

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

CRIMINAL WRIT PETITION NO.107 OF 2020

Adivasi Panther Kamgar Sanghatna
Maharashtra State,
Having its Registered Office at
Plot No.2, Gulmohar Colony,
Padegaon, Aurangabad
Through Its President
Prashant s/o. Mahadeorao Bodakhe

.. Petitioner

Versus

1. The State of Maharashtra,
Ministry of Tribal Development,
Through its Secretary
Mantralaya, Mumbai
2. The Police Officer,
Anti Corruption Bureau, Old Tehasil
Office Building, Opp. Main Post Office
Old Bazar, Aurangabad
3. Commissioner,
Tribal Development Department,
Nashik
4. Additional Commissioner,
Tribal Development Department,
Thane
5. Smt. Jijabai Sampat Sane
Age : Major, Occu : Retired,
R/o. Plot No.166, Ganpati Mandir,
Ulka Nagari, Aurangabad

.. Respondents

...

Advocate for the petitioner	:	Ms Neha B. Kamble
APP for respondent nos.1 to 4	:	Mr S.G. Sangle
Advocate for respondent no.5	:	Mr S.S. Gangakhedkar h/f. Mr M.S. Deshmukh

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

Date : 26-04-2021

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Pursuant to our earlier orders, the petitioner has placed before us the constitution of the petitioner Union. Considering the provisions of the Trade Unions Act, 1926 and especially Section 22 with regard to the proportion of office-bearers to be connected with the industry, we find that this Union is formed for espousing the cause of those workers who are working as employees in the agricultural area, connected factories, brick-kilns, domestic servants, sugarcane harvesters and building and construction. We are informed that, the seven office-bearers set out on internal page 6 of the compilation of documents tendered by the learned Advocate for the petitioner, are employees in agricultural fields. However, no such statement

has been made in the memo of the petition and no employment record is placed before us to indicate that at least 2/3rd of the elected office-bearers are employees working in the industry in which the Union claims to be connected with.

3. In the light of the above, we have perused prayer clauses 'B' and 'C', which read as under :

“B. By issuing appropriate writ or order or direction in the like nature, the respondent No.1 to 4 be directed to take immediate criminal action on the finding of the committee annexed at **Exh.-F**

C. By issuing appropriate writ or order or direction in the like nature, the respondent – State authorities be directed to register offence against the respondent No.5 punishable under Section 406 and 409 of the Indian Penal Code and the provisions of Prevention of Corruption Act, 1988 in illegal promotion of Class IV employees case.”

4. The learned Advocate for the petitioner fairly states, on the the basis of the record placed before us that, the issue raised in this petition is not in connection with any of it's members or the service conditions or the employment relations of it's members vis-a-vis their employments / employers.

5. In view of the above, we have no hesitation in concluding that this petition at the behest of the Adivasi Panther Kamgar Sanghatana, Maharashtra State, is not maintainable and deserves to be dismissed.

6. In this background, it is submitted that, the petitioner is willing to delete the Union as a petitioner from this petition and since Mr Bodakhe is the complainant along with Mr Deepak Sambhuappa Jirvankar, this petition be treated as having been filed by an individual namely Prashant Mahadeorao Bodakhe.

7. In the interest of justice, we permit the petitioner to delete the Union from the cause title of this petition and retain the name of the petitioner as Mr Prashant Mahadeorao Bodakhe. Deletion be carried out by 27-04-2021.

8. Considering the above, we find that the respondent authorities will have to answer prayer clause 'B' insofar as

respondent no.5 is concerned. The learned Prosecutor submits that, considering the complaints against respondent no.5, she has been compulsorily retired on 30-11-2015. Her pensionary benefits have been withheld since the departmental enquiry was to be initiated. Subsequently, a departmental enquiry at the divisional level has been initiated on 15-10-2019. After the enquiry is concluded and if the quantum of money said to have been misappropriated by respondent no.5 is quantified, further disciplinary action would follow and which may also include the recovery of the said amount from her pensionary benefits.

