

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

Civil Application [CAO] No. 1168 of 2015
IN
Misc. Civil Application [Review] St. No. 6997 of 2015
IN
Writ Petition No. 4184 of 2013 [decided]
With
Contempt Petition No. 129 of 2015

[A] Civil Appln. No. 1168 of 2015 :

**1. Chief Executive Officer,
Zilla Parishad, Gondia.**

...Org. Respdt. No.1.

**2. Medical Officer,
Primary Health Centre,
Rawanwadi,
Zilla Parishad, Gondia.**

...Org. Respdt. No.2.

..... Applicants.

Versus

**1. Ishwardas Rambhau Nipane,
aged 39 years,
occupation - Multipurpose
Worker,
resident of Sawri, Post -
Jawaharnagar,
Bhandara,
Tq. & Distt. Bhandara.**

...Org. Petitioner.

**2. Scheduled Tribe Certificate
Scrutiny Committee,**
Adiwasi Vikas Bhavan,
Nagpur,
through its Member-Secretary. **Respondents.**

Mr. A.Y. Kapgate, Adv., for the Applicants in Civil Application No. 1168 of 2015.

Mr. R.S. Parsodkar, Adv., for Respondent no.1 [original petitioner].

Mr. A. Parihar, Adv., for Chief Executive Officer, Zilla Parishad, Gondia.

[B] Contempt Petition No. 129 of 2015 :

Ishwardas Rambhau Nipane,
aged 40 years,
occupation – Multipurpose
Worker,
resident of Sawari, Post -
Jawaharnagar,
Bhandara,
Tq. & Distt. Bhandara. **Petitioner.**

Versus

1. Shri D.B. Gawade,
the Chief Executive Officer,

Zilla Parishad, Gondia.

- 2. Shri H.S. Karmarkar,**
District Health Officer,
Zilla Parishad, Gondia,
Distt. Gondia.

..... Respondents.

Mr. R.S. Parsodkar, Adv., for the petitioner.

Mr. A. Parihar, Adv., for Respondent Nos. 1 and 2.

**CORAM : A.B. CHAUDHARI AND
P.N. DESHMUKH, JJ.**

Date : 11th August, 2015.

ORAL JUDGMENT [per A.B. Chaudhari, J.]:

01. Civil Application No. 1168 of 2015 is for condonation of delay in filing the Review Application, namely Misc. Civil Application St. No. 6997 of 2015 arising out of the Judgment and Order dated 27th January, 2015 passed by this Court in Writ Petition No. 4184 of 2014.

02. Heard.

03. Delay is condoned. Civil Application No. 1168 of 2015 is

disposed of.

**Misc. Civil Appln. St. No. 6997/2015 arising out of Writ Petition
No. 4184 of 2015, decided on 27th January, 2015 AND
Contempt Petition No. 129 of 2015 :**

01. Rule. Rule is made returnable forthwith. Learned Adv. Mr. Parsodkar waives service for respondent no.1. Heard learned counsel for the rival parties. By consent of rival parties, this Misc. Civil Application [Review] St. No. 6997 of 2015 and Contempt Petition No. 129 of 2015 are taken up for final hearing and disposed of by this Judgment and Order.

02. This Review Application came up before us in view of the Counsel Note dated 14th July, 2015 filed by the Review Applicants in which it is stated as under:-

“In view of the present assignments; the counsel for the applicant/respondent no. 1 and 2 is requesting this Hon'ble Court to be pleased to constitute a special bench of Shri A.B. Chaudhari and Shri P.N. Deshmukh, JJ, as the order dated 27th January, 2015 in Writ Petition No. 4184 of 2013 [D], that is sought to be reviewed, was passed by the bench of Shri A.B. Chaudhari and Shri P.N. Deshmukh, JJ.”

