



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL APPLICATION NO.10105 OF 2021
IN
PUBLIC INTEREST LITIGATION NO.89 OF 2021

- 1) Peoples Right Vigilance Organization (NGO),
Through General Secretary,
Rakesh Omprakash Agrawal, Age-62 years,
Occupation: Social Service,
R/o-G-2, Aabad Complex, Gandhi Chaman Road,
Jalna (Maharashtra), Mobile +91 94233 43606
Email-Id:- peoplerightsvigilanceorg1@gmail.com
UID No. 3435 1355 4160,
- 2) Sambhaji Brigade, Maharashtra State,
Through Jalna District President,
Shivshri Vijay Panditrao Wadekar,
Age-51 years, Occupation: Business,
Resident of: Jalna, Taluka and District-Jalna,
Mobile No. 8275012700, 9823351825,
UID No: 4836 0983 6422
Email-Id: vijaywadekarvpw522@gmail.com
- 3) Common Citizens Of India (Common Citizen
of India), Through Rakesh Omprakash Agrawal,
Age-62 years, Occupation: Business,
R/o-G-2, Aabad Complex, Gandhi Chaman Road,
Jalna (Maharashtra), Mobile +91 94233 43606
Email-Id:- roagrwal59@gmail.com
UID No. 3435 1355 4160

...APPLICANTS

VERSUS

- 1) The Hon'ble High Court of Bombay,
Through Registrar General,
High Court, Mumbai,
Fort area, Taluka and District-Mumbai
(Maharashtra)

- 2) Union of India (Union of India),
Through Principal Secretary,
Law and Judiciary Department, 4th Floor,
A wing, Shashri Bhawan, New Delhi,
- 3) State of Maharashtra,
Through Principal Secretary,
Law and Judiciary Department,
Mantralaya, Fort area,
Taluka and District-Mumbai (Maharashtra),
- 4) Maharashtra Human Rights Commission,
Through Principal Secretary,
Maharashtra Human Rights Commission,
Hajarimal Somani Marg, In front of
C.S.M.T. Station, Mumbai-400001,
- 5) National Human Rights Commission,
Through Principal Secretary,
National Human Rights Commission,
Manav Adhikar Bhavan, Block-C,
G.P.O. Complex, INA,
New Delhi – 110023.

...RESPONDENTS

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Mr. Rakesh Omprakash Agrawal, Party-in-person for Applicants.
Mr. Rajendra Deshmukh, Senior Counsel, i/b. A.B. Kadethankar
Advocate for Respondent No.1.

Ms. N.N. Gore Advocate for Respondent Nos.2 and 5.

Mr. P.S. Patil, Additional G.P. for Respondent Nos.3 and 4.

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**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE OF RESERVING ORDER : 10th JANUARY 2024

DATE OF PRONOUNCING ORDER : 7th MARCH 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. The Public Interest Litigation has been filed by the party-in-persons i.e. certain organizations for various reliefs. The present Application has been filed for suspension of the Notifications issued by the High Court bearing No.P.1602/2015 and G/Amend/654/2015 dated 9th September 2015.

2. Heard Mr. Rakesh Omprakash Agrawal, Party-in-person for all the applicants, learned Senior Counsel Mr. Rajendra Deshmukh instructed by learned Advocate Mr. A.B. Kadethankar for respondent No.1 – High Court, Learned Advocate Ms. N.N. Gore for respondent Nos. 2 and 5 and learned Additional Government Pleader Mr. P.S. Patil for respondent Nos. 3 and 4.

