

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13741 OF 2016

Mr. Naresh Govind Vaze,]
R/at Matruchhaya Building,]
Room No.2, Property No.81/1,]
Behind Vedant Tower, Tulinj,]
Nallasopara (East), PIN – 401209.] **.. Petitioner**

Versus

1. The High Court of Bombay]
Through the Registrar General]
High Court of Bombay,]
Mumbai – 400 023.]
2. The Government of Maharashtra,]
Through Chief Secretary / Principal Secretary,]
Law and Judiciary Department,]
Mantralaya, Mumbai – 400 032.] **.. Respondents**

Mr. Naresh Govind Vaze, the Petitioner is present in-person.

Mr. Rahul Nerlekar, Advocate for Respondent No.1-High Court.

Mr. N.C. Walimbe, Additional Government Pleader, with Mr. S.P. Shetye,
Assistant Government Pleader, for Respondent No.2-State of Maharashtra.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 2ND APRIL, 2024.

The date on which Judgment is pronounced : 7TH MAY, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. RULE. Rule made returnable forthwith and heard the petitioner-in-person as well as the learned counsel for the respondents.

2. The petitioner, a Law Graduate and a former Judicial Officer, has raised a challenge to the Notification dated 9th September 2015 notifying the “Rules for Presentation and Conduct of Proceedings in Person by Parties” (for short, the said Rules) principally on the ground that the said Rules prevent a party-in-person from appearing before the Court and arguing his / her case in person. It has been pleaded in the writ petition that on 21st July 2016, the petitioner had appeared in person in Writ Petition (Stamp) No.19347 of 2016. The Division Bench hearing the said writ petition required the petitioner to appear before the Committee of two Officers of the Registry in accordance with Rule 2 of the said Rules. According to the petitioner, a party litigating cannot be denied the right of audience at the threshold of the litigation and the same offends the provisions of Article 19(1)(a) of the Constitution of India. Requiring a party who desires to appear in person to appear before the Committee defeats the right of such party to put-forth his / her say in the matter before the Court. It is thus prayed by the petitioner that the said notification be quashed and it be declared that a party-in-person desiring to appear before the Court is not required to first appear before the Committee constituted under Rule 2 of the said Rules.

3. The petitioner-in-person as well as the learned counsel appearing for the 1st respondent have placed on record their written notes of

arguments. Compilation of various documents, including the decisions sought to be relied upon are also placed on record. It is in this backdrop that the challenge as raised by the petitioner-in-person is being considered.

4. In the written note of arguments submitted by the petitioner-in-person, it has been stated that there can be law providing reasonable restrictions while exercising fundamental rights. The restrictions, if any, have to be reasonable but the same should not result in a party-in-person being completely disabled from appearing in person before the Court. Requiring a party who desires to appear in person to submit an undertaking is also unwarranted for the reason that the provisions of the Contempt of Courts Act, 1971 are sufficient to take care of any irresponsible conduct of such party-in-person. Reference has been made to the provisions of Order III Rule 1 of the Code of Civil Procedure, 1908, (for short, the Code) which recognizes the right of a party to appear and contest proceedings in a court of law. An objection is also sought to be raised to the use of the expression “unparliamentary language or behaviour” in Rule 5 of the said Rules. These terms being undefined are likely to result in indiscriminate interpretation. The said Rules though stated to be framed in exercise of powers conferred by the Code, the same are inconsistent and thus discriminatory as well as violative of Articles 14

and 19(1)(a) of the Constitution of India. It is thus prayed that the Notification dated 9th September 2015 be quashed and set aside.

5. In the written note of arguments submitted on behalf of the 1st respondent, it has been stated that in accordance with Article 225 of the Constitution of India, read with the Code as well as Clause XXXVII of the Letters Patent, the High Court has inherent powers to regulate its procedure and frame appropriate procedural rules for proper administration of justice. The said Rules are in the nature of procedural instructions for regulating the appearance of parties who wish to appear in person before the High Court. The said Rules do not prevent any party-in-person from appearing before the Court. The Rules having been approved by the Full House of the High Court and thereafter having been published in the Official Gazette cannot be stated to be brought into force pursuant to an exercise without jurisdiction. Reference has been made to the decision of the Supreme Court in *Iridium India Telecom Ltd. Vs. Motorola INC.*, (2005) 2 SCC 145 as well as the judgment of the Full Bench of the Delhi High Court in *M/s. Print Pak Machinery Ltd. Vs. Jay Kay Papers Conveters*, (1979) ILR II Delhi 28. In addition, copy of the order dated 7th March 2024 passed in Civil Application No.10105 of 2021 in Public Interest Litigation No.89 of 2021 (*Peoples Right Vigilance Organization (NGO), Jalna and Ors. Vs. The Hon'ble High Court of Bombay, Mumbai*

