

Gurpal Singh vs State Of Punjab & Ors on 10 May, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2755, 2005 (5) SCC 136, 2005 AIR SCW 3144, (2005) 30 ALLINDCAS 60 (SC), 2005 (3) SERVLJ 136 SC, 2005 (5) SCALE 91, (2005) 5 JT 389 (SC), (2005) 5 KHCACJ 403 (SC), (2005) 3 ALLMR 797 (SC), (2005) 3 SERVLJ 136, (2005) 3 LAB LN 110, 2005 (30) ALLINDCAS 60, 2005 (4) SLT 455, (2005) 3 KER LT 588, 2005 SCC (L&S) 636, (2006) 1 MAD LW 142, (2005) 2 ORISSA LR 184, (2005) 3 PAT LJR 26, (2005) 4 SCJ 496, (2005) 4 SUPREME 35, (2005) 5 SCALE 91, (2005) 2 WLC(SC)CVL 296, (2005) 3 JLJR 9, (2005) 100 CUT LT 275

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:

Appeal (civil) 2802-2803 of 2002

PETITIONER:

Gurpal Singh

RESPONDENT:

State of Punjab & Ors

DATE OF JUDGMENT: 10/05/2005

BENCH:

ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

By the impugned judgment a Division Bench of the Punjab and Haryana High Court held that the appointment of the appellant as Auction Recorder of the Market Committee, Patran was invalid and illegal. The said order came to be passed on the basis of a Writ Petition filed by respondent No. 4. It is to be noted that the said petition was styled as a Public Interest Litigation (in short 'PIL').

A brief reference to the factual aspect would be necessary.

Appellant was appointed as Auction Recorder on 19.11.1986. Appointment of the appellant was challenged by one Ashok Kumar, clerk of the Market Committee by filing a complaint before the competent authority alleging that the appellant having been convicted under Section 61(1)(a) of Punjab Excise Act in 1974 for alleged commission of offence on 21.5.1973 and was therefore

ineligible for being considered for appointment. The complaint was looked into by the Market Committee and by order dated 22nd May, 1989 it was held that the appointment was not contrary to law. The Standing Counsel of the Committee categorically opined that since no moral turpitude of any kind was involved, there was no ineligibility attached to the appellant and his appointment was in accordance with law. For the aforesaid purpose reliance was placed on a decision of the Punjab and Haryana High Court in the case of Narain Singh v. N.S. Chima (1997 SLWR 448). On 5.9.1989 appellant's services were regularized under the Punjab Market Committees (Class III) Rules, 1989 which came to be operative after appellant was appointed. Prior to that no specific Rules were there. A Civil Writ Petition No. 3451 of 1989 was filed by one Chandra Bhan before Punjab and Haryana High Court challenging the direct appointment of the appellant. During pendency of the said Writ Petition Sukhjinder Singh filed a complaint before the Administrator, Market Committee questioning appellant's appointment. Notice was issued by the Administrator to the appellant, who filed his reply. A revision in terms of Section 42 of the Punjab and Haryana Agricultural Produce Markets Act, 1961 (in short the 'Markets Act') was filed before the Special Secretary to the Government of Punjab, Department of Agriculture who passed orders to the effect that Administrator should look into the matter and take a decision as to whether action against the appellant was called for. While Writ Petition No. 3451 of 1989 was pending, Civil Writ Petition No. 6180 of 2000 was filed by the respondent No. 4 challenging appointment of the appellant and as noted above the petition was stated to be one in public interest. Counter Affidavit was filed by the Punjab Mandi Board and the Market Committee taking the stand that since conviction of the appellant did not involve any moral turpitude the appointment was in accordance with law. Appellant also filed counter affidavit before the Market Committee questioning locus standi of the Writ Petitioner to challenge his appointment. It was pointed out that no public interest involved and because of political and personal rivalry the petition had been filed. The High Court by the impugned order held that since the appellant had been convicted by a Court of competent jurisdiction under Section 61 of the Punjab Excise Act, his appointment was not according to rules. Therefore his appointment was set aside and the Punjab Mandi Board and the Market Committee were directed to start fresh process of selection for filling up of the post.

In support of the appeal, learned counsel for the appellant submitted that Writ Petition filed by the writ petitioner (respondent No. 4) was nothing but a sheer abuse of process of court. It was by no stretch of imagination Public Interest Litigation and it was filed because of personal and political rivalry and ought to have been dismissed by the High Court. The assertion that appellant and respondent No.4 were pitted against each other in several elections has not been denied. Even the Punjab Government has as back as on 22.6.1981 issued a Circular that only records of conviction for preceding five years were to be taken note of.

Learned counsel appearing for the Market Committee supported the stand of the appellant and submitted that there was nothing irregular in the appointment of the appellant and the same was in terms of the rules of appointment. Learned counsel for the respondent No. 4, writ petitioner however, submitted that merely because the writ petition was filed after fourteen years and because there was some personal differences that cannot dilute the public interest element involved in the writ petition. It was further submitted that notwithstanding the clear direction of the High Court to start the process of selection afresh within four months, nothing has been done and this amounts to

contempt of Court.

The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant;

(b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra vs. Prabhu*, (1994 (2) SCC 481), and *Andhra Pradesh State Financial Corporation vs. M/s GAR Re-Rolling Mills and Anr.*, (AIR 1994 SC 2151). No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Dr. B.K. Subbarao vs. Mr. K. Parasaran*, (1996 (7) JT 265). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so- called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain

possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

The aforesaid position was highlighted in *Ashok Kumar Pandey v. State of W.B.* (2004 (3) SCC 349).

It is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation"

in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others." (See : Dr. B. Singh v. Union of India and Others (2004(3) SCC 363) When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object. Since in service matters public interest litigation cannot be filed there is no scope for taking action for contempt, particularly, when the petition is itself not maintainable. In any event, by order dated 15.4.2002 this Court had stayed operation of the High Court's order.

Judged in the above said background the High Court was not justified in entertaining the Writ Petition. The judgment of the High Court is indefensible and is therefore set aside.

The appeals are allowed with no orders as to costs.