IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO. 58 OF 2021

Bhushan Ishwar Mahajan .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Ms. P. S. Talekar, Advocate h/f M/s. Talekar and Associates, for the Petitioner.
Mr. A. R. Kale, AGP for Respondent Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.
DATED : 11th October, 2021.

PER COURT:-

. The present public interest litigation is filed seeking following reliefs :

A) To direct the respondents, their subordinates, officers, agents to strictly implement the notification dated 01.07.2004 issued by the Revenue and Forest Department, Mantralaya, Mumbai, wherein it is held by the State Government that the stamp duty chargeable under Article 4 of Schedule I of the Maharashtra Stamp Act, 1958 for the purposes of Affidavits to be used for any purposes has been remitted under Section 9 of the said Act, by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be;

B) To direct the respondents their subordinates, officers, agents to display in their offices/public offices at conspicuous place that 'as per notification dated 01.07.2004 the stamp duty chargeable under the Maharashtra Stamp Act, 1958 for the purposes of Affidavits to be used for any purposes has been remitted by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be;

C) To direct the respondents to give wide publicity to the notification dated 01.07.2004 issued by the Revenue and Forest Department, Mantralaya, Mumbai, pending hearing and final disposal of this petition.

D) To direct the respondents, their subordinates, officers, agents not to insist any person to pay stamp duty under the Maharashtra Stamp Act, 1958 for the purposes of Affidavits to be used for any purposes, pending hearing and final disposal of this petition;

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

2. Ms. Talekar, learned counsel for the petitioner submits that in spite of the fact that notification has been issued on 01.07.2004 by the State Government under Section 9 of the Maharashtra Stamp Act, 1958 (hereinafter referred to as 'Act of 1958') remitting the stamp duty chargeable under Article 4 of Schedule I of the Act of 1958 for the purpose of affidavit, the departments of the State Government are insisting for affidavits either on Rs. 100/- stamp paper or on Rs. 500/- stamp paper consistently. The same is in flagrant violation of the remission granted by the State Government. The departments of the State cannot insist for affidavit on a stamp paper.

3. The learned counsel for the petitioner to buttress her submissions relies on the tender documents of the Public Works Department to contend that now the Public Works Department is insisting for affidavit on Rs. 500/- stamp paper. The learned counsel also has referred to other illustrations to submit that in all Government departments, the affidavits are insisted on stamp papers.

4. Mr. Kale, learned A.G.P. submits that the State Government invoking its powers under Section 9 of the Act of 1958 has granted remission from payment of stamp duty on affidavits as envisaged under Article 4 of the Act of 1958. The State machinery has already instructed to all the Deputy Commissioners, District Collectors as well as all the authorities concerned informing issuance of resolution and instructed them for non insistence of the stamp papers. The authorities have also taken care to give wide publicity through posters as well as through news items. The steps are taken for public awareness of the issuance of notification granting remission of stamp duties for affidavits. The copies of news items and the relevant posters are also annexed with the affidavit in reply. The learned A.G.P. further submits that the Joint District Registrar, Aurangabad has filed affidavit that the authorities have also taken care to give wide publicity through poster as well as through news items and further granting remission of stamp duties for

the affidavits. The learned A.G.P. further submits that the notification granting remission of stamp duty for affidavit is also published on the Website.

5. The Act of 1958 is enacted to consolidate and amend the law relating to stamps and stamp duties in the State of Maharashtra. The same is adopted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960. Article 4 of Schedule I of the Act of 1958 provides that affidavit that is to say, a statement in writing purporting to be a statement of facts, signed by the person making it and confirmed by him on oath or in the case of persons by law allowed to affirm or declare instead of swearing, by affirmation is required to be on a stamp paper of Rs. 100/-. Article 4 grants exemption to certain specific affidavits.

6. Section 9 of the Act of 1958 empowers the State Government to reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State the duties with which any instruments or any particular class of instruments or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable.

7. Invoking Section 9 of the Act of 1958, the State Government under notification dated 01.07.2004 remitted the stamp duty chargeable under Article 4 of schedule I appended to the said Act, on the instruments of affidavit or the declaration made for obtaining caste certificate/income certificate/domicile certificate/nationality certificate or for any other purpose of being filed or used before any Government authority or in any Court or before the officer of any Court.

8. The notification dated 01.07.2004 thereby remits the stamp duty on the instruments of affidavit or declaration for being used before any Government authority or in any Court or before the officer of any Court.

9. The notification is explicitly clear. No Government authority can insist for affidavit on a stamp paper. The Government, it appears was aware that its authorities are not abiding by the notification dated 01.07.2004 as such, issued a circular on 12.05.2015 directing not to insist for affidavits on stamp paper. It appears from the information provided under the Right to Information Act that Rs. 100/- stamps are used for non judicial purposes on a large scale.