3. In nut-shell, the party-in-person submits that it is the fundamental right of every citizen that he should have access to justice. A common man should also reach the Courts of law without delay in affordable cost so that his constitutional rights can be protected, especially the constitutional rights enshrined under Article 14, 19 and 21 of the Constitution of India. Every legislation and rules thereunder should be in consonance with the basic fundamental rights and therefore, the procedure that

has been laid down by the said Notification, according to the party-in-person is contrary to the fundamental rights under Article 14, 19 and 21 of the Constitution of India. He relied on the observations in *Maneka Ganghi vs. Union of India, 1978 (2) S.C.R. 621* wherein it has been held that various articles of the Constitution in Chapter III (Fundamental Rights) were not several, isolated walled fortresses, each not reacting on the other, but, on the other hand, were parts of a great scheme to secure certain basic rights to the citizens of the country, each article designed to expand but never to curtail the content of the right secured by the other article. It was further observed that the law satisfying the requirements of Article 21 would still have to meet the challenge of Article 14 and Article 19 of the Constitution. In regard to Article 21 itself, it was held that the procedure contemplated by the Article had to be fair, just and reasonable, and not some semblance of procedure, fanciful, oppressive or arbitrary. According to the party-in-person when the norms for presentation and conduct of proceedings by the party-in-person have been laid down by the impugned Notifications, it restricts and violates the fundamental rights granted to common man to approach the Courts of law.

4. The party-in-person further relies on the decision in *Lawyer's Forum for General Utility & Litigating Public, Aurangabad vs. the State of Maharashtra and others, 2016(3) ALL MR 613*, wherein the issue was raised regarding the powers of the Chief Justice of this Court to transfer the matter pending before a Bench of this Court to its Principal Seat by exercising administrative powers vested in him as the master of roster and the second important issue involved was the legality and validity of the Proviso to Rule 2 of Chapter XXXI of the Bombay High Court (Appellate Side) Rules, 1960. It was then observed, after taking into consideration various decisions that the Proviso to Rule 2 of Chapter XXXI of the Appellate Side Rules is illegal and invalid as the same is in contravention of Section 126 of the Code of Civil Procedure, 1908. It was also held that the Hon'ble the Chief Justice in exercise of his power as the master of roster can always direct that a particular category of cases pending before its Benches shall be heard at the Principal Seat. Merely because the rules are framed by the Hon'ble the Chief Justice and the Judges of this Court, it cannot be said that the impugned Notification cannot amount violation of any Article under the Constitution of India. The party-in-person further relies on the observations in *Badat and Company, Bombay vs. East India*

Trading Company, AIR 1964 S.C. 538, wherein it is observed that if there is no denial of a fact in specific or it is evasive, then it will have to be taken as admitted. Taking into consideration the fact that the other respondents have not filed affidavit-in-reply to the present Application, it should be taken that the other respondents have admitted the Application. The party-in-person further submits that those rules were referred by this Court in *Smt. S.A. Sinha vs. Dr. Leo Rebello, 2016 ALL MR (Cri) 3321*, wherein the background in which the Notification came to be issued has been stated, but if some person is behaving in particular manner that does not mean that the other should be considered on the same footing and therefore asking the person who desires to conduct his own matter, to appear before the committee and then to seek the certificate is unjust, arbitrary and contrary to the fundamental rights. He, therefore, prayed that the said Notifications should be suspended till the Public Interest Litigation is heard and disposed of on merits.

5. Affidavit of Registrar (Legal and Research) of Mr. Dhananjay Achyut Deshpande has been produced on behalf of respondent No.1. He has stated that the Rules of 2015 were made effective with effect from 9th September 2015. He denies that those Rules were brought into force to prevent the parties-

in-person, common citizen or deformed strata of the society from availing recourse to the remedies available under Articles 226 and 227 of the Constitution of India. According to him, prior to the enactment of Rules of 2015 the entire administration of the matters filed / defended by the parties-in-person was unguided and therefore resulting into inconvenience to the parties as well as to the High Court. With the implementation of Rules of 2015, the High Court wants to bring in discipline and modality in the administration of such matters. Further, with utmost transparency the Rules are lawfully framed and those are not inconsistent with the constitutional provisions.

