

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.02 OF 2016**

**DISTRICT : KOLHAPUR**

Shri Naresh A. Polani. )  
Age : 52 Yrs., Working as Inspector of )  
Motor Vehicles, R/o. Punya-Pavitra C.H.S, )  
Belbag, Mangalwar Peth, Kolhapur. )...**Applicant**

**Versus**

1. The District Collector-Cum- )  
Chairman, District Disaster )  
Management Authority, Solapur )  
and having office at Siddheshwar )  
Peth, Solapur. )
2. The State of Maharashtra. )  
Through Principal Secretary )  
[Revenue], Revenue & Forest )  
Department, Mantralaya, )  
Mumbai – 400 032. )
3. The Regional Transport Officer, )  
Kolhapur and having office at )  
Nagala Park, Kolhapur. )...**Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J  
SMT. MEDHA GADGIL, MEMBER-A**

**DATE : 12.08.2021**

**PER : SHRI A.P. KURHEKAR, MEMBER-J**

## **JUDGMENT**

1. The Applicant has challenged the Show Cause Notice dated 18.09.2015 issued by Respondent No.1 – District Collector-Cum-Chairman, District Disaster Management Authority, Solapur issued invoking Section 51 of Disaster Management Act, 2005 by filing this O.A. under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the application are as under :-

The Applicant was serving as Inspector of Motor Vehicle and posted at Kolhapur. The Commissioner, Transport, State of Maharashtra, Mumbai by order dated 04.07.2015 deputed the Applicant at Sangola for checking of vehicles, breach of permit, etc. in view of religious procession of Shree Tukaram Maharaj Palkhi, Pandharpur for the period from 18.07.2015 to 24.07.2015 and he was to submit report on or before 31.07.2015. However, again, Respondent No.3 – Regional Transport Officer, Kolhapur by communication (undated) at Page No.31 of Paper Book informed the Applicant and one Shri Digvijay Jadhav that they have to continue the work of vehicle inspector for further period from 25.07.2015 to 29.07.2015. The Applicant contends that he did not receive this second order of his deputation from 25.07.2015 to 29.07.2015, and therefore, after completing his deputation for the period from 18.07.2015 to 24.07.2015, he left Pandharpur on 25.07.2015 there being Holidays on 25.07.2015 and 26.07.2015. As such, the Applicant did not attain further deputation period as directed, and therefore, Respondent No.1 issued Show Cause Notice dated 18.09.2015 to the Applicant *inter-alia* stating that Applicant left the work of inspection without any intimation despite his subsequent deputation period from 25.07.2015 to 29.07.2015 and thereby committed breach of provisions of Disaster Management Act, 2005 and the orders issued by District Collector-Cum-Chairman, District Disaster Management Authority, Solapur. In Show Cause Notice, it is further stated that the Applicant

had committed breach of Section 51 of Disaster Management Act, 2005 and Collector asked him as to why further action should not be taken in pursuance of the said provision against him and he was asked to submit reply on or before 21.09.2015. It is this Show Cause Notice, the Applicant has challenged in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the Show Cause Notice dated 18.09.2015 issued by Respondent No.1 on the following grounds :-

(i) Show Cause Notice dated 18.09.2015 though purported to be issued by District Collector-cum-Chairman, District Disaster Management Authority, Solapur in absence of Notification under Section 25 of Disaster Management Act, 2005, Show Cause Notice is illegal.

(ii) Chairperson viz. Collector cannot issue any such Notice in his capacity as a Collector unless there is delegation of powers to him by District Authority, as contemplated under Section 26 of Disaster Management Act, 2005.

(iii) Impugned Show Cause Notice is issued invoking Section 51 of Disaster Management Act, 2005 which speaks about the powers and jurisdiction of Court only that too, on conviction, if prosecution is launched by filing complaint in terms of Section 60 of Disaster Management Act, 2005.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer at the very outset raised the issue of jurisdiction of this Tribunal to entertain such proceedings in view of express bar of jurisdiction in the light of Section 71 of Disaster Management Act, 2005 which *inter-alia* provides no Court (except Hon'ble Supreme Court or High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything

done, action taken under the provisions of Disaster Management Act, 2005.

