

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.1575 of 2018

- 1) Narendra Parshuram Patil,
Age 38 years,
Occupation : Social Service
R/o Raisingpura, Andhare Chowk,
Nandurbar.
- 2) Mayur Waman Chaudhary,
Age 33 years,
Occupation : Social Service,
R/o Bagwan Galli, Nandurbar. .. **Petitioners.**

Versus

- 1) The State of Maharashtra,
Through Chief Secretary,
Mantralaya, Mumbai.
- 2) The Secretary for Home Affairs,
Mantralaya, Mumbai.
- 3) The Superintendent of Police,
Nandurbar, District Nandurbar.
- 4) The District Magistrate,
Nandurbar, District Nandurbar.
- 5) The Sub Divisional Magistrate,
Nandurbar, District Nandurbar. .. **Respondents.**

Shri. Suresh M. Kulkarni and Shri. Umesh A.
Bhadgaonkar, Advocates, for petitioners.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent Nos.1 to 5.

**Coram: T.V. NALAWADE &
K.K. SONAWANE, JJ.**

Date: 24 JULY 2019

JUDGMENT (Per T.V. Nalawade, J.):

1) Rule. Rule made returnable forthwith. By consent heard both sides for final disposal.

2) The proceeding is filed for the relief of compensation in respect of action of the respondents by which the petitioners were prevented from entering their native place viz. Nandurbar city for the period 16-9-2018 to 23-9-2018.

3) It is the case of the petitioners that they are social workers and due to their activities, the respondents, particularly the police officers, have developed grudge against them. It is contended that as against petitioner No.1, out of that grudge, externment proceeding was started under section 59 of the Maharashtra Police Act in the year 2017 but after considering the explanation given by petitioner No.1, the Sub Divisional Magistrate,

authority, dropped the said proceeding. It is contended that by citing the same reasons order was issued by the Sub Divisional Magistrate Nandurbar on 15-9-2018 under section 144(2) of the Code of Criminal Procedure and the petitioners were prevented from entering Nandurbar city for the aforesaid period. It is contended that the said order was challenged by petitioner No.1 by filing revision in Sessions Court and the Sessions Court set aside the order on 21-9-2018. It is contended that as the order remained in force for some period and the petitioners were prevented from entering Nandurbar city, there was breach of fundamental rights of the petitioners and they are entitled to get compensation.

4) Copy of the order made by the learned Sub Divisional Magistrate Nandurbar dated 15-9-2018 is on record. The order is shown to be made under section 144(2) of the Code of Criminal Procedure. Following reasons are given for making such order.

(i) Some crimes are registered against the petitioners showing that there was breach of peace due to the activities of the petitioners.

Crimes punishable under sections 395, 307, 353, 188 of Indian Penal Code were registered (two in number) in the year 2015 and 2017.

(ii) As there was Ganesh festival during the period 13-9-2018 and 23-9-2018 and during the same period persons of Muslim community were to celebrate Moharrum festival, there was possibility of continuation of similar activities by the petitioners and for that reason, *ex-parte* order was required to be issued.

5) The aforesaid order shows that no show cause notice was issued, no explanation was taken and the order was made which was to be executed immediately as the period was to start from 16-9-2018 when the order was dated 15-9-2018. It appears that publicity was also given to that order by publishing the news in the news paper.

6) Copy of the order made by the Sessions Court shows that the aforesaid order came to be set aside by holding that the order was illegal and it was not proper on the part of the authority to consider the same reasons which were given in the proposal of externment. The

externment order was not passed on those grounds but the order came to be passed under section 144(2) of the code of criminal Procedure.

7) The provision of section 144(2) of the Code of Criminal Procedure runs as under.

"144. Power to issue order in urgent cases of nuisance or apprehended danger.--

(1) In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*."

8) The aforesaid provision shows that a person can be prevented from entering a particular area under the aforesaid provision but the provision does not provide

for asking a person living in particular area and particularly at his native place to leave that place for a particular period. Though preventive measures can be taken of the nature mentioned in the provision, under this provision a person cannot be externed from his native place. There are provisions under the Maharashtra Police Act like sections 56 to 59 providing for externment proceeding. That proceeding was dropped already by other Sub Divisional Magistrate. Thus, under the aforesaid provision it was not possible to issue such order and further the grounds given were held to be not tenable in the past for externment order. The order is also set aside by the Sessions Court and that order has become final.

9) When the order of aforesaid nature is made it affects fundamental rights under Article 19 and Article 21 of the Constitution of India. Though some restrictions can be put on those rights, there needs to be some legislation in place for putting such restrictions and that legislation needs to be in accordance with the restrictions provided by the Constitution itself. Due to all these circumstances this Court holds that the petitioners are entitled to get

compensation. They are interested only in declaring that the action of the Sub Divisional Magistrate was illegal and such action involving breach of fundamental rights is not expected from the authorities. On this point, learned counsel for the petitioners placed reliance on observations made by the Apex Court in some reported cases like **S. Nambi Narayanan v. Siby Mathews [(2018) 10 SCC 804]**, **Damji Tingsa Pada v. Superintendent, Nagpur Central Prison [(2012(4) Mh.L.J.(Cri.) 609]** and **Hardeep Singh vs. State of M.P. [2012(2) Mh.L.J.(Cri.188)]**. Though the facts and circumstances of the aforesaid cases are different, the fact remains that in the present matter also there was the violation of fundamental rights of the petitioners due to the aforesaid order. Unless some compensation is awarded, the authorities will not realise the seriousness of such actions and possibility of making them liable for such action. In the result, following order.

10) The petition is allowed. To each petitioner compensation of Rs.10,000/- (Rupees Ten Thousand Only) is to be paid by the respondents with liberty to the State to recover the amount from respondent No.5. The amount

is to be deposited in the Court within forty five days from today. On depositing the amount the petitioners are permitted to withdraw the amount. If the amount is not deposited as directed above, it will carry interest at the rate of 8% per annum. Rule is made absolute in those terms.

Sd/-
(K.K. SONAWANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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