



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

WRIT PETITION NO. 4890 OF 2023

(Swayam Roajgar Pradhashani, Anand Mela Vs. State of Maharashtra & Ors.)

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

Court's or Judge's order

Shri S.A. Mohta, Advocate for the petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : SEPTEMBER 12, 2023

Heard.

2] The challenge raised in the present Writ Petition is to the communication dated 31/3/2023 that has been issued by the Sub-Divisional Officer, Wardha by which it has been directed that various applications received pursuant to the communication dated 27/12/2022 issued by the Collector, Wardha in the matter of allotment of open spaces/playgrounds for a temporary period to undertake activities of amusement have been cancelled. Challenge is also raised to the communication dated 26/4/2023 issued by the Sub-Divisional Officer, Wardha indicating the manner in which applications were required to be made for allotment of such open spaces for a temporary period on rental basis.

3] It is the case of the petitioner that it is engaged in the activities of organizing exhibitions at such open spaces wherein items of entertainment, etc. are conducted. The matter is governed by the Government Resolution dated 3/3/2007 issued by the Revenue and Forest Department, State of Maharashtra wherein it is stated that allotment of such open spaces/playgrounds ought to be made on the basis of policy of first come first serve by accepting the amount of rent. On 27/12/2022, the Collector issued an order in which it was stated that in the matter of allotment of such open spaces at plot Nos. 27/1 and 27/3 at Mouza – Pulgaon, Taluka – Deori, District – Wardha. The Sub-Divisional Officer and Nazul Officer were directed to prepare a programme in the matter of receiving applications from the interested parties. Publicity was directed to be given by having such notice published in the local newspapers and also by publishing the same on the notice board of the local Authorities. Accordingly, on

27/12/2022 itself, such intimation was given. The petitioner on 2/1/2023 made its application seeking allotment of open space for the period from 5/9/2023 to 25/9/2023. The petitioner's application was received first in time along with about sixteen other applications. However, on 31/3/2023, all applications that were received pursuant to the order dated 27/12/2022 issued by the Collector came to be cancelled by the Sub-Divisional Officer on the ground that there was a difficulty in making allotment of the open spaces and it was likely that disputes could arise in future. A fresh programme was accordingly published on 26/4/2023 by the Sub-Divisional Officer, Wardha stipulating the period within which applications were to be received for consideration. A condition was imposed with regard to registration of the entity making such application as well as the necessity of its accounts being audited. It is in this backdrop that the petitioner has challenged the communication dated 31/3/2023 as well as 26/4/2023 issued by the Sub-Divisional Officer in this regard.

4] After hearing the learned Counsel for the parties and after perusing the documents on record, it is seen that though initially the Collector on 27/12/2022 had directed the Sub-Divisional Officer to take necessary steps in accordance with the Government Resolution dated 3/3/2007 and accept the application forms from the interested parties in physical mode, the manner of submission of forms came to be modified by the Sub-Divisional Officer on 31/3/2023. The Sub-Divisional Officer rejected all the applications received and on 26/4/2023 published a fresh programme for accepting the applications physically. The petitioner was interested in seeking allotment of open space/playground during Ganesh festival in September – 2023. The petitioner did apply for being allotted the open space/playground but its application came to be rejected on the ground that it was not a registered entity and that its accounts were not audited.

Though the Sub-Divisional Officer proceeded to cancel the process that was undertaken pursuant to the order passed by the Collector on 27/12/2022 and rejected all applications that were received by his communication dated 31/3/2023 coupled with the fact that on 26/4/2023 a fresh programme was published pursuant to which the petitioner had applied for allotment of such

space, the petitioner initially neither challenged the communication dated 31/3/2023 nor the programme published on 26/4/2023. On the contrary, the petitioner participated in the fresh process initiated by the Sub-Divisional Officer by submitting its application for item No.2 therein pertaining to the period of allotment for Ganesh festival. Though the requirement of the entity being registered and the requirement of audit were prescribed in the notice dated 26/4/2023, the petitioner did not challenge the same immediately. The present Writ Petition has been filed only on 2/8/2023. The delay in raising challenge to the notice published on 26/4/2023 is fatal inasmuch as had such challenge been raised immediately, the matter could have been considered much prior to the schedule prescribed in that notice. In these facts therefore we are not inclined to consider such belated challenge at the behest of the petitioner.

It may be stated that the petitioner sought to raise various grounds in challenge of the aforesaid communications including the ground that the Sub-Divisional Officer having been delegated the task of allotment of open spaces by the Collector he could not have modified the conditions thereof. For the reasons stated hereinabove, we find that the petitioner is precluded from raising such challenge to the terms and conditions in view of the belated challenge to the notice dated 26/4/2023.

5] The Writ Petition is thus dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

SUMIT