



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

941 WRIT PETITION NO. 4120 OF 2024

SHIVAJI GUNWANT KOLHE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

...

Advocate for the Petitioner : Mr. Tambe Rahul A.

AGP for Respondent/State : Dr. Kalpalata Patil Bharaswadkar

Advocate for Respondent nos.2 and 3 : Mr.Manale Satish S.

...

CORAM : ROHIT W. JOSHI, J.

DATED : 18th June, 2025

PER COURT :

1. The present petition takes exception to order of suspension dated 22.11.2023 passed by the Block Development Officer, Panchayat Samiti, Ahmedpur (for short, "BDO"), which in turn is approved by the Chief Executive Officer, Zilla Parishad, Latur (for short, "CEO"), vide order dated 28.12.2024.

2. Perusal of the suspension order dated 22.11.2023 will indicate that the BDO had marked copy of the order to the CEO to grant *ex post facto* approval to the order of suspension. The CEO has granted *ex post facto approval* to the order of suspension vide order dated 28.12.2024.

3. It appears from the documents filed on record that

the petitioner has filed appeal dated 10.01.2024 (Annexure "C") under Rule 12(1) of the of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 along with the application for stay (Annexure "B"). However, the order dated 28.12.2024 is not an order passed in appeal. It is an order granting approval to the order of suspension.

4. The learned counsel for respondent nos.2 and 3 raises an objection that the orders impugned in the present petition are administrative orders, and therefore, the petition should lie before the Division Bench. He contends that under Chapter XVII Rule 18 of the High Court Appellate Side Rules, jurisdiction of a Single Judge is only with respect to judicial or quasi judicial orders and not with respect to administrative orders. He places reliance on *Chandrakant S/o Damodar Kale Vs. Nagpur Improvement Trust, through its Executive Officer* reported in *1997(4) BCR 607*, wherein in para 5 of the decision, it is clearly indicated that an order of suspension is not a judicial or quasi judicial order and that it is merely an administrative act. The learned Advocate also places reliance on Single Bench judgment of this Court in the matter of *Damodar Jairam Sao Vs. Deputy Charity Commissioner and others*, reported in *2012(3) BCR 684*, wherein it is held that an order passed under Section

41-A of the Maharashtra Public Trust Act, 1950 is amenable to jurisdiction of Division Bench since the said order is purely administrative order and not judicial or quasi-judicial order.

5. Per contra, learned advocate for the petitioner has placed reliance on following judgments to contend that the petition will lie before a Single Judge and not before the Division Bench :-

(a) Judgment dated 18th July, 2023 in the matter of ***Shankar Bhausahab Gaikwad Vs. The State of Maharashtra and another in Writ Petition No.2499/2023.***

(b) **Prakash Securities Pvt. Ltd., Vs. Life Insurance Corporation of India and another reported in 2012(5) Mh.L.J. 312 (FB.)**

(c) ***Jyoti w/o Anil Ganeshpure Vs. State of Maharashtra and others*** reported in ***2006(2) Mh.L.J. 173.***

6. Under the scheme of Bombay High Court Appellate Side Rules, as will be apparent from Chapter I Rule 1, Chapter XVII Rule (1) and (17), jurisdiction to deal with all matters is vested with a Division Bench. Jurisdiction of a Single Judge is by way of an exception. Chapter I Rule 1 provides that except in cases otherwise provided by Rules, civil and criminal jurisdiction of the High Court on its appellate side shall be exercised by a

Division Bench of two or more Judges. Chapter XVII deals with petitions filed under Article 226 and 227 as also applications filed under Article 228 of the Constitution of India. Chapter XVII Rule 1 provides that every petition under Article 226 shall be heard and disposed of by a Division Bench. Likewise, Chapter 17 Rule 17 provides that petitions and applications filed under Article 227 and 228 respectively of the Constitution of India shall be heard and disposed of by a Division Bench. Thus, the general rule is that all the matters should be heard by a Division Bench.