6. It is pertinent to note that the Hon'ble the Chief Justice and the Judges of this Court had made the amendments in the Bombay High Court Appellate Side Rules, 1960 on 17th - 23rd September 2015. The Rules were framed under the name, "Rules for presentation and conduct of proceedings in-person by parties". The norms for presentation and conduct of proceedings in person by parties were framed. It was then made applicable to those persons who cannot engage an Advocate and wants to appear and argue in person. We know that many persons want to argue the matters by themselves before the Courts of law, however, many time it is noticed that when they have not taken

the formal education in law, they hardly have knowledge about various legal provisions. They might be master in their own facts, however, as regards the application of law on the facts in their hand would be a difficult task. Decision in such matters is not possible unless the facts and the law prevailing or governing over those facts are considered and therefore, the procedure has been laid down to see whether the party-in-person who wants to argue his own matter, has legal knowledge or not. The committee consists of two officers of the Registry i.e. who are the Judges of the District Judiciary and certainly they can assess, as to whether the party-in-person before them can effectively represent his own case, in fact as well as in law. If they are of the opinion that the person has adequate knowledge, they would certify him as competent to assist the Court in-person. However, if they consider that the party-in-person does not possess the requisite legal knowledge then they may endorse the same and even steps can be taken to provide free legal aid to such person if the said person would then be eligible under the provisions Legal Services Authorities Act.

7. Conduct of the parties, Advocates and the general public is another issue involved. We are aware that every litigant wants a quick decision in respect of his matter. However, at the same

time, the Courts are supposed to follow the procedure. In ignorance of the procedure the party who has no knowledge about the procedure may make unnecessary allegations. The conduct in and outside the Court should be appropriate. If the said conduct is not proper then definitely such person may invite the action for contempt of Court. Definitely, it appears that the Rules / Notifications came to be issued because of the unruly behaviour of the parties-in-person before the various Courts and especially the High Court. Therefore, when the purpose for the said Notifications is to protect the parties to have adequate representation i.e. with the legal background before the Court of law and to make alternative arrangement for providing legal aid when there is no such capacity in the party-in-person, will not certainly amount to violate Article 14, 19 and 21 of the Constitution of India.

8. The ratio laid down in the decision relied by the party-in-person is not applicable to the facts of the case when the present Rules of 2015 were passed after adopting due procedure. It is absolutely not necessary that the said Notifications ought to have been got approved from the Houses and would have received assent. The Bombay High Court Appellate Side Rules, 1960 are framed under Article 225 of the Constitution of India.

Article 225 of the Constitution of India deals with jurisdiction of existing High Courts and makes provision in relation to the administration of justice in the Court including any power to make rules of Court etc. and therefore, any insertion in the rules even by way of amendment does not require assent.

9. Rules of 2015 were framed in 2015 but the party-in-person wants to challenge it in 2021. It is not for the first time that the presentation or procedure in respect of party-in-person before this Court is tried to be regulated and made discipline. There is already Chapter IV titled as "presentation of appeals and applications", wherein Rule 3 deals with a different treatment to be given to the proceedings presented by the party-in-person. Liberty was given to the party-in-person to frame the memo of the appeal, cross objections, application or petition either to be in Marathi or in Hindi or in English. However, as regards the language of the proceedings presented by the Advocates is concerned, it should be in English. Those rules were the subject of decision in *Vinayak Hari Kulkarni vs. State of Maharashtra and others, i.e. the Full Bench decision reported in (2010) 4 MhLJ 868* and the said decision was then upheld as it was beneficial to the party-in-person. At the cost of repetition, we would say that the norms for presentation and conduct of proceedings in person

by the parties i.e. Rules 2015 have been framed with an object to give proper representation and protection to the party-in-person so that he should be competent to deal with the legal issue involved and simultaneously it takes care of the unruly behaviour of the parties-in-person when they appear in the Court when it comes with the reasonable restrictions, as the conduct of any party before a Court of law is regulated and therefore, no case is made out to suspend the said Notifications which have come into effect about five years before the presentation of the Public Interest Litigation.

10. The Civil Application stands rejected.

11. For rest of the Applications and proceedings, the Public Interest Litigation be placed for further consideration on 1st April 2024.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE