
(2019) 08 BOM CK 0089
In the Bombay High Court
Case No : Writ Petition No. 5734 Of 2019

Shriram

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Bombay Reorganization Act, 1960 — Section 41
Bombay High Court Appellate Side Rules, 1960 — Rule 1
Constitution Of India, 1950 — Article 226, 226(2)

Citation : (2019) 08 BOM CK 0089

Hon'ble Judges : R.K. Deshpande, J; Vinay Joshi, J

Bench : Division Bench

Advocate : Anand Jaiswal, R.S. Kalangiware, A.J. Gilda, Subodh Dharmadhikari, N.A. Padhye

Final Decision : Dismissed

Judgement

R.K. Deshpande, J

1. By notification dated 8-7-2019 issued by the Institute of Cost Accountants of India, a statutory body constituted under the provisions of the Cost and Works Accountants Act, 1959, the petitioner was declared as elected member of the Western India Regional Council ('the said Council') of the Cost Accountants of India for the term 2019 - 2023. In the meeting of the said Council held on 8-8-2019, the petitioner was declared as the Chairman of the said Council.

2. By an order dated 9-8-2019 issued by the Secretary (Acting) of the Institute of Cost Accountants of India, Kolkata, in exercise of his power conferred under Regulation No.119 of the Cost and Works Accountants Regulations, the election of the petitioner as the Chairman of the said Council is declared as null and void. This is the subject-matter of challenge in this petition.

3. We have heard Shri Anand Jaiswal, the learned Senior Advocate, assisted by Shri R.S. Kalangiware, Advocate for the petitioner; and Shri Subodh

Dharmadhikari, the learned Senior Advocate, assisted by Shri N.A. Padhye, Advocate for the respondent Nos.2 and 3.

4. A preliminary objection is raised in respect of the territorial jurisdiction of this Court to entertain, try and decide this writ petition. It is urged that there is nothing to show that even a part of cause of action has arisen within the territorial jurisdiction of this Court. Relying upon the provision of Section 41 of the Bombay Reorganization Act, 1960 read with Rule 1 under Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, it is urged that this Bench would not have a territorial jurisdiction. Our attention is invited to the fact that none of the respondents have their offices located within the territorial jurisdiction of this Court, and merely because the order impugned is communicated to the petitioner at Nagpur or that the petitioner resides at Nagpur, would not confer a jurisdiction upon this Court to entertain this petition.

5. Shri Anand Jaiswal, the learned Senior Advocate appearing for the petitioner, has relied upon the decision of the Division Bench of this Court in the case of Asif s/o Shaukat Qureshi v. State of Maharashtra and another, reported in 2017(2) Mh.L.J. 178, to urge that this Court has held in the said decision that the petitioner therein received the communication at Nagpur, declaring that he is deemed to have vacated the office and the Wakf Board functioning under the Wakf Act, 1995 works for the entire State of Maharashtra and, therefore, this Bench was held to have jurisdiction to entertain the petition challenging the removal of the petitioner from the membership of the Wakf Board. It is urged that in the present case, the said Council, though is having its office at Mumbai, exercises the jurisdiction over the entire State of Maharashtra. The petitioner is the resident of Nagpur and has received the impugned communication at Nagpur. The order of removal of the petitioner from the post of Chairman of the said Council takes effect at Nagpur and, therefore, a part of cause of action arises at Nagpur.

6. We have gone through the provision of Article 226(2) of the Constitution of India regarding territorial jurisdiction of the High Court, the provision of Section 41 of the Bombay Reorganization Act, 1960, and the provision of Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, dealing with the allocation of business amongst the various Benches of the Bombay High Court located at different places in the State of Maharashtra.

7. In the decision of the Division Bench of this Court in Asif Qureshi's case, cited supra, it is held that the provision of Section 41 of the Bombay Reorganization Act, 1960 read with Chapter XXXI of the Bombay High Court Appellate Side Rules cannot abridge the writ jurisdiction and basically designed to meet administrative requirements and administrative convenience. The provision is in respect of any case arising in the jurisdiction of the High Court Benches at Nagpur, Aurangabad and High Court of Bombay at Goa,

8. In the decision of the Division Bench of this Court in the case of Nitin

Industrial Associates, Khamgaon v. State of Maharashtra and others, reported in 1986 Mh.L.J. 474, the Division Bench specifically negated the argument that Chapter XXXI of the Bombay High Court Appellate Side Rules and Section 41 of the Bombay Reorganization Act can be taken to have abridged the jurisdiction and power conferred on this Court by Article 226 of the Constitution of India. The Court holds that it is not that every petition under Article 226 which is presented to this Bench at Nagpur that needs to be entertained and regard must be had to these two provisions in the filing of writ petitions so that the petitions can be dealt with by an appropriate Bench.

9. In Asif Qureshi's case, cited supra, the relevant fact, which the Court seems to have taken into consideration in Para 16, is that the petitioner was prevented from exercising his rights and carrying his activities within the jurisdiction of this Bench of the High Court and, therefore, it was held that this Court shall have territorial jurisdiction to decide the controversy between the parties. We can understand such a reasoning in respect of the functions of the said Council. The case is, therefore, distinguishable. In the present case, we are concerned with setting aside the election of the Chairman of the said Council, who holds the office in Mumbai.

10. In the decision of the Division Bench of this Court in the case of VSP Acqua Mist Fire Pvt. Ltd., Nagpur v. Maharashtra State Electricity Transmission Company Ltd., Mumbai, reported in 2010(2) Mh.L.J. 575, the jurisdiction of this Court was claimed on the basis of the communication pertaining to the tender notice, the communication of the date and timing of opening, and the communication regarding a query about the validity of the certificate, all received at Nagpur. The Division of this Court upheld the preliminary objection regarding territorial jurisdiction of this Court to entertain, try and decide the petition.

11. In the present case, the petitioner was elected as the Chairman of the said Council in the election held at Mumbai. The office of the Western India Regional Council is located at Mumbai. The said Council may have the jurisdiction all over the State, but it is not the action of the said Council which is the subject-matter of challenge in this petition, but it is setting aside the election of the petitioner as the Chairman of the said Council, which is the subject-matter of challenge in this petition. We are in agreement with the submission of Shri Subodh Dharmadhikari, the learned Senior Advocate for the respondent Nos.2 and 3, that mere communication of the order setting aside the election of the petitioner at Nagpur would not constitute an integral part of the cause of action. We find that even if the jurisdictional facts stated in the petition are read together, the same would not clothe the jurisdiction with the Nagpur Bench of the Bombay High Court to entertain, try and decide the petition.

12. In view of aforesaid discussion, this petition is dismissed for want of territorial jurisdiction. Needless to say that the petitioner shall be at liberty to approach the appropriate forum.