



(1)

(Reportable)

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

39 WRIT PETITION NO. 2662 OF 2024

**NASER NAHDI MOHAMMED YAHYA NAHDI
VERSUS
THE CHIEF ELECTION COMMISSIONER AND OTHERS**

....

Mr T. Y. Syed, Advocate h/f Mr Mohd. Aseem Abdul Kaleem,
Advocate for Petitioner;

Mr Alok Sharma, Advocate for Respondent Nos.1, 2 and 4

Mr A. B. Girase, G.P. for Respondent Nos.3 & 5

Mr S. B. Deshpande, Senior Advocate i/b Mr S. P. Urgunde a/w

Mr C. B. Chaudhari, Advocates for Respondent No.6

**CORAM : RAVINDRA V. GHUGE
AND
R. M. JOSHI, JJ.**

DATE : 11th March, 2024

ORAL ORDER (*Per Ravindra V Ghuge, J.*):

1. We have heard the learned Advocate Mr Syed for the Petitioners, the learned Advocate Mr Alok Sharma appearing for Respondent Nos.1, 2 and 4, the learned Senior Advocate Shri Deshpande along with Mr Urgunde and Mr Chaudhari for Respondent No.6 and the learned Government Pleader appearing for Respondent Nos.3 and 5.

2. The Petitioner has set out the following prayer clauses

B, C and D :-

- “B. By issuing a Writ of Mandamus and or any other appropriate writ, order and/or direction in the like manner, respondent no.3 and 4 may kindly be directed to comply with the Circulars dated 23rd December, 2008 and 21st December, 2023 issued by the Election Commission of India and thereby transfer respondent no.06, Shri. G. Shrikant, Commissioner-cum- Administrator, Aurangabad Municipal Corporation out of Aurangabad district as respondent no.06 would be completing a service period of more than 03 years on the date fixed by the E.C.I. on 30th June, 2024.
- C. By issuing a Writ of Mandamus and or any other appropriate writ, order and/or direction in the like manner, respondent no.01 may kindly be directed to initiate appropriate disciplinary and penal proceedings against respondent no.3 and 4 for their failure to comply with the directions issued by the Election Commission of India in the form of Circulars dated 23rd December, 2008 and 21st December, 2023 and thereby colluding with the respondent no.06 for not transferring him out of Aurangabad district being mandatorily liable for such transfer.
- D. Pending hearing and final disposal of this Writ Petition, the respondent no.6 may kindly be restrained from discharging his duties in Aurangabad district as he is officiating on the said post in blatant violation of aforesaid Circulars dated 23rd December, 2008 and 21 December, 2023.”

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. The Petitioner claims to be an aspiring politician and has earlier contested a few elections. He has levelled allegations against the Respondents, more specifically, wild and reckless allegations against Respondent no 6, who is the Municipal Commissioner and has been arrayed by name.

4. The Petitioner claims to be a social activist and an active politician in this City. He is a former Councillor of the Chhatrapati Sambhajnagar Municipal Corporation and also contested the Lok Sabha elections in 2001. It is stated in the Petition that, Respondent No.6 was earlier officiating as an Administrator-cum-Commissioner of the Municipal Corporation, Chhatrapati Sambhajnagar. He was then transferred as the Joint Sales Tax Commissioner, Chhatrapati Sambhajnagar, and finally, he was transferred as the Commissioner of the Municipal Corporation, Chhatrapati Sambhajnagar vide the order dated 02/05/2023.

5. It is canvassed that Respondent Nos.3 and 4 have failed to comply with the instructions of the Election Commission

(4)

of India, vide Circular dated 21/12/2023, by not transferring Respondent No.6 out of the District. It is contended that, Respondent No.6 has been serving in this District for a period of three years. The representations filed by the Petitioner to Respondent No.1/Chief Election Commissioner, Respondent No.2/Senior Principal Secretary, Election Commission of India, Respondent No.3/Chief Secretary of Maharashtra and Respondent Nos.4/Chief Electoral Officer, State of Maharashtra, which were delivered on 14th, 15th and 16th February, 2024, are pending.

