

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

WRIT PETITION NO.4229 OF 2016

[Shri Vasanta s/o Sadashiv Barapatre .vs. Joint Commissioner & Vice Chairman, Scheduled Tribe Caste Certificate Scrutiny Committee, Nagpur and others]

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

Court's or Judge's orders

Shri S.R. Narnaware, counsel for the petitioner,
Shri D.P. Thakare, Additional Government Pleader for respondent no.1.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JULY 26, 2016.

In the writ petition, the petitioner has made the following prayers :

- (i) *protect the services of the petitioner, in view of the Full Bench judgment in case of Arun Sonone, reported in 2015 (1) Mh.L.J. 457, in the interest of justice.*
- (ii) *quash and set aside invalidation order dated 12.7.2016 (Annexure-11) passed by the respondent no.1 i.e. Scrutiny Committee, Nagpur, in the interest of justice.*

The learned counsel for the petitioner states that the petitioner has given up the prayer in prayer clause (ii) that is, the challenge to the order of the scrutiny committee, dated 12.7.2016 invalidating the caste claim of the petitioner. It is stated that the petitioner now restricts the petition only in respect of the prayer made in prayer clause (i), by which the petitioner seeks the protection of his services, in view of the judgment rendered by the full bench, in the case of Arun s/o Vishwanath Sonone .vs. State of Maharashtra and others, reported in 2015 (1) Mh.L.J. 457.

The petitioner was appointed in the year 1996 in Zilla Parishad, Ratnagiri on a post earmarked for the Scheduled Tribes. The petitioner had claimed to belong to Halba, Scheduled Tribe and the caste claim of the petitioner was referred to the scrutiny committee for verification. The scrutiny committee has invalidated the caste claim of the petitioner, by the order dated 12.7.2016. The petitioner had originally challenged the order of the scrutiny committee in the instant petition, but he has given up the said challenge by deleting the said prayer clause and has only sought the protection of his services, in view of the judgment of the full bench of this court reported in 2015 (1) Mh.L.J. 457 [Arun s/o Vishwanath Sonone .vs. State of Maharashtra and others].

Shri Narnaware, the learned counsel for the petitioner submitted that the services of the petitioner are required to be protected, in view of the judgment of the full bench, as the petitioner was appointed before the cut off date in the year 1996 and there is no observation in the order of the scrutiny committee that the petitioner has fraudulently secured the benefits meant for the Halba, Scheduled Tribe. It is stated that both the conditions, that are required to be satisfied while seeking the protection of the services, stand satisfied in the case of the petitioner and hence a direction to the Zilla Parishad, Ratnagiri to protect the services of the petitioner would be necessary.

Shri Thakare, the learned Additional Government Pleader appearing on behalf of the respondent no.1-scrutiny committee, has raised a preliminary objection to the tenability of the writ petition in the Nagpur Bench of the Bombay High Court. It is stated that by this writ petition, the petitioner is only seeking a direction against the Zilla Parishad, Ratnagiri to protect his services. It is stated that the cause of action for seeking the relief

of protection has not arisen within the jurisdiction of the Nagpur Bench and hence the petitioner would be required to file appropriate proceedings at the principal seat. It is stated that the only prayer made by the petitioner is against the Zilla Parishad, Ratnagiri, which is situated within the territorial jurisdiction of the principal seat of the Bombay High Court and hence it would be necessary for the petitioner to approach the principal seat to seek appropriate relief.

Shri Narnaware, the learned counsel for the petitioner, states that the objection raised on behalf of the respondent no.1 is not tenable. It is stated that the scrutiny committee, that is situated within the jurisdiction of the Nagpur Bench, has invalidated the caste claim of the petitioner and hence it could be said that a part of cause of action has arisen within the jurisdiction of the Nagpur Bench. It is stated that though the petitioner has not challenged the order of the scrutiny committee and has only sought the protection of his services by issuance of an appropriate direction against Ratnagiri Zilla Parishad, the Nagpur Bench would have jurisdiction to entertain the writ petition, as a part of cause of action has arisen within the Nagpur Bench. The learned counsel submits that the petitioner being the dominus litis would be entitled to have his forum conveniens. The learned counsel relied on the provisions of Article 226 (2) of the Constitution of India and Section 20 (c) of the Code of Civil Procedure to canvass that a case may be instituted where a part of cause of action arises. The learned counsel relied on the judgments reported in AIR 1976 SC 331 [Nasiruddin .vs. State Transport Appellate Tribunal], AIR 2004 SC 1998 [National Textile Corporation Limited and others .vs. M/s. Haribox Swalram and others], AIR 2004 SC 2321 [M/s. Kusum Ingots and Alloys Limited .vs. Union of India and another], AIR 1977 Allahabad 83 [Jagat Nath Wahal and others .vs. The U.P. State

Road Transport Corporation and others] and the unreported judgments in the case of Rajendra Vitthalrao Pakhale and Narendra Yashwant Parate, to substantiate his submission.