and Ors.) by the Aurangabad Bench considering a similar challenge is also sought to be relied upon. It is thus submitted that there being no illegality in the framing of the said Rules, the writ petition was liable to be dismissed.

6. We have heard the petitioner-in-person and Mr. Rahul Nerlekar, learned counsel appearing for the 1st respondent. By the Notification dated 9th September 2015, the “Rules for Presentation and Conduct of Proceedings in-Person by Parties” have come into force pursuant to their publication in the Official Gazette. Chapter IV – A has been inserted in the Bombay High Court (Appellate Side) Rules, 1960 while the very same Rules have also been inserted in Chapter LVIII – A in the Bombay High Court (Original Side) Rules, 1980. The said Rules require a party who wants to appear and argue the case in person to first file an application along with the proceedings seeking permission to appear in person. The reasons for such party to be unable to engage an Advocate are required to be indicated as well as expressing willingness to accept an Advocate who can be appointed for such party by the Court. On such application being filed, a Committee of two Officers of the Registry nominated by the learned Chief Justice is required to scrutinize the matter and examine the averments made therein. The Committee has to interact with the party-in-person and thereafter express an opinion by way of an office report

indicating whether the party-in-person would be able to give necessary assistance to the Court or whether an Advocate could be appointed as amicus curiae in such case. A similar procedure is required to be followed when a party wishes to defend his / her proceedings in person.

. If it is certified that a party-in-person is competent to assist the Court in-person, an undertaking is required to be given that such party would maintain decorum of the Court and would not use or express objectionable and unparliamentary language or behaviour during the course of hearing in the Court or in the Court premises or in further pleadings. Failure to abide by such undertaking would result in initiation of contempt proceedings. The said Rules however are not applicable when applications for temporary bail, parole, furlough and habeas corpus are made. Notwithstanding anything provided in the said Rules, the concerned Court before which the matter lies can in its discretion permit a litigant to appear in person and conduct the proceedings. The Court can also in its discretion require the concerned litigant to first appear before the Scrutiny Committee under Rule 2 or 3 as the case may be.

7. Perusal of the said Rules in their entirety indicates that the same seek to regulate the mode and manner in which a party who wants to appear and argue the case in person can do so. The said party is required to indicate the reason as to why he / she cannot engage an Advocate and

wants to appear and argue in person. The Committee as constituted is required to scrutinize the pleadings of the said proceedings and thereafter interact with the party-in-person and express its opinion as to whether such party would be able to give necessary assistance to the Court for disposal of the matter. On being certified to be competent to assist the Court, the party-in-person is required to give an undertaking so as to maintain decorum of the Court and the use of language therein. Rule 7 of the said Rules is found to be relevant and the same is reproduced hereunder.

“7. Notwithstanding anything contained in these Rules, the concerned Court before which the matter lies, may, in its discretion, permit a litigant/s to appear in person and conduct the proceedings :

Provided, that the Court may, in its discretion, require the concerned litigant/s, first to appear before the Scrutiny Committee under Rule 2 or Rule 3, as the case may be.”

