

**(2003) 03 AHC CK 0034**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 5849 (M/B) of 2002

Ashok Pandey, Advocate

APPELLANT

Vs

Satish Chandra Mishra and Others

RESPONDENT

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**Date of Decision :** 03-03-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1  
Constitution of India, 1950 — Article 124(2), 124(3), 132, 133, 134A

**Citation :** (2003) 2 UPLBEC 1294

**Hon'ble Judges :** P.K. Chatterjee, J; Khem Karan, J

**Bench :** Division Bench

**Advocate :** Party in Person, for the Appellant; C.S.C., for the Respondent

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## **Judgement**

Khem Karan, J.—The present writ petition styled as Public Interest Litigation (for short P.I.L.) has been filed by a practicing lawyer of this Court, who by now is fairly known in the legal fraternity, at least at Lucknow because of his earlier four PILs [Writ Petition Nos. 4953 (M/B) of 1999, 1838 (M/B) of 2000, 4393 (M/B) of 2000 and 4957 (M/B) of 2001], filed in this Court at Lucknow, in a short span of two or three years, for espousal of one cause or the other. We were informed during the course of arguments that all those four PILs were dismissed by this Court and in some of them not only a great displeasure was shown, but cost was also imposed on the petitioner, for filing untenable and ill-founded PILs. But undeterred by those severe strictures and the imposition of cost, the petitioner has again brought this PIL, raising the matters, most of which are academic in nature than real one and some of them are political in nature.

2. Before we advert to the pleas taken in the writ petition, we would like to reproduce the reliefs sought in this writ petition, as in our view, the same would itself reveal the nature of this litigation :

(i) Issue a writ, order or direction in the nature of quo warranto asking the respondent No. 1 as to how he accepted the appointment as Advocate General for the State of U.P. after being disqualified for the appointment as Judge of the

High Court.

(ii) Issue a writ order or direction in the nature of certiorari quashing the order of appointment of Sri S.C. Mishra, respondent No. 1 for the post of Advocate General, U.P. after summoning the same from the respondent Nos. 1 and 2.

(iii) Issue a writ, order or direction in the nature of certiorari quashing the rejection order passed by the Supreme Court collegium by means of which the recommendation made with regards to respondent No. 1 for Judge of the High Court was rejected by the Supreme Court collegians after summoning the same from the concerned respondents.

(iv) Issue a writ, order or direction in the nature of mandamus directing the respondents concerned to reconsider the recommendation made by High Court collegium with regards to the appointment of respondent No. 1 as Judge of the High Court.

(v) Issue a writ, order or direction in the nature of mandamus directing the Government of India to take back the designation of Deputy Prime Minister given to Sri L.K. Advani and as the State Governments not to create the new constitutional offices not created by the Constitution by using the words like acting, additional adhoc, Vice or Deputy before an office created by the Constitution like Deputy Chief Minister or Additional Advocate General and to declare that "a" (single constitutional offices) can not be interpreted as plural with the help of Section 13(2) of General Clause Act.

(vi) Issue a writ, order or direction in the nature of mandamus directing the respondent Nos. 5 to 7 to take necessary action against the defective working of respondent Nos. 3 and 4.

(vii) Issue a writ, order or direction in the nature of mandamus directing the Government of India to amend the Indian Constitution and to introduce so many good provisions quoted by the petitioner in the writ petition, in the Indian Constitution and the top offices of the country should be reserved for "natural born Indians".

(viii) Issue a writ, order or directions in the nature of mandamus directing the Government of India to take mandamus directing the Government of India to take the necessary action to nullify the judgment of the Supreme Court given in the case of S.C. Advocate on record v. Union of India and the Presidential Reference Case No. 1 of 1998 and to constitute a commission for the appointment of High Court and Supreme Court, Judges.

(ix) Issue a writ, order or direction in the nature of quo warranto asking the respondent No. 4 as to how he is holding the office of Attorney General for India and direct the Government of India to remove the respondent No. 4 from the office of Attorney General of India.

