

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

CIVIL WRIT PETITION NO.3077/2020

PETITIONER : Vijaysingh Gajrajsingh Chauhan
Aged 39 years, Occ. - Advocate
R/o Keshawraj Wetel, Akot,
Tq. Akot Dist. Akola.

...VERSUS...

RESPONDENTS : 1. Governor of Maharashtra
Raj Bhawan, Walkeshwar Road,
Malbar Hill, Mumbai – 35

(Deleted as per order of Hon'ble Court
Dt. 4/01/21)

2. State of Maharashtra
Through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai – 32.

3. State of Maharashtra
Through Principal Secretary
Forest Department,
Mantralaya, Mumbai -32.

4. State of Maharashtra
Through its Chief Secretary
Mantralaya, Mumbai – 32.

Mr. C.S. Kaptan, Senior Advocate with Mr. M.C. Jeswani, Advocate for petitioner
Mr. Ashutosh Kumbhakoni, Advocate General with Shri A.M. Deshpande, Addl.
G.P. for respondent nos.2 to 4/State
Mr. Nihalsingh B. Rathod, Advocate for proposed Intervenor

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

Judgment reserved on : 09/01/2021
Judgment pronounced on : 09/02/2021

J U D G M E N T (PER : AVINASH G. GHAROTE, J.)

1. Heard. Rule. Rule made returnable forthwith.
2. By the present petition, the amendments, to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, in its application to the State of Maharashtra by the Governor of Maharashtra, in exercise of the powers conferred by Sub-paragraph (1) of Paragraph 5 of the Vth Schedule of the Constitution of India as published in the Gazette by notifications dated 23/02/2017, 18/05/2020, Corrigendum dated 2/6/2020, 23/09/2020 and the Government Resolution dated 28/9/2020 are under challenge.
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 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 *Ayaaubkhan 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.

5. Mr. C.S. Kaptan, learned Senior Counsel for the petitioner invites our attention to the amendment to the Act of 2006. He submits that the notification dated 18/5/2020, in the matter of inserting Section 6-A, had provided the right of appeal to “any person” which by the subsequent corrigendum notification dated 2/6/2020 has been substituted by the expression “any claimant”. He therefore contends that the right of appeal, as available to “any person” has been reduced to “claimants”, which amounts to taking away a pre-existing right, which in fact gives rise to a cause of action. He submits that the violation of any right gives the petitioner a locus to lay the challenge as made. He submits that the constitutionality of any Statute or its amendment, is necessary to be tested at the threshold and any delay, may lead to an anomalous situation, due to the rights created in the interregnum, in case the challenge to the constitutionality succeeds at a later point of time. By inviting our attention to para 6 in *Kusum Ingots* (supra), which holds that cause of action would mean that every fact which would

be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the Court, learned Senior Counsel Mr. Kaptan submits that the judgment may be anything but right to challenge infringement of a legal right by withdrawal of right to appeal, would inherently vest in every citizen and would give rise to a cause of action. He submits that the cause has arisen by taking away of the right available to “any person” to sue/appeal. He submits that there is no vacuum in the present matter, as a right is infringed. He further submits that the Hon'ble Apex Court in *Kusum Ingots* was considering the issue of cause of action in the background of lack of territorial jurisdiction. He submits, by inviting our attention to para 21 that in the instant case also, as passing of the legislation, has given rise to a cause of action, a writ petition questioning the constitutionality of such legislation, would always be maintainable. Relying upon *Chairman, Railway Board Vs. Chandrima Das, 2000 (2) SCC 465*, it is submitted that the restricted meaning to the expression “aggrieved person” and narrow outlook of specific injury has given way to a broad and wide construction and considering the changing scenario the expression should be given as wide meaning as possible.

6. Learned Senior Counsel Mr. Kaptan further invites our attention to para 10 in ***Ayaaubkhan Noorkhan Pathan*** (supra) to contend that the Government had no authority to withdraw right of appeal. He submits that the expression “aggrieved person” cannot be considered with any amount of rigidity as the ambit of the expression is undefinable and changes from case to case. He therefore submits that the petitioner indeed has a cause of action to challenge the notifications as issued in this regard.

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 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.

10. It is further material to note that the petitioner also does not fall within the expression “aggrieved person”, as indicated in *Ayaaubkhan Noorkhan Pathan* (supra) in the following manner :-

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised.

11. In *Anand Sharadchandra Oka v. University of Mumbai*, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.”

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.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar

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