Bombay High Court
Chandrapur District Central ... vs The State Of Maharashtra, Thr. ... on 3 March, 2023
Bench: Vinay Joshi, Valmiki Sa Menezes

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

WRIT PETITION NO. 8041/2022

1. Chandrapur District Central
Co-operative Bank Ltd., through
its Chairman, Civil Lines, Chandrapur,
Tah. & Dist. Chandrapur.

2. Shri Santoshsingh S/o. Chandansingh
Rawat, aged 60 yrs., Occ. Business,
R/o. At post Mul, Ward No. 11, near Rest
House, Mul, Tah. Mul, Dist. Chandrapur.

PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary of Ministry
of Co-operation, Mantralaya,
Mumbai, Maharashtra.

2. The Commissioner of Co-operation,
Pune, State of Maharashtra, Central
Building, Pune, Tah. & Dist. Pune.

3. Divisional Joint Registrar, Co-operative
Societies, Nagpur, Tah. & Dist. Nagpur.

4. District Deputy Registrar Co-operative
Societies, Chandrapur, Tah. & Dist.
Chandrapur.

5. Shri Manohar S/o. Laxman Pahunkar,
aged 58 years, Occ. Business,
R/o. Laxmi Nagar, Wadgaon Road,
Near Raj Lawn, Chandrapur, Tah. &
Dist. Chandrapur.

6. Shri Gajanan S/o. Wasudevrao Patode,
Aged 42 yrs., R/o. Dongargaon, Tah.
Nagbhid, Dist. Chandrapur.

7. State of Maharashtra, through
its Special Work Officer and Joint
Registrar, Co-operative Societies,

Department of Co-operation, Mumbai.

.....RESPONDENTS

1. Sudhakar S/o Maluji Arjunkar,
aged about 62 yrs., Occ. Social Work,
R/o. Nanaji Nagar, Wadgaon Ward,
Tah. & Dist. Chandrapur.

.....INTERVENER

(Application [caw] No. 28

Mr. S.V. Manohar, Senior Advocate with Mr. A.M. Ghare, Advocate for petitioners.
Mr. R.L. Khapre, Senior Advocate with Ms. N. P. Mehta, Assistant Government Pleader for respondent Nos. 1 to 4 & 7.
Mr. N.C Nagapure, Advocate h/f Mr. A.V. Band, Advocate for respondent Nos. 5 & 6.
Mr. S.K. Mishra, Senior Advocate with Mr. K. Deogade, Advocate for intervener.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES JJ.
JUDGMENT RESERVED ON : 20.01.2023
JUDGMENT PRONOUNCED ON : 03.03.2023

JUDGMENT (PER VINAY JOSHI, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for respective parties.

2. The principal challenge in this petition is to the competency of Chief Minister in granting stay to the staff recruitment process of petitioner- Co-operative Bank vide order dated 29.11.2022.

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3. Petitioner No.1 Chandrapur District Central Co-operative Bank Ltd., is registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 ('MCS Act'). Petitioner No.2 is elected Chairman of the Petitioner No.1 Bank. Petitioner Bank is doing business of banking under the licence of the Reserve Bank of India. Petitioner Bank has not been funded in any manner by the State Government. The petitioner Bank has its area of operation in entire revenue district of Chadrapur, whilst head office at Chandrapur. Bank has 93 branches spread over the entire Chandrapur District. The Bank has approved staffing pattern of 885 employees. In passage of time, several employees have been retired resulting into shriking the strength to the extent of 525 employees only. Resultantly 393 posts are lying vacant. In proximity, more posts would lie vacant due to upcoming retirements.

4. The petitioner Bank is facing acute shortage of staff making it difficult to run various Branches. The banking business has been largely affected due to acute shortage of staff. Considering the said contingency faced by the Bank, Board of Directors in meeting dated 18.11.2021 resolved to take necessary steps for filling up vacancies by undertaking recruitment process. The District Deputy Registrar, Co-operative Societies also attended the Board meeting dated 18.11.2021 and partook in resolving about need of recruitment. It resolved to forward a 4 wp8041.22.odt proposal to the Commissioner of Co-operation, Pune seeking approval for undertaking recruitment process.

5. In pursuance of Board Resolution dated 18.11.2021, the petitioner Bank sent proposal for approval to the respondent No.3, Divisional Joint Registrar, Co-operative Societies, Nagpur for forwarding the proposal to respondent No.2, Commissioner of Co-operation, Pune. After considering the proposal and recommendations made by respondent No.3 Divisional Joint Registrar, Co-operative Societies, Nagpur, vide order dated 25.02.2022 Commissioner of Co-operation accorded permission/sanction for undertaking recruitment process by petitioner Bank. In accordance with the sanction, initial steps have been taken by the Bank in the shape of issuing public advertisement inviting applications from reputed agencies to undertake recruitment process.

6. It is petitioners' case that political opponent of the petitioner No. 2 i.e. member of Parliament from Bhadrawati Constituency started making false allegation against the petitioner. Writ petition No. 2126/2022 was filed seeking appointment of Administrator for the Management of petitioner Bank. In the said petition, notices have been issued, however no interim orders have been passed.

7. The petitioner has received a communication dated 12.05.2022, by which recruitment undertaken by the petitioner Bank has been stayed. The petitioner has challenged the stay order in Writ 5 wp8041.22.odt Petition No. 2689/2022 which is pending. The petitioner also made representation dated 11.11.2022 to the Minister, Co-operation for vacating the stay. In response, the Minister of Co-operation after considering the representation, vacated the stay which was communicated vide letter dated 23.11.2022. The petitioner was about to resume the recruitment process, however vide impugned order dated 29.11.2022, the Chief Minister has again stayed the recruitment process. The petitioner learnt that respondent Nos.5 and 6 made certain grievances to the Chief Minister, on which, without making inquiry and hearing the petitioner, stay has been granted.

8. The petitioner has challenged the impugned order of the Chief Minister inter alia on following grounds :-

> (1) The Chief Minister has no jurisdiction to pass the impugned order dated 29.11.2022 when the Minister of Co-operation had already vacated the stay.
>
> (2) The impugned order has been passed in patent breach of principles of natural justice as the petitioners have not been heard.
>
> (3) The order under challenge has been passed without assigning reasons.

(4) The Chief Minister has not verified the allegations made in the representation, but without application of mind has passed the impugned order.

(5) The petitioner Bank has followed requisite procedure.

(6) The proposal for recruitment was sanctioned by the Commissioner of Co-operation after making necessary inquiry.

