

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

CRIMINAL WRIT PETITION NO. 543 OF 2014
WITH CRIMINAL APPLICATION (APPW) NO. 154/15 IN C.W.P. NO. 543/14.
Sunil s/o Gayaprasad Mishra .vs. The State of Maharashtra & others

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Petitioner in person.
Mr. S.M. Ukey, A.P.P. for respondent nos. 1 to 3
Mr. P.B. Patil, Advocate for respondent no.4.
Mr. S.P. Bhandarkar, Advocate for intervenor.

CORAM : B.R. GAVAI & PRASANNA B. VARALE, JJ.

DATED : OCTOBER 7, 2015.

1] This Criminal Writ Petition has been filed by the petitioner praying for appointment of special investigation team not below the rank of Deputy Commissioner of Police and direct the said Special Investigation Team to complete the investigation in the roster scam by registering an FIR and take action in accordance with law and as per Loney Committee report dated 5.1.2011.

2] The petition is pending since 2014. The matter has been adjourned on various occasions. Various affidavits have been filed by the parties. When the matter was listed on 27.10.2014 the Division Bench of this Court was *prima facie* of

the opinion that the presence of Nagpur University would be appropriate for effective adjudication of the said petition. However, the petitioner-in-person had opposed to join Nagpur University as a party and had stated that he would not like to implead the Nagpur University as party respondent. The matter was, therefore, adjourned by the Court to consider the question as to whether the present petition was maintainable or not in the absence of Nagpur University. Again on 10.11.2014 the petitioner-in-person sought adjournment. When the matter was listed before this Court on 12.2.2015, another Division Bench of this Court found that the assistance from the Nagpur University in order to find out the truth from the records and affidavits before endeavouring to go ahead with the hearing the Criminal Writ Petition was an appropriate step. The Court, therefore, found that the presence of the Nagpur University in the present proceedings would be fruitful for finding out the correct position. The Court, therefore, overruled the objection of the petitioner-in-person and directed the petitioner to join the Nagpur University as party respondent.

3] Again the matter was adjourned from time to time on various occasions and on many occasions at the request of the

petitioner. When the matter was listed before this Court on 16.9.2015, this Court passed the following order :-

“Whatever the petitioner wants to do shall be done within a period of two weeks from today.

The matter to come up for hearing on 07th October, 2015. It is made clear that no further adjournment shall be granted on any count either to the petitioner-in-person or the respondents.”

It would thus be clear that the Court had made it clear that whatever the petitioner wanted to do, he should do within a period of two weeks from the said date. The Court had made it clear that the petition would come up for hearing on 7.10.2015 and further adjournment would not be granted on any count either to the petitioner-in-person or the respondents.

4] Today, when the matter is listed, it is found that the petitioner has filed another application, being Criminal Application No. 154/15 with a prayer to join the Anti-Corruption Bureau, through the office of the Superintendent of Police, Civil Lines, Nagpur as party respondent. The application is

vehemently opposed by the learned Counsel appearing on behalf of the respondents on the ground that the petitioner is making every attempt to protract the proceedings. It is submitted that the petitioner is not interested in hearing of the petition on merits but for some oblique reasons, wants the petition to be kept pending and seeks adjournment after adjournment on one count or the other.

5] The perusal of the application would reveal that the petitioner is seeking to implead the additional respondent on the basis of the communications dated 31.8.2009, 5.11.2009 and the last one dated 20.12.2012. It could thus be seen that the document on which the petitioner seeks to rely for impleading the additional respondent, is at least two years and ten months old. The petition has been filed thereafter and adjourned from time to time. In that view of the matter, we find that the present application is nothing else but an attempt to protract the present proceedings and as such, we reject the said application and proceed to decide the petition on merits.

6] It is the basic contention of the petitioner that a scam known as Roster Scam had happened in the Nagpur University,

wherein large scale malpractices were committed in the matter of appointments. The perusal of the record would reveal that the Nagpur University had itself appointed a Committee vide order dated 26.6.2009 under the chairmanship of Justice G.G. Loney as Chairman and Smt. Sujata Gandhe and one Shri N.M. Kadam as members of the said Committee. The perusal of the report of the Committee itself would reveal that Smt. Gandhe had resigned from the said Committee and in her place Dr. K.P. Sonawne, Ex-Vice Chancellor of Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, was appointed as a member. The said Committee after deliberations and after holding meetings on nine occasions has observed thus in its report dated 27.7.2010 :-