03. Office to put a stamp number on this Counsel Note which has not been put inadvertently.

04. As per the Counsel Note, it appears that the Registrar [Judicial] accepted the request for placing the matter before the Bench consisting of A.B. Chaudhari and P.N. Deshmukh, JJ., and that is how the entire matter came up before this Court on 24th July, 2015, when the counsel for the parties agreed to address on the merits of the Review Application itself, since the delay was only of 39 days and would be condoned with the consent of the contesting parties. On 24th July, 2015, accordingly, the Review Application was heard. While arguing the review for Zilla Parishad, Gondia for some time, Mr. Kapgate contended that the judgment under review dated 27th January, 2015 was liable to be reviewed because the original petitioner – Ishwardas, who practised a fraud or committed forgery in obtaining the employment as a Scheduled Tribe candidate, could not have been given protection in service in accordance with the Full Bench Judgment in the case of **Arun Vishwanath Sonone Vs. State of Mah. & others** [2015 (1) Mh.L.J. 457]. On this, the Court pointed out to him that upon perusal of the record of Writ Petition bearing No. 4184 of 2013, no such reply or pleadings were at all filed pleading fraud etc., when the Judgment and Order dated 27th January, 2015 was dictated

in the open Court. Even the Caste Scrutiny Committee had not recorded any finding of fraud or forgery in its order. In fact, the Writ Petition was kept pending from 2013 awaiting the decision of the Full Bench in the case of Arun Sonone Vs. State of Mah. & others [cited supra]. Mr. Kapgate, counsel for the Zilla Parishad was also told that time for compliance of the judgment had already expired after six weeks from 27th January, 2015 and his client Zilla Parishad, Gondia, did not even move for extension of time to implement the judgment and it was over a period of six months that the Judgment of the High Court was not complied with and, therefore, the counsel was asked to instruct his client to comply with the Judgment first and then Review Petition would be taken up for hearing. Taking a clue from what transpired, Mr. Kapgate, learned counsel for the Review Applicants, thereafter appears to have made an application to Hon'ble the Chief Justice, stating therein that this Court pressurized him to comply with the order of High Court and that, therefore, all his matters should not be placed before the Bench presided over by A.B. Chaudhari, J. On the next date, i.e., 31st July, 2015, the counsel for the review applicants did not appear before the Court, and on the contrary, filed the Pursis in the Review Application which was pointed out by the Court Sheristedar. On 31st July, 2015, this Court, therefore, made an order asking the counsel Mr. Kapgate to explain about his allegations

against the Court, and also issued a notice to the Chief Executive Officer, Zilla Parishad, Gondia, asking as to why action for aggravating the contempt should not be taken, since Contempt Petition No. 129 of 2015 was already filed and was also placed before us.

It appears that Adv. Mr. A.Y. Kapgate is habitual in indulging in such type of acrobatics. His wife [as stated by Adv., for the petitioner in Criminal Writ Petition No. 501 of 2008 in her letter on the address of Adv. Mr. A.Y. Kapgate enclosed with the Pursis filed by Advocate on 7th February, 2014] addressed a letter to the Chief Justice not to place the Criminal Writ Petition No. 501 of 2008 before the Bench wherein Justice Shri B.R. Gavai is a Member. It appears that on 10th March, 2014, Justice Shri B.R. Gavai himself ordered not to place the said Criminal Writ Petition no. 501 of 2008 before him. Adv. Mr. A.Y. Kapgate must have thought that we would also do the same thing. But we will not and, thus, proceed further.

05. The matter was adjourned to 7th August, 2015. On 06th August, 2015, Mr. Kapgate, Adv., filed a Pursis Stamp No.8380/15, stating as follows:-

“The counsel for the applicants is informing to this Hon'ble Court that counsel will be unable to attend the Court for two-three weeks in view of the fact that the spouse of the counsel is admitted in the hospital and is undergoing treatment for Cervical Radiculopathy

following a car accident.”

Looking to that Pursis, this Court adjourned the proceedings to 11th August, 2015 for communicating the order dated 31st July, 2015 by FAX to the Chief Executive Officer, Zilla Parishad, Gondia. On 10th August, 2015, however, Mr. Kapgate, Adv., filed the Pursis St. No. 8542/15, stating that the Judgment and Order dated 27th January, 2015 was complied with and the petitioner Ishwardas joined the service and that the Written Notes of Arguments filed by him should be considered.