7. Chapter XVII Rule 18 provides for jurisdiction of a Single Judge to hear and finally decide petitions under Article 226 and 227 of the Constitution of India. Every entry in Chapter XVII Rule 18 speaks about an order passed under a particular enactment. However, Rule 18(3) is a general provision under which decrees or orders passed by any sub-ordinate Court or quasi judicial authority in any suit or proceeding is covered. In this context, it is necessary to refer to the provision with definition of the term "order" as provided under explanation to Chapter XVII Rule 18, which reads as under :-

"18. Single Judge's powers to finally dispose of applications under Article 226 and 227.-Notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution

(or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of -

(3) The decrees or the orders passed by any Subordinate Court or by any quasi Judicial Authority in any suit or proceeding (including suits and proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court and orders passed under the Recovery of Debts due to Banks and Financial Institutions Act, 1993; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Goa Commission for Schedule Caste and Schedule Tribes Act, 2010);

may be heard and finally disposed of by a Single Judge appointed in this behalf by the Chief Justice:

Explanation.- The expression "order" appearing in Clauses (1) to (56) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the above mentioned statutes.

Perusal of the provision leaves no doubt that the jurisdiction of a Single Judge will be restricted to entertain petitions against any judicial or quasi judicial order.

8. It is, therefore, necessary to determine the nature of the orders impugned in the present petition. The order dated 22.11.2023 is a transfer order and the subsequent order dated 28.12.2024 is an order granting ex post facto sanction to the said

transfer order. Both these orders are administrative orders and not judicial or quasi judicial orders as has been held in the matter of ***Chandrakant Damodar Kale (supra)***, which is cited by the learned advocate for respondent nos.2 and 3. The judgment in the matter of ***Damodar Jairam Sao (supra)*** referred by learned advocate for respondent nos.2 and 3 clearly lays down that challenge to administrative order will lie before the Division Bench.

9. In view of the aforesaid judgments, the present matter should lie before a Division Bench and not before Single Judge.

10. However, it is also necessary to consider the judgments on which the learned advocate for the petitioner has placed reliance :-

(i) ***Prakash Securities Pvt. Ltd., Vs. Life Insurance Corporation of India and another*** reported in ***2012(5) Mh.L.J. 312 (F.B.)***:- This judgment is pertains to action under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act. The subject matter of challenge in the petition was an order passed by the City Civil Court under the said Act. Dealing with the

contention that the petition shall be heard by a Division Bench, it is held as under :-

"5. Having heard the learned Counsel appearing for parties, we find that Clause (3) of Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960, is wide enough to include the orders passed by any quasi-judicial authority under any enactment, even if such explanation is not covered by clauses 1, 2 and 4 to 43 of Rule 18. It is necessary to note that the original Rule 18 had 5 clauses providing that the orders passed under the Rules and legislations specified therein may be challenged in the writ petition before the Single Judge. It appears that subsequently several clauses came to be added to Rule 18. In the year 1997 by Notification dated 16-10-1997, the Explanation came to be added. It was thereafter by Notification dated 15-7-1999 that Clause (3) of Rule 18 came to be amended to insert the words "or by any quasi-Judicial Authority". It appears to us that this amendment to Clause (3) of Rule 18 was made in the year 1999 to cover orders of any quasi-Judicial Authority under any other legislation which may not have been specified in Clause (1) to (43). Hence, the order passed by the quasi-Judicial Authority under the Public Premises Act, 1971 is also covered by Rule 18(3) so as to indicate that the petitions under Articles 226 or 227 of the Constitution challenging the order of quasi-

Judicial Authority under the Public Premises Act, 1971 is to be heard and decided by the learned Single Judge of this Court."

Under the scheme of the said Act, an order of eviction is required to be passed in compliance of principles of natural justice after giving opportunity of hearing. Function performed by the Estate Officer under the said Act is essentially a quasi judicial function. It is therefore held that the petition can be entertained by a Single Judge.

