

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

WRIT PETITION NO. 250 OF 2019

**BHAUSAHEB NAGESH RUPWATE AND OTHERS
VERSUS
JABA MARUTI RUPWATE AND OTHERS**

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Advocate for the petitioners : Shri S. S. Dixit
Advocate for Respondent Nos.1A, 1B, 2 and 3 : Shri V. Y.
Bhide
AGP for Respondent No. 5 : Shri S. R. Yadav - Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th JUNE, 2019.

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PER COURT :

1. The petitioners are aggrieved by the registration of the Appeal filed by respondent Nos. 1 to 3 and issuance of notice to the petitioners by the SDO. This Court (Coram : Sunil P. Deshmukh-J.) issued notices to the respondents on 08/01/2019.

2. I have heard the learned Advocates for the respective sides and the learned AGP on behalf of the statutory authorities.

3. The contention of the petitioners is that respondent Nos. 1 to 3 filed an application for amendment before the Tahsildar, Sangamner. The said application was allowed by order dated 01/09/2015. At the stage of final arguments in the proceedings before the Tahsildar, respondent Nos. 1A, 2 and 3 filed an application for seeking amendment to their written statement filed on 02/01/2018. On 06/01/2018, the Tahsildar rejected the application and refused amendment. Respondent Nos. 1 to 3 filed an application for review. By order dated 21/09/2018, the Review Application was rejected. Respondent Nos. 1 to 3 filed an RTS Appeal on 23/10/2018 before the SDO.

4. It is further submitted that the petitioners *suo moto* appeared in the Appeal on 15/11/2018 and filed an application before the SDO that the Appeal is not maintainable under Section 252 of the MLR Code. The SDO registered the Appeal and issued notices to all the litigating sides so as to cause a hearing.

5. The thrust of the petitioners case is that the SDO should

not have registered the Appeal and should have passed an order on an application filed by these petitioners objecting to the maintainability of the Appeal.

6. The learned AGP submits that the SDO, while passing any order in his capacity as a quasi judicial authority, has to maintain the record of the proceedings and for which the daily roznama also has to be maintained. If the Appeal is not to be registered and owing to which the application filed by these petitioners would not have been registered in the absence of any proceedings before the SDO, it is circumspect as to how the SDO would have passed an order on the application filed by these petitioners without there being any proceedings.

7. The learned Advocate for the petitioners now submits that since the Appeal is registered, the SDO should first deal with the objection application filed by these petitioners and should not touch the other issues raised in the Appeal.

8. I find that as the Appeal was required to be registered without which the SDO would not have any proceedings

before him, he has not committed any error in doing so. *Insofar* as the objection application is concerned, it is by now well settled that such summary proceedings should not be dealt with in bits and pieces. The objections of the petitioners alongwith their grounds for opposing the Appeal could be considered together in such summary proceedings.

9. Section 255 of the MLR Code provides for the appellate authority exercising its discretion either to admit the Appeal or call for the record and give an opportunity of hearing to the Appellant followed by which, he may summarily reject the said Appeal. The record, however, reveals that these petitioners *suo moto* appeared before the SDO and moved an application. He has still not passed an order of admitting the Appeal and as such, it is obvious that these petitioners have unnecessarily rushed to this Court before the SDO could pass any order under subsection 1 of Section 255 of the MLR Code.

10. Considering the above, this petition is dismissed with costs. The learned AGP as well as the learned Advocate for respondent Nos. 1A, 1B, 2 and 3 submit that the costs may be

donated for the treatment of poor patients at Aurangabad. As such, the petitioners shall deposit a total cost of Rs. 5,000/- (Rs. Five Thousand only) 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 Dengi Samiti”**), within four weeks from today. After depositing the amount, the receipt shall be produced before the SDO to indicate the amount deposited and only thereafter the SDO would proceed to hear the matter.

11. It is made clear that notwithstanding the fact situation emerging from the record, in the event the SDO could decide the Appeal summarily considering Section 252 and Section 255(1), before passing a formal order of admitting the Appeal, he would be at liberty to hear the litigating sides and pass a reasoned appropriate order.

(RAVINDRA V. GHUGE, J.)

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