8. It can be seen from the aforesaid Rules that, firstly, there is no blanket prohibition or bar for a party to appear in person before the Court. The Rules merely regulate the manner in which a party who desires to appear in person is required to take steps to facilitate the same. The modalities prescribed are merely regulatory in nature with an object that the time of the Court while hearing a party-in-person is not spent on

unnecessary details and that the party-in-person is found broadly in a position to render necessary assistance to the Court for deciding his/her matter. The procedure in that regard is not aimed to prevent or bar a party from appearing in person. Subject to compliance with the requirement of the said Rules, permission can be granted to such party to appear in person. Rule 7 of the said Rules starts with a non-obstante clause and it is open for the concerned Court while entertaining the matter in question to permit in its discretion a litigant to appear in person and conduct the proceedings. In other words, the Court may permit a litigant to appear in person and conduct the proceedings without undertaking the procedure prescribed by Rules 1 to 4 of the said Rules. In such case, the concerned Court may find that a litigant who is appearing in person for conducting the proceedings is in a position to assist it without the requirement of any such certification by the Committee constituted under Rule 2. This would indicate therefore that in a given case, a party desiring to appear in person for conducting the proceedings can appear before the concerned Court, which, if satisfied, can permit such party to appear in person and conduct the proceedings. The right of a party to appear in person for conducting the proceedings without approaching the Committee is thus preserved subject to discretion of the concerned Court. Moreover, the said Rules also do not apply if a party desires to appear in person when the proceedings relate to applications for temporary bail, parole, furlough and habeas

corpus.

9. In our view, Rules 6 and 7 of the said Rules clearly indicate that a party if governed by the proceedings referred to in Rule 6 or a party who is permitted by the concerned Court under Rule 7 to appear in person is not required to undergo the exercise prescribed by Rules 1 to 4 of the said Rules. The prohibition in that sense is not absolute and sufficient provision has been made wherein a party in the proceedings that have been referred to in Rule 6 is entitled to appear in person. Rule 7 is of wider application and it applies to all matters subject to the discretion being exercised by the concerned Court. We therefore do not find that the said Rules in any manner prevent a party from appearing in person. The bar is not absolute. The said Rules are merely regulatory in nature and cases falling within Rules 6 and 7 do not require the exercise prescribed by Rules 1 to 4 to be undertaken. It is thus clear that the said Rules are not prohibitive in nature so as to offend the provisions of Articles 14 and 19(1)(a) of the Constitution of India. They are merely regulatory in nature and have been framed to enable presentation and conduct of proceedings by a party-in-person smoothly to facilitate the administration of justice.

10. We may note that the Division Bench in *Peoples Right Vigilance Organization (NGO), Jalna and Ors. (supra)* has considered the challenge based on the said Rules not being approved by the State Legislature before

coming into force. That challenge has been turned down by the Division Bench. Though the petitioner-in-person sought to urge that the basis on which the challenge to the said Rules has been turned down requires reconsideration, we do not find any legal or justifiable reason to take a different view of the matter. We are in respectful agreement of what has been held by the Division Bench in *Peoples Right Vigilance Organization (NGO), Jalna and Ors. (supra)*.

11. The petitioner-in-person sought to urge that being a law graduate and a former judicial officer, he ought not to have been directed to approach the Committee constituted under Rule 2 of the said Rules. We find that Rule 7 takes care of such contention inasmuch as a party-in-person answering such description and desiring to appear in person can always request the Court to exercise its discretion and permit him / her to appear in person so as to conduct the proceedings without adopting the procedure prescribed by Rules 1 to 4 of the said Rules. It appears from the petitioner's affidavit that he had indeed sought to appear in person before the Division Bench of this Court on 21st July 2016 and that he was thereafter asked to appear before the Committee constituted under Rule 2. This would thus indicate that the Division Bench was not inclined to exercise discretion under Rule 7 in favour of the petitioner to enable him to appear in person and conduct the proceedings. In such situation, there

was no option left for the petitioner but to undergo the exercise contemplated by Rules 1 to 4 of the said Rules.

. We also note an apprehension sought to be expressed by the petitioner-in-person that having been once permitted to appear in person, such litigant may not be required on each subsequent occasion to again undertake the exercise contemplated by Rules 1 to 4 of the said Rules. In our view, there cannot be any strait jacket formula for such situation. The requirement of undertaking the exercise prescribed by Rules 1 to 4 in a given situation could be either dispensed with or found necessary by the concerned Court while exercising its discretion under Rule 7 of the said Rules. The position would depend on the facts of an individual case.

12. Thus, taking an overall view of the matter, we do not find that the Notification dated 9th September 2015 deserves to be quashed on the grounds urged by the petitioner-in-person. The writ petition therefore fails. Rule stands discharged with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]