5. Since the issue of jurisdiction is raised which goes to the root of the matter, let us firstly examine whether this Tribunal have jurisdiction to entertain this O.A.

6. Whereas Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that the bar of jurisdiction contemplated under Section 71 of Disaster Management Act, 2005 pertains to Civil Courts only and the Tribunal being not Civil Court, Section 71 of Disaster Management Act, 2005 is not applicable.

7. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision of Hon'ble Supreme Court in **Civil Appeal No.663 of 1978 [Chief of Army Staff and Ors. Vs. Major Dharam Pal Kukrety] decided on 21<sup>st</sup> March, 1985** wherein it has been held that where Show Cause Notice is issued without jurisdiction, it is maintainable against such Show Cause Notice. In that case, it was found that the concerned authority has no power in law to issue Show Cause Notice and question of maintainability of Writ Petition was raised. It is in that context, the Hon'ble Supreme Court held that Writ Petition is maintainable.

8. The learned Advocate for the Applicant further referred to **(2010) 11 SCC 1 [Union of India Vs. R. Gandhi, President, Madras Bar Association]**. In Para No.38 of the Judgment, the Hon'ble Supreme Court clarified difference between Courts and Tribunals and held as under :-

*“38. The term “Courts” refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the state for administration of justice that is for exercise of the judicial power of the state to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special*

*alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to Civil Courts, Criminal Courts and High Courts. Tribunals can be either private Tribunals (Arbitral Tribunals), or Tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or Tribunals authorized by the Constitution (Administrative Tribunals under Article 323A and Tribunals for other matters under Article 323B) or Statutory Tribunals which are created under a statute (Motor Accident Claims Tribunal, Debt Recovery Tribunals and consumer Fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory Tribunals have Judicial and Technical Members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer Fra, Cyber Appellate Tribunal, etc)."*

9. Reference was also made to the decision **(1997) 2 SCC 349 [State of Tamil Nadu & Ors. Vs. S. Thangavel and Ors.]** wherein it has been held that the Members of the Tribunal cannot be considered to be Judges and their statement cannot be treated to be a decree and it may be construed on only an order for the purpose of decision arrived at by the Tribunal under the Administrative Tribunals Act, 1985. In Para No.6, the Hon'ble Supreme Court held as under :-

*"6. In view of the respective contentions, the question that arises for consideration is: whether the view taken by the Tribunal is correct in law? We have come across number of judgments of various Administrative Tribunals in the country treating their orders to be "a judgment and order" obviously under Section 2(9), CPC. The view seems to be not correct in law grounds of a decree or order. Section 2(8) defines "Judge" to mean the presiding officer of a civil court, An officers, therefore, is appointed to preside and to administer the law in a court of justice and clothed with judicial authority. Judgment is the decision of a court of justice upon the respective right and claims of the parties to an action in a suit submitted to it for determination. The word "Judgment" denotes the reasons which the court gives for its decision. The members of the Tribunal cannot be considered to be Judges and their statement cannot be treated to be a decree; it may be construed to be only an order for the purpose of decision arrived at by the Tribunal under the Administrative Tribunal Act. Under these circumstances, we must hold that the Tribunal's order cannot be treated to be a judgment or decree but they should be only an order."*

10. There could be no dispute about the legal principles enumerated in these decisions. However, all these Judgments are of no assistance to the Applicant in the facts and circumstances of the present case.

11. At this juncture, it would be apposite to refer the definition of 'district authority' as well as to see the provisions from Disaster Management Act, 2005 referred by the learned Advocate for the Applicant as well as learned Presenting Officer in their submissions.

