

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4990/2017

(Rashid Khan Yusuf Khan and others Vs. The Divisional Commissioner, Amravati)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri M. I. Dhatriak, Advocate for Petitioners.
Shri B.M. Lambat, Assistant Government Pleader for Respondent No.1.

CORAM: RAVINDRA V. GHUGE AND
S.M. MODAK, JJ.

DATE: 4th FEBRUARY, 2020.

1] The learned Advocate for the petitioners submits that respondent No.2 would not be a contesting party and can be deleted. Deletion is permitted. Deletion to be carried out forthwith.

2] The petitioners are aggrieved by the order dated 03.02.2017 passed by the Divisional Commissioner, Amravati vide which, about 39 persons have been held liable for recovery of amounts under the Bombay Local Fund Audit Act, 1930.

3] This petition was filed on 19.04.2017. A statutory remedy under Section 13(1) of the Bombay Local Fund Audit Act, 1930, is available to the petitioners and considering the view expressed by the Hon'ble Apex Court in the matters of the *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin Educational Society (2019 SCC Online SC 1292) in Civil Appeal No.7764/2019, dated*

03.10.2019 and in the matter of ***Genpact India Private Limited Vs. Deputy Commissioner of Income Tax in Civil Appeal No.8945/2019, dated 22.11.2019***, the petitioners deserves to be relegated to the statutory remedy.

4] However, we find that the issue before us pertains to recovery of amounts as mentioned in the impugned order at page 54. Only 11 persons have challenged the said order out of the 39 who have been held liable.

5] There is no dispute that the hearing was posted by the Divisional Commissioner on 19.11.2016, 26.12.2016 and 27.12.2016 when these petitioners remained absent. It is clarified that though the petitioners were absent, their Advocate was present and had sought adjournments. The Divisional Commissioner finally passed an order on 03.03.2017 which is impugned in this petition.

6] Though we find that the Advocate for the 11 petitioners had sought frequent adjournments, which was not justified, the ends of justice would be made by directing these 11 persons to deposit the entire amounts as well as by imposing costs of Rs.1,000/- per petitioner which can be donated to the Advocate's Bar Library, Nagpur. In addition, we would be setting a time frame for the appearance of these parties and their participation so that further controversy as regards whether an opportunity of hearing was granted or not, would be put to rest.

7] In view of the above, this petition is partly allowed purely on the ground of granting an opportunity of hearing to the petitioners, subject to the following directions :-

- a. The impugned order dated 03.03.2017 shall stand set aside.
- b. The petitioners shall deposit the entire amounts as assessed by the impugned order, with the respondents, on or before 15.02.2020, failing which this order shall stand recalled and this petition would stand dismissed.
- c. The petitioner shall also deposit a total amount of Rs.11,000/- in this Court on or before 15.02.2020, without prejudice to the rights and contentions in this proceedings and the Registry of this Court shall transfer the said amount to the Advocate's Bar Library, Nagpur.
- d. These petitioners, or through their Advocates, shall appear before the sole-respondent on 21.02.2020 at 3.00 p.m.. No adjournment would be sought. Oral and written submissions are permitted.
- e. The respondent shall conclude the hearing in the matter on or before 07.03.2020 and shall deliver an order on 31.03.2020 at 3.00 p.m. The petitioners would be obliged to remain present on the date of the pronouncement of the order.

f. If the petitioners are aggrieved by the said order, they shall resort to the remedy under Section 13(1) of the Bombay Local Fund Audit Act, 1930 and shall be precluded from filing a Writ Petition directly in this Court.

g. It is made clear that this order shall be applicable only to the case of these 11 petitioners.

(S.M. Modak, J.)

(Ravindra V. Ghuge, J.)