

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

44 WRIT PETITION NO.10623 OF 2022

Madhukar S/o Dagdoji Deshmukh,

...Petitioner

VERSUS

1. Sub Divisional Officer, Aurangabad.

2. Laxibai/Laxmibai Marotirao Gaikwad,

3. Laxman Maroti Gaikwad,

4. Rukhminbai Raju Mali,

5. Saliram Laxman Dabhade,

6. The Collector, Aurangabad.

...Respondents

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Advocate for Petitioner : Mr.Hange Sandesh V.
AGP for Respondent Nos. 1 & 6/State : Mr. S.B.Pulkundwar
Advocate for Respondent Nos. 2 to 5 : Mr. Thombre S.S.

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CORAM : KISHORE C. SANT, J.

DATE : 17.08.2023.

PER COURT :

1. Heard the learned Advocate for the Petitioner, the learned Advocate for respondent Nos. 2 to 5 and the learned AGP for Respondent Nos. 1 & 6.

2. Respondent Nos. 2 to 5 at the inception raised an objection about the maintainability of the petition as the petition is only against order issuing notice to the petitioner on the point of entertaining the application. He submits that till now no judicial mind is applied and the issuance of notice cannot be said to be an order, which can be challenged before this Court.

3. The learned Advocate for the petitioner submits that in fact the issuance of notice shows that the authority had applied its mind and thereafter the notice is issued. He submits that said notice also shows that the authority has applied judicious mind and that the case is required to be adjudicated at the hands of the said authority. His submission is that thus, there is limited application for judicial mind,. Thus the nature of the order would become quasi judicial order.

4. He relief upon a judgment reported in **2006 (2) Mh.L.J. 173** (Bom.) – Jyoti w/o Anil Ganeshpure vs. State of Maharashtra and Ors., wherein the Court had held that even a show cause notice itself shows application of mind and can be

challenged before this Court. Paragraph No. 9 which reads as under :

"It is apparent that before Calcutta High Court question whether proceedings were of quasi-judicial nature and whether any order was passed in it before issuing the impugned notices to the petitioner before it did not arise for consideration. Further that petitioner had challenged the order of assessment and also notices. Hence, I find that the Hon'ble Calcutta High Court considered the controversy in entirely different background and no support can be drawn from this ruling for considering the present controversy. Here, the character of respondent No. 3 as quasi-judicial authority is not in dispute. It is further apparent that applicants in Civil application 3465/2005 made application to respondent number three for removal of present petitioner on the ground that she has incurred disqualification under section 16(1)(i) of the 1961 Act. Respondent No. 3 is competent authority under said Statute to take cognizance of such disqualification and to initiate action therefor. Thus, said respondent has judicially applied his mind to the complaint received and prima facie, was satisfied that the case for initiation of proceedings for removal of petitioner has been made out. Therefore, only said respondent issued notice to show cause as to why action under Section 40 (2) of 1961 Act should not be taken against her to petitioner. Thus, the judicial process started when respondent No. 3 applied his mind and took cognizance in the matter. Even if latter on he finds that petitioner is not disqualified, it would be a order exonerating petitioner and applicants would be entitled to challenge it. In such circumstances, show cause notice is not a plain simple administrative step taken by respondent No. 3. He has set into motion a quasi-judicial

inquiry and hence, the show cause notice in the matter is like a “show cause order” as clarified in Black Law Dictionary (supra). In such circumstances, I find that the view expressed by Hon’ble Calcutta High Court is not relevant and applicable in the facts and circumstances of the present case.”

5. However, it is seen that in the said judgment the authority had applied its mind and taken cognizance and thus the judicial process was started. It was held that a show cause notice is not plain simple administrative steps taken by the authority therein but that set into motion the quashi-judicial inquiry and therefore, in such case, even show cause notice is in the nature of “show cause order”. It is held that the petition is maintainable.

6. He further relied upon the judgment reported in 2011 SCC Online Bom. 288, in the case of Munjaji through legal representative and Another Vs. State of Maharashtra, Through Government Pleader High Court and Others. It was the case wherein the authority had decided to reopen the proceedings suo-moto in the proceedings under Section 42 (2) of the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961.

7. He also relied upon the full Bench Judgment reported in 1989 Mh.L.J. 1011, in Manohar Ramchandra Manapure and Ors. Vs. State of Maharashtra and another wherein, the Full Bench had again considered the question of maintainability. In that case the preliminary objection was raised before the Commissioner, Nagpur Division, regarding bar of limitation in initiating the Revisional Proceedings under Section 42 (2) – Proviso of the Ceiling Act. In that view it was held that necessary application of mind was shown on the part of the learned Commissioner, as the learned Commissioner had taken cognizance of the matter beyond a period of 3 years.

8. Looking to the nature of the order presently under challenge, this Court finds that the order cannot be said to be quasi-judicial or judicial in nature. There is no adjudication even on a preliminary issue. Thus, notice cannot be said to be a notice issued by applying judicial mind but it is simple notice calling upon the petitioner to appear for explaining on the point as to whether the cognizance needs to be taken of the proceedings.

9. Considering this position, this Court finds that the order under challenge is not a judicial or quasi-judicial order and thus, the Writ Petition is not maintainable. In view of the same, the petition stands disposed off.

10. At this stage, the learned Advocate for the petitioner requests the Court to specify that the authority to decide first the issue of maintainability of the petition etc. This Court finds that it is needless to state that any authority will certainly pass an order by giving the hearing to the parties. All the objections can be raised before the said authority and for that purpose no specific order is necessary.

(KISHORE C. SANT)
JUDGE

mahajansb/