(7) The order has been passed on the a basis of a mere representation made by the rival of the respondent No.2.

(8) The impugned order is discriminatory and politically motivated and passed at the behest of Local Guardian Minister.

(9) The order does not consider that the Bank is facing acute shortage of staff making it impossible to run various Branches.

The petitioner therefore, seeks to quash the order dated 29.11.2022 passed by the Chief Minister granting stay to the recruitment process.

9. The petition came to be resisted by respondent Nos. 1 to 4 and 7 (State) vide its joint reply-affidavit dated 20.12.2022. The contents of the affidavit have been sworn and verified by respondent No. 3 - Divisional Joint Registrar, Co-operative Societies, Nagpur. In resistance, it has been stated that initially the matter came up before the State Government at the instance of complaint filed by the member of Parliament Mr. Suresh Dhanorkar. The said complaint was processed by the Co-operation Department, on which detailed note-sheet with 7 wp8041.22.odt remarks of the Additional Chief Secretary of the Co-operation Department has been prepared. On the basis of the note-sheet, stay was granted to the recruitment process by the concerned Minister. It was followed by the petitioners filing representation dated 11.11.2022. The petitioners have suppressed material facts, therefore, the concerned Minister has vacated the stay as per note-sheet, which was communicated vide letter dated 23.11.2022. Again, complaints of respondent No. 5 Mr. Manohar Pahunkar and respondent No. 6 Mr. Gajanan Patode have been received raising grievance against the order of vacating stay dated 23.11.2022. In pursuance of the said complaints, summary inquiry was conducted by the Department of Co-operation. It was revealed during inquiry that the term of existing body of the petitioner Bank had expired in the year 2017 itself. However, as election had not been held, the said body was continuing as an interim arrangement.

10. It is stated that the existing Managing Body had earlier started recruitment process and having indulged in corrupt practices, offence was registered against ten Directors. The Director General (Anti-Corruption), Maharashtra State has forwarded proposal to the Chief Secretary to prosecute the Directors on account of misappropriation. The Divisional Joint Registrar, Co-operative Societies

has also granted permission to prosecute all Directors. A special audit 8 wp8041.22.odt was conducted and directions have been issued to register a First Information Report regarding financial irregularities. It is alleged that the present Board of Directors has indulged in malpractices and defalcated a huge sum of near about rupees four crores. The Divisional Joint Registrar, Co-operative Societies has initiated an inquiry in terms of Section 88 of the MCS Act.

11. It is stated that all these aspects have been brought to the notice of the Chief Minister who in turn directed the Co-operation department to prepare a detailed note-sheet on all irregularities. The Chief Minister has also directed the department to prepare a summary note-sheet directing the department that the caretaker body cannot take policy decisions. Accordingly a short summary note-sheet was placed before the Chief Minister.

12. According to respondents, the stay order was vacated by the Minister of Co-operation who acted under the Chief Minister. The Chief Minister has power to vary, modify and vacate the orders passed by the concerned Minister of the Co-operation. In-substance, it is stated that the petitioners are a merely a care taker body which cannot take policy decisions for initiating recruitment. The existing Board of Directors were found indulging into corrupt practices for which criminal prosecution has been launched against them, and thus, the order of stay was necessitated by public interest.

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13. Moreover, it is submitted that the Chief Minister has not yet finally decided matter of revoking the permission granted by the Commissioner of Co-operation on 17.02.2022. The recruitment process is merely stayed and the petitioners would get an opportunity to put up their case before the Chief Minister. These are the contentions, by which the petition has been opposed.

14. We have allowed the intervention application of one Mr. Arjunkar. He has principally supported the impugned order of stay issued by the Chief Minister. He claims to be member of an Agricultural Society which in turn is a member of the petitioner Bank. He has narrated the history of some present and pending litigations between the parties. He would submit that initially, when the Minister of Co- operation had stayed the recruitment process vide order dated 12.05.2022, the petitioner had filed Writ Petition No. 2689/2022 which is still pending. He has also intervened in the said petition also. The intervener has filed Writ Petition No. 2126/2022 seeking appointment of an the Administrator as the tenure of the existing Executive Committee has come to an end in the year 2017. It is stated that one Mrs. Bawane has filed a Writ Petition No. 4547/2017 challenging the validity of Section 73AAA and Section 73B of the MCS Act. In the said petition, stay has been grated to the election and all similar petitions have been transferred to the Principal Seat of this Court.

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15. Mr. Mishra, learned Senior Counsel appearing for the intervener would submit that the petitioner being a caretaker body, cannot take policy decisions. In this regard, he relied on the decision of the Supreme Court in the case of Suresh &. anr. Vs. State of Maharashtra & ors., (Petition(s) for Special Leave to Appeal (C) No.(s). 6/2021, decided on 18.02.2021). Bare perusal of

the said order indicates that purely towards interim arrangement, the Supreme Court has restrained the then Managing Committee from taking policy decisions. In the said case, statement was made that an Administrator would be appointed within one week, on this assurance, the interim order was passed. The said order was passed on a different footing and therefore, it would not assist the intervener in any manner.

16. The intervener has narrated a long history about alleged malpractices in recruitment process indulged by the petitioners and the criminal action taken thereon. It is primarily contended that since the term of the existing Board of Directors has expired in the year 2017 and the petitioners being a caretaker body, cannot take a policy decision. In short, the intervener has resisted the petition inter alia for above reasons.

17. The learned counsel for the respondents as well as intervener also emphasized the point that the petitioner was a caretaker body and 11 wp8041.22.odt cannot take a major decisions of undertaking recruitment process. Particularly, it has been submitted by the intervener that in earlier recruitment process, there was larger scale malpractice for which offence was registered against most of the Directors. Several related documents have been produced to substantiate this contention. Basically, the challenge in this petition is limited to the extent of authority of the Chief Minister to grant stay. Therefore, we need not undertake the exercise of evaluating the petitioner's credentials for conducting recruitment process.

18. Undisputed facts of the case are as below:-

(i) Petitioner No.1 is a Co-operative Society registered under the provisions of the MCS Act, doing business of banking.

(ii) Petitioner No.2 is elected President of Petitioner No.1 Bank. The existing Managing Committee was elected in the year 2012 and the term expired in the year 2017.

(iii) By virtue of order passed in writ petition, election of the Managing Committee has been stayed.

(iv) Though its term has expired, the Managing Committee is functioning as a care taking body.

(v) The head office of the petitioner Bank is at Chandrapur having 93 branches in the entire District. Approved staffing pattern of the petitioner Bank is of 885 employees whilst 393 posts are lying vacant.

