

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CIVIL APPELLATE JURISDICTION.**

Writ Petition No.4882 Of 2013.

Dr. Nandkumar Govindrao Ukadgaonkar :: **Petitioner.**

Versus

The State of Maharashtra & Ors. :: **Respondents.**

Appearance =>

Mr. M.S. Kulkarni h/for Mr. S.P. Shah, Advocate for the Petitioner.

Mr. M.B. Bharaswadkar, Advocate for Respondent No.2

Mr. G.K. Thigale - Naik, A.G.P. for the State of Maharashtra.

Mr. S.S. Kazi, Advocate for Respondent No.4.

CORAM : S.S. SHINDE, J.
DATE : 19th DECEMBER, 2013.

Per Court :-

Heard.

(2) Being aggrieved by the order dated 19th June, 2013 passed by the Competent Authority – cum – the Deputy Commissioner of Police, Zone -1 Aurangabad in जावक क्रमांक.पोउपआ/परि-१/ध्वनिप्रदुषन/नोटीस/२०१३/१२४७ औरंगाबाद ३, the petitioner has filed present petition.

(3) The learned counsel for the petitioner submits that, before taking the writ, no notice was given to the petitioner. It is submitted that, while taking the writ, procedure as envisaged under the Noise Pollution (Control and Regulation) Rules, 2000, (In short, the Rules, 2000), the relevant Rules under the Environment (Protection) Act, 1986 and

Government Resolutions has not been followed. The learned counsel invited my attention to the provisions of the Rules, 2000 and in particular Rule 3(4) of the said Rules and submits that, at the first place, complaint itself is not maintainable. *Secondly*, no notice was given before taking the writ by the Competent Authority. *Thirdly*, prescribed procedure has not been followed and, *fourthly*, noise emitted by the gen set is within permissible limits and the supply of said gen set is for ventilatory assistance to the Incentive Care Unit of said hospital, therefore, relying upon the grounds in the petition, annexure thereon, Government Resolutions and the Rules laid down in the Rules, 2000, the learned counsel for the petitioner submits that, Petition deserves to be allowed.

(4) The learned counsel appearing for the original complainant vehemently opposed the prayer in the Petition. He submits that, Competent Authority on the basis of available material, reached to the conclusion that, the noise emitted by get set is beyond the permissible limits and frequency weighting in the measurement of noise is exceeding 55 dB. He submits that, the complainant is a age old lady, facing serious health problems due to emission of noise pollution created by generator / compressor installed in the hospital, therefore, relying on the report of the Competent Authority and reply, he prayed that, Petition be dismissed.

(5) Learned A.G.P. for the State invited my attention to the *affidavit* in reply filed by Dr.Jay Vasantao Jadhav, Competent Authority – Cum – Dy.Commissioner of Police, Zone 1, Aurangabad and submits that, in the hospital run by the petitioner, there are two compressors and DG set which create noise pollution, therefore, due to increasing noise pollution, original complainant lodged the complaint. He submits that, as per Rule of 7 of the Rules, 2000, respondent No.3 is a competent authority to take an

action against the violator in accordance with the provisions of the Rules, 2000. He further submits that, as per Rule 8(a)(ii) the competent authority has initiated an action against the petitioner, as noise emitted by gen set, DG Set and compressor beyond the permissible limits. He further submits that, if any person is aggrieved by the order passed by the competent authority as per Rule 8(a)(ii) of the Rules, 2000, he may make an application as per Rule 8(2) of the Rules, 2000 before the Competent Authority. Thus, learned A.G.P. for the State submits that, the petitioner, if aggrieved with the *impugned* order, alternate remedy is to approach Competent Authority under Rule 8(2) of the Rules, 2000. He submits that, expert persons from the Competent Authority on 18th April, 2013 has taken the frequency of measurement of alleged noise pollution, upon which, reading for evening and night showed as dB(A) Leq.68.84 and dB(A) Leq 66.58, respectively. Thus, he submits that, since the noise level measurement exceeded the ambient level mentioned in the Schedule of the Rules, 2000 on 22nd April, 2013 the Competent Authority has issued notice to the petitioner. Therefore, he submits that, all the issues raised in this petition includes procedural lapses like, whether the notice was duly served upon the petitioner or not, and other issues, which can be considered by the Competent Authority and the petitioner has alternate remedy under Rule 8(2) of the Rules, 2000. He submits that, the Rules, 2000 does permits the Competent Authority to consider all the points raised in this petition, therefore, instead of deciding disputed question of fact, raised in this petition, the petitioner can approach the Competent Authority under Rule 8(2) of the Rules.

(6) Upon hearing learned counsel for the parties and upon perusal of grounds taken in the petition, annexures thereto and reply filed by the respective respondents and in particular paragraph No.7 of the *affidavit* in reply filed by Dr.Jadhav / Respondent No.3, this court finds that, it would be

proper to direct the the parties to appear before the Competent Authority established under the Rules, 2000. The points which are raised by the petitioner, may lead to disputed question of fact and this Court may have limitation to dictate on all the points or issues raised by the petitioner, therefore, when alternate remedy is available under the provisions of the Rules,2000, this court instead of entertaining the present Petition, declined to deal with merits / demerit of the petition and deems it appropriate to direct the parties to approach before the competent authority, established under the Rules, 2000.

(7) Since this court is inclined to direct the petitioner to approach before the concerned competent authority, two weeks time is granted to the petitioner to file appropriate application before respondent No.3. Upon filing such application, respondent No.3 to exercise his powers, available to him under the Rules, 2000, as stated by him in the affidavit in reply and shall decide the application and to consider the points raised by the petitioner including that no notice was give before initiating the inquiry, procedural lapses, in adherence to the Rules, 2000 and all other Government Resolutions and to decide the application in one way of otherwise.

(8) In the light of the above discussion, petitioner to file appropriate proceedings before the competent authority under the Noise Pollution (Control and Regulation) Rules, 2000 within two weeks from today. Upon filing such application / proceedings, respondent No.3 – competent authority shall issue notice to the original complainant for her appearance before him and to hear the parties, within 15 days of filing of the application.

(9) If for the proper adjudication, the competent authority feels it necessary, it is at liberty to exercise his powers by taking the reading of

frequency of alleged noise pollution to detect whether noise emitted by the gen set, compressor and DG set is within permissible limits or otherwise. He may exercise the same in presence of the parties, if desires and to follow all requisite procedure, laid down in the Noise Pollution (Control and Regulation) Rules, 2000 and Government Resolutions. In that respect, It is made clear that, this court has not made any observations or expression of any opinion on the merits or demerits of the case and the competent authority after hearing the parties, to take appropriate decision in the matter. In view of the above directions, Writ Petition stands disposed of.

(10) Till decision is taken afresh by the competent authority, no coercive action should be taken against the petitioner. If as per the directions given hereinabove, appropriate proceedings is filed by the petitioner before the competent authority under the provisions of the Rules,2000 and if after considering the matter afresh, the competent authority arrived at conclusion that the noise emitted by get set, compressors and DG set is exceeding the permissible limits, still such order which is against the petitioner, shall not take effect for one week thereafter. Competent Authority to hear the parties and to pass the orders within two months from the date of this order. Writ Petition stands disposed of according in above terms. There shall be no order as to costs.

(S.S. SHINDE, J.)