



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6104 OF 2026

(MUHAMMAD QAISAR FAROOQ S/O MOHAMMAD AKBAR

VS

STATE OF MAHA., THR. CHIEF SEC. GOVT. OF MAHA., MUMBAI AND ANR.)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. Moin Imran Khan, Advocate for petitioner.

Mr. D.V.Chauhan, Government Pleader with Mr.N.S.Rao, AGP for respondents.

CORAM : ANIL S. KILOR AND
RAJNISH R. VYAS, JJ.

DATE : AUGUST 21, 2026

- 1) Heard learned counsel for the petitioner.
- 2) The challenge in this petition is to the vires of the Maharashtra Freedom of Religion Act, 2026 in whole or its key provisions relating to prior notice, public display, penalties, burden of proof and third party complaints as unconstitutional. A prayer is also made to restrain the respondents from enforcing or acting upon it in any manner. The prayer clauses show that the petitioner himself is not sure whether he is challenging the entire Act or part thereof.
- 3) Be that as it may, upon perusal of the memo of the petition, we find that the grounds raised therein are general in nature. The grounds merely state that the Act is in contravention of Articles 14, 19(1)(a), 21 and 25 of the Constitution of India. The pleadings further show that the definition of clause of the Act 2026 is vague and overly broad terms. It further shows that the criminal laws are already dealing with the punishment for the act committed and therefore, the Act in question creates an

extra hurdle. According to the petitioner, similar laws in other States were also challenged and now the matter is pending before the Hon'ble Supreme Court.

- 4) Be that as it may, Hon'ble Supreme Court long back in the year 2004 by way of authoritative judgment in the case of ***Kusum Ingots & Alloys Ltd. v. Union of India and another***, reported in ***2004 (6) SCC 254*** has observed in para 18 and 19 as under :-

"18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

19. Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor."

- 5) The Hon'ble Supreme Court in the case of ***Union of India and others vs. Manjurani Toutray and others*** reported in ***2023 INSC 787*** has observed in para 8 and 9 as under :-

"8. After hearing the learned counsel for the parties and considering the prayer made in the writ petition, it is luculent that the respondent no. 1 did not set out any grounds to declare Rule 4(b) of the Rules as ultra vires. No such relief was even prayed for in the writ petition. The respondent no. 1 in the writ petition merely sought a writ in the nature of certiorari to set-aside the order of the CAT. Therefore in the given facts, there was no occasion for the High Court to declare Rule 4(b) as ultra vires.

9. While hearing learned counsels appearing for the parties, we asked Shri B.H.Marlapalle, learned senior counsel along with Shri Shibashish Mishra appearing on behalf of the respondents and intervenors, as to how, in absence of any pleading setting out grounds challenging the vires of Rule 4(b) and in the absence of seeking any relief to that effect, the High Court was justified in exercising jurisdiction to declare Rule 4(b) as ultra vires? In response, learned senior counsel has fairly stated that it is a defect in the pleadings as well as in the relief sought before the CAT and in the writ petition. But still, they made an unsuccessful attempt to satisfy this Court that the said

rule appears to be discriminatory and therefore the High Court has rightly exercised the jurisdiction while passing the impugned order. It is a trite law that for striking down the provisions of law or for declaring any rules as ultra vires, specific pleading to challenge the rules and asking of such relief ought to be made, that is conspicuously missing in the present case. In the absence of such a pleading, the Union of India did not have an opportunity to rebut the same. The other side had no opportunity to bring on record the object, if any, behind the Rules that were brought into force. We are also of the considered view that, in the writ petition seeking a writ of certiorari challenging the order of the CAT, the High Court ought not to have declared Rule 4(b) as ultra vires in the above fact situation. Therefore, the High Court was not justified to declare Rule 4(b) as ultra vires.”

- 6) The Hon’ble Supreme Court in the case of ***Haji Abdul Gani Khan v. Union of India*** reported in ***(2023) 11 SCC 432*** made the following observations in paragraph 20, which are worth quoting :-

“20. There cannot be any doubt that when a party wants to challenge the constitutional validity of a statute, he must plead in detail the grounds on which the validity of the statute is sought to be challenged. In absence of the specific pleadings to that effect, Court cannot go into the issue of the validity of statutory provisions. The Constitutional Courts cannot interfere with the law made by the Legislature unless it is specifically challenged by incorporating specific grounds of challenge in the pleadings. The reason is that there is always a presumption of the constitutionality of laws. The burden is always on the person alleging unconstitutionality to prove it. For that purpose, the challenge has to be specifically pleaded by setting out the specific grounds on which the challenge is made. A Constitutional Court cannot casually interfere with legislation made by a competent Legislature only by drawing an inference from the pleadings that the challenge to the validity is implicit. The State gets a proper opportunity to defend the legislation only if the State is made aware of the grounds on which the legislation is sought to be challenged.”

- 7) The Hon’ble Supreme Court in the case of ***State Kerala and others vs. Shibu Kumar P.K. and Another*** reported in ***2019(13) SCC 577*** has observed in para 4 are as under :-

“4. In these matters, none of the parties to the proceedings had laid the required pleaded foundation for questioning the vires of Rules 4 and 5 of the Rules as imperative in law. What was really questioned by the respondent(s)/defaulter(s) was/were only the show-cause notice(s) issued for the recovery of the amounts due from him/them, either to the financial institution(s) or to the Bank(s). Ignoring this aspect of the matter, the Division Bench of the High Court has proceeded to consider the vires of Item (viii) under Rules 4 and 5(1) of the Rules.”

- 8) The gist of the aforesaid judgments can be said to be that there cannot be a challenge to the vires of the Act on the basis of vague pleadings. We find that the pleadings made in the petition are not sufficient to test the vires of the Statute. A writ Court would not decide constitutional question in a vacuum. That being so, we are not inclined to entertain the present petition. Accordingly, the petition is dismissed.
- 9) Since the filing of the petition on the basis of loose pleadings has resulted in wastage of precious judicial time, we impose costs of Rs. 500/- on the petitioner. The costs be paid to the High Court Legal Aid Services Sub Committee, Nagpur within a period of one week from today.
- 10) We make it clear that, if appropriate study and research are undertaken, the petitioner would be at liberty to raise a fresh challenge to the issue by filing a fresh petition.
- 11) As the petition is dismissed, the Civil Application No.2077/2026 for intervention is also disposed of.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)