9. The learned Advocate for Respondent no.5 has strenuously contended that, the petitioner, namely Prashant Mahadeorao Bodakhe, is a person having a chequered criminal record. There are about four cases pending against him involving offences punishable under Section 353. Sessions Case No.6 of 22 is pending before the Additional Sessions Judge, Hingoli, R.C.C. No.732 of 2020 before the Judicial Magistrate First Class, Aurangabad at the stage of committal, R.C.C. No.3023 of 2015 before the Judicial Magistrate First Class,

Aurangabad, and S.C.C. No.761 of 2019 for flouting the externment order.

10. He further submits that, the petitioner is conveniently using the identity of his so called Union by name 'Adivasi Panther Kamgar Sanghatna Maharashtra State' having registration no.AWB/3001/2016. He uses the banner of this Union for opening of Union offices at the different places by using the name 'Bhartiya Adivasi Panther Sanghatna', though the Union is not registered by the said name, 'Bhartiya'. He persecutes Government officials by using this name of the Union without a specific registration for his Union for carrying the name 'Bhartiya'. There are externment orders against him. He has not even established in this petition as to whether he was residing in the hostel, which was conducted by the integrated Adivasi Development Programme (Ekatmik Adivasi Vikas Prkalpa, Aurangabad). The learned Advocate, therefore, prays for the dismissal of this petition.

11. Considering prayer clause 'C', we could have

dismissed this petition as disciplinary proceedings have already been initiated against respondent no.5. Conclusions in the disciplinary proceedings cannot be a basis of any criminal proceeding or criminal trial, vide this petition.

12. We are, however, entertaining this petition only on account of the complaint of the petitioner having been entertained by the establishment, in which, respondent no.5 was employee. Keeping in view that disciplinary proceedings have already been initiated against respondent no.5 and her pensionary benefits have been withheld, we find it judicious to direct the appropriate authorities to conclude the enquiry within a particular time frame and if respondent no.5 is found guilty, to initiate action as is permissible in law within a stipulated period. Thereafter, respondent no.5 would be at liberty to voice her grievance by availing of legal remedies that may be permissible in law.

13. Considering the above, this petition is disposed off with the following directions :

(a) The Enquiry Officer, Aurangabad would conclude the enquiry initiated against respondent no.5, within a period of four months after COVID – 19 restrictions are lifted.

(b) Upon conclusion of the enquiry, the Enquiry Officer shall tender an Enquiry Report within 30 days.

(c) The competent authority, by following the due process of law, shall ensure that, the enquiry culminates into a final order of the employer of respondent no.5 within two months thereafter.

(d) Needless to state, if respondent no.5 is held guilty and if any amount to be recovered from her is quantified, the same shall be deducted from her retiral / pensionary benefits and her pensionary benefits shall thereafter be released within three months.

14. At this juncture, the learned Prosecutor submits that,

there could be more persons along with respondent no.5 who may be covered by the said enquiry report, if at all they are found guilty and, therefore, same directions be made applicable even to those persons. Needless to state, we observe that, these directions shall also apply to those persons, if held guilty along with respondent no.5, but would not apply to those persons who are still in service.

15. Before parting with this case, we must record that, in Criminal Writ Petition Nos.1550 of 2019, 1527 of 2019 and the present petition no.107 of 2020, we find that the petitioner namely Prashant Mahadeorao Bodakhe has printed letterheads by using a word 'Bhartiya' before Adivasi Panther Sanghatna. He has registered a Union by name 'Adivasi Panther Kamgar Sanghatna Maharashtra State' bearing Registration No.AWB/3001/2016. He shall be precluded for using the word 'Bhartiya' as his Union is not registered by the said name.

16. We also find that this petitioner is filing petitions under the aegis of Adivasi Panther Kamgar Sanghatna in relation

to such causes of action which would not be within the realm of the objects set out in the constitution of the Adivasi Panther Kamgar Sanghatna. As such, the Registry of this Court is directed to scrutinize every writ petition filed by Adivasi Panther Kamgar Sanghatna as regards whether it pertains to any cause of action of any member of its Union vis-a-vis the employment service conditions of the members and the employer with whom such employees are in employment, since the Trade Unions Act, 1926 does not permit this Union to transgress the parameters of its Constitution and is precluded from taking up causes on behalf of the public at large. The Registry shall accordingly make its noting on the objections sheet. No petition beyond the scope of the Constitution of this Union, shall be entertained, at the behest of such Union, unless it takes up a cause for its members in relation to their employment.

17. Rule is discharged.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE