

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

WRIT PETITION NO. 9608 OF 2018

**HAMID KHAN HABIB KHAN AND OTHERS
VERSUS
ABDUL WAHAB ABDUL RAZZAK AND OTHERS**

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Advocate for the Petitioners : Shri G. R. Syed
Advocate for Respondent No. 1 : Shri P. F. Patni
AGP for Respondent Nos. 2 and 3 : Shri S. R. Yadav - Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 10th APRIL, 2019.

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PER COURT :

1. While issuing notice, I had considered the submissions of the learned Advocates for the petitioners and the appearing parties in my order dated 31/08/2018, which reads as under :-

"1. The petitioners are aggrieved by the order dated 16/07/2018, passed by the Additional Divisional Commissioner, Aurangabad thereby deciding the Review Application filed by the petitioners on 16/07/2018, contrary to the notice of hearing issued dated 15/06/2018, listing the matter for hearing on the Review Application on 23/07/2018. Further startling contention is that the Review Application appeared on the board of the Additional Divisional Commissioner, Aurangabad on 23/07/2018 and also on 28/08/2018.

2. Issue notice to the respondents returnable on 07/09/2018.

3. The learned Advocate waives service for respondent No.1.

4. The learned AGP waives service for respondent Nos. 2 and 3."

2. I have heard the learned Advocates for the respective sides and the learned AGP at length. Primarily, in this petition, the grievance of the petitioners is that the Additional Divisional Commissioner preponed the date in the Review Application filed by the petitioners, from 16/07/2018 to 23/07/2018 and without hearing any litigating side, passed the order dated 16/07/2018 disposing off the Review Application filed by the petitioners.

3. The learned AGP indicates from the record that a clerk had unauthorizedly issued the notice on 15/06/2018, listing the Review Application, filed by the petitioners, for a hearing before the Additional Divisional Commissioner on 23/07/2018 at 3.00 p.m. He had no authority to do so. He had signed for and on behalf of the Additional Divisional Commissioner.

Disciplinary proceedings have been initiated against the said clerk Shri Pravin Adhane and action would be taken against him.

4. After hearing the learned Advocates and upon on going through the provisions of the Hyderabad Atiyat Inquiries Act, 1952 and the Rules framed thereunder, it is obvious that an order of condonation of delay passed by the Additional Divisional Commissioner cannot be subjected to a Review Application under Section 258 of the MLR Code. The MLR Code could have no applicability in such matters and especially to the extent of filing of a review since it is settled law that a Review Application can be entertained only if the power to review an order flows from a particular enactment. As such, the Review Application filed by the petitioners was not tenable. Consequentially, the order of the Additional Divisional Commissioner, Aurangabad dated 16/07/2018 would not call for an interference.

5. However, it needs to be noted that the Additional Divisional Commissioner namely Shri Shivanand Taksale

should have perused the record and should have noted that rightly or wrongly, a notice was issued by his office by a clerk Shri Adhane. If, as is submitted by the learned AGP, that the O.C. of the notice dated 15/06/2018 was not found in the proceedings before him and the matter came up before him for the first time, yet he could not have disposed off the Review Application without giving an opportunity of hearing, atleast to the applicant who needs to be heard before an adverse order is passed. It is elementary under the principles of natural justice that an adverse order cannot be passed without hearing a litigant.

6. In view of the above, I record my displeasure in the manner in which the Additional Divisional Commissioner Shri Shivanand Taksale has dealt with the proceedings and has passed the order dated 16/07/2018 without even issuing a notice to the petitioners who were the applicants. The learned Registrar (Judicial) shall place a copy of the order before the concerned Additional Divisional Commissioner and shall also forward a copy of this order to the Chief Secretary, State of Maharashtra.

7. The petitioners further submit, after carrying out an amendment in this Writ Petition, that the SDO did not give an opportunity of hearing to the petitioners and has delivered his impugned order on 16/08/2018. It is contended that an application for adjournment was filed and the SDO did not adjourn the proceedings.

8. The record reveals that on 13/08/2018, the petitioners sought an adjournment. It is further seen from the record that one adjournment was granted on 06/08/2018 and for the second time an adjournment was sought on 13/08/2018 on the ground that the Writ Petition is pending. The petition has been filed in this Court on 13/08/2018. The impugned order passed by the SDO indicates that Shri S. A. Shaikh and Shri Manoj Deshpande, Advocates appeared on behalf of the petitioners and submitted their written statement, as well as, advanced oral arguments.

9. In view of the above, since a statutory remedy under Section 11 of the Hyderabad Atiyat Enquiries Act, would

enable the petitioners to prefer an appeal before the Collector, Atiyat, Jalna, this petition is disposed off. The petitioners have a statutory remedy and are at liberty to avail of the said remedy. All contentions of the litigating sides are kept open *insofar* as the condonation of delay order passed by the Additional Divisional Commissioner on 27/02/2018 is concerned and the order of the SDO dated 16/08/2018.

(RAVINDRA V. GHUGE, J.)

shp/-