

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1353 OF 2025

Duristar Infrastructure Pvt Ltd
Through Md Mr Suresh Murari Narwekar ...Petitioner
Versus
State of Maharashtra
Through The Additional Chief Secretary ...Respondent

Mr. Akash Rebello a/w Mr. Nilesh Gala, Manish Gala, Swapna Gokhale, Nusrat Shah, Ema Almeida, Kevin Gala, Archana Jha i/b. Swapna Gokhale for Petitioner.
Mr. Amar Mishra, AGP for Respondent Nos.1, 2 and 3.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 1 December 2025

Oral Order (M.S. Sonak, J.) :-

1. Heard the learned counsel for the parties.
2. Rule. Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The Petition challenges order dated 12 November 2024 made by the Commissioner (Appeals) *inter alia* on the ground that the same was without service of notice to the Petitioners and consequently, without giving the Petitioners an opportunity of personal hearing.

4. An additional grievance is made that the Petitioners' electronic credit ledger was debited even though the Appeal was pending after the Petitioners had made the pre-deposit required by law. Mr Rebello submitted that such a pre-deposit operates as a stay and therefore, the debits were not warranted.

5. In any event, based on the instructions, Mr Rebello submits that, for the present, the Petitioners are not pressing the grievance regarding debits in the electronic credit ledger, but the impugned order dated 12 November 2024 warrants interference because it was in breach of the principles of natural justice and fair play.

6. Mr Mishra submits that the impugned order was duly served upon the Petitioners. He also refers to notices on the portal. He submits that, in this case, notice was given to the correct email ID, but it was found to be non-functional. Therefore, he submits that there was no failure of natural justice involved.

7. Mr Rebello responds by submitting that in the Appeal Memo itself, the correct email ID was furnished, and therefore, notice should have been served at this correct and functional email ID. He points out that the Petitioners have not received any notice for a personal hearing in the Appeal. Even on the Website, notices sent by email were to an incorrect address. He therefore submitted that in the absence of proper notice and, consequently, a personal hearing, the

impugned order should not have been made.

8. Based on the records, we are satisfied that no notice was served upon the Petitioners and, consequently, no opportunity of personal hearing was granted to them. The Petitioner had disclosed the correct email ID in the appeal memo. Instead, the notice was addressed to some other ID, which turned out to be non-functional. The non-service of notice, followed by the consequent denial of a personal hearing, amounts to a violation of the principles of natural justice and fair play. This is one of the exceptions to the practice of exhausting alternative remedies. Besides, there are issues concerning the functioning of the Tribunal to which an Appeal would lie.

9. Therefore, on considering the totality of the circumstances, we set aside the impugned order dated 12 January 2024 and restore the Petitioners' Appeal to the file of the Commissioner (Appeal) for fresh decision in accordance with law and on its own merits. This time, the Commissioner must give the Petitioner a personal hearing in the matter by serving a notice on the email address indicated in the Memo of Appeal, i.e. suresh.nivatkar@gmail.com. The issue of notice at this address will amount to proper communication.

10. All contentions of all parties on the merits of the matter are left explicitly open.

11. The Rule is made absolute in the above terms without any costs order.

12. All concerned to act upon an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J.)