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(vi) The petitioner Bank has passed resolution for initiating process of recruitment.

(vii) The District Deputy Registrar vide communication dated 10.12.2021 has forwarded proposal to the Commissioner of Co-operation, Pune with his recommendations.

(viii) The Commissioner of Co-operation vide

communication dated 25.02.2022, has granted

approval for undertaking recruitment process.

(ix) The Divisional Joint Registrar vide communication dated 12.05.2022 has stayed the recruitment process.

(x) The Minister of Co-operation has vacated the stay vide communication dated 23.11.2022.

(xi) The Chief Minister has again granted stay to the recruitment process vide remark (page 80) on complaint dated 29.11.2022.

19. Some reference is required to be made to some proceedings pending in Court. The petitioner Bank has filed Writ Petition No. 2689/2022 challenging the communication dated 12.05.2022, whereby initially stay was granted to the recruitment process which is pending. Mr. Vidhate and Mr. Arjunkar had filed Writ Petition NO. 2126/2022 seeking appointment of an Administrator to the petitioner Bank, in which notices were issued. Writ Petition No. 4547/2017 was filed by 13 wp8041.22.odt Mrs. Bawane challenging the constitutional validity of Section 73AAA and Section 73B of the MCS Act. Several similar petitions have been filed and all are transferred to the Principal Seat and stay was granted to the election.

20. The learned senior counsel Mr. Manohar appearing for petitioner Bank initially took us through the petition to contend that there is acute need of undertaking recruitment process. Approved staffing pattern of employee was 885, out of which working strength is of 521 employees. At present 393 posts are lying vacant, therefore, it is difficult to run various branches of the petitioner Bank. Considering extreme urgency, the Board of Directors in its meeting dated 18.11.2021 resolved to take steps to undertake recruitment process. The said factual aspect is not disputed by the other side.

21. It is the petitioner's contention that the Bank has followed due process of obtaining permission from respondent No. 2 Commissioner of Co-operation, Pune as per guidelines issued by the National Bank for Agricultural and Rural Development ('NABARD'). The proposal was verified by the District Deputy Registrar and recommended to the Commissioner of Co-operation who after considering the matter before it, has granted approval. It is submitted that the due process was followed by obtaining permission. Though initially the Minister of Co-

14 wp8041.22.odt operation has stayed the recruitment process, however after realizing the exigency, has vacated the stay.

22. The main thrust of the arguments of Mr. Manohar is that the Chief Minister lacks jurisdiction/authority to stay the order passed by the concerned Minister. On the other hand, Mr. Khapre, learned senior counsel appearing for respondent Nos. 1 to 4 and 7 resisted the submission by contending that the Chief Minister is head of the Council of Ministers and he is responsible for the acts of the Ministers. The Chief Minister has every power to review the orders passed by the Minister and therefore, there is no illegality in passing the impugned order of stay. Moreover, he

would submit that the Chief Minister has merely stayed the recruitment process by directing to initiate inquiry. The matter is under process, and therefore petition is pre-mature. Besides that some other grounds have been canvassed to state that the petitioner being caretaker body, cannot take a policy decision like the sensitive issue of holding recruitment process. It has been stated that in the past, the petitioners have misappropriated huge sums during the recruitment process, for which criminal action has been initiated.

23. Basically, we are not going into the factual aspect about fairness of undertaking recruitment process. The principal issue that falls for our consideration is restricted to the aspect, as to whether the Chief Minister has power to stay the order passed by the Minister of the 15 wp8041.22.odt concerned department i.e. Minister of Co-operation. Both sides have advanced arguments to justify their respective stand.

24. Initially Mr. Manohar took us through various provisions contained under Part-VI of the Constitution of India. Article 154 of the Constitution of India vests the executive power of the State in the Governor, to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. As per Article 163, there would be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is, by or under the Constitution required to exercise his functions or any of them, in his discretion. It is on this premise that the conduct of Government business is designed under Article 166 of the Constitution of India. Under Clause (1) of Article166, all executive action of the Government of a State is enjoined to be taken in the name of Governor. Clause (3) makes it incumbent on the Governor to frame rules for the more convenient transaction of the business of the Government of the State and for the allocation, amongst the Ministers, of the said business, insofar as it is not one with respect to which, the Governor is by or under the Constitution required to act in his discretion.

25. Contextually, we have been taken through The Maharashtra Government Rules of Business and Instructions issued in exercise of the 16 wp8041.22.odt powers conferred by Clause (3) of Article 166 of the Constitution of India.

26. Rules 4 and 5 of the Rules of Business provides the mechanism of transacting business through various departments as specified in the First Schedule, and assignment of departments among the various ministries. For ready reference, Rules 4 and 5 of the Business Rules are extracted herein below:-

> Rule 4.
>
> The Business of the Government shall be transacted in the Departments specified in the First Schedule and shall be classified and distributed between those Department as laid down therein.
>
> Rule 5.

> The Governor shall on the advice of the Chief Minister allot among the Ministers the business of the Government by assigning one or more Departments or part of Departments to the charge of a Minister :
>
> Provided that, nothing in this rule shall prevent the assigning of one Department to the charge of more than one Minister.

27. Our attention has been invited to Rule 9 pertaining to cases to be brought before the Council of Ministers in terms of the Second Schedule to the Rules. It empowers the Chief Minister or the Minister- in-charge with the consent of the Chief Minister to bring the subject before the Council of Minsters and reads as under:-

> Rule 9.
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> All cases referred to in the Second Schedule shall be brought before the Council -
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> (i) by the direction of the Governor under clause (c) of Article 167;
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> (ii) by the direction of -
>
> (a) the Chief Minister; or
>
> (b) the Minister-in-charge of the case with the consent of the Chief Minister:
>
> Provided that, no case in regard to which the Finance Department is required to be consulted under rule 11 shall, save in exceptional circumstances under the directions of the Chief Minister, be discussed by the Council unless the Finance Minister has had opportunity for its consideration.

Second Schedule to Rule 9 encompasses in all 28 subjects which can be brought before the Council of Ministers.

28. Our attention has been invited to Rule 10 to contend that the Minister-in-charge of a department shall be responsible for the business of the concerned department and reads as under:-

> Rule 10.
>
> (1) Without prejudice to the provisions of rule 8, the Minister-in-charge of a Department shall be primarily responsible for the disposal of the business appertaining that Department or part of the Department.

(2) Every Minister, every Minister of State, every Deputy Minister and every Secretary shall transmit to the Chief Minister all such information with respect to the business of the Government as the Chief Minister may from time to time require to be transmitted to him.