(x) Issue a writ, order or direction in the nature of quo warranto asking the

respondent No. 10 as to how she is holding the office of the leader of the opposition in Lok Sabha and the Chairperson of the Indian National Congress and direct the Government of India to derecognised her as leader of the opposition in the Parliament and to direct the respondent No. 9 not to except the respondent No. 10 as Chairperson of Indian National Congress.

(xi) Issue a writ, order or direction in the nature of mandamus directing the respondent Nos. 3, 5 and 6 to appoint a Additional or Deputy Chief Justice of India and to appoint the Additional or Deputy Chief Justices in all the Benches of the High Courts of the Country.

(xii) Issue any other writ, order or direction which this Hon''ble Court deem fit and proper in the facts and circumstances of the case.

3. It has been stated in Paras 3 to 19 of the writ petition that the candidature of Sri Satish Chandra Mishra (O. P. No. 1) was earlier sponsored by Hon''ble the Chief Justice of this Court, for appointment as a Judge of this Court, but was not cleared by collegium of the Apex Court and so he was not eligible to be appointed as Advocate General of this State and the State of U.P. committed grave illegality by appointing him as such. He goes on to say that Sri Mishra was earlier designated as a Senior Advocate and so rejection of his candidature for appointment as a Judge of this Court was not justified.

4. In Paras 22 to 28, the procedure, which is being followed for processing and finalizing the name of a candidate for Judgeship of a High Court especially the procedure of taking the consent of the candidate for such appointment, has been criticized. It is said that an Advocate whose consent has been taken for being appointed as Judge of a High Court is entitled to know as to why his candidature has been rejected and there should be no such rejection without giving an opportunity of hearing. It is prayed that the rejection of the candidature of Sri S.C Mishra should be quashed otherwise no good lawyer or a lawyer of some standing or repute would ever consent to be the Judge of the High Court. According to him, the decision of the Apex Court in Supreme Court Supreme Court Advocates-on-Record Association and another Vs. Union of India, and in Special Reference No. 1 of 1998 1998 (7) SCC 739, require reconsideration.

5. In Paras 36 to 41, it is said that in view of Article 145(3) of the Constitution of India, only the Supreme Court has jurisdiction to interpret the provisions of the Constitution and no other Court including the High Court has such a power and so the decisions of the various High Courts in M.K. Padnabhan v. State of Kerala 1978 Lab. I.C 1336 ; Bhadreswar Tanti Vs. S.N. Choudhury and Another, ; Ashok Pandey v. Union of India, W.P. No. 4393 (M/B) of 2000, and its confirmation by the Apex Court in SLP No. 4823 of 2001, holding that word "a appearing in Article 165 before the words "Advocate General" also includes Additional Advocate General, are without jurisdiction and have no binding force. He says that the word "a" appearing in the relevant Articles of the Constitution, before the words "President" or "Vice President"; or "Chief Minister" or "Chief Justice of

India" or "Chief Justice of a High Court", cannot be interpreted with the aid of Section 13(2) of the General Clauses Act, so as to include plurality of such offices. He contends that there cannot be a post like Deputy Prime Minister or Deputy Chief Minister and there can not be any such office which does not find place in the Constitution.

6. In Paras 46-47, it is said that opposite party Nos. 3 and 4 have failed in their duties by not correctly advising the respective Governments and by not advising the Government of U.P. to remove opposite party No. 1. He says that by accepting office of the Advocate General, Sri S.C. Mishra has violated the Constitution, as he was not qualified to be appointed as Advocate General, once his candidature for a Judgeship of this Court had been rejected by the Apex Court.

7. In Para 52, the petitioner says that opposite parties Nos. 3 and 4 have failed in discharging their respective duties by not advising the Government to amend the Constitution, so as to debar Mrs. Sonia Gandhi (opp. party No. 10) from becoming the head of the Government or from holding top offices in the Government. He has tried to say that no person, who is not born in India, should be allowed to hold the top offices in the Government. He has referred to some of the Constitution of other countries, so as to highlight his points. He has also attacked those State Governments and their Chief Ministers, who say that they will not implement Prevention of Terrorism Act, 2002 (POTA) in their respective States and he suggests that in such States, President Rule should be imposed. He goes on to say that concerned opposite-parties should have advised the Hon"ble President of India to make a reference to the Apex Court under Article 143 of the Constitution, for its opinion on the following points :

(a) Whether word "a" appearing in relevant Articles of the Constitution, before words, President or Vice-President or Prime Minister or Chief Minister or Chief Justice of India etc. includes plurality of such offices?