6. The Petitioner concedes that, Respondent No.6 was not included in the list of the Officers, who are transferred on the eve of the Lok Sabha Elections 2024, by the Election Commission. It is alleged that his continuance in Chhatrapati Sambhajinagar would amount to a person determining a case in his own cause. Likelihood of suspicion of bias in the elections at his behest, cannot be ruled out.

7. Our attention is specifically drawn to the representation made by the Petitioner on 11/02/2024, addressed to Respondent Nos.3 and 4, seeking transfer of Respondent No.6, in which, it has been averred as under :-

(5)

(a) Respondent No.6 is currently officiating as the Commissioner-cum-Administrator of the Chhatrapati Sambhajnagar Municipal Corporation and is holding additional charge of the District Collector, since 02/05/2023.

(b) His total tenure in this officiating position was of three years.

(c) He enjoys patronage from the politicians and people in the corridors of powers.

(d) He has paid an illegal gratification of 2,00,00,000/- (Rs. Two Crores) to some high official, who ensures that, he is not transferred out of the Chhatrapati Sambhajnagar District.

(e) Some politicians do not want Respondent No.6 to be transferred out of the District, in order to use him to interfere in the upcoming Lok Sabha elections for their benefits.

8. The learned Advocate for the Petitioner refers to the Circular issued by the Election Commission of India, New Delhi,

(6)

dated 21/12/2023, more particularly, Clauses 5.1 and 5.2, which read as under :-

“5.1 District Officers: - These instructions shall cover not only officers appointed for specific election duties like DEOs, Dy. DEOs, RO/AROs, EROs/AEROs, officers appointed as nodal officers of any specific election works but also district officers like ADMs, SDMs, Dy. Collector/Joint Collector, Tehsildar, Block Development Officers or any other officer of equal rank directly deployed for election works.

5.2 Officers other than District Officers: - These instructions shall also cover the officers deputed in Municipal Corporations and Development Authorities, etc.”

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

9. The learned Senior Advocate representing Respondent No.6 draws our attention to the order dated 02/05/2023, issued by the Additional Chief Secretary (Services), by which, Respondent No.6 was appointed as the Commissioner of the Municipal Corporation, Chhatrapati Sambhajinagar. He was earlier the Joint Sales Tax Commissioner, Chhatrapati Sambhajinagar by virtue of the transfer order dated 24/02/2021, from Akola to Chhatrapati Sambhajinagar. The learned Senior Advocate takes a strong exception to the reckless, baseless and unfounded allegations made against Respondent No.6, by naming him in the

(7)

representations and in the Writ Petition. A wild allegation has been made Respondent no.6 has paid Rs.Two Crores to remain in this district. The learned Senior Counsel demands that the Petitioner should produce documentary material to support the said allegation, or this Court may impose cost of Rs.10 lakhs in order to curb the disease of making rampant allegations against officers who are defenceless.

10. The learned Government Pleader has placed before us a communication from the Senior Principal Secretary, Election Commission of India, New Delhi, dated 27/02/2024, informing all the Chief Secretaries of all the States and the Union Territories and the Chief Electoral Officers of all States and Union Territories, as under :-

“Subject:- General Election to House of the People (Lok Sabha), 2024 Transfer/Posting of officers- Clarification-regarding.

Madam/Sir,

I am directed to refer to the Commission's instructions of even number dated 21.12.2023 and 23.02.2004 on the subject cited and to further clarify as under:

(8)

(i) *All the DEOs, Dy. DEOs, RO, AROs, and Range ADGs, IGs, DIGs, SSPs, SPs, Addl. SPs, Dy. SPs, Circle Officers (or equivalent rank police officers) shall be posted out if they are completing 3 years during the last 4 years in the same Parliamentary Constituency or districts. Thus, the Commission's instructions dated 23.02.2024 would be applicable only on the above officers. Moreover, it shall be ensured that ROs and AROs are not posted in the Parliamentary Constituency which is comprised of their Home District.*

(ii) *The States/UTs with upto 5 Parliamentary Constituencies shall be exempted from the Commission's aforesaid instruction dated 23.02.2024,*

The compliance report from the Chief Secretary and DGP of the concerned states may be sent Immediately.”