29. Mr. Manohar would submit that the executive power is vested in the Governor whilst the Chief Minister is only head of Ministers. The Governor can allocate business to the Minister on the advice of the Chief Minister and the Minister-in-charge shall be the head of his portfolio. It is submitted that the power of the Chief Minister is to the extent of 18 wp8041.22.odt distribution of Business and not beyond that. Unless there is express power conferred on the Chief Minister by way of Business Rules or Instructions, he cannot act or take administrative decisions as a Reviewing or Appellate Authority. The orders which are passed by the Minister are the orders on behalf of the State Government. The Chief Minister has no supervisory power to interfere with the orders of the concerned Minister.

30. The main emphasis is laid on the submission that a Minister cannot go beyond allocation of business specified under the Rules. The Rules of Business do not confer power on the Chief Minister to review orders of the Minister. Mr. Manohar took us through the instructions regarding business of the Government issued under Rule 15 of the Rules of Business. Our attention has been invited to Instruction No. 3 which states that the particular subject shall be deemed to be belonging to concerned department. The said Instruction No. 3 reads as under:-

Instruction No. 3.

(1) A case shall be deemed to belong to a department to which under the Schedule to the Rules, the subject matter thereof pertains or it mainly related.

(2) If any question arises regarding the department to which a case belongs, the decision of the Minister-in-charge of the Department concerned, if all such departments are in charge of the same Minister, shall be final. If such departments are in charge of different Ministers, who, after discussion, are unable to agree as to the department to which the case belongs, the Chief Minster shall decide the questions.

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31. In order to impress that the ordinarily the business is to be carried by the Minister-in-charge, Instruction No. 4 is pressed into service by the petitioner which reads as under:-

Instruction No. 4.

Except as otherwise provided in these Instructions, cases shall ordinarily be disposed of by, or under the authority, of the Minister-in-charge, who may by means of

standing orders give such direction as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Governor and the Chief Minister.

32. It is submitted that Instruction No. 8 confers power on Minister-in-charge to dispose all cases of the said department and he is in control of the entire affairs of his department. For ready reference, Instruction No. 8 is reproduced below:-

Instruction No. 8.

(1) Subject to the Rules and the other provisions in these instructions, the Minister-in-charge may dispose of all cases arising in departments which he controls.

(2) When a difference of opinion arises on any question between departments which the same Minister controls, the Minister may decide the question.

33. Mr. Manohar would submit that Instruction No. 15 only specifies the class of cases which shall be submitted to the Chief Minister before issuance of orders. According to him, besides Instruction No. 15, the Rules of Business, or Instructions do not confer any power on the Chief Minister. Instruction No. 11 only empowers the Chief Minister to call for papers and nothing more than that.

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34. By placing reliance on the decision of the Karnataka High Court in the case of BPL Group of Companies Karmikara Sangha Vs. State of Karnataka & Ors. ILR 1999 KAR 3520 , Mr. Manohar sought to argue that the Chief Minister has no authority to interfere with the order passed by the concerned Minister. In the said case, the issue pertained to the Labour Department. The concerned Minister (Labour Minister) had ordered payment of interim relief to a workmen to prohibit a strike.

However, the order was not issued due to the intervention of the Chief Minister. In that context, the Karnataka High Court has examined the provisions contained in the Karnataka Government (Allocation of Business) Rules, 1977 ('Business Rules'). On examination, it was ruled that all the business allotted to a department under the Business Rules shall be disposed of by the general or special direction of the Minister-in- charge. The Business Rules contemplates that the matter to be transacted by the Labour Department, is to be dealt with by the concerned Minister, namely Labour Minister, who alone was to dispose of cases concerned with his department. Once he had passed such an order, it ought to have been implemented. The intervention of the Chief Minister in the matter was neither authorized nor permitted under the Act, the Business Rules and the Transaction Rules and therefore, the order of the Chief Minister was set aside.

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35. Mr. Khapre took multiple stands to defend the impugned order of stay. Initially, he relied on Instruction No. 11 to contend that the Chief Minister had powers to take a decision in connection with any department. The second stand taken was that the Chief Minister has granted stay in the process of referring the subject to the Council of Ministers. The third stand taken was somewhat contradictory, being that the stay was not granted by the Chief Minister but was a Committee decision, of which the concerned Minister of Co-operation was also party, and thus, it assumes the character of a stay by the concerned Minister.

36. Mr. Khapre specifically relied on Instruction No. 11 to contend that the Chief Minister being head of the Council of Ministers, has every authority to see papers relating to any department. He would submit that power "to see" includes the power to decide. In this regard, he laid emphasis on Instruction No. 11 which reads as under:-

> Instruction No. 11.
>
> Subject to the provisions of instructions 55-
>
> (1) Where the Chief Minister desires to see papers relating to any case in any Department any requisition made by the Chief Minister in that behalf shall be complied with by the Secretary in the Department in which the case belongs:-
>
> (2) Where a Minister, Minister of State or a Deputy Minister desires to call for papers belonging to another Department he shall personally address a requisition for the papers to the Minister-in-charge of that Department; and if papers are urgently required, to the Secretary in the Department to which the case belongs. In either case, the Secretary shall submit the papers to the Minister-in-charge of his department, who will decide whether the papers should be shown to the Minister, Minister of State or Deputy Minister, who 22 wp8041.22.odt has called for the papers. Before he decides to withhold the papers, he should show them to the Chief Minister and take his instruction in the matter.
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> (3) The Chief Secretary may ask to see papers relating to any case in any Department, and any such requisition shall be complied with by the Secretary in the Department concerned.

37. It is submitted that Instruction No. 11 specifically empowers the Chief Minister to call files from any Department and thus, it was within his competence to deal with the subject which was allocated to the Department of Co-operation. Moreover, Mr. Khapre took us through Instruction No. 21 to contend that the Chief Minister is empowered to direct that any case incorporated in the Second Schedule can be brought for discussion before the Council of Ministers.

38. Instruction No. 21 reads as under:-

> Instruction No. 21.

(1) The Chief Minister may direct that any case referred to in the Second Schedule may, instead of being brought up for discussion at a meeting of the Council, be circulated to the Ministers for opinion, and if all the Ministers are unanimous and the Chief Minister thinks that a discussion at a meeting of the Council is unnecessary, the case shall be decided without such discussion. If the Ministers are not unanimous or if the Chief Minister thinks that a discussion at a meeting is necessary, the case shall be discussion at a meeting of the Council.