(b) Whether the decision of the Apex Court in Supreme Court Advocates on Record Association v. Union of India, violates Articles 124 and 217 of the Constitution?

(c) Whether a foreigner can manage and run a political party?

(d) Whether the Constitution permits the entry of foreigners in the political activities of our country?

8. The petitioner has also attacked the Chief Election Commissioner in the context of its stand, relating to the holding of election in Gujarat and has suggested that he should be impeached. He says that reference under Article 143 of the Constitution of India in the context of Gujarat, was not a wise step.

9. In Paras 81 to 85, it has been suggested that the tenure of the Chief Justice of India should not be less than five years. He says that like in other countries, there should be no age of retirement of a Judge of the High Court or of the

Supreme Court.

10. In Paras 17 to 19 of the supplementary-affidavit, the petitioner has tried to say that since Sri Soli J. Sorabji (opp. party No. 4) had already crossed the age of 65, before his appointment as Attorney General for India, so he was ineligible under Article 76, to be appointed as such.

11. He has also suggested that Constitution should be amended so as to meet the contingencies created by sudden death of Prime Minister or the Chief Minister, as there is no express provision as to who would act as such in his place.

12. We have intentionally avoided to make reference to those paras of the writ petition in which uncalled for and unjustified imputations have been made, against the holder of the highest or responsible offices under the Constitution.

13. Long back in the year 1976, the Apex Court relaxed the traditional rule of "locus standi" and thereby sown the seeds of PIL in *The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others*, . The purpose was to make the justice available and accessible to those persons also, who by reason of ignorance or illiteracy or social or economic backwardness or the like, were themselves unable to knock the doors of the higher and highest Court for redressal of their grievances. Subsequent decisions of the Apex Court mainly in *Fertilizer Corporation Kamgar Union v. Union of India* AIR 1981 SC 344 ; *S.P. Gupta Vs. President of India and Others*, ; *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, ; *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, ; *Sheela Base v. Union of India* (1988) 1 SCC 226 ; *Janata Dal Vs. H.S. Chowdhary and Others*, ; *Mrs. Veena Sethi Vs. State of Bihar and Others*, and in *Balco Employees Union v. Union of India*, AIR 2001 SCW 513 have developed and consolidated that concept. It would be profitable to recall the following observations of Bhagwati, J. (as his Lordship then was ) made in *S.P. Gupta's* case (supra). He said :

"It may, therefore, now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determine class of persons by reason of violation of an constitutional or legal right of 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 persons 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 persons or determine class of persons, in this Court under Article 32 seeking juridical redress for the legal wrong or injury caused to such persons or determine class of persons. This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there arc rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require

various formalities to be gone through by a persons seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would, therefore, unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public-minded individual as a writ petition and act upon it. But we must hasten to make a clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determine class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the organization which can take care of such cases."

14. Conscious of the possible misuse of this new tool of PIL, the Apex Court observed as follows, in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, :

"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories (i) "person aggrieved", (ii) "stranger", (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for 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. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity, while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

15. Again the same caution was repeated in *S.P. Gupta*'s case in the following terms :

"But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

16. The same views were echoed in AIR 1991 420 (SC) The Court said :

"Public Interest Litigation 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, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a Public Interest Litigation. Public Interest Litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A persons invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. 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 Public Interest Litigation."

17. So, it can be said that whosoever brings PIL must be acting bona fide with a view to vindicate noble cause of justice and his action should not be actuated by any consideration like getting cheap popularity or drawing attention of the people or denigrating the holder of the high offices or the institutions. Not only this matter which is to be brought before the Court, should be the matter in reality and hypothetical or academic or political matters should not be allowed to be raised as the Courts are sitting for administering the law and doing justice according to law, and have no concern with the question as to what should be the Constitution or who should or should not be allowed to hold one public office or the other or who should or should not be allowed to head one political party or the other. In other words, the question relating to the constitutional policy, do not fall in the realm of the judiciary and this has to be decided by other wings of the Government.