(ii) ***Jyoti w/o Anil Ganeshpure Vs. State of Maharashtra and others*** reported in ***2006(2) Mh.L.J. 173*** :- The petitioner in the said matter was President of Zilla Parishad, who had challenged a show-cause notice issued under Section 16(1)(i) of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961, asking her to show cause as to why order of disqualification should not be passed against her under the said provision. The matter was listed for adjudication before a learned Single Judge. An objection was raised that since a show-cause notice was under challenge, the petition would lie before a Division Bench. Rejecting the contention, the learned Single Judge has held that the term "order" under Chapter XVII Rule 18 is wide enough to include any notice, which is issued for passing the ultimate order.

It is held that decision to issue a show-cause notice is an order under the said provision. Since the order to be ultimately passed was to be of a quasi-judicial nature, it was held that the challenge to show-cause notice will also lie before a Single Judge and not a Division Bench. It will be pertinent to mention here that the judgment refers to earlier Division Bench judgment in the matter of ***Ramchandra Naik Vs. State of Maharashtra*** reported in ***2005(3) Mh.L.J. 933***, wherein it is held that an order under Chapter XVII Rule 18 of the Appellate Side Rules is necessarily a judicial or quasi judicial order and not an administrative order. In paragraph no.10 of the judgment also it is observed that the term order under the provisions means order passed by any judicial or quasi-judicial authority. The judgment does not support the contention of the petitioner that a transfer order, which is essentially an administrative order can be assailed before a Single Judge.

(iii) Judgment dated 18th July, 2023 in the matter of ***Shankar Bhausaheb Gaikwad Vs. The State of Maharashtra and another in Writ Petition No.2499/2023:-*** This judgment holds that in view of Chapter XVII Rule 18(3) any decree or order passed by any subordinate Court or Authority in a suit or a proceedings under any special or local law, excluding enactments mentioned in the

said provision will lie before the Single Judge. In paragraph 4 of the judgment, the learned single Judge has observed as under :-

"4. As regards maintainability of the petition before the Single Bench he places reliance upon the judgment in the case of Jyoti Anil Ganeshpure Vs State of Maharashtra and others reported in 2006 (2) MHLJ 173 wherein this court specifically by considering Rule 18(3) of the Chapter-XVII with explanation that the matter would come before the Single Bench where even the show cause notice is issued by the Commissioner under Section 16(1)(i) of the 1961 Act. He further relies upon the full bench judgment in the case of Prakash Securities Pvt. Ltd. Vs. Life Insurance Corporation of India and another reported in 2012 (5) MHLJ 312 wherein full Bench has held that Chapter XVIII Rule 18 clause (3) is wide enough to include the orders passed by any quasi-judicial authority under any enactment, even if such explanation (sic) enactment is not covered by clauses 1,2 and 4 to 43 of Rule 18."

11. The ratio of the said judgment is that in view of Chapter XVII Rule 18 (3), jurisdiction of a Single Judge will extend to entertain petitions challenging orders passed by all sub-ordinate Courts and authorities, under all enactments, although they are not specifically enumerated in Chapter XVII

Rule 18(1), (2) and (4) to (46). It will be pertinent to mention that in paragraph 4, the learned Single Judge has specifically stated that Chapter XVIII Rule 18 clause (3) is wide enough to include the orders passed by **any quasi-judicial authority** under any enactment, even if such enactment is not covered by clauses 1, 2 and 4 to 43 of Rule 18.

12. Perusal of paragraph 5 of the judgment will indicate that a contention that order of suspension is only an administrative order was raised before the learned Single Judge. However, it was not canvassed that an administrative order passed by any authority is not an order within the meaning of explanation to Chapter XVII Rule 18 of the High Court Appellate Side Rules. The judgment does not take into consideration the explanation. It, therefore, does not lay down the ratio that administrative orders are amenable to challenge before a Single Judge.

13. In view of the clear exposition of law in the judgment in the matters of ***Chandrakant Damodar Kale and Damodar Jairam Sao (supra)***, there cannot be any quarrel with the proposition that the order of suspension is an administrative order, the challenge to which will not lie before the Single Judge.

14. Having regard to the said provision as also ratio of the decisions referred above, I am of the clear opinion that since the order of suspension is an administrative order, the same is required to be challenged before the Division Bench.

[ROHIT W. JOSHI]
JUDGE

sga/