

Personal Jurisdiction Denied

Origins Natural Resources v. Kotler, 2001 U.S. Dist. LEXIS 2639 (D.N.M. 2001)

Facts: In *Origins*, the plaintiff, a New Mexico Corporation, sued the defendants, a California resident and a California Company, for trademark infringement in Federal District Court in New Mexico. The plaintiff argued that jurisdiction over the defendants was proper in New Mexico because the defendants had sold the alleged trademark infringing products to a national department store, Nordstroms, who then sold the products through its interactive website over the Internet.

Held: After thoroughly reviewing the issues presented by Internet jurisdiction cases, the District Court held that jurisdiction over the defendants was not proper. The court stated that although the defendants sold the products through Nordstroms' interactive website, there was no evidence that they had sold any of the products to New Mexico residents (other than the plaintiff for litigation purposes). Thus, the court found that the defendants had not purposefully availed

themselves to suit in New Mexico.

Other related cases:

Rodriguez v. Circus Circus Casinos, Inc., 2001 U.S. Dist. LEXIS 61 (S.D.N.Y. 2001)

First Financial Resources v. First Financial Resources, Corp., 2000 U.S. Dist. LEXIS 16866 (N.D. Ill. 2000)

Millennium Enterprises, Inc. v. Millennium Music, L.P., 33 F. Supp. 2d 907 (D. Or. 1999)

Neogen Corp. v. Neo Gen Screening, Inc., 109 F. Supp. 2d 724 (W.D. Mich. 2000)

Roche v. Worldwide Media, Inc., 90 F. Supp. 2d 714 (E.D. Va. 2000)

Conclusion

Although it is unclear how the court will enforce "e-contracts," it is clear that they would be a very easy solution to what could become an overwhelming problem. Until the law is modified, companies must continue to educate themselves on legal developments pertaining to e-contracts and try to protect themselves from law suits in every corner of the world.

MISUSE AND ABUSE OF PUBLIC INTEREST LITIGATION

By

—S. SHIRISHA REDDY,
ADVOCATE
Secunderabad

Recently in a case the Hon'ble Delhi High Court has dismissed public interest litigation and imposed costs of Rs.50,000/- on the petitioner for filing a vexatious petition with ulterior motive and wasting the precious time of the court. The WP was filed seeking further investigation on the Ayodhya issue (demolition of Babri Masjid on Dec'06 1992). The bench comprising of Chief Justice B.C.

Patel and Justice S.K. Kaur has warned that if the costs are not paid within 2 week Non-Bailable arrest warrants will be issued against the petitioners¹.

In another case the Hon'ble Supreme Court has come down very heavily on a

1. Article published in Enadu Newspaper dated 07.07.2005.

Public Interest Litigation which was filed with ulterior motive in the said context the Supreme Court has cautioned that the unregulated use of Public Interest Litigations (PIL) petitions would make them a vindictive tool in the hands of unscrupulous people. A Bench of Justice Arijit Pasayat and Justice S.H. Kapadia asked the High Courts to be careful while entertaining such PIL pleas. It said some persons indulged in the pastime of meddling with the judicial process either by force of habit or from improper motives. The Bench observed: "The judiciary has to be extremely careful to see whether behind the beautiful veil of public interest an ugly private malice, vested interest or publicity seeking is not lurking." The Judges noted that the latest trend had given birth to another form of litigation -

"Paise Income Litigation" - to plague the promising concept of PIL, which was already, ravaged by the craze for publicity, private interest and politics. The Bench dismissed an appeal against a judgment of the Bombay High Court imposing Rs. 25,000 costs, while dismissing a PIL filed by an advocate who was caught while taking "black mailing" money. It said courts had to act ruthlessly while dealing with impostors and busybodies or meddlesome interlopers impersonating as public-spirited men. The concept of PIL was devised to help the judiciary in extending its long arm of sympathy to the poor, ignorant, oppressed and the needy, be it noted. On the alleged misuse of law by an advocate to extract money from some persons, the Bench said: "This case is a sad reflection on members of the legal profession and is almost a black spot on the noble profession." The court directed that the copy of the order be delivered to the Bar Council of India and the Supreme Court Bar Association to help them take measures to expose those guilty of wrongdoing¹.

