
(2015) 08 MP CK 0008
In the Madhya Pradesh High Court
Case No : W.P. No. 13758 of 2015

Amitabh Agnihotri

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2015) 4 MPLJ 179

Hon'ble Judges : Shantanu Kemkar and K.K. Trivedi, JJ.

Bench : Division Bench

Advocate : Anuvad Shrivastava, for the Appellant

Final Decision : Dismissed

Judgement

1. Dr. Anuvad Shrivastava, learned counsel for the petitioner. Heard on the question of admission. This petition under Article 226 of the Constitution of India, is filed as pro bono publico claiming the following reliefs:--

"(i) To set-aside the impugned notification of 2007 Annexure-P/5 as well as all the recruitments and appointments made by Vyapam under the impugned notification of 2007.

(ii) Any other order/orders that this Hon"ble Court deems fit the proper in the facts and circumstances of the case, may also kindly be passed."

2. The contentions raised by learned counsel for the petitioner are that by impugned Notification Annx. P/5, an Act known as M.P. Vyavsayik Pariksha Mandal Adhiniyam, 2007, has been brought in operation. According to learned counsel for the petitioner, such an Act is contrary to the provisions of Article 309 of the Constitution of India. It is contended that the validity of the Act is to be examined in terms of the provisions of the aforesaid Article and since the Act is violative of the said Article 309 of the Constitution of India, the impugned Notification promulgating, the said Act is liable to be quashed. Any selection/ recruitment in the Government service done pursuance to the said Notification

and the Act are liable to be set aside.

3. The further contention raised by the learned counsel for the petitioner is that the Government of Madhya Pradesh has made the Rules known as M.P. Junior Service (Joint Qualifying) Examination Rules, 2013, and, therefore, the very object of the aforesaid Notification and the Act has come to an end. The said Act is, thus, liable to be declared as bad in law.

4. First of all, to understand the genuineness of the Public Interest Litigation, we have to examine the locus of the petitioner. It is claimed by the petitioner that he is a Senior State Accredited Journalist. He has challenged certain actions in public interest, being a public spirited person and has called in question certain Notifications issued by the State Government under the Municipal Corporation Act, 1956. He has raised the voice against the illegal colonies and encroachments made over the land belonging to the State Government, therefore, it is contended that the petitioner has a locus to challenge the validity of the Act in this Public Interest Litigation.

5. It is no longer in dispute that a real and genuine public interest litigation is required to be adjudicated by the Courts in the interest of the public at large. The public interest litigations are not the adversary litigations. The Apex Court has sounded caution on several occasions in respect of entertaining the public interest litigations by the Courts because of the fact that in the garb of public interest, in fact some time the unscrupulous persons approach the Courts by way of public interest litigations, for extending benefit of such a litigation to someone else. Serious nature of the public cause and likely public injury are to be tested by the Court before permitting any such public interest litigation. The Apex Court in the case of T.N. Godavarman Thirumalpad Vs. Union of India (UOI) and Others, , has even gone to the extent to say that in case it is found that a frivolous, misconceived or vexatious claim is set out in the shape of a public interest litigation, the Court should not hesitate in imposing exemplary cost on such litigant.

6. In the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , following principles have been enunciated by the Apex Court for testing whether a real Public Interest Litigation has been brought to the Court or the same is filed for extraneous consideration:

"(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The Court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

7. Testing in the light of aforesaid principles enunciated by the Apex Court, we have no hesitation in saying that the present is not a genuine public interest litigation as has been crafted by the present petitioner. Either he is ill-advised or has become a tool to file such a frivolous petition, without any basis. The reasons for the same are recorded hereinafter.

8. The well settled law is that the challenge to the Act can be made on legal and valid grounds such as competence to legislate and for that purposes, provisions of the Constitution of India in making of the law are required to be described. We have examined the pleadings in the writ petition and in the said pleadings, nothing has been said except that the Notification so issued by the State Government, bringing in force the Act made by the Legislative Assembly, is short of legislative powers as the said Act is not made under the provisions of Article 309 of the Constitution of India. We completely fail to understand as to how the provisions of Article 309 of the Constitution of India, would be attracted in making such an Act. Precisely, the Act is made to provide for the establishment of a Board for conducting examination in professional courses and matters connected therewith and incidental thereto. This is not the scope of Article 309 of the Constitution of India. It is not the case of the petitioner that the Act is made by the State, whereas, no such law could be made in terms of the provisions of Schedule-VII of the Constitution of India.

9. After going through the pleadings raised in the writ petition, we are surprised to note that even not a single ground is raised worth alleging the legislative competence of the State in making the Act except as has been referred to herein above that the Act is violative of the provisions of Article 309 of the Constitution of India. Therefore, such a writ petition is nothing, but an abuse of process of law, much less to say ventilating the grievance of the public at large or highlighting any issue which may touch the interest of the public at large in any

manner.

10. Yet, another aspect is that even if the constitution of the Board is said to be bad, any action taken by the said Board is to be nullified as prayed, and for that, those who have been inducted in service because of selection by the said Board were required to be heard. None of them have been impleaded as party to the present writ petition and, therefore, the reliefs as claimed in the writ petition cannot be granted to the petitioner.

11. The other argument of the learned counsel for the petitioner is equally misconceived, inasmuch as, it is contended that by making the Rules in exercise of power under Article 309 of the Constitution of India, which are placed on record as Annx. P/7, the purpose of Act of 2007 has become redundant. The said Rules are only for the purpose of prescribing the manner of conducting/assessing the merits of the candidates. These Rules nowhere contemplates that recruitment is to be made by any of the authorities as mentioned in the Rules. On the other hand, the Rules themselves contemplate that the procedure for selection as mentioned in the Rules are to be followed by the M.P. Professional Examination Board. Thus, the Rules are simply to facilitate the provisions of the Act referred to herein above, under which the Board is constituted and, therefore, the Act itself would not become redundant because of making of the aforesaid Rules. On these counts alone, the constitution of the Board by making of an Act by the State cannot be said to be bad in law.

12. As has been pointed out herein above, this litigation brought before this Court is nothing, but a totally misconceived, vexatious and improper approach, inasmuch as, the reliefs as claimed in the writ petition cannot be granted as are not found on the valid grounds as have been mentioned. It is not pointed out as to how the Act said to be made under the impugned Notification is ultra vires to any provisions of law or the Constitution of India. If that is not the understanding available to the petitioner, he cannot be said to be a benign and law spirited litigant before the Court. However, at present, we refrain ourselves to impose cost on the petitioner for bringing such a baseless and vexatious litigation before this Court. For the aforesaid reasons, the writ petition is dismissed, without notice to the other side.