petitioner does not dispute that the facts of both the review petitions being identical, the judgment in Review Petition (St.) No.34389 of 2018 would apply to the facts in Review Petition (St.) No.34391 of 2018.

44. I therefore pass the following order : -

(i) It is declared that the Principal Bench of this Court has no

jurisdiction to entertain, try and adjudicate upon the subject matter of the Writ Petition No.13766 of 2018. Aurangabad Bench of this Court has exclusive jurisdiction to entertain, try and adjudicate upon the subject matter of the said writ petition.

(ii) The order dated 13<sup>th</sup> June 2018 is recalled.

(iii) Office is directed to transmit the papers and proceedings in Writ Petition No.13766 of 2018 to the Aurangabad Bench of the Bombay High Court expeditiously.

(iv) Ad-interim order passed by this Court on 13<sup>th</sup> June 2018 to continue till 10<sup>th</sup> January 2019.

(v) Both the review petitions are allowed in aforesaid terms. No order as to costs.

(vi) Parties as well as the office to act on the authenticated copy of this order.

***R.D. DHANUKA, J.***