In order to curb the ill practice of filing frivolous and vexatious cases it is necessary to understand the real concept of Public Interest Litigation.

"Public Interest Litigation" Meaning and Definition:

BLACK'S LAW DICTIONARY defines PIL as follows: - "*Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.*"

Evolution of PIL:

In India, the courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, women, children and other downtrodden have either no to justice or had been denied justice. A new branch of litigation known as PIL was evolved with a view to render complete justice to the aforesaid classes of persons.

It expanded its wings in course of time. The courts granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. The court has intervened when there had been callous neglect as a policy of the State, a lack of probity in public life, abuse of power in control and destruction of environment. The court interferes and gives appropriate directions when there has been an element of violation of Article 21 or of Human Rights or where the litigation has been initiated for the benefit of the poor and the underprivileged that are unable to come to the court due to some disadvantage¹. The evolution of PIL in India has an interesting background. In the famous case of *Kesavananda Bharati v State of Kerala*²

1. (2005) 1 SCC 590= [Dattaraj Nathuji Thaware V's State of Maharashtra and others, 2005 AIRSCW 46. Arijit Pasayat and S.H.Kapadia (JJ)]. Article published in THE HINDU, Dec2004.

1. *Balco Employees Union v U.O.I*, AIR 2002 SC 350.

2. (1973) 4 SCC 225.

the Supreme Court ultimately put a brake on the arbitrary and unreasonable power of Legislature to destroy the “Basic features” of the Constitution. Thus, the seeds of PIL could never have been planted had the Supreme Court not brought justness and fairness in the “Indian Legal System” in the year 1973, by formulating the “Doctrine of Basic Structure”. Justice Krishna Iyer sowed the seeds of the new dispensation in *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai*¹ and used the expression PIL and “epistolary jurisdiction” (i.e., petitions filed in the form of letters) in *Fertilizer Corporation Kamgar Union v. U.O.P.* In between, the Supreme Court interpreted the expression “Procedure established by law” as a procedure which must be just, fair and reasonable in the year 1978². This led to the testing of any “law” on the touchstone of Articles 14, 19 and 21 collectively and thus brought justness and fairness in the State’s dealing with the general public. The Supreme Court in the year 1993 declared “independence of judiciary” a “basic feature” and acquired autonomy in the selection and appointment of Judges⁴.

This made the interference of “Executive” in the appointment of Judges a forgotten practice and made the Judges more free and impartial to render justice. In the year 1993 the Supreme Court held that judicial review under Articles 32 and 226 is a basic feature of the Constitution, which is beyond the pale of amendability⁵. Thus, the discretion to entertain a dispute or petition was reserved exclusively with the judiciary. This was a landmark judgment since all the PIL’s are either filed under Article 226 or under Article 32. This means that the discretion to entertain a PIL itself can be considered to be a part of basic feature and the only limitation

could be the self-imposed restriction by the court itself.

To supplement all this, the collective powers of Articles 32, 136, 141 and 142 made the Indian Supreme Court one of the most powerful court of the world. PIL is said to be a boon to the people because vigilant citizens of the country can find an inexpensive legal remedy through it because there is only a nominal fixed court fee involved in this. Further the litigants can focus attention on and achieve results pertaining to larger public issues, especially in the fields of human rights, consumer welfare and environment.

Who can file a petition - Maintainability?

Public Interest Litigation is a matter of prudence. The court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief¹.