“We have carefully scrutinized the record, statements of all the witnesses. We have clearly found after scrutinizing the evidence recorded of the relevant witnesses that Shri Ashok Govindrao Menchalwar has clearly admitted in his statement that he has made the changes in original registers in red ink in his own handwriting. His frank admission given by him very clearly demonstrates that he is the person who made changes in the original roster 'A', 'B', 'C' and 'D'. We have also carefully scrutinized and found that changes are

made by Shri Menchalwar. He clearly mentioned that he has made the changes in red ink in his own handwriting. We have also scrutinized the evidence of other witnesses who were concerned with the roster in question. We do not find from any other evidence on record to show that there is any other person responsible to make the changes in the roster. The Registrar and other relevant Officers of the University although they have supervisory role and custody of the registers but there is no whisper from any one to establish that they are responsible for making any changes in the roster in red ink. However, they have clearly mentioned that corrections were carried out by Shri Menchalwar. We found that there is evidence that Shri Menchalwar is responsible for the changes. In our view, we are clear in our minds that Shri Ashok G. Menchalwar is solely and exclusive author of the changes made in the roster Registers 'A' to 'D'. Coupled with his frank admission that he has made all these changes leaves no doubt in our mind that the sole responsibility of the changes made in the roster lies on Shri A.G. Menchalwar.

On consideration of the reference made to this Committee and the findings based on the material before us we come to the conclusion that there are changes made in the original roster and the author of the changes is Shri A.G. Menchalwar,

the then Superintendent, B.C. Cell. Under these circumstances, the University may take further necessary action as deem fit.”

The perusal of the report of the said Committee which is also signed by Justice G.G. Loney would reveal that the Committee had come to the conclusion that the changes in the roster were made by Shri Ashok Govindrao Menchalwar and no other person was responsible for the changes in the roster.

7] However, it appears that Shri G.G. Loney who was signatory to the report submitted by the Committee on 27.7.2010, addressed another communication dated 5.1.2011 under his sole signature observing thus :-

“Under these circumstances the instances of the act of making changes in the original roster by erasing the original marking etc. in the original roster attracts the provisions of cognizable offences falling under Chapter XVIII of the Indian Penal Code. These are the offences relating to the documents and are punishable under various Sections of the Indian Penal Code. Under this Chapter XVIII some of the Sections, namely, 465, 466 and 467 are non-cognizable and 468, 469 and 471 are cognizable by

the Police. The University may write a First Information Report stating the relevant facts and the names of the persons concerned making the changes and the connected all the details of acts done as regards the roster. The First Information Report requires to be submitted to the Police for further investigation. The further action on the submission of the First Information Report requires to be taken by the police.”

It could thus be seen that though the report of the Committee consisting of three members does not recommend lodging of a FIR, the Chairman of the Committee almost after a period of six months after submission of report has addressed a communication recommending lodging of a FIR. We do not understand as to in what capacity the said letter is addressed by Justice Shri G.G. Loney.

8] It appears that subsequent to the direction by this Court to implead the Nagpur University, Rashtrasant Tukdoji Maharaj Nagpur University was impleaded as a party respondent. An affidavit has been filed by the said respondent dated 8.7.2015. In the reply filed on behalf of the University, it is specifically stated by the Nagpur University that all the

necessary documents were supplied to the Investigating Agency by the University. It will also be relevant to note that to the roster prepared by the University, an approval was granted by the State Government on 7.9.2011. It will be relevant to refer to paragraph nos. 14, 15 & 16 of the said affidavit : -

“14. In view of the aforesaid facts, it is apparent that the present petition is totally misconceived and premature as the police machinery to whom all the necessary documents are supplied have undertaken the task of investigating the issue in question and therefore, no grievance can be made. It is clear that after due rectification from the State Government, the entire operation of roster have been effected.

15. It is submitted that the petitioner has not pointed out any fault or mischief being played on any of the official of the respondent University. Moreover the approval granted by the State Government to the Roster speaks about the fact that there is no foul play nor mischief played in preparation of Roster or about its applicability. The respondent University has acted as per the mandate of Section 7(2) of Maharashtra University Act, 1994. Therefore, the grievance as raised by the petitioner is misconceived. It is also pertinent to note that in view of the order passed by this Hon'ble Court on 13/03/2013, the cause of action as put forth by the

petitioner does not exists therefore, the petition needs to be dismissed with costs.

16. It is submitted that the Management Council of the respondent University in its meeting dated 03/11/2015 had decided to constitute committee under the Chairmanship of Dr. D.K. Agrawal (Senior Member of Management Council). Amongst other issues, the committee has been entrusted with the duty to take into consideration the various order/directions/observations made and issued by the State Government, the representation of the employees issued, the effect and impact of justice Loney Committee Report, the authenticity of Verification Report of Shri Kedare etc. pertaining to the operation of roster in the respondent University and to submit consolidated report about the facts enveloping controversy in order to facilitate the Management Council to take appropriate decision in this regard. The Constitution of aforesaid committee takes care of the entire grievance of the petitioner, if any. The petitioner has also got a locus standi to approach SC ST Commission, which is already investigating the same issue on basis of complaint made by the Backward Class Employees Association.”

