



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO. 591 OF 2024

Dhananjay Deoram Jadhav,
Age-34 years, Occu-Agriculture,
R/o At Post : Dhandhane,
Tq. and Dist.Dhule

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.

2. The Collector,
Dhule, Dist. Dhule

3. The Tahsildar,
Dhule, Tq. And Dist. Dhule

-- RESPONDENTS

Mr.Y.B.Bolkar, Advocate for the Petitioner.
Mr.S.B.Narwade, AGP for the Respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : JANUARY 16, 2024

ORAL JUDGMENT (Per Ravindra V Ghuge, J):

1. Rule. Rule is made returnable forthwith and heard finally
by the consent of the parties.

2. The Tahsildar has passed certain orders and has carried out mutation entries by recording the factum of *lis-pendence*. The Petitioner has moved an application/representation dated 23.03.2023 calling upon the Tahsildar to review his own orders and set aside the mutation entries that were carried out under his orders.

3. The learned AGP submits that merely because a representation is filed, does not mean that the Court should direct an Officer to entertain a revision. So also, this would amount to seeking a review by the Tahsildar of his own mutation entries.

4. We are of the view that, a Writ of Mandamus is issued when the Court notices that a particular Officer refuses to exercise jurisdiction duly vested in him by Law for deciding particular matters and in a particular manner, warranting the High Court to issue a 'Command' to ensure that he exercises the jurisdiction vested in him by Law. As such, issuance of such a command is a reprimand to a statutory authority/officer for not discharging or failing to discharge, the legal obligation of exercising jurisdiction duly vested in him by law.

5. It would be apposite to refer to a few judgments defining the scope of a Writ of Mandamus. In **Naresh Kumar and Others Vs. Government (NCT of Delhi) [(2019) 9 SCC 416]**, it was held by the Hon'ble Supreme Court (3 Judges Bench) that, review is not an inherent power. It can be exercised only when the Statute provides for the same expressly / specifically or by necessary implication. In the absence of any such provision in the Statute, power of review cannot be exercised in case of judicial / quasi judicial orders. Exercise of powers of review in absence of express provision would be ultravires, illegal and without jurisdiction.

6. In **Sureshsing s/o Sattarsingh Girase Vs. State of Maharashtra and Others [2021(6) Mh.L.J.617]**, this Court concluded that review of earlier orders passed would be impermissible since the scope of review is a creation of the Statute and would flow only from the provision of Law. Power of review can be exercised only if the Statute so provides. Reference was made by this Court to the judgments delivered in (1) *Dr.Smt.Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (UP) and others [(1987) 4 SCC 525]*, (2) *O.P.Gupta Vs. Union of India and Others, [(1987) 4 SCC 328]*, (3)

Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others [2010 Mh.L.J.Online (S.C.) 53 = (2010) 9 SCC 437], (4) *Naresh Kumar and Others Vs. Government (NCT of Delhi)* (2019) Mh.L.J. Online (S.C.) 106 = (2019) 9 SCC 416.

7. In **U.P.State Road Transport Corporation and another Vs. Mohd.Ismail and others** [(1991) 3 SCC 239], the Hon'ble Supreme Court (3 Judges Bench) has concluded in paragraph Nos.11 and 12 as under :-

“11. The view taken by the High Court appears to be fallacious. The discretion conferred by [Regulation 17\(3\)](#) confers no vested right on the retrenched workmen to get an alternative job in the Corporation. Like all other statutory discretion in the administrative law, [Regulation 17\(3\)](#) creates no legal right in favour of a person in respect of whom the discretion is required to be exercised other than a right to have his case honestly considered for an alternative job by the Corporation.

12. The High Court was equally in error in directing the Corporation to offer alternative job to drivers who are found to be medically unfit before dispensing with their services. The Court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The Court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The Court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion

according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The Court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would be beyond the jurisdiction of the Court.”

8. In **Director of Settlements, A.P. and Others Vs. M.R.Apparao and another [(2002) 4 SCC 638]**, the Hon’ble Supreme Court (3 Judges Bench) has explained the meaning of Writ of Mandamus. It is held that Mandamus means a command. Existence of a legal right to the performance of a legal duty by a public authority on the date of the petition, is one of the conditions precedent for issuing a Writ of Mandamus. High Court committed a serious error in issuing Mandamus directing release of interim payments.

9. In **Union of India and another Vs. S.B.Vohra and Others [(2004) 2 SCC 150]**, the Hon’ble Supreme Court has held in paragraph nos. 12, 13, 32, 33, 52 and 53 as under :-

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the

King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is a most extensive remedial nature. The object of mandamus is of to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.

32. It is not possible to lay down the standard exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. In other words, exercise of its discretion by the Court will also depend upon the law which governs the field, namely, whether it is a fundamental law or an ordinary law.

33. It is, however, trite that ordinarily the Court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory authorities to perform their own functions and would not usher the said jurisdiction itself.

52. The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the

Central/ State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefor. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not ad idem, the matter should be discussed and an effort should be made to arrive at a consensus.

53. We are further of the opinion that only in exceptional cases the High Court may interfere on the judicial side, but ordinarily it would not do so. Even if an occasion arises for the High Court to interfere on its judicial side, the jurisdiction of the High Court should be exercised with care and circumspection.”

10. It is further held that the limitations on the exercise of discretion while issuing a Writ of Mandamus, are such that unless public law element is involved, Court should not ordinarily interfere with the performance of statutory duty by a statutory authority and should not exercise its writ jurisdiction.

11. The learned Advocate for the Petitioner submits that he can not cite any such provision of Law by which a Tahsildar could review

his orders carrying out mutation entries. We find that on the one hand, there is no statutory provision by which the Tahsildar can review his own orders. On the other hand, the statutory provision enables the Petitioner to file an appeal. The representation tendered by the Petitioner is without any foundation of Law and we cannot entertain a Writ Petition for issuing a direction under the Writ of Mandamus to the Tahsildar to deal with such representation when he does not have the power to review his own orders.

12. In view of the above, we do not find that the representation made by the Petitioner, calling upon the Tahsildar to review his orders of carrying out mutation entries, could be entertained. **This Petition, being devoid of merit, is therefore dismissed.** Rule is discharged.

13. Liberty is granted to the Petitioner to avail of any statutory remedy as is permissible in Law.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)