11. As such, as things stand today, we find from Clause 3 of the instructions dated 21/12/2023 that, ‘*no officer connected directly with elections shall be allowed to continue in the present district (revenue District) of posting*’. One of the Sub-clauses relied upon by the Petitioner reads as “*if she/he has completed three years in that district during the last four (4) years or would be completing 3 years on or before 30th June, 2024*”. What is relevant is that the Officer must be connected directly with the elections. Clause 5.1 also mandates that, Officer must be directly deployed for election works. Even if it is an Administrator or the

(9)

Commissioner of Municipal Corporation, he should be directly deployed for election work. The basis for the transfer is not completion of 3 years in a district. The foundation is that an officer must have completed 3 years in a district and he should be deployed directly for the election work.

12. The learned Government Pleader submits that, Respondent No.6 is the Commissioner of the Municipal Corporation and he has not been directly deployed for election work. He further submits that no order has been issued thereby deploying Respondent no.6 on election duty in any nature whatsoever, as of now. He is not posted on any election duty.

13. Shri Alok Sharma, representing the Election Commission submits on instructions that Respondent no. 6 has not be entrusted with any election duty and there is no responsibility cast on him, at this stage, for the General Elections.

CONCLUSIONS

14. In view of the above, we called upon Advocate Shri Syed to take instructions as to whether the Petitioner has any material to support the allegations made in this Petition or the

representation, against Respondent no. 6, who has been arrayed by name. He has taken instructions and he submits that, the Petitioner does not have material to support the allegations made by him against Respondent No.6.

15. We are shocked and astonished by the conduct of the Petitioner. We have perused the pleadings put forth by him in the Petition and the representation. We are circumspect, as to whether he can indulge in a pretence that, he is affected by the continuance of Respondent No.6 or that a legal injury is caused to him. His request for transferring Respondent No.6 is on the basis of wild, baseless and reckless allegations, which we have summarized in the forgoing paragraph No.7, and in support of which, he has no iota of evidence.

16. In view of the above, we find that, this Writ Petition is not only misconceived, but appears to have been filed with oblique motives and with such object, the Petitioner has cast grave and serious aspersions on Respondent No.6 without any substantiation or any evidence. It is quite shocking that the Petitioner would dare to make such allegations when he has no material with him to substantiate even a single allegation.

17. The law on filing frivolous petitions is, by now, well settled by the Honourable Supreme Court. In ***Yogesh K. Bhatia vs. State of U.P., 1995 Supp (3) SCC 741***, the Honourable Supreme Court has held that in matters wherein frivolous, unverified and irresponsible allegations are made, punitive costs should be imposed. Such untrue allegations will have a demoralizing effect.

18. In ***Dr. B. Singh vs. Union of India and others, (2004) 3 SCC 363***, it was held that the information in the PIL should be adequate and credible. When frivolous and baseless allegations are made, imposition of exemplary costs would be justified. So also, if the pleadings give impression of oblique motives, they must be dealt with sternly in order to filter out frivolous petitions and dismiss them with costs so that the message goes in the right direction that the petitions filed with oblique motives do not have the approval of the Court. In 2004, the Honourable Supreme Court imposed costs of Rs.10,000/- on the Petitioner.

19. In ***Duryodhan Sahu (Dr.) vs. Jitendra Kumar Mishra, 1998 (7) SCC 273***, the Honourable Supreme Court concluded that there could not be a PIL in service matters wherein, a baseless case has been put forth.

20. In ***State of Uttaranchal vs. Balwant Singh Chaufal and others, 2010 (3) SCC 402***, the Honourable Supreme Court recorded that in Public Interest Litigation there is a need to maintain purity and sanctity and a PIL for extraneous consideration should be discouraged. It was further held that all the High Courts should frame rules relating to PIL. While imposing costs of Rs.1 lakh, the Honourable Supreme Court laid down the following guidelines :-

“181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other Courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

- (1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.*
- (2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging*

(13)

the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

- (3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.*
- (4) The courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.*
- (5) The courts should be fully satisfied that substantial public interest is involved before entertaining the petition.*
- (6) The courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.*
- (7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.*
- (8) The courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.*

21. In ***Tehseen Poonawalla vs. Union of India and another, 2018 (6) SCC 72***, the Honourable Supreme Court deprecated misuse of PIL and casting of aspersions on the judiciary and dismissed the PIL. (In the instant case in hand, wild allegations are made against Respondent No.6 in a Writ Petition).