We are inclined to uphold the preliminary objection raised on behalf of the respondent no.1 to the tenability of the writ petition at the Nagpur Bench of the Bombay High Court. In view of clause (2) of Article 226 of the Constitution of India, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. The expression 'cause of action' has been concisely defined to mean every fact which a party invoking the jurisdiction of the court is required to prove. It is well settled, as could be seen from the judgments of the Hon'ble Supreme Court, even the judgments relied on by the counsel for the petitioner, that a cause of action, as understood in the civil proceedings, would mean every fact that is required to be proved by the petitioner or the plaintiff, if traversed, in order to support his right to a judgment of the Court. In the instant case, the petitioner has made only one prayer and the prayer is for a direction to Zilla Parishad, Ratnagiri to protect the services of the petitioner. For seeking protection of services, the petitioner would be required to prove only two facts, in view of the judgment of the full bench, reported in 2015 (1) Mh.L.J. 457. One of the facts being that the appointment of the petitioner was made before the cut off date in the year 1996 and the second being that there is no observation in the order of the scrutiny committee that the petitioner had fraudulently secured the benefits meant for the Halba, Scheduled Tribe. These are the only two facts that could be traversed by the respondents to deny

the rights for the protection of service in favour of the petitioner. In this case, a bundle of facts do not give rise to the cause of action and the facts that are necessary to be proved by the petitioner to prove his right to a judgment are referred to herein above. We do not find that any part of cause of action has arisen within the Nagpur Bench of the Bombay High Court. The petitioner was appointed by Zilla Parishad, Ratnagiri and claims to have rendered services in the offices of the Zilla Prishad in Ratnagiri since 1996. The petitioner is appointed by Zilla Parishad, Ratnagiri which falls within the territorial jurisdiction of the principal seat. Had the petitioner challenged the order of the scrutiny committee and had this court found favour with the said challenge, while seeking the protection of service, then the Nagpur Bench would have had the jurisdiction to entertain and decide the writ petition. We do not find that in a case where the petitioner has only sought the protection of his services by relying on two relevant facts for seeking a direction for the protection against the Zilla Parishad, Ratnagiri, the cause of action has arisen within the jurisdiction of the Nagpur Bench of the Bombay High Court. Merely because the scrutiny committee situated within the territorial jurisdiction of the Nagpur Bench of the Bombay High Court, has passed the order, invalidating the caste claim of the petitioner, it cannot be said that a cause of action has arisen within the jurisdiction of the Nagpur Bench.

There is one more aspect of the matter that needs to be looked into in such cases, where protection of services are sought by the petitioner by filing a petition before the Nagpur Bench of the Bombay High Court only on the basis of forum conveniens and the respondent against whom a direction to protect the services is sought, is not situated within the territorial jurisdiction of the Nagpur Bench. We have observed this on a number of occasions in the writ petitions, that were filed in this Bench

earlier, for seeking the protection of services that when the only respondent against whom a direction to protect the services is sought is not situated within the territorial jurisdiction of the Nagpur Bench of the Bombay High Court, then in most of the matters, the said respondent is not represented by a counsel in the court. The matters are not defended. While granting protection of services, we cannot believe only on the averments in the petition that the petitioner was appointed before the cut off date, on the date mentioned in the petition. In view of the judgment of the full bench, protection could be granted only when the petitioner proves that he was appointed before the cut off date in the year 2001. We find that, in several petitions, though an averment is made in the writ petition that the appointment was made before the cut off date, the same is actually made later. When the office of the government, local bodies or authorities like the one in this case are situated within the territorial jurisdiction of the Nagpur Bench, they are represented by the standing counsel for those local bodies and they are easily available before the Nagpur Bench and the matters do not go unrepresented. Granting protection of services, after invalidation of a caste claim, is a serious matter and if the petitioner is not appointed before the cut off date and if there is an observation in the order of the scrutiny committee that the petitioner has secured the benefits by playing fraud on the employer, then the protection cannot be granted. If the respondents are not represented in this court, it would not be possible for this court to record a finding, whether the petitioner was actually appointed before the cut off date and whether he/she could be granted protection of service or not. In undeserving cases also, in the absence of any representation on the part of the local bodies, whose offices are located outside the jurisdiction of the Nagpur Bench, this court may grant an order

of protection of service. In the present matter also, if the same is filed at the principal seat, the standing counsel, who usually appears at the principal seat for Zilla Parishad, Ratnagiri would be readily available at the principal seat and he would argue/defend the case. We would like to note that in several similar writ petitions which came up before this court earlier, this aspect of the matter was considered and we had decided not to entertain the matters pertaining to the protection of services, where the employer is located outside the limits of the territorial jurisdiction of the Nagpur Bench. It would not be possible to administer justice in a proper manner, if in a matter of protection of service, the matter is not defended by the respondents or the local bodies, merely because the standing counsel normally practice, at the bench within whose jurisdiction the office of the local bodies is located. In this view of the matter, we are, even otherwise, not inclined to entertain this writ petition at the Nagpur Bench of the Bombay High Court. Merely because a few similar matters were earlier entertained by this court at the Nagpur Bench, without objection, the petitioner cannot ask us to follow suit, on parity. In those matters, such an objection was not raised. The judgments reported in AIR 1976 SC 331 [Nasiruddin .vs. State Transport Appellate Tribunal], AIR 2004 SC 1998 [National Textile Corporation Limited and others .vs. M/s. Haribox Swalram and others], AIR 2004 SC 2321 [M/s. Kusum Ingots and Alloys Limited .vs. Union of India and another], AIR 1977 Allahabad 83 [Jagat Nath Wahal and others .vs. The U.P. State Road Transport Corporation and others] and the unreported judgments in the case of Rajendra Vitthalrao Pakhale and Narendra Yashwant Parate and relied on by the counsel for the petitioner, will have no application to the peculiar facts of this case.

At this stage, the learned counsel for the petitioner states that since this court is not inclined to entertain the writ petition at the Nagpur Bench, this court may protect the services of the petitioner for a period of one month, so that the petitioner would file the proceedings at the principal seat, within a month. The request made on behalf of the petitioner is just and reasonable. Hence, though we are not inclined to entertain the writ petition, the services of the petitioner are protected for one month, so that the petitioner could take up appropriate proceedings at the principal seat. The writ petition is disposed of with no order as to costs.

JUDGE

JUDGE

Gulande, PA

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

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