(2) If it is decided to circulate any case to the Ministers, a memorandum giving a gist of papers relating to such case which is circulated among the Ministers shall simultaneously be sent to the Governor.

(3) When a case is circulated, the order of circulation shall be as follows:-

(a) to the Ministers (other than the Minister-in-charge) in order to juniority;

(b) to the Minister-in-charge;

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(c) to the Chief Minister.

He took us through Item 26 of the Second Schedule which is in the nature of a residuary subject, and reads as under:-

Clause 26.

Cases required by the Chief Minister to be brought before the Council.

39. Endeavour was made to submit that Instruction No. 11 empowers the Chief Minister to call for papers and peruse of any department and power to call for and see papers includes the power to pass incidental orders. Moreover, it is submitted that Instruction No. 21 coupled with Item 26 of Second Schedule, authorizes the Chief Minister to bring any subject before the Council of Ministers. It is argued that in order to exercise this power, the Chief Minister has directed to initiate inquiry and in the interregnum, granted stay. Thus, the action of granting stay cannot be said to be beyond the competence of the Chief Minister.

40. We have carefully examined rival submissions and considered the relevant Rules of Business, and Instructions issued thereunder. There is no dispute that Article 166 of the Constitution of India, empowers the Governor to make Rules for smooth transaction of business of the Government and for allocation of business amongst the Ministers. Both learned senior counsels are in agreement that business of 24 wp8041.22.odt the Government shall be transacted and governed by these Rules and Instructions only. First Schedule to Rule 4 carves out 23 Departments/portfolios out of which the 23

rd subject is of Co-operation and Textile Department. Undisputedly, the Governor shall allocate business amongst the Ministers on the advice of the Chief Minister, and the concerned Minister would be in-charge of that particular department. There is no dispute that portfolio of Co-operation has been assigned to a separate Minister, meaning thereby, that the said department was not retained by the Chief Minister. The departments shall be run through the Secretary of each department.

41. Rule 10(1) specifies that the Minister-in-charge of a particular Department shall be primarily responsible for the disposal of business pertaining to the concerned department. Rules by and large indicate that though a particular department has been allocated to the Minister by the Governor, on the advice of the Chief Minister, the said Minister shall transact business of the allocated department and he would be responsible for the same.

42. We are unable to see any Rule amongst Rule Nos. 1 to 15 which empowers the Chief Minister to intermeddle with the business of a department assigned/allocated to another Minister. Neither do the Instructions confer supervisory or appellate powers on the Chief Minister to review or to reverse the decision or business, transacted by the 25 wp8041.22.odt Minister-in-charge. Instruction No. 4 specifies that ordinarily, cases of a particular department shall be disposed of by the Minister-in-charge or under his Authority. Instruction No. 8(1) in particular provides that a Minister-in-charge may dispose of cases arising from the Departments with which he is in control. The orders passed by the concerned in- charge Minister would assume the character of the order of State Government.

43. Mr. Khapre has laid more emphasis on Instruction No. 11 to contend that the Chief Minister has unbridled powers to deal with any subject. No doubt, Instruction No. 11 authorizes the Chief Minister to call for and see papers relating to any case in any department, but does it mean that he can take a decision thereon? Unless there are express power under Rules or Instructions, nothing can be assumed in that regard. Instruction No. 11 pertains to inter department connectivity. Sub-clause (1) authorizes the Chief Minister to see papers of any department, whilst Sub-clause (2) provides a mechanism for a Minister to call for papers from another department. Sub-clause (3) empowers the Chief Secretary to see papers relating to any department.

44. The submission of learned counsel Mr Khapre that the term "see papers" includes the authority to pass orders pertaining to any department if accepted, then by the same analogy under Sub-clause (3), the Chief Secretary can also pass orders in the subject of any department 26 wp8041.22.odt as he is empowered under Instruction 11(3) to "see papers" of any department. Reading of Instruction No. 11 only conveys that the Chief Minister as well as the Chief Secretary has power to see papers of any department, and on their desire, related department shall make the papers available. However, as regards to the aspect of looking through papers of other departments by a particular Minister, a separate mechanism is provided under Clause (2) of Instruction No.11. Therefore, Instruction No. 11 is restricted to see papers and in particular authorizes only the Chief Minister and the Chief Secretary to have free access to papers of all departments. It does not mean that they can pass orders pertaining to other departments and such interpretation would lead to absurdity.

45. Mr. Khapre, also relied on the decision of the Supreme Court in case of Mr. Rajureshwar Associates Vs. State of Maharashtra and others, AIR 2004 SC 3770 to contend that in terms of Rule 11, the Chief Minister has authority to take decisions of any government Department. The reliance is misplaced. The said case pertains to sale of government land exceeding value of Rs. 5 lakhs. In that case, the Chief Minister informally directed that there was no need to submit the case before the Cabinet. Accordingly, the matter was not placed before the Cabinet in terms of Rule 11(2) and therefore, the decision of government, not to sell the land was upheld. Rather, it was observed 27 wp8041.22.odt that the requirement under the Rules of Business cannot be bye passed. The said decision in noway supports the respondents contention that Rule 11 empowers the Chief Minister to take decisions about a matter pertaining to any department. Though Mr. Khapre, has relied on the decision of the Supreme Court in case of Narmada Bachao Andolan Vs. State of M.P., AIR 2011 SC 3199 it has no relevance to the matter at hand.

46. Mr. Khapre took another stand that in terms of Instruction No. 21, the Chief Minister can direct, that any case referred to in the Second Schedule can be placed before the Council of Ministers. Reading of Instruction No. 20 clarifies that Instruction No. 21 pertains to Instruction No. 9, which relates to inter department affairs. Instruction No. 9 is meant for the cases concerning more than one department. Instruction No. 20 states that the inter department cases shall be submitted to the Chief Minister with a view to obtain orders for circulation in terms of Instruction No. 21. Thus, Instruction No. 21 provides a mechanism for considering any subject by circulation only. Therefore, the submission in that regard is unacceptable.

47. On the same lines, Mr. Khapre took us through the powers of the Chief Minister envisaged under Rule 9(ii)(a), which authorize the Chief Minister to bring any subject contained in the Second Schedule before the Council of Ministers. According to him in terms of Item 26 of 28 wp8041.22.odt the Second Schedule, the Chief Minister can bring any subject before the Council of Ministers. An attempt has been made to ague that since the Chief Minister is empowered to bring any subject before the Council of Ministers, in the present case he has directed to initiate inquiry and granted stay with a view to bring the said subject before the Council of Ministers. There can be no dispute that the Chief Minister can bring any subject before the Counsel of Ministers, but it does not mean that he is empowered to pass orders on any subject, before he places a matter before the Council of Ministers.

