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

901 WRIT PETITION NO.4419 OF 2006

Bhagwan s/o Rambhau Karankal,
Age: 41 years, Occu: Social work and Agril.,
R/o. "Dwarka" Lane No.6,
Dhule

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
(Through it's Secretary,
Urban Development Department,
Mantralaya, Mumbai-32)
- 2) The Municipal Corporation,
(Through it's Commissioner),
Dhule
- 3) The Advocate General of Maharashtra,
High Court, Mumbai
- 4) Union of India,
(Through it's Secretary, Urban
Development and Poverty Alleviation,
New Delhi

...RESPONDENTS

...

Ms P. S. Talekar, Advocate for petitioner;
Mr Ashutosh Kumbhakoni, Advocate General a/w Mr D. R. Kale, G.P.
for respondent Nos.1 & 3;
Mr V. D. Hon, Senior Counsel i/b Mr V. P. Latange and Mr A. V. Hon,
Advocates for respondent No.2;
Mr A. G. Talhar, ASGI for respondent No.4

(2)

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 27th July, 2021

ORAL JUDGMENT : (Per : Ravindra V. Ghuge, J.)

1. By this petition, the petitioner has put forth prayer clauses below paragraph No.34, as under :

“34. The petitioner craves leave to add, amend, delete or alter any of the submission/s, para/s at the time of hearing/ final hearing.

** In view of the above circumstances, this Honourable Court would be graciously pleased under Article 226 of the Constitution of India :*

(A) To hold and declare that Article 243 R(2) is ultra vires Article 14 of the Constitution of India.

(B) To hold and declare that Section 19 of the Bombay Provincial Municipal Corporation Act, 1949 to the extent it provides lesser term of two and a half years of the Office of Mayor of the Municipal Corporation is ultra vires Article 14 of the Constitution of India.

(C) To grant interim injunction restraining the Respondents 1 and 2, their agents, subordinates and servants from holding election of the office of the Mayor,

(3)

Municipal Corporation, Dhule, pending hearing and final disposal of this petition.

(D) To grant interim injunction restraining the Respondents, their agents, subordinates and servants from restraining the petitioner from acting as Mayor of the Municipal Corporation, Dhule, pending hearing and final disposal of this petition.

(E) To grant any other relief to which the petitioner is entitled to.”

2. We have briefly heard the learned Advocate for the petitioner, the learned Advocate General and the learned Government Pleader on behalf of the State of Maharashtra, Shri. V. D. Hon, learned Senior Advocate on behalf of respondent No.2 and Shri. Talhar, learned ASGI on behalf of respondent No.4.

3. There is no dispute that the petitioner was elected as a Mayor on 30.12.2003 by virtue of Section 19 of the Bombay Provincial Municipal Corporations Act, 1949 (for short “the 1949 Act”) for a term of two and half years as prescribed therein. His term as a Mayor of the Dhule Municipal Corporation expired on 30/06/2006 and since then he is not a Mayor. This petition was filed on 07/06/2006.

(4)

4. In view of the above, it is clear that the petitioner is not a Mayor for more than last 15 years. The prayer put forth in the petition was for seeking two declarations from this Court, that Article 243 R(2) is ultra virus Article 14 of the Constitution of India and that Section 19 of the 1949 Act be declared ultra virus Article 14 to the extent that it provides a term of two and half years for the office of the Mayor. The learned Advocate for the petitioner canvassed that such tenure should be either for a period of five years or should be co-terminus with the term of the Corporation, whichever is earlier.

5. The learned Advocate General has canvassed that the petitioner has not sought any relief while setting forth a challenge to the virus of Article 242 R(2) and Section 19 of the 1949 Act. According to him, such an empty challenge, without seeking any relief from this Court, would render this petition not maintainable since a mere challenge by a litigant without seeking any relief that he would desire post success in such challenge, should not be entertained. Reliance is placed upon a judgment delivered by this Court at the Nagpur Bench, in Civil Writ Petition No.3077/2020, filed by **Vijaysingh Gajrajsingh Chauhan versus Governor of Maharashtra and others**, wherein the

submissions of the learned Advocate General have been reproduced in paragraph Nos.3 and 4, as under :