18. The petitioner appears to have raked up issues, most of which or academic or political one. Some of them are totally misconceived and totally ill-founded.

19. In affidavit and supplementary affidavit, filed in support of the averments, relating to the proposal of the name of Shri Satish Chandra Mishra for appointment as a Judge of this Court and its rejection by the collegium of the Apex Court, it is not disclosed as to what is the source of the knowledge about all these facts, which are confidential in nature. No firm basis for saying so has been laid down in the writ petition. He was not expected to come across, the processing of any such proposal for appointment of a Judge of a High Court. In view of the law laid down by the Apex Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, ; *The State of Bombay Vs. Purushottam Jog Naik*, and *A.K.K. Nambiar Vs. Union of India (UOI)* and *Another*, , such affidavits which is not conform to the requirements of Order XIX,

Rule 1 of the Code of Civil Procedure, deserves to be discarded. The petitioner may have his own views regarding the procedure to be adopted for making appointment of a Judge of High Court and there are million of people in this country, who may have the same or different views. The question is not as to what should be the procedure. The question is what procedure has been laid down in the Constitution and what guidelines have been laid down by the Apex Court in its decisions in *Advocates on Record v. Union of India* (1993) 4 SCC 739 and in *Special Reference No. 1 of 1978* 1998 (1) SCC 739. We have not been able to understand as to how the petitioner has challenged before this Court, the ratio of those decisions. As a lawyer he should know that the law declared by the Apex Court is binding on all of us and this Court being judicially subordinate to the Apex Court, as no jurisdiction to examine the correctness or legality of the decisions rendered by the Apex Court. We are constrained to observe that it was not expected of a lawyer of the standing of the petitioner to challenge those decisions under Article 226 of the Constitution of India.

20. Secondly, the petitioner is not the person aggrieved, in the context of the alleged rejection of the proposal, for appointment of Sri S.C. Mishra (opposite party No. 1) as a Judge of this Court. The complaint that if in this way, candidature of an Advocate for appointment as a Judge of a High Court will continue to be rejected after his consent, no good lawyer will opt for the Judgeship, relates to the procedure evolved on the basis of the verdict of the Apex Court, referred to in the preceding para, so this Court refrains from entering into any discussion on that point.

21. Since the petitioner has also prayed for a writ of quo warranto, against Sri S.C. Mishra, the learned Advocate General of this State, so it would be proper to see as to whether, there is any prima facie substance, to issue notice to him to show cause as to how he is holding that office. The ground taken is that he was disqualified to be appointed as an Advocate General under Article 165 of the Constitution of India, because his name for the Judgeship had been turned down by the Apex Court. In other words, according to the petitioner, if an Advocate, fulfilling the requirements laid down in Article 217(2), is ultimately not cleared for an appointment as a Judge of a High Court, he will stand disqualified, for appointment under Article 165 of the Constitution.

22. Article 165 of the Constitution of India. which provides for appointment of an Advocate General, for a State, reads as under :

(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.



(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

23. So, a person qualified to be appointed as a Judge of a High Court, is eligible to be appointed as an Advocate-General. Article 217(2) lays down the qualification for appointment as a Judge of a High Court. It is never the contention of the petitioner that the opposite party No. 1 did not fulfil the requirements prescribed under Article 217(2) of the Constitution. He has not been able to indicate any specific provision in the Constitution, which says that once a proposal for appointment as a Judge is rejected, the person concerned becomes disqualified forever to be appointed as a Judge of a High Court or as an Advocate-General. So, the plea that Sri S.C. Mishra was disqualified to be appointed as an Advocate-General is not only misconceived, but is also funny one.

