

PUBLIC INTEREST LITIGATION*

We have assembled here, today, to pay our tributes to the fond

memory of Late Justice Sobhagmalji Jain, a legal luminary, a gentleman Judge and above all a human being par excellence. While generally agreeing with what has been said by Mr. Justice M.C. Jain and my predecessor speakers, I would like to mention by way of my separate but concurring opinion just two anecdotes retrieved from down the memory lane. While practicing as a member of the Gwalior High Court Bar, I accompanied a client of mine who had lost from all the Courts upto the High Court to file a special leave petition in the Supreme Court. It was a landlord-tenant litigation, adjudged to be devoid of any merit. Obviously the purpose of my client was to try his luck in the apex court of the country – hoping that the ingenuity of a Delhi lawyer may win him a windfall from speculative litigation. Accompanied by advocate-on-record, I had a conference with Justice Sobhagmal Jain, a senior advocate by that time. He listened to us with patience and at the end told the advocate-on-record something like this – “Do not waste your client’s money. However still, if you feel professionally convinced, try your luck”. He offered us a cup of tea. The broad smile spread on his face was a courteous denial to accepting the brief. He did not charge any fee for consultation. However, the advocate-on-record could not come over the temptation and did file a SLP with paper book, running into about 900 pages, only to win a nine letter dictum – ‘dismissed’.

Late Justice Sobhagmalji had a keen interest in public interest matters. He used to keep a watch on burning issues of the day and of significance to the society. He would collect facts and material and engage himself into deep research and think over finding out solutions. He had a vision as to how peace and development of the society as a whole can be achieved so that the democratic India can also be a developed India. The seminar today is a befitting tribute to his mission. Probably his parting message was – ‘You do not miss me now but you will when I am no more’. This seminar is a dedication to affirm what he rightly thought.

It is gratifying to note that his worthy son and his daughter-in-law are both members of Supreme Court Bar, following Late Sobhagmalji’s footsteps in professionalism, ethics, morality and traditions. His grandson has also recently joined the Bar.

Late Pt. Jawahar Lal Nehru, the first Prime Minister of India, used to say – “What is there in a name; you may call rose by any other name but its fragrance would be as sweet”. The saying by Pt. Nehru is very apt in the context of the name ‘Public Interest Litigation’. There is nothing in a name if it has no intimate relationship with the personality named. However, if the name is descriptive of the character and quality, the purpose and purport of the subject, it does make a difference.

Public Interest Litigation, an innovative outcome of judicial ingenuity and activism has been complimented by being described as ‘social interest action’. It came to be recognized by the constitutional courts as a vehicle for promoting and protecting the constitutional rights – and preventing the violation thereof – belonging to ‘We, the people of India, specially the poor, downtrodden, ignorant and socially or economically disadvantaged, who by reason of oppression, ignorance, poverty or otherwise cannot speak for themselves and cannot afford to enter the portals of justice though the doors are open. Not even quarter of a century elapsed and the ‘public interest litigation’ has come to be nicknamed as ‘private interest litigation’, ‘political interest litigation’, ‘publicity interest litigation’ and very recently as ‘paise income litigation’. Today’s seminar is of special significance for the legal fraternity, especially in the light of two

very recent judgments of Supreme Court of India. The decisions are in the case of *Ashok Kumar Pandey*¹ and in the case of *Dr. B. Singh*², the latter just pronounced on 11th March, just a day before. It is a very appropriate time for the legal fraternity to seriously indulge into introspection. While circumspection is needed on the part of any member of the Bar approached with a brief by a purportedly public interest litigant, care and caution are needed to be exercised by the Court before which a litigation, purporting to be in public interest, comes up for hearing.

Jurisprudentially, PIL has now come to stay as an indispensable component of administrative law. It is indeed satisfying to witness this seminar taking up for consideration the anatomy as also the pathology of PIL, not only its theory but also the practical aspects so as to draw up, at the end of the day, a prescription for curing the ailments which have set in and listing the 'DOs' and 'DON'Ts' in the interest of better health for future. The four sessions, artistically arranged and prudently planned, deal with the triple Ps of PIL, i.e. 'practice', 'procedure' and 'precautions', the philosophy behind and the balancing act in PIL, as also the interesting question – whether PIL is disturbing the delicate balancing of powers in the constitutional scheme of ours. My hopes from this seminar have risen high by the rich contents and the beautiful cover page of Souvenir, released by SC-AOR Association. The cover page carries the photo of Late Sobhagmalji Jain. He can be seen as a visionary. Vision is the art of seeing things invisible.