06. On 11th August, 2015, Mr. A. Parihar, the learned Standing Counsel for the Zilla Parishad, Gondia, appeared with Dr. H.S. Kalamkar, District Health Officer, Zilla Parishad, Gondia. Mr. Parihar, upon instructions from Dr. H.S. Kalamkar, Distt. Health Officer, stated that the Zilla Parishad has complied with the Judgment and Order dated 27th January, 2015 and the employee has been reinstated and all the formalities have been completed. Mr. Parihar invited our attention to the Reinstatement Order dated 5th August, 2015 filed along with Pursis St. No. 8379/15 dated 6th August, 2015. In view of the compliance, Mr. Parihar, learned Standing Counsel for Zilla Parishad, Gondia, was asked to argue the Review Application, since he

appeared for Chief Executive Officer and District Health Officer, Zilla Parishad, Gondia, as stated before us. Mr. Parihar submitted that he does not agree with the bombastic confrontation made by Adv. Mr. Kapgate, which was avoidable and unnecessary, because, according to Mr. Parihar, the Judgment dated 27th January, 2015 was really required to be complied with, since the case was fully covered by the Full Bench decision of this Court in the case of Arun Sonone [cited supra]. It was pointed out to him by us that the Review Applicant – Zilla Parishad had not at all filed any reply rebutting the averments made in the Writ Petition, nor the stand was taken in the Writ Petition No. 4184 of 2013 that the petitioner Ishwardas had practised any fraud or committed any forgery. In the absence of any pleadings, it was difficult to consider any such contentions, since the allegations of fraud and forgery are the matters of facts. Mr. Parihar agreed that record does not show any such stand being taken in answer to the writ petition, obviously because no reply to the writ petition was at all filed by the Zilla Parishad and hence it was wholly wrong to raise such a ground for the first time in review. Mr. Parihar, then, upon taking instructions from Dr. Kalamkar, Distt. Health Officer, submitted that after examining the matter in consultation with him, the Zilla Parishad has come to a correct conclusion that there was no point in pressing the Review Petition in the absence of any rebuttal to the Writ Petition originally or

even in reply to the Contempt Petition that was filed, about the issue of fraud and forgery for the first time, all the more so because the Judgment under review was in accordance with the Full Bench Judgment of this Court regarding protection of service. He also submitted that the Chief Executive Officer would like to accept the said judgment as was ordered in several other cases by this Court. Mr. Parihar clarified in fairness that the happenings in the instant case do not give a good signal to one and all and, therefore, he would completely disassociate from the inane shrill and tantrum made by the Advocate Mr. Kapgate. We appreciate the stand taken by Mr. Parishar in fairness, since he appears to have given the correct advice to his client. Nevertheless, we have perused the Written Notes of Arguments filed by Mr. Kapgate, Adv., and so also the reasons recorded in the order of the Caste Scrutiny Committee. It must be said that the Caste Scrutiny Committee in its entire order, that was the subject-matter of Writ Petition No. 4184 of 2013, did not record a single finding that the Petitioner Ishwardas had committed any fraud or forgery, as contended by Mr. Kapgate, Adv. As per the provisions of the Act and as per the practice of the Caste Scrutiny Committee, the Committee records a categorical finding about fraud and forgery first and thereafter in such cases, orders filing of FIR with the Police Station and prosecution against the candidate. Even that is not to be found in the impugned

order. Therefore, we cannot accept the contention raised by Mr. Kapgate, Adv., that the Committee has come to any conclusion that the petitioner Ishwardas had committed any fraud or forgery. Independently also, Mr. Kapgate did not file any reply to the petition to show any fraud or forgery by any other material, since allegations of fraud and forgery are the matters of fact and by arguments, no fraud or forgery can be established. After all, the charge of fraud and forgery is serious one. Therefore, we find that the arguments regarding fraud and forgery have been made in the Written Notes of Arguments in most casual manner without any foundation of pleadings or affidavit on record even in response to the Writ Petition Contempt Petition. There is no factual data about fraud or forgery anywhere.

07. We, therefore, do not find any substance in the present Review Application and the order to dismiss the same is inevitable.

08. We, however, were pained to see the allegations in the application by way of shenanigans which have been made by Mr. Kapgate to the Hon'ble the Chief Justice and we find from that application that the only allegation is that asking him to instruct his client to comply with the order of High Court was taken by him to be the pressure exerted by the Bench. We do not approve of such a

despicable conduct of the Advocate. But then, at the same time, we also do not take any serious cognizance of his conduct and would like to leave it for him to introspect.

09. With the above observations, we make the following order:-

O R D E R

- [a]** Civil Application [CAO] No. 1168 of 2015 is disposed of.
- [b]** Misc. Civil Application St. No. 6997 of 2015 for review is dismissed with no order as to costs. Notice is discharged.
- [c]** Contempt Petition No. 129 of 2015 does not survive in view of compliance of the Judgment and Order dated 27th January, 2015 passed in Writ Petition No. 4184 of 2013. Hence disposed of.

Judge.

Judge

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