It can thus be seen that the University in its meeting dated

03/11/2015 has decided to constitute committee under the Chairmanship of Dr. D.K. Agrawal, who was the seniormost Member of Management Council, to take into consideration the various issues including the impact of Justice Loney Committee Report and the matters regarding roster. The perusal of paragraph 18 of the affidavit would also reveal that the University had not acted upon the report submitted by the Justice Loney Committee, inasmuch as the University was of the view that the report was not as per the terms of reference.

9] It appears that a further affidavit is filed by Shri Siddharth Vinayak Kane, the Vice Chancellor of the respondent no.4 University pointing out therein various steps taken by the University after the receipt of Loney Committee Report.

10] The University has also filed an affidavit on 7.9.2015. In the said affidavit, it is stated that a Committee of four members was constituted on 2.3.2015 for submitting its report after considering various orders, directions and observations made by State Government from time to time and the representations made by the organizations of the employees. It is further stated that on account of resignation of one member

Dr. Bharti and due to cessation of membership of Dr. Shrikant Komawar, the Hon'ble Vice Chancellor had reconstituted the Committee vide order dated 5.6.2015. It is further stated that the decision of the Hon'ble Vice Chancellor was also ratified by the Management Council in its meeting dated 26.8.2015. The perusal of the affidavit would reveal that a detailed report was submitted to Hon'ble Vice Chancellor on 31.8.2015 by the said Committee. The report is duly signed by its members. The affidavit would further reveal that the Management Council in its meeting dated 26.8.2015 had also authorized the Hon'ble Vice Chancellor to take appropriate decision on the report of the said Committee. The affidavit further shows that the Hon'ble Vice Chancellor vide his order dated 4.9.2015 has accepted the report of the said Committee dated 31.8.2015. The perusal of the affidavit would reveal that the said Committee had taken into consideration various documents. The report of the Committee itself runs into 13 pages. The Committee consists of experts in the education field. The Committee has found that the correction made by Backward Class Cell of the University at the time of verification of the primary roster cannot be construed as tampering with original roster in any manner. It, therefore, holds that there is no question of taking any criminal

action in the matter. It further finds that there is no valid recommendation of any competent authority/committee on record to initiate criminal action in the matter. It further holds that since the State Government had granted approval to the final roster vide communications dated 26.2.2010 & 7.9.2011, the roster was final, binding and conclusive for all the purposes. It further finds that in view of the final approval granted by the State Government to the updated roster, the previous roster has become non-operable and redundant. The Hon'ble Vice Chancellor after considering the detailed recommendations of the Committee consisting of experts in the field and after perusing the report of the committee has accepted recommendations of the said committee.

11] It would thus be clear that the Committee of experts appointed by the Management Council has found that there are no irregularities in the matter of preparation of roster and that the roster has already been approved by the State Government way back in 2010 and 2011 and as such, there is no question of taking any criminal action. The said report has been accepted by the Hon'ble Vice Chancellor.

12] It will not be appropriate for us to go into the question regarding the correctness or otherwise of the report of the said Committee or order passed by the Hon'ble Vice Chancellor, inasmuch as that is not the subject matter of the present petition. However, firstly the contention that Justice Loney Committee had recommended lodging of FIR itself is without substance. The perusal of the report of the Justice Loney Committee which is duly signed by three persons on 27.7.2010 does not show any such recommendations. A letter written by the Chairman of the said Committee in his personal capacity cannot be said to be the report of the said Committee. Apart from that, it would reveal that the petition seeking an identical prayer being Writ Petition No. 443/12 was disposed of by this Court vide order dated 13.3.2013 on the basis of the statement of the learned A.P.P. that the appropriate action would be taken in the matter. The Court expected police authorities to act earnestly and had disposed of the said petition.

13] It could thus be seen that after report was submitted by Justice Loney Committee, the Management Council again appointed a Committee of experts in the University. The said Committee did not find that any criminal action was necessary.

The recommendation of the said Committee has been approved by the Hon'ble Vice Chancellor. It can thus be seen that the very basis of the petition that an FIR is directed to be registered, is on non-existent premise. Firstly, no such recommendations are made by the Justice Loney Committee; secondly, the Committee of experts appointed by the University has found that since approval has been granted to the final roster by the Government on 26.2.2010 & 7.9.2011, the same had become final and that the corrections made in the draft roster before making it final do not constitute a criminal act. The said recommendations have been approved by the Hon'ble Vice Chancellor. In that view of the matter, we find that the relief claimed in the petition cannot be granted.

14] If anybody is aggrieved by either the recommendations of the Committee or the order passed by the Hon'ble Vice Chancellor, such a person is always at liberty to challenge the correctness of the said report or the order passed by the Hon'ble Vice Chancellor. However, as long as report of the Committee exists in law, which states that no case for initiating criminal act is made out and so long as the order of the Hon'ble Vice Chancellor accepting the said

recommendation exists in law, the relief as claimed in the petition cannot be granted.

15] In that view of the matter, the petition is found to be without merit and as such, is dismissed.

J. Judge

Judge