It was in 1987, while placing on record his appreciation of social action litigation the eminent jurist P.M. Bakshi³ had said –

“The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For this purpose it is necessary to make procedural innovations in order to meet the challenges posed by this new role of an active and committed judiciary. The summit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of Western thought, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups.....During the last four or five years however, judicial activism has opened up a new dimension for the judicial process and has given new hope to the justice starved millions of India.”

In just 27 years after the above statement, this Court has been compelled to place on record, just a day before (in *Dr. B. Singh's case*), that the petitions filed as PILs are often a camouflage to foster personal disputes or vendetta to bring to terms a person, not of one's liking, or to gain publicity or as a facade for blackmail. The attractive brand name of PIL is being used for marketing suspicious products of mischief. Unfortunately, persons of vested interest are indulging in the pastime of meddling with judicial process either by force of habit or or improper motives and trying to bargain for a good deal, at times, to enrich themselves or actuated by a desire to win notoriety or cheap popularity. The court has gone on to say: – “....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, whereas only 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, Courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases.”

The Supreme Court has noted that, inspite of strong disapproval having been expressed, PILs are continuing, unabated in the Courts, involving service matters. The tendency is percolating slowly into setting in motion the criminal law jurisdiction just for gaining publicity for oneself or giving adverse publicity to the opponents. Averments picked up from air and having no foundation, much less a reliable one, are being made recklessly and even official documents are

being annexed with petitions without indicating how the petitioner came to possess them. This is a dangerous trend which makes imperative for the Courts to lift the veil and uncover the 'real purpose' and the 'real person' behind the petition. To begin with, the Courts were inclined to extend their helping hands to anyone who needed to be helped but the confidence of the Courts has been shaken, persuading them to say that the doors of the Courts are open but only to deserving persons and not for anyone just to walk in. PIL is meant for real and genuine public interest and not for merely an adventurous knight errant.

I hope the present seminar would provide an opportunity to all of us for finding out ways and means by which the stream of public interest justice is kept pure and clean and a surgeon's knife is prevented from being converted into a butcher's chopper.

Though I am not averse to innovations, yet personally I feel – old is gold. We have to guard both against too much of liberalism and too much of conservatism. I may quote with advantage the golden words, couched in a sentence, running into a para, from *S.P. Gupta's case*⁴ which must remain the test for PIL:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed, in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court under Article 32, seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."

That is what the PIL should remain and ought to be.

A PIL Judge shuns busy buddies. An individual acting bona fide with a view to vindicating the cause of justice without personal, private, political or oblique motivation is welcome. Away from legalistic jargon, I feel a public interest litigant must satisfy the test of being one who is genuinely pained at the injustice done to society or class or public in general as opposed to an individual, and genuinely feels that he deserves the constitutional court lending, with justification a helping hand to him. It is that feeling of pain in the heart of the petitioner proportionate with the cause of public grievance, projected in the petition, which is determinative of his locus. The public interest litigant is one who satisfies the test available in literature.

Says the poet,

The social suffering spread around,
So much pains me in my heart,
That when the society weeps
The tears roll down my eyes.
This is a public interest litigant.



* Inaugural address delivered at All India Seminar on Public Interest Litigation (in memory of Late Justice Sobhagmal Jain) organised by SC AOR Association on 13th March, 2004.

1. *Ashok Kumar Pandey v. State of West Bengal*, JT 2003 (9) SC 140.

2. *Dr. B. Singh v. Union of India*, (W.P.(C) No.122 of 2004) decided on March 11, 2004

3. Role of Judiciary in Plural Societies, 1987 quoted at p.3 of Public Interest Litigations, P.M. Bakshi.

4. *S.P. Gupta v. President of India*, AIR 1982 SC 149.