The Hon’ble Supreme Court in *Ashok Kumar Pandey vs. State of West Bengal*² has held that public interest litigation which has now come to occupy an important field in the administration of law should not be a “Publicity Interest Litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paisa income litigation”. There must be a real and genuine public interest involved in the litigation and not merely an adventure or knight to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a locus standi and can approach the Court to wipe out violation of

1. (1976) 3 SCC 832.

2. AIR 1982 SC 344.

3. *Maneka Gandhi v. U.O.I.*, AIR 1978 SC 597.

4. *Supreme Court Advocate on record v. U.O.I.*, (1993) 4 SCC 441.

5. *Kiboto v. Zachilbu*, AIR 1993 SC 412.

1. *Vinoy Kumar vs. State of U.P.* JT 2001 (4) SC 506.

2. AIR 2004 SC 280 = 2003 AIRSCW 6105 = (2004)3 SCC 349

fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. In another case the Hon'ble Supreme Court has observed "A pro bono public character that files public interest litigations has the responsibility of making necessary investigation in the first instance and to bring the findings to the notice of the concerned authorities before moving the constitutional courts by way of public interest litigations".¹

Cases in which PIL can be entertained

Any letter or petition falling under the following categories can be entertained as PIL.

1. Neglected children matters.
2. Bonded labour matters.
3. Non-payment of minimum wages to workers, exploitation of casual workers and complaints relating to violation of labour laws. (Except in individual cases)
4. Petition from prisons complaining harassment, death in prison, transfer, speedy trial *etc.*
5. Petition against atrocities on women, bride burning, rape, murder *etc.*
6. Petition against police refusing to register a case, harassment in police custody and death in police custody.
7. Petitions complaining harassment or torture of villagers by co-villagers or by police from persons belonging to the Scheduled Castes, Scheduled Tribes and Economically Backward Classes.
8. Petitions pertaining to environment pollution and ecological imbalance.

Cases in which PIL cannot be entertained

The petition involving individual or personal matter shall not be entertained as PIL's. Illustrations of such cases are as follows:

1. Petitions pertaining to early hearing of pending cases.
2. Petitions pertaining to service matters.
3. Petitions relating to admission to medical and other educational institutions, *etc.*

Application of Res Judicata in PIL

The Hon'ble Supreme Court in *Forward Construction Co. v. Prabhat Mandal (Regd)*¹ has observed that the principle of *Res judicata* is applicable to PIL, and held that "In view of Explanation VI it cannot be disputed that Section 11 applies to public interest litigation as well but it must be proved that the previous litigation was the public interest litigation and not by way of private grievance. It has to be bona fide litigation in respect of a right, which is common and is agitated in common with others. The onus of proving the want of *bona fides* in respect of the previous litigation is on the party seeking to avoid the decision."

Abuse of PIL

However, the development of PIL has also uncovered its pitfalls and drawbacks. As a result, the apex Court itself has been compelled to lay down certain guidelines to govern the management and disposal of PIL's. It is to be used as an effective weapon in the armory of law for delivering social justice to citizens. The court must not allow its process to be abused for oblique considerations. The Supreme Court has also

1. *Vithaldas vs Union of India*, 2001 (2) KLT SN.24. P.20

1. AIR 1986 SC 391 = 1986 (1) SCC 100 = 1985(2) Scale 1123

observed that the vexatious petitions filed by such persons should be thrown out at the threshold¹ and in appropriate cases exemplary costs should be imposed. PIL cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 were entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this court.

It is the duty of this court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this court for personal matters under the garb of the P.I.L.²

It is thus clear that only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. It must be noted that once the court has accepted the PIL, its withdrawal is not permissible unless the court permits the same. Thus, the petitioner is not entitled to withdraw his petition at his sweet will unless the court sees reason to permit withdrawal. In granting the permission the court would be guided by considerations of public interest and would also ensure that it does not result in abuse of process of law. Courts must guard against possibilities of such litigants settling the matters out of the court to their advantage and then seeking withdrawal of the case³. Thus, a writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean

heart, clear mind and clear objective. It is depressing to note that on account of the trumpety proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for disposal of cases of genuine litigants. Further, the Hon'ble Supreme Court in *Dattaraj Nathuji Thaware v. State of Maharashtra and others*⁴ has issued the following guidelines for entertaining PIL's. In the said case it has been held that "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; and (c) the information being not, vague and indefinite. The information should show gravity and seriousness involved. The court has to strike a 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. Moreover the courts should 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 Legislature².

