

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.19/2022

Abhijeet S/o Sudhakar Rao Bhalerao
..Vs..
Hon'ble Chief Justice Bombay High Court, Bombay and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Abhijeet Sudhakar Rao Bhalerao petitioner in person.

CORAM :- SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.
DATED :- 10.1.2022.

Heard the petitioner who is an Advocate and who appears in person in support of the contentions made in this petition. This petition has been filed questioning the legality and correctness or otherwise of the Circular dated 14.7.2021 and in the opinion of the petitioner, this Circular is illegal and *ultra vires* Article 166 of the Constitution of India. On this ground, the petitioner has sought quashing and setting aside of the Circular dated 14.7.2021 and this is the first prayer of the petitioner.

2. The petitioner has also made further prayers. The further prayers relate to restoration of the position ante 14.7.2021, grant of permission to the Advocates to file pleadings, submissions etc. on legal paper without any objection from the ministerial staff and issuance of direction for continuation of the practice of filing of

pleadings and submissions on A4 size paper with GSM 75 only for a specified time and issuance of direction to discontinue this practice after specified time is over.

3. By the impugned Circular dated 14.7.2021, the Hon'ble the Chief Justice and Judges of this Court have taken a decision to direct that all pleadings, petitions, affidavits or other documents etc. submitted to the Registry on judicial side for the purpose of filing in the High Court and it's Benches at Nagpur, Aurangabad and Panaji (Goa) and all other Courts in the State of Maharashtra, shall be in a manner and on a paper type having specifications as given hereinbelow:-

“Superior quality A4 size paper having not less than 75 GSM with printing on the both sides of the paper with Font - Times New Roman or Georgia, Font size 14 with inner margin of 5 cms and outer margin 3 cms.”

4. This Circular also directs that even for internal communications, similar paper type with similar specifications and in same manner shall be used.

5. According to the petitioner, this Circular which is nothing but an executive order of the High Court has not been issued in the name of Governor, as required under Articles 166(1) and 166(2) of the Constitution of India.

6. With due respect to the submissions made by the petitioner, we must say it here that there is no substance in the argument of the petitioner. Reasons are not too far

to seek.

7. The independence of judiciary, which is the third wing of the democratic scheme under the Constitution, is one of the basic features of the Constitution and the powers of the High Court as delineated in Chapter V of the Constitution are representative of the independent status of the High Court [see High Court of Judicature at Bombay V/s. Shirish Kumar Rangrao Patil (1997) 8 SCC 339]. Under the Constitutional scheme there is a separation of powers amongst executive, legislature and the High Court and each wing of governance is supreme within its own sphere of powers. Under Article 227(2) read with Article 235 of the Constitution, forming part of Chapter V, power has been conferred upon the High Court to do various acts which include, making and issuance of general rules and prescription of forms for regulation of practice and procedure of the Courts in respect of which the High Court has authority to superintend. This power of the High Court is exclusive to it under the doctrine of 'separation of powers' and it cannot be interfered with or encroached upon by any other wing of the Government. As regards the prescription of Article 166, which is about conduct of Government business, we must say it here that it has its application to the executive wing of the Government and not to the High Court which is supreme within its own sphere of power under Article 227(2) read with Article 235, unless exercise of power by High Court under these articles comes in conflict with any other provisions of or

power under the Constitution of India, such as Article 14, 16, 311 or the Rules made by the Governor under Article 309 [see *State of Assam V/s. Kusewar Saikia*, AIR 1970 SC 1616, *Supreme Court Advocates on Record Association V/s. Union of India* (1993) 4 SCC 441, *Goel B.L. V/s. State of U.P.*, AIR 1979 SC 228, *State of Haryana V/s. Inder Prakash Anand*, AIR 1976 SC 1841, *State of U.P V/s. Batuk Deo Pati Tripathi* (1978) 2 SCC 102, *Hari Datt Kainthla V/s. State of U.P.*, AIR 1980 SC 1426 and *Chief Justice of A.P V/s. L.V.A. Dixitulu*, AIR 1979 SC 193, *State of W.B. V/s. Nripendra Nath Bagchi*, AIR 1966 SC 447). Such is not the case here.

8. As stated earlier, what is laid down in the Articles 166(1) and 166(2) would have no application when it comes to exercise of powers by the High Court under Article 227(2) read with Article 235 of the Constitution of India. Under Article 227(2) and 235 of the Constitution it is for the Hon'ble the Chief Justice and the Judges of the High Court to exercise powers specified therein without mixing with or interfering with the executive powers of the Government and vice versa. Therefore, the argument that the impugned Circular violates Article 166 has no merit. It deserves to be rejected and it is rejected accordingly.

9. As regards the impugned Circular dated 14.7.2021, we must point out here, it has been issued only after the gazette notification was published whereby amendments were introduced to Chapter XVII, Rule

10(ii) of the Bombay High Court Appellate Side Rules, 1960. This notification has not been challenged in any manner by the petitioner. The petitioner, however, submits that even though there is no specific challenge made to this notification, the notification being *void ab initio*, no specific challenge is necessary. According to him, before issuing gazette notification whereby amendments to Rule 10(ii) of Chapter XVII were made, it was necessary that previous publication of the proposed amendments was made so that objections to the proposed amendments could have been filed and this is the requirement of Section 24 of the Maharashtra General Clauses Act, 1904, as held in the case of *Prashant Babusaheb Ghiramkar V/s. State of Maharashtra and others* reported in 2013(6) Mh.L.J. 703. In support, he invites our attention to the observations made in paragraph 6 of the judgment.

10. Paragraph 6 of the judgment reproduces provisions of Section 24 of the Maharashtra General Clauses Act and it would be appropriate that same is reproduced here as well. They go as under:-

“24. Provisions applicable to making of rules or by-laws after previous publication.-

Where, by any Bombay Act or Maharashtra Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely :-

(a) the authority having power to make the rules of by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(b) the publication shall be made in such manner as that authority deems to be sufficient or, if the condition with respect to previous publication so requires, in such manner as the Central Government, or as the case may be, the State Government prescribes;

(c) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(d) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(e) the publication in the Official Gazette of a rule or by-laws purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made."

11. A careful reading of the aforesaid provision would make it clear that this provision has no application whatsoever to the amendment challenged in this petition for two reasons. Firstly, the provision comes into play only when the rules or by-laws are proposed to be made in exercise of any

power regarding making of rules or by-laws conferred under any Bombay or Maharashtra Act and in the instant case, the rule making power which has been invoked is from Article 227 of the Constitution of India. So, no recourse could be made to Section 24 of the Maharashtra General Clauses Act. Secondly, the provisions made in Section 24 of the Maharashtra General Clauses Act leave no doubt in one's mind that previous publication is necessary only when the power of making rules or by-laws has been given subject to the condition of the rules or by-laws being made after previous publication. This is also not the case here. It then follows that no assistance could be sought by the petitioner from the case of Prashant Babusaheb Ghiramkar (*supra*) and it cannot be said that Section 24 of the said Act would have any application to the present case.

12. In the circumstances, we find no merit in the first prayer seeking quashing and setting aside of the impugned Circular dated 14.7.2021.

13. As regards second and third prayers, we would say that as the first prayer has been rejected, the second and third prayers also stand rejected as a necessary consequence thereof. This is true about

remaining prayers as well.

14. The petition is, therefore, summarily **dismissed**. No costs.

JUDGE

JUDGE