“3. The challenge is at the behest of the petitioner, who is an Advocate by profession. Mr. Ashutosh Kumbhakoni, learned Advocate General has raised a preliminary objection regarding the locus of the petitioner, to raise such a challenge. He contends that the petitioner, does not have any cause of action to challenge the validity of the amendments to the Act of 2006. The petition does not disclose any cause of action, no averments are there as to what right of the petitioner has been affected and reliance is placed on Kusum Ingots & Alloys Ltd. Vs. Union of India and another, (2004) 6 SCC 254. He further submits that the Court always decides an issue on a cause and does not decide any issue academically or in the air. Reliance is placed upon Jotun India Private Limited Vs. Union of India and Ors., 2018 SCC OnLine Bom 6400 and United Forum and others Vs. The Union of India and others, 2018 SCC OnLine Bom 2221 to contend that there should be a real and genuine challenge arising out of the facts and circumstances of the case and no jurisdictional or issue of constitutional validity should be considered in abstract, unless the aggrieved party or its cause is otherwise represented, which is absent in the present matter. Relying upon State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lal Jute Mills and another, AIR 1960 SC 378, he submits that if the facts admitted or proved do not attract the impugned provisions then there is no occasion to decide the issue about the vires of the provisions and in such a case any decision on the said question would be purely academic and Courts should be reluctant to decide constitutional points merely as matters of academic importance. Further

(6)

relying upon State of Uttar Pradesh Vs. Kartar Singh, AIR 1964 SC 1135 he submits that in case the validity of the rule is to be challenged, foundational facts necessary to sustain such a plea, ought to be first laid out which is absent.

4. Learned Advocate General further contends that the present matter not being a public interest litigation but a writ petition filed by the petitioner, the requirement to disclose a cause of action, is mandatory. He further submits that the petitioner does not fall within the expression “aggrieved person” and neither does he have any direct grievance, for which reliance is placed upon Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra and others, (2013) 4 SCC 465. Further contentions are that there is no executable prayer; the petition merely seeking a declaration is not maintainable. He further submits that only para 54 in the petition, remotely suggests of any cause of action, which does not satisfy the requirement of law of any cause in the petitioner. The petition therefore according to him is not maintainable and is required to be dismissed on that count alone.”

6. In paragraph Nos.7, 8 and 9, this Court, in Vijaysingh Gajrajsingh Chauhan (*supra*), has accepted the submissions of the learned Advocate General in the following terms :

“7. The right to approach a Court of law by a party, is intrinsically linked to a cause of action, accrued in favour of such a party. The approach, is always for the redressal of a grievance or an entitlement, the denial of which gives rise to a cause of action to a party whose right is affected by any

such cause of action. Thus, the traditional view as to a “cause of action” is always personal to the party. The question whether passing of a legislation by itself would give rise to a cause of action, has been considered by the Hon'ble Apex Court in *Rai Bahadur Hurdut Roy Moti Lal Jute Mills* (supra) as under :-

“7. On behalf of the appellant Mr Lal Narain Sinha has contended that the High Court was in error in holding that the proviso to Section 14-A violates either Article 20 (1) or Article 31 (2) of the Constitution. He has addressed us at length in support of his case that neither of the two articles is violated by the impugned proviso. On the other hand, the learned Solicitor-General has sought to support the findings of the High Court on the said two constitutional points; and he has pressed before us as a preliminary point his argument that on a fair and reasonable construction, the proviso cannot be applied to the case of the first respondent. We would, therefore, first deal with this preliminary point. In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance.”

(emphasis supplied)

The same has also been considered in Kartar Singh (supra) as under :-

“12. The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any appropriate reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is to well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in and formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not

(9)

overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Article 19 (1) to carry on business in adulterated foodstuffs.

13. Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was an apriori argument addressed to the Court, that the division into the zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on apriori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of Himachal Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account.”

In Kusum Ingots (supra) the Hon'ble Apex Court held as under :-

“19. Passing of a legislation by itself in our opinion do not confer any such right to file a writ petition unless a cause of action arises therefor.

21. A parliamentary legislation when it receives the assent of the President of India and is published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in vacuum.”

8. Thus the consistency of judicial opinion, in so far as it considers the cause of action, for the purpose of laying a challenge to the constitutional validity of any statutory provision, as spelt out from the above decisions, clearly indicates that the person raising such challenge, ought to have a cause of action, which would mean material facts, enabling the existence of a cause of action.