**“30.** (1) The District Authority shall act as the district planning, coordinating and implementing body for disaster management and take all measures for the purposes of disaster management in the district in accordance with the guidelines laid down by the National Authority and the State Authority.

(2) Without prejudice to the generality of the provisions of sub-section (1), the District Authority may –

- (i) .....
- (ii) .....
- (iii) .....
- (iv) .....
- (v) give directions to different authorities at the district level and local authorities to take such other measures for the prevention or mitigation of disasters as may be necessary.

**2(f)** “District Authority” means the District Disaster Management Authority constituted under sub-section (1) of section 25.

**25.(1)** Every State Government shall, as soon as may be after issue of notification under sub-section (1) of section 14, by notification in the Official Gazette, establish a District Disaster Management Authority for every district in the State with such name as may be specified in that notification.

(2) The District Authority shall consist of the Chairperson and such number of other members, not exceeding seven, as may be prescribed by the State Government, and unless the rules otherwise provide, it shall consist of the following, namely :-

(a) the Collector or District Magistrate or Deputy Commissioner, as the case may be, of the district who shall be Chairperson, *ex officio*;

(b) the elected representative of the local authority who shall be the co-Chairperson, *ex officio*;  
 Provided that in the Tribal Areas, as referred to in the Sixth Schedule to the Constitution, the Chief Executive Member of the district council of autonomous district, shall be the co-Chairperson, *ex officio*;

- (c) the Chief Executive Officer of the District Authority, *ex officio*;
  - (d) the Superintendent of Police, *ex officio*;
  - (e) the Chief Medical Officer of the district, *ex officio*;
  - (f) not exceeding two other district level officers, to be appointed by the State Government.
- (3) In any district where zila parishad exists, the Chairperson thereof shall be the co-Chairperson of the District Authority.
- (4) The State Government shall appoint an officer not below the rank of Additional Collector or Additional District Magistrate or Additional Deputy Commissioner, as the case may be, of the district to be the Chief Executive Officer of the District Authority to exercise such powers and perform such functions as may be delegated to him by the District Authority.”

**26.** (1) The Chairperson of the District Authority shall, in addition to presiding over the meetings of the District Authority, exercise and discharge such powers and functions of the District Authority as the District Authority may delegate to him.

(2) The Chairperson of the District Authority shall, in the case of an emergency, have power to exercise all or any of the powers of the District Authority but the exercise of such powers shall be subject to *ex post facto* ratification of the District Authority.

(3) The District Authority or the Chairperson of the District Authority may, by general or special order, in writing, delegate such of its or his powers and functions, under sub-section (1) or (2), as the case may be, to the Chief Executive Officer of the District Authority, subject to such conditions and limitations, if any, as it or he deems fit.

**51.** Whoever, without reasonable cause –

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorized by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be

punishable with imprisonment for a term which may extend to two years.

**60.** No court shall take cognizance of an offence under this Act except on a complaint made by –

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorized in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorized as aforesaid.

**71.** No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by, or in relation to its functions, by this Act.”

12. Now turning to the facts of the present case, ex-facie Respondent No.1 called upon the Applicant to explain why action under Section 51 of Disaster Management Act, 2005 should not be taken against him for withdrawing himself from duties assigned to him for the next phase i.e. from 25.07.2015 to 29.07.2015. Indeed, it is obvious from Section 51 of Disaster Management Act, 2005 that it pertains to the powers of Court to impose punishment on conviction. As such, prima-facie the Respondent No.1 invoked jurisdiction of the Court. Here, material to note that Section 60 of Disaster Management Act, 2005 provides for cognizance for an offence committed under the provisions of Disaster Management Act, 2005. It provides that cognizance can be taken only on complaint made by State authority or any other authority or Officer authorized in that behalf. As such, it is on complaint, the Magistrate can take cognizance of the offence and on conviction, the accused can be punished with imprisonment for a term which may extend to one year or with fine or both, as provided under Section 51 of Disaster Management Act, 2005.