48. We have examined the said submission on the factual background of the case. According to Mr. Khapre, the Chief Minister was desirous of placing the subject before the Council of Ministers, and therefore granted stay. Though it is canvassed that the Chief Minister would shortly take the matter before the Council of Ministers, however the said submission has no factual foundation. There is nothing on record nor in the affidavit in reply or note-sheet that indicates, that the Chief Minister has undertaken or in the process of referring the matter to the Council of Ministers in terms of powers vested under Rule 9(ii)(a) of the Rules. In absence of specific stand, the said submission can not be accepted, and even then he cannot pass orders on the subject while bringing the case before Council.

29 wp8041.22.odt

49. Two-fold submission has been made, perhaps may be in the alternative form. It has been submitted that the complaints of respondent No. 5 Mr. Manohar Pahunkar and respondent No. 6 Mr. Gajanan Patode were received by the office, note-sheet (page 153) was prepared and placed before the Committee consisting of Executive Officer, Joint Registrar, Co-operative Department, Additional Chief Secretary, Minister concerned and the Chief Minister. That the said committee has taken unanimous decision to stay the recruitment and therefore, the order of stay also assumes a character of granting stay by the concerned Minister. Effort was made to justify the stay ordre by submitting that it was a decision of the Committee consisting, amongst others the concerned Minister.

50. Apparently, multiple defences have been taken to justify the impugned order of stay. Firstly, Mr. Khapre laid emphasis on the point that the Chief Minister has power to grant stay, by virtue of Instruction No. 11(1) with which we have dealt above. The second stand is that since the Chief Minister is empowered to place any subject before the Council of Ministers, in the said bid, he has taken up the matter and only in the process of placing the subject before the Council of Ministers, has granted a stay order. The third stand is somewhat contradictory to the above submissions. It has been stated that note-sheet (page 153) was placed before the Committee of which the Chief Minister was one of the 30 wp8041.22.odt member including the Minister of Co-operation. It is argued that on said note-sheet, though the Chief Minister has remarked to grant stay, however according to Mr. Khapre the note-sheet was also signed by the concerned Minister and thus, it assumes the character of a stay order granted with concurrence of the Minister. As a matter of fact, no such stand was taken by the State in its reply-affidavit dated 20.12.2022. The reply is silent about formation of a Committee or that an unanimous decision was taken by the Committee to grant the stay. The specific stand taken by the State in para 10 of the reply-affidavit reads as under:-

> "10. That all these points were revealed before the Hon'ble Chief Minister by the department orally by the Department before the Hon'ble Chief Minister. That it is submitted that the Hon'ble Chief Minister ordered the Department to prepare a detailed note-sheet on all these irregularities, however, asked the department to prepare summary note sheet asking the department that the caretaker body cannot take policy decision having regard to the urgency of the matter. That a short summary note-sheet was placed before the Hon'ble Chief Minister and said note-sheet is enclosed herewith as Annexure- R-11 (page 153). That it is thus apparent that the stay was vacated by the Hon'ble Minister of the Co-operation who always acts under the Hon'ble Chief Minister and the Hon'ble Chief Minister can vary, modify, vacate the orders of the Minister of the Co-operation."

51. Rather, the above portion of the reply-affidavit is in the form of justification to the order of stay granted by the Chief Minister. The reply indicates that the matter was orally informed by the department to the Chief Minister who in turn directed the Department to prepare a note- sheet which is at Annexure-R-11 (Page 153). The reply further states 31 wp8041.22.odt that the earlier stay order was vacated by the concerned Minister who always acts under the Chief Minister and thus, the Chief Minister can vary, modify and vacate the order of concerned Minister. The said reply is contrary to the submission made before us, that the matter was placed before the Committee and

the decision to grant stay was a Committee decision of which the concerned Minister was a member. Moreover, it is not explained what was the constitution of the Committee and under which Rules or Instruction the said Committee was created.

52. The matter can also be looked at from another angle. There is an attempt at treating the note-sheet (page 153) as an order of the concerned Minister which cannot be accepted. The first para of the note-sheet itself is sufficient to shatter the submission made in this regard. The crucial note-sheet reads as below:-

> "i`-129@i-fo- ojhy Jh-euksgj ikmudj o Jh- xtkuu ikrksMs ;kaP;k fnukad 29-11-2022 i=kps d`i;k voyksdu Ogkos- lnj i=koj ek-eq[;ea=h egksn; ;kauh "Hkjrh izfdz;syk LFkfxrh nsmu vgoky lknj djkos" vls funsZ'k v-eq-l- ¼lgdkj o i.ku½ ;kauk fnys vkgsr-
>
> 2- lnj i=kr fnukad 23-11-2022 jksthP;k i=kUo;s panziwj ftYgk e/;orhZ lgdkjh cWadsP;k Hkjrh izfd;ojhy mBfoysY;k Lfkfxrh jn~n dj.kscksckcr fouarh dsyh vkgs-

3- panziwj ftYgk e/;orhZ lgdkjh cWadsus fn-1-12-2021 jksthP;k i=kOnkjs cWadsPkk 360 ins ljGlsosOnkjs Hkjrh dj.;kl ekU;rk feG.;kckcrpk izLrko dk;ZokghLro lgdkj vk;qDr o fuca/kd] lgdkjh laLFkk ;kapsdMs foHkkxh; lgfuca/kd] lgdkjh laLFkk] ukxiwj ;kaP;k f'kQkj'khlg lknj dsyk gksrk-cWadspk izLrko rlsp foHkkxh; lgfuca/kd] lgdkjh laLFkk] ukxiwj ;kaps f'kQkj'khuqlkj lgdkj vk;qDr dk;kZy;kdMhy fnukad 17-2-2022 jksthps i=kOnkjs cWadsl fyfid Js.khrhy 261] f'kikbZ Js.khrhy 97 o fLoij Js.khrhy 2 32 wp8041.22.odt ins ;kizek.ks ,dq.k 360 ins ljGlsosOnkjs Hkjrh dj.;kl ekU;rk fnysyh vkgs-

ukckMZdMhy vkj-vkeyksjikoukFku lferhP;k f'kQkj'khuqlkj cWadsus ;kiwohZp lknj dsysY;k 885 inkaP;k lq/kkjhr lsod dekaM@vkd`rhca/kkl lgdkj vk;qDr dk;kZy;kus fnukad 23-8-2021 jksthP;k i=kUo;s eatwjh fnysyh vkgs- fnukad 31-10-2021 v[ksj cWadse/;s dk;Zjr ins 551 vlqu 364 ins fjDr vkgsr- ;kiSdh mDr ueqn dsY;kizek.ks 360 ins ljGlsosOnkjs Hkjrh dj.;kl ekU;rk ns.;kr vkyh vkgs-