9. In the instant matter, the petitioner, a practicing Advocate, claims to espouse the cause of environment, forest and wildlife in view of the duty enshrined in Article 51 A (g) of the Constitution of India and it is in this background, that the petitioner claims to have a cause of action to challenge the corrigendum dated 2/6/2020 which replaces the

expression “any person” as occurring In the notification dated 18/5/2020 by the expression “any claimant”, on the ground that the same is violative of Article 14 of the Constitution of India and is also beyond the powers of the Hon’ble Governor, under paragraph 5 of the Vth Schedule of the Constitution of India. It is material to note, that the petitioner claims to espouse not a personal cause, but a cause with which as the averments in the petition spell out, he has no nexus. The petition does not spell out, as to how, he as a person, would be aggrieved by the change in the expression “any person”, to “any claimant”, as indicated above. The petitioner does not claim to own any immovable property within a forest area or for that matter is also not a resident within a forest area, so as to claim to be aggrieved by the changeover as indicated above. The petitioner therefore, apparently does not have any cause of action, to challenge the notifications. As indicated above, the challenge to the validity of any legislation, by itself does not give rise to any cause of action, rather it is the implementation of the legislation and the consequences of such implementation, which may give rise to a cause of action, which however, is absent in the present matter. As held in United Forum (supra) and Jotun India Private Limited (supra), there should be a real and genuine challenge arising out of the facts and circumstances of the case and not an academic one.”

7. This Court, then proceeded to conclude in paragraph Nos.11, 12, 13 and 14 that such a petition cannot be entertained and more so, when it is not filed in public interest, reproduced under :-

11. *The petition, as pointed out above, does not espouse a personal cause in the petitioner, but raises an issue, of challenge to the notifications as indicated above. The petition admittedly, is not a public interest litigation, where the question of cause of action becomes immaterial and what is to be looked into is the locus of the person and the nature of the challenge being of larger public interest. The contention of Mr. Kaptan, learned Senior Counsel that due to the deletion of the expression “any person” and insertion of “any claimant” in Section 6A (1) of the Act of 2006 a right available to any person is taken away and therefore the petitioner would be an aggrieved person and would have a cause of action, cannot be accepted, for the reason, that looking to the provisions under the Act of 2006, such a right of appeal, would not be available to the petitioner, in any case, unless it could be demonstrated, that the petitioner is affected by any decision of the Forest Authorities, taken under the provisions of the Act of 2006, which position is absent in the present matter.*

12. *Chandrima Das (supra) stands on a footing of violation of fundamental rights, for the enforcement of public duties where public functionaries are involved, in which case the Court held that the remedy would still be available under the public law, notwithstanding that an alternative remedy for damages would be available under the private law. In that case also, there was a cause of action, though the same was espoused by a lawyer by filing a petition. In the instant case however, as indicated above, there is no cause of action whatsoever as yet.*

13. *For the above reasons, we therefore are of the considered opinion that the present petition at the behest of the petitioner, would not be maintainable.*

14. That however would not mean that the challenge as raised would be shut off as the same can always be considered either in a public interest litigation when filed properly or a petition filed by an aggrieved person, having a cause of action. The petitioner therefore would be at liberty to file a public interest litigation, if the circumstances so warrant, and if a cause to that effect arises, in the exigencies of the situation, provided the same satisfies the requirement of law, in that regard, as laid down by the rules framed for the said purpose.

Writ Petition is dismissed. Rule stands discharged. No order as to costs."

8. While considering the view of this Court in Vijaysingh Gajrajsingh Chauhan (supra), we no doubt find that the petitioner desired a full tenure of five years as a Mayor after his election on 30/12/2003. Alternatively, it is submitted that the tenure of the Mayor should be co-terminus with the term of the Corporation whichever is earlier. It is also true that he was a Mayor when this petition was filed, albeit for 23 days from the date of the filing of the petition. Notice was issued in this matter on 27/06/2006 when the petitioner had three days to go for demitting office of the Mayor. However, entertaining prayer clauses (A) and (B) in this petition, would be only of an academic interest. No relief can be granted to the petitioner today, even if he succeeds.

9. This petition is, therefore, disposed off. Rule is discharged.

10. We, however, make it clear that in the event, a similar challenge is raised by a person who has a substantive right subsisting, this Court may consider such a challenge in such petition.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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