However, admittedly, no further order was passed by Respondent No.1 in terms of Show Cause Notice which indeed he could not have passed for want of jurisdiction and only Show Cause Notice was issued as to why further action under Section 51 of Disaster Management Act, 2005 should not be taken. The Tribunal has granted interim relief by order dated 06.01.2016 with the observation that Section 51 of the Disaster Management Act, 2005 is penal provision and Respondent No.1 has no such jurisdiction to impose a punishment.

13. However, material question would be whether the Tribunal has jurisdiction to entertain this O.A. and to examine the legality of such Show Cause Notice in view of express bar of jurisdiction, as provided in Section 71 of Disaster Management Act, 2005 and the answer is in negative.

14. Though Respondent No.1 seems overzealously issued impugned Show Cause Notice taking a recourse of Section 51 of Disaster Management Act, 2005, *prima-facie* he had no such jurisdiction to impose any such punishment. Indeed, indisputably, the Government has already initiated departmental proceedings against the Applicant for withdrawing himself from duty and thereby committed dereliction in duties. Indeed, the Applicant was initially suspended but later he was reinstated in service and now DE is at the verge of passing final order. As such, the initiation of DE was the option available to the Government and the recourse of the same is already undertaken.

15. In so far as criminal liability is concerned, it is for the competent Court of law to impose punishment, if the cognizance is taken by the Court, as contemplated under Section 60 of Disaster Management Act, 2005. Indeed, in such situation, the Collector ought to have taken recourse to the provisions of Sections 56 and 59 of the Disaster Management Act, 2005, which are as under :-

**“56.** Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.

**59.** No prosecution for offences punishable under sections 55 and 56 shall be instituted except with the previous sanction of the Central Government or the State Government, as the case may be, or of any officer authorized in this behalf, by general or special order, by such Government.”

16. Be that it may, in view of clear embargo of Section 71 of Disaster Management Act, 2005, this Tribunal cannot examine the legality or otherwise of the impugned Show Cause Notice. Section 71 specifically mandates that jurisdiction lies only with Hon’ble Supreme Court or Hon’ble High Court. As such, when there is express ouster of jurisdiction of the Tribunal, it is not permissible for this Tribunal to go into the issue of non-issuance of Notification contemplated under Section 25 of Disaster Management Act, 2005 or non-delegation of power contemplated under Section 26 of Disaster Management Act, 2005. Examining these contentions on merit, as raised by the learned Advocate for the Applicant, would amount to exercising the jurisdiction over the matter which cannot be done in view of express bar of Section 71 of Disaster Management Act, 2005. Needless to mention, jurisdiction means authority to hear and decide the controversy and where jurisdiction is expressly barred, this Tribunal cannot give any finding upon the merits or demerits of the controversy placed before it. The existence of jurisdictional fact is *sine-qua-non* to the assumption of jurisdiction by Court or Tribunal. Suffice to say, where jurisdiction is expressly barred and there is specific embargo, as provided under Section 71 of Disaster Management Act, 2005, this Tribunal cannot record any finding on the legality of impugned Show Cause Notice.

17. We have, therefore, no hesitation to conclude that the Applicant has chosen wrong forum and this Tribunal has no jurisdiction to

entertain the O.A. in view of express bar under Section 71 of Disaster Management Act, 2005. The O.A. is, therefore, liable to be dismissed on the point of jurisdiction. The contentions raised by learned Advocate for the Applicant about absence of Notification, delegation of power and competency of Respondent No.1 to issue such Show Cause Notice are left upon to be decided before competent forum. Hence, we proceed to pass the following order.

**ORDER**

The Original Application is dismissed with no order as to costs.

Sd/-  
**(MEDHA GADGIL)**  
**Member-A**

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 12.08.2021  
Dictation taken by :  
S.K. Wamanse.

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