24. The petitioner also has contended that in view of Article 145(3) of the Constitution, no other Court except the Supreme Court of India has powers to interpret the provision of the Constitution. The Court is of the view that such theoretical question, not in the context of any particular case, cannot be raised in such a PIL. Nobody could be permitted to waste precious time of this Court by raising such hypothecated and academic questions. Had such a question arises in the facts and circumstances of a particular case, the Court would have certainly entered into discussion as to whether provision of the Constitution can also be interpreted by this Court. Perhaps the provision contained in Articles 132 133 and 134A of the Constitution escaped the notice of the petitioner. Article 132 itself contemplates that the case involving a substantial question of law as to the interpretation of the Constitution might be decided by the High Court and so an appeal has been provided to the Apex Court. We do not want to devote much energy on this point, because in our view it is not necessary for us to decide that point. The reasons have already been stated above.

25. The averments in the writ petition to the effect that a person not born in India, should not be allowed to head a political party or to occupy one or the other offices under the Constitution, do not require examination by the Court, because those are the questions relating to the constitutional policy or governmental policy, By entering into those questions, this Court will be landing itself into a political thicket. If the petitioner has any views, he should approach the law makers, because policy matters are not within the province of the judiciary and no directions can be given to any authority to enact a particular law. [M/s. Narendra Chand Hum Ram and Ors. v. Lt. Governor AIR 1971 SC 2899 and Kanhaiya Lal Sethia and Another Vs. Union of India (UOI) and Another, .

26. The plea that the appointment of Sri Soli J. Sorabji as Attorney General of India is not legal one, is also totally misconceived, what the petitioner wants to say is that since opposite party No. 4 had already crossed the age of 65, before his appointment as Attorney General of India, so he had become ineligible to be appointed as a Judge of the Supreme Court and consequently was disqualified to

be appointed as Attorney General of India.

27. Firstly it is not clear as to how the petitioner knows that the opp. party No. 4. had crossed 65, before he was appointed as Attorney General for India. Article 76 provides that the President shall appoint a person, who is qualified to be appointed a Judge of the Supreme Court, to be Attorney General for India. It further provides that he shall hold the office during the pleasure of the President.

28. Article 124(3) of the Constitution prescribes the qualifications for appointment was a Judge of the Supreme Court and according to it, the person should be citizen of India and should have been for at least five years a Judge of a High Court or of two or more such Courts in succession or should have been for at least ten years an Advocate of a High Court or of two or more such Courts in succession or should be in the opinion of the President, a distinguished jurist.

29. It is never the contention of the petitioner that Sri Soli J. Sorabji did not fulfil the qualification mentioned in Article 124(3) of the Constitution. The relevance of age comes in the context of holding of office by a Judge of the Supreme Court. Article 124(2) says that every Judge of the Supreme Court shall hold office until he attains the age of 65 years. This condition of holding office until the age of 65 years has nothing to do with the qualifications mentioned in Article 124(3) of the Constitution. So, we find no substance in the contention that Soli J. Sorabji was not eligible to be appointed as Attorney General for India.

30. We have carefully gone through the relevant averments made in the writ petition and we find no good ground for saying that opposite parties No. 1 and 2 failed in discharge of their duties.

31. As regards the suggestion for long tenure of the Chief Justice of India or other Hon'ble Judges of the Apex Court and High Court, we are of the view that this is not the proper forum and the petitioner should select some other forum for the purpose, if he so likes.

32. We do not find it necessary to refer to the averments relating to the Chief Election Commissioner, respective Chief Ministers of the different State in the context of Gujarat or implementation of POTA, the reason is that those are not the matters which can be raised through such PIL. Various events take place in the country" and if PIL will be entertained in respect of one event or other, the Court will be flooded with such petitions.

33. We, therefore, conclude that this writ petition under the title of PIL is totally misconceived, ill-advised and untenable. The Court can infer that the petitioner wants to remain in limelight by way of filing such PIL.

34. It is not a bona fide action to vindicate the cause of justice. So, it is dismissed with a cost of Rs. 10,000/-. The cost shall be deposited by the petitioner within two months from today and it will go in the account of the High Court. Legal Services Committee.

35. After pronouncement of the judgment Sri Ashk Pandey has made an oral prayer for granting a certificate for appeal to the Apex Court, under Article 132 of the Constitution of India.

36. In the facts and circumstances of the case, we do not find a case for granting such a certificate, as in our opinion, no such substantial question of law relating to the interpretation of the Constitution, is involved in this writ petition. So the request is refused.