4- panziwj ftYgk e/;orhZ lgdkjh cWadsP;k lapkyd eaMGkph eqnr fn-5-10-2017 jksth laiq"Vkr vkyh vkgs- ;kckchr Jherh 'kkarkckbZ cko.ks ;kauh ek-mPp U;k;ky;] eqacbZ [kaMihB ukxiwj ;sFks fjV ;kfpkd dz-4625@2017 nk[ky d:u egkjk"Vª lgdkjh laLFkk vf/kfu;e 1960 e/;s 'kklukus fn-13-8-2013 jksth ¼egkjk"Vª XVI@2013, fn- 14-2-2013 iklwu ykxw½ dsysY;k lq/kkj.ksOnkjs lgdkjh laLFkkaP;k lapkyd eMGkojhy vkfFkZd nqcZy izfrfu/khph rjrqn ¼dye 73 ch½ vf/kfu;ekrqu R;kpizek.ks cWadkaP;k mifo/khrqu dk<qu VkdY;kus O;fFkr gksmu ;kfpdk nk[ky dsyh- lnj ;kfpdsoj ek- mPp U;k;ky;] [kaMihB ukxiwj ;kauh fn-21-7-2017 jksthP;k vkns'kkOnkjs cWadsP;k lapkyd eaMGkph fuoM.kqd izfdz;k lq: u dj.;kckcr vkns'khr dsys vkgs o lnj LFkfxrh v|ki dk;e vkgs- ¼lkscr izr tksMyh vkgs-½ lnj ;kfpdk o vU; 13 ;kfpdsOnkjs vf/kfu;ekrhy lq/kkj.kk vkOgkuhr dsY;kus lnj ;kfpdk ek-mPp U;k;ky;] eqacbZ dMs oxZ dj.;kr vkyh vkgs o lnj ckc v|ki U;k;izfo"B vkgs- lnj ;kfpdsPkk Ø-4647@2018 vkgs-

5- njE;ku panziwj ftYgk e/;orhZ lgkdjh cWadsP;k lapkyd eaMGkph eqnr laiysyh vlY;kus ;k cWadsP;k uksdjHkjrhl lgdkj vk;qDrkauh fnysY;k ekU;rsl Lfkfxrh ns.;kph fouarh ek-Jh-lqjs'k /kkuksjdj] yksdlHkk lnL; ;kauh rRdkyhu ek-ea=h ¼lgdkj½ ;kpsdMs dsyh gksrh- R;kuq"kaxkus 'kklukus

fnukad 12-05-2022 jksthP;k vkns'kkUo;s panziwj ftYgk e/;orhZ lgdkj cWadsP;k uksdjHkjrhl LFkfxrh fnyh-

rn~uarj v/;{k] panziwj ftYgk e/;orhZ lgdkjh cWad ;kaP;k fnukad 11-11-2022 jksthP;k i=kUo;s] cWadsrhy deZpk&;kaph la[;k deh vlY;kus dkedkt pkyfo.ks vMp.khps gksr vlwu uksdjHkjrh u >kY;kl xzkgd lsosr O;R;; ;smu dkgh can iM.;kph 'kD;rk vlY;kps uewn d:u uksdjHkjrhojhy LFkfxrh mBfo.;kph fouarh ek-ea=h ¼lgdkj½ ;kauk dsyh- R;kuqlkj cWadsps dkedkt O;ofLFkr pky.;klkBh vkf.k xzkgd lsosr O;R;; u ;s.;kP;k mn~ns'kkus 'kklukus fnukad 23- 11-2022 jksthP;k i=kUo;s cWadsP;k uksdjHkjrhojhy LFkfxrh mBfoyh vkgs-

6- l|fLFkrhr Jh= euksgj ikmudj o Jh- xtkuu ikrskMs ;kauh

R;kapk fnukad 29-11-2022 jksthP;k i=kUo;s] panziwj ftYgk e/;orhZ lgdkjh cWadsP;k lapkyd eaMGkph eqnr laiysyh vlwu lnj lapkyd eaMG gs dkGthokgw lapkyd eaMG vkgs- R;keqGs ;k lapkyd eaMGkyk uksdjHkjrh lkj[ks eksBs vkf.k egRokps fu.kZ; ?ks.;kps vf/kdkj ulY;kps uewn d:u 'kklukus fnukad 23-11-2022 jksthP;k vkns'kkUo;s mBfoysyh LFkfxrh ;ksX; ulY;kus lnj uksdjHkjrhl iqUgk LFkfxrh ns.;kph fouarh dsysyh vkgs-

7- izdj.kh uewn dj.;kr ;srs dh] panziwj ftYgk e/;orhZ lgdkjh cWadsP;k lapkyd eaMGkph eqnr laiq"Vkr vkysyh vkgs] gh ckc [kjh vlyh rjh ek- mPp U;k;ky;kP;k vkns'kkuqlkjp lnj cWadsP;k lapkyd eaMGkP;k fuoM.kwdhl LFkfxrh ns.;kr vkysyh vlwu v|ki;Zar lnj LFkfxrh dk;e vkgs- mijksDr oLrqfLFkrh fopkjkr ?ksrk] panziwj ftYgk e/;oRkhZ lgdkjh cWadsP;k Hkjrhl LFkfxrh ns.ks mfpr gksbZy fdaok dls ;kckcr d`i;k vkns'k Ogkosr-

(jtsoj) dk-v- ¼Jh- dkBksGs½

fo-dk-v-o l-fu-¼l-la½¼Jh- okMsdj½

(nkS&;koj) v-eq-l-¼lgdkj o i.ku½¼Jh- vuwi dqekj½

ek-ea=h ¼lgdkj½

ek-eq[;ea=h

v-eq-l- ¼l-o-i½"

53. The first para has demolished the submission that the matter was placed before the Committee and it was the Committee's decision to grant stay. The note-sheet itself begins with reference to the fact that on the complaints of respondent No. 5 Mr. Manohar Pahunkar and respondent No. 6 Mr. Gajanan Patode, the Chief Minister has granted stay with direction to prepare a report. Thus, before acting on the note- sheet, the Chief Minister had already granted a stay to the Minister order, which is the impugned order separately passed on the complaint (page 80). Therefore, there is no

substance in the submission that the 34 wp8041.22.odt Committee consisting of the Chief Minister and the concerned Minister has considered the matter and thereafter granted stay. As a matter of fact, the Chief Minister had already granted stay by passing the impugned order on the complaint dated 29.11.2022 filed by respondent No. 5 Mr. Manohar Pahunkar and respondent No. 6 Mr. Gajanan Patode. Thus, the position is clear that stay was not granted by the concerned Minister, but it was an act of the Chief Minister alone.

