



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

WRIT PETITION NO.5729 OF 2022

[Ratnakar Wamanrao Wahane .vs. District Magistrate/Appellate Authority, Senior Citizen Maintenance Tribunal, Civil Lines, Nagpur and others]

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

Court's or Judge's orders

Shri A.R. Ingole, Advocate for the petitioner,
 Shri H.D. Dubey, AGP for respondent nos.1 and 2,
 Shri P.J. Mehta, Advocate for respondent nos.3 to 6.

CORAM : ANIL S. KILOR, J.
DATE : 13.09.2023.

1. The order dated 26.05.2022 passed by the respondent no.2–Sub-Divisional Officer and President of Maintenance and Welfare of Parents and Senior Citizens, Nagpur, rejecting the application filed by the petitioner for grant of maintenance, is under challenge in this writ petition.

2. The only ground raised in this petition is that the inquiry was not conducted as per Section 8 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rule 13 of the Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rules, 2010 framed under the Act of 2007.

3. In view of the above referred challenge raised in this writ petition, it would be appropriate to refer to **Section 8 and Rule 13** which read thus :

“8. Summary procedure in case of inquiry – (1)
 In holding any inquiry under section 5, the Tribunal may, subject to any rules that may be

prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

(2) The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) Subject to any rule that may be made in this behalf, the Tribunal may, for the purpose of adjudicating and deciding upon any claim for maintenance, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.”

Rule 13 of the Rules 2010 – Action by Tribunal in other cases (1) In case, -

(i) the applicant (s) and the opposite parties do not agree for reference of their dispute to a Conciliation Officer under rule 10, or

(ii) the Conciliation Officer appointed under rule 10 sends a report under sub-rule (3) of rule 11, conveying his inability to arrive at a settlement acceptable to both the parties, or

(iii) no report is received from a Conciliation Officer within the stipulated time-limit of one month, or

(iv) in response to the notice issued under sub-rule (1) of rule 12, either of the parties decline to confirm the settlement worked out by the Conciliation Officer,

the Tribunal shall give to both the parties an opportunity of leading evidence in support of their respective claims, and shall, after holding a summary inquiry as provided in sub-section (1) of

section 8, pass such order as it may deem fit.

(2) An order passed under rule 7, 8 or sub-rule (1) above, shall be a speaking order, spelling out the facts of the case as ascertained by the Tribunal, and the reasons for the order.

(3) While passing an order under sub-rule (1), directing the Opposite Party to pay maintenance to an applicant, the Tribunal shall take the following into consideration, namely:-

(a) amount needed by the applicant to meet his basic needs, especially food, clothing, accommodation, and health care;

(b) income of the opposite party;

(c) value of, and actual and potential income from the property, if any, of the applicant which the opposite party would inherit or is in possession of.

(4) A copy of every order passed, whether final or interim, on an application, shall be given to the applicant (s) and the Opposite Party or their representatives, in person, or shall be sent to them through a process server or by registered post.

4. Section 8 of the Act of 2007 says that in holding any inquiry under section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit.

5. It is also evident from the provisions, particularly sub-section (2) of section 8 that the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed.

6. Rule 13 (1) of the Rules of 2010 says that the Tribunal shall give to both the parties an opportunity of leading evidence in support of their respective claims, and shall, after holding a summary inquiry as provided in sub-section (1) of section 8, pass such order as it may deem fit.

7. In the present matter, admittedly no such procedure has been followed. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the Sub-Divisional Officer for deciding the same afresh, in accordance with the law, and under Section 8 of the Act of 2007 and Rule 13 of the Rules of 2010. Accordingly, I pass the following order :

O R D E R

- (i) The writ petition is partly allowed.
- (ii) The order dated 26.05.2022 passed by the respondent no.2–Sub-Divisional Officer and President of Maintenance and Welfare of Parents and Senior Citizens, Nagpur is hereby quashed and set aside.
- (iii) The matter is remanded back to the Sub-Divisional Officer to decide the same afresh, after hearing both the parties and after following the procedure, as referred above.
- (iv) The parties shall appear before the Sub-Divisional Officer on **5th October, 2023** at 12.00 noon.
- (v) Thereupon, the Sub-Divisional Officer shall decide the application within three months from the date of appearance of the parties.

(ANIL S. KILOR, J.)