Recent cases on abuse of PIL:

The Hon'ble Supreme Court has dismissed the appeal preferred by the appellant against the order of the High Court dismissing the writ petitions by way of PIL making unfounded allegations against the Commissioner, Central Excise and Customs. The Hon'ble Supreme Court has dismissed the said appeal as it was filed at the instance of the appellant with an oblique motive of avoiding appellant's transfer from his place

1. *Janta Dal v H.S.Chowdhary*, (1992) 4 SCC 305.

2. *Subhash Kumar v State of Bihar*, (1991) 1 SCC 598.

3. *S.P.Anand v H.D.Deva Gowda*, AIR 1997 SC 272.

1. 2005 AIRSCW 46.

2. *Ashok Kumar Pandey v State of W.B.*, JT 2003 (9) SC 140.

of posting [(2004) 6 SCC 299]. In another case the Hon'ble High Court of Punjab and Haryana has dismissed a PIL saying it to be vexatious, thereby imposing punitive costs. The said *PIL was filed* questioning eligibility of a Doctor to hold a post where as earlier a criminal case filed against the Doctor was dismissed [*H.K.Chopra vs. P.G.I.Chandigarh*. AIR 1992 Punj & Har 30.]

In a very recent decision of the Supreme Court in Dattaraj Nathuji Thaware vs. State of Maharashtra- Special Leave Petition (Civil) No.26269 of 2004 dated 14.12.2004 [*Alagaapuram R.Mohan Raj Vs The Secretary to Government of Tamil Nadu & Others*, Writ Petition No.31670 of 2004, M.Katju (CJ) & N.V. Balasubramanian.]. A PIL was filed seeking a writ for enquiry against several officers of Salem Corporation. The Hon'ble Supreme Court has held that it is not "Public Interest Litigation" but "Publicity Interest Litigation" and a "Private Interest Litigation" as the whole purpose of such litigation was to harass and blackmail.

STEPS NECESSARY:

Even though it is very much essential to curb the misuse and abuse of PIL, any move by the

Government to regulate the PIL results in wide-spread protests from those who are not aware of its abuse and equate any form of regulation with erosion of their fundamental rights.

Under these circumstances the Supreme Court of India is required to step in by incorporating safeguards provided by the Civil Procedure Code in matters of stay orders/injunctions in the arena of PIL. In the landmark case of Raunaq International Limited v/s IVR Construction Ltd, Justice Sujata V Manohar rightly enunciated that - when a stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order which stops the project from proceeding further must provide for the reimbursement of costs to the public in case ultimately the litigation started by such an individual or body fails.

In other words the public must be compensated both for the delay in the implementation of the project and the cost escalation resulting from such delay. The three pitfalls in the PIL *i.e.*, private interests, political interests and publicity interests should not be allowed to be used for routine violations of municipal laws and such things.

**A NOTE ON THE DECISION OF HIS LORDSHIP
HON'BLE SHRI L. NARASIMHA REDDY, J.,
IN S.S.V. PRASAD v. Y. SURESH KUMAR AND OTHERS,
REPORTED IN AIR 2005 AP 37 = 2004 (5) ALD 57 = 2004 (5) ALT 814
= 2004 (2) L.S 510**

By

**—A.S. RAMA CHANDRA MURTHY,
ADVOCATE,
Kakinada**

1. In the above decision, His Lordship decided that an endorsement of a promissory note cannot be treated as a part

of the cause of action within the meaning of Section 20(c) of Civil Procedure Code, and that the place of transfer or endorsement