54. Moreover, the note-sheet reveals that it was merely signed by the rest, and the Chief Minister has only remarked to grant stay which also needs consideration. The said remark has no bearing as in first para of the note-sheet, it is stated that the Chief Minister has already granted stay. Obviously, the said note-sheet was prepared as per direction of the Chief Minister subsequent to grant of stay and thus, there can be no ratification by the subsequent remarks. The note-sheet indicates that the file has been moved from the Authorities of which two were absent, whilst two have only singed. When the note-sheet came to the Chief Minister, he remarked thereon to grant stay. Therefore, in any eventuality, it cannot be said that it was a joint decision to grant stay. Hence, we do not found any force in the submission, which is nothing but an attempt to shield the order of the Chief Minister.

55. Mr. Khapre, relied on the decision of the Supreme Court in case of Lalaram and others Vs. Jaipur Development Authority and 35 wp8041.22.odt another with connected matters, (2016) 11 SCC 31 to make two fold submission that minor irregularities will not make the action illegal, and that, the Chief Minister has residuary powers to pass orders in any case. In this regard, he took us through para 61, 67, 73, 105 of the decision. To understand the submission, we have gone through the decision carefully, but are unable to find how it supports the contention that the order of the Chief Minister is a mere irregularity. In-fact, it was the basic contention of petitioner that the Chief Minister has no power to pass orders when the business of co-operation department was allocated to the concerned Minister. No doubt, mere non-compliance would not render the executive action/decision invalid, if otherwise validly taken as per the terms of Rules of Business, however the action must be in accordance with the Rules of Business.

56. The second submission about residuary powers of the Chief Minister is based upon the Rajasthan Rules of Business, where the residuary powers are vested with the Chief Minister in terms of the Rule 31(2)(xix). Mr. Khapre is unable to point any Rule of Business or Instruction framed by the Governor of Maharashtra in terms of Article 166(3) of the Constitution of India which vests such residuary powers with the Chief Minister. Moreover, the subject at hand cannot be said to be a case involving the policy or matter of urgent public importance, 36 wp8041.22.odt therefore being distinct on facts, the said decision would not assist respondents in any manner.

57. Last, reliance of Mr. Khapre is on the decision of the Supreme Court in case of Jayantbhai Manubhai Patel & ors. Vs. Arun Subodhbhai Mehta & ors., AIR 1989 SC 1289 to contend that by virtue of Section 21 of the General Clauses Act, the power to pass the impugned order is an implicit one. Section 21 of the General Clauses Act states that a power to make an order, includes power to add, amend vary or rescind the order. However basically the authority must be vested with initial power to deal with the subject and only then does Section 21 of the General Clauses Act, aid the

passing of incidental orders. In the case at hand, the initial power to pass orders on the subject assigned to the Co-operation Ministry has not been demonstrated and therefore, Section 21 of the General Clauses Act could not be made applicable to justify the impugned order.

58. Mr. Khapre, learned senior counsel would submit that the impugned order of stay was an interim order and the Chief Minister is yet to hear and decide the proceeding. The petitioners would get an opportunity to put up their case before the Chief Minister and therefore, the order being of interim nature, does not call for interference. In response, it is submitted that since the Chief Minister has no authority to pass interim orders or to stall the order of the concerned Minister, the 37 wp8041.22.odt proceeding itself is illegal, without jurisdiction and therefore, the petitioners are not required to submit to the said authority.

59. On the issue of maintainability of the writ petition, learned counsel Mr. Manohar relied on the decision of the Supreme Court in case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & ors. (1998) 8 SCC 1. In the said decision, it has been observed that existence of alternate remedy would not operate as a bar in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of principles of natural justice; or (iii) where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged. Even in the case at hand, it is not a plea of the other side that alternate remedy is available. The petitioner very much claims violation of principles of natural justice and that the order impugned is wholly without jurisdiction.

60. Admittedly, the Chief Minister was not the head of the Co- operation Department, but the said department was assigned to a separate Minister. There is no authority/power vested in the Chief Minister as per Rules of Business and Instructions to have supervisory powers over the decision taken by the concerned Minister. Nor do the Rules indicate that the Minister is subordinate to the Chief Minister as 38 wp8041.22.odt regards independent functioning of a department assigned to him by the Rules. Obviously, subordination must be express either by a Statute or the Rules of Business. Once the powers are distributed by the Rules of Business and Instructions, there must be an express provision authorizing the Chief Minister to indulge in the matter assigned to the particular Ministry. Since a Minister-in-charge of a department is supposed to function for the concerned department, he is responsible for the affairs thereof and his orders would assume the character of an order passed by the State Government. There is no provision in the Business Rules to go beyond allocation of work. Rule 15 of the Business Rules specifies the classes of cases which shall be submitted to the Chief Minister before issuance of orders, but the concerned subject does not fall within specified subjects contained therein. No doubt the order of granting permission for recruitment is of administrative nature which can be reviewed, but only by the In-charge-Minister. The intervention of the Chief Minister is not authorized under the Business Rules and the Instructions issued thereunder. The Intervention of the Chief Minister is wholly unwarranted and without the authority of law. The Chief Minister has no independent power under the Business Rules and Instructions to interfere into the subject which was allocated to the In- charge-Minister.

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61. In the result, we hold that the Chief Minister has no independent power assigned under the Rules of Business and Instructions issued thereunder to review or modify the decision taken by the concerned In-charge-Minister, therefore, the impugned order of stay granted by the Chief Minister would not stand on this legal touchstone. In that view of the matter, the writ petition is allowed. Impugned order of stay dated 29.11.2022 passed by the Chief Minister is hereby quashed and set aside.

62. Rule is made absolute in terms of prayer clause (A) of the petition. No costs.

(VALMIKI SA MENEZES, J.) (VINAY JOSHI, J.)

Gohane

Digitally
signed by
JITENDRA
JITENDRA BHARAT
BHARAT GOHANE
GOHANE Date:
2023.03.03
18:01:49
+0530