22. In ***Dattaraj Nathuji Thaware vs. State of Maharashtra and others, 2005 (1) SCC 590***, the Honourable Supreme Court concluded that adequate permissible information and necessity of disclosure of sources of information, should emerge from the pleadings. While dismissing such frivolous PIL, imposition of exemplary costs is required.

23. Recently, on 06.03.2024, in ***Seva Bharathi, Tamilnadu vs. Surendar @ Naathikan in C.S. No.60/2021***, the Single Judge Bench of the Madras High Court, dealing with a civil suit under Order IV Rule 1 of the Original Side Rules, 1956 r/w Order VII Rule 1 of the Code of Civil Procedure, decreed the suit and granted damages of Rs.50 lacs with costs for attempting to spoil the reputation of others by leveling false allegations which were circulated on YouTube and social media platform. It was held that the Court cannot shut its eyes to such situations.

24. In *Campaign For Judicial Accountability and Reforms vs. Union of India and others, 2018 (1) SCC 589*, the Honourable Supreme Court concluded that the Writ Petition is wholly frivolous, without any accountability by the Petitioner.

25. In *Reepak Kansal vs. Secretary General, Supreme Court of India and others, 2020 (7) SCC 805*, the Honourable Supreme Court dismissed the Writ Petition for setting forth baseless and reckless allegations.

26. In *Amar Singh vs. Union of India and others, 2011 (7) SCC 69*, the Honourable Supreme Court concluded that frivolous litigation has to be weeded out.

27. In view of the above, **this Writ Petition is dismissed**, by imposing costs of Rs.1,00,000/-, which the Petitioner shall deposit in this Court within a period of 30 days from today. In the event of failure, the said amount shall be recovered by the District Collector of this District, by resorting to the provisions of the Maharashtra Land Revenue Code, treating the said amount to be arrears of the land revenue.

(16)

28. After the amount of costs as directed above is deposited, the Registry of this Court shall transmit the same to the following Institutions as under:-

Sr.No.	Name of Institution	Amount to be transmitted (in Rupees)
1.	The Government Medical College and Hospital (GHATI) at Chhatrapati Sambhajinagar.	Rs.25,000/-
2.	The Government Cancer Hospital at Chhatrapati Sambhajinagar.	Rs.25,000/-
3.	Infant India, Anandwan, 659/Infant Hill, Infront of Bindusara Dam, N.H. 211, Pali, Beed-431122. Mobile-9422693585/ 9822456411. Canara Bank A/c No.3773201000011, IFS Code CNRB0003773	Rs.15,000/-
4.	Orphanage home i.e. "Shantivan", Arvi, Tq.Shirur Kasar, District Beed. Bank Details:- "Bhavani Vidhyarthi Kalyan Pratishthan, Arvi", State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995	Rs.15,000/-
5.	The Day Care Center, High Court of Bombay, Bench at Aurangabad.	Rs.10,000/-
6.	Advocates' Association of Bombay High Court, Bench at Aurangabad.	Rs.10,000/-

LIBERTY TO WITHDRAW THE PETITION

29. Before parting with this matter, we must record that after noticing the contents of the pleadings and the representation made by the Petitioner, the submissions of the Respondents and the legal position, we informed Advocate Syed to take instructions from the Petitioner as to whether he desires to withdraw this Petition, since we are dismissing the same. We also informed him

that we were thinking of imposing costs of Rs.One lakh since he has conceded that, there is no material available with him to support and substantiate the grave, wild and reckless allegations made. He sought a pass over to take instructions and he submitted, on instructions, that the Petitioner desired that this Court should pass an order and he would face the consequences. Even on the quantum of costs, the Petitioner instructed Advocate Syed that he would not pray for reducing the cost amount. Thereafter, we started the dictation of this order. After the dictation, we informed Advocate Syed that this order would take time to be formalised and he can tell us tomorrow as to whether the Petitioner has any desire to withdraw this Petition. Yet Advocate Syed submitted on instructions that this Court should pass any order.

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

sjk