10. It appears that Suo Moto Public Interest Litigation No. 121 of 2014 was registered at the Principal Seat of this Court on the basis of

the news item published in Mumbai Mirror on 10.07.2014, “Mystery Shortage of Rs. 100/- Stamp Papers”. In the said Public Interest Litigation the affidavit was filed by the Additional Controller of Stamps. Paragraph No. 4 and 6 of the affidavit are reproduced by the Court in its judgment dated 28.03.2016 in Public Interest Litigation No. 121 of 2014. The same reads thus :

> 4] In the aforesaid affidavit, Additional Controller of Stamps has denied that there was any shortage of stamp papers of the denomination of Rs. 100 in the month of July 2014, or for that matter at present. Further, he has pointed out that the State in exercise of powers conferred upon it by clause (a) of section 9 of the Maharashtra Stamp Act, 1958 has issued notification dated 1 July 2014 remitting the stamp duty chargeable under section 4 of schedule I appended to the said Act, on the instruments of affidavit or declaration made for obtaining caste certificates, income certificates, domicile certificates and nationality certificates. As such, he has submitted that there is no necessity for purchase of any stamp paper for the aforesaid purpose. Mr. G. W. Mattos, the Government Pleader has submitted that in view of such notification, there are hardly any purposes, for which, the students seeking admission to educational institutions are required to purchase stamp papers.
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> 5] That apart, the Additional Controller of Stamps at paragraphs 6, 7 and 8 of his affidavit has made the following statements :
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> *“6. I say that the Government in the Revenue and Forest*

Department vide a Circular dated 14th October, 2014 granted Stamp Vending licenses to Bar Associations for sale of Stamp Papers and Court Fee Labels in Court premises. I say that my office has issued Stamp Vending Licenses to the Dadar Bar Association, the Bombay Advocates Bar Association at the Small Causes Court, Mumbai, The Motor Accident Claim Tribunal Bar Association, The Borivali Advocates Bar Associations, the Advocates Associates of Western India, The Mazagaon Court Bar Association at Esplanade Court, Mumbai. However, the Advocates Association of Western India has not yet commenced the sale of Stamp Papers and Court Fee Labels inter alia on account of some administrative difficulties. I say that my office has also issued a Stamp Vending License to The Indian Advocates Multi State Multi Purpose Co-operative Society Ltd. situate in the High Court premises as per the permission granted by the Government in the Revenue and Forest Department vide its letter dated 26th November, 2014.

7. I say that it is made compulsory to fill the form in Annexure 1 for obtaining Stamp Papers for executing Affidavits and the form in Annexure 2 for executing documents other than Affidavits as per the Circular dated 14th August, 2014 issued by Inspector General of Registration, Maharashtra State, Pune. The specimen copies of the said Annexures are hereto annexed and marked as ***EXHIBITS '2' and '3'*** *respectively. I say that for completing these formalities it takes some time, which some times results into long queues of people at the Stamp Vending Centres.*

> *8. I say that in Mumbai and Mumbai Suburban District there are 24 Government approved license Stamp Vendors. I say that as per the demand of the said Stamp Vendors, supply of stamp papers and Court Fee labels is being arranged by my office regularly. Hence, there is no scarcity of stamp papers. I say that with a view to keep a check inter alia on the sale of stamp papers by Stamp Vendors, instructions are issued to all Collectors of Stamps in Mumbai and Mumbai Suburban District by my office to carry out periodic inspections of the licensed Stamp Vendors premises so as to inter alia ensure that the persons intending to purchase Stamp Papers are not overcharged."*

11. The said affidavit also clarified the stand of the State that remission on stamp paper for the affidavit is provided for.

12. The officers of the Government are required to be imparted with the necessary knowledge of the notification published by the State Government remitting the stamp duty. Though it is submitted that time to time news items are published, on the website also the same is published, still the fact remains that the affidavit on stamp papers are insisted upon by the Government Departments and also on the documents to be used before the Court.

13. The Government may take further steps such as holding workshops for the officers and the authorities and/or such steps so as to bring it to the notice of all concerned that they shall not insist for

affidavits on stamp paper. The notification has to be brought in effect in reality and the same shall not remain only on papers. The order dated 08.01.2015 issued by the State Election Commission also it seems is flouted. The State Election Commission on 08.01.2015 had issued an order that the affidavit and declaration shall not be insisted on the stamp paper, but still the same is accepted on stamp paper during the process of elections. All the Government authorities have to take effective steps to implement the notification and to make the authorities and the public aware. It is also the duty of the authorities to implement the notification in its true letter and spirit, so that unnecessary burden on the citizens would be avoided. Needless to state that, the exercise shall be done by the State Government throughout the State of bringing it to the notice of all the Government departments and the authorities accepting affidavits and declaration not to insist upon the stamp duty.

14. Public interest litigation is disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.