

(1996) 09 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 1758 of 1996

Dilip Karambelkar

APPELLANT

Vs

Rear Admiral Vishnu Bhagwat and others

RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1997 Bom 131

Hon'ble Judges : M.B. Shah, C.J.;J.N. Patel, J

Bench : Division Bench

Advocate : Dr. B.K. Subbarao and P.R. Mukhedkar, Lt. Jawahar Bhagwat, Mrs. N. Bhagwat and Ms. Kuzhimadathil M.L, for the Appellant; R.A. Dada, Addl. Solicitor General, M.M. Varma and Satish Shah, instructed by Ms. S. Bhattacharya, for the Respondent

Judgement

M. B. Shah, C. J.

1. It is the contention of the petitioner that at present he is Editor, Printer and Publisher of Daily Mumbai "Tarun Bharat" and Managing Editor Printer and Publisher of "Vivek Weekly". This petition is filed in public interest and he has prayed as under:--

"(a) this court may issue direction to the Union of India to satisfy that the thick clouds of suspicion regarding the integrity and/or competency of all the three candidates namely respondent Nos. 1, 7 and 8 who are now being considered for the post of Chief of the Naval Staff, have been looked into in order to ensure the safety, security and integrity of the Nation and also to preserve the morale of the Indian Navy.

(b) to issue appropriate direction that the HDW/SSK Submarine deal and the alleged corrupt practices should be investigated by the Central Bureau of Investigation and necessary follow-up actions taken thereafter.

(c) the Union of India should satisfy that the alleged contact with foreign national

and the alleged influence of foreign powers in the personal and promotional structure of the Indian Navy are properly and thoroughly examined and necessary actions thereof have been taken to ensure the safety, security and integrity of the Nation.

2. The entire petitions is founded on writ petition No. 2757 of 1990 filed by respondent No. 1 for deleting the adverse Confidential Reports communicated to him. It is submitted that in the said writ petitions respondent No. 1 had made serious allegations against the senior and Superior Naval Officers, the then Principle Secretary to the Prime Minister and other Senior Officials of the Central Government, Defence Ministry, Home Ministry and against the then Honourable Prime Minister who was also holding charge of Defence Ministry and these complaints and allegation are more grave and serious than complaints made by Shri Lakhubhai Pathak, which is under active examination of Delhi High Court as well as by the Honorable Supreme Court. It is, therefore, submitted that for the safety, security and integrity of the Nation the investigation may be carried out on the basis of the allegations made in the said writ petition filed by respondent No.1.

3. The learned Additional Solicitor General appearing for the Union of India submitted that this petition is not a public interest litigation, but is only filed to scandalize the administration and is for oblique motive. He pointed out that the aforesaid writ petition filed by respondent No. 1 was withdrawn in April, 1991. At the relevant time the Court permitted the withdrawal of the said petition as the request for deleting the adverse remarks was allowed. He also submitted that the petitioner wants to re-open the said petition even by casting aspersions on the functioning of this court by stating that respondent No. 1 was erroneously permitted to withdraw the said petition. He has pointed out that the learned Counsel who appeared on behalf of respondent No. 1 at the relevant time moved an application that the matter be placed before the Division Bench consisting of Bharucha J., (as he then was) and Savant., J., on 16th April 1991 along with an application for withdrawal of the petition. In that application it has been specifically mentioned that the Chief of Naval Staff by this communication dated 26th Dec. 1990 has informed the petitioner that the Government has directed that the relevant A.C.Rs. which are adverse should not be treated as adverse. In paragraph 2 of the Application it has been stated that the Chief of Navy Staff constituted a Committee comprising of the Vice Chief of Naval Staff and 3 Commanders-in-Chief of the Western Naval Command, Eastern Naval Command and Southern Naval Command to examine issues related to the writ petition, inter alia, relating to appointments, administrative censure and related issues and that Committee has submitted its findings and recommendations. It is also specifically mentioned that the Government/Ministry of Defence is inquiring into other issues mentioned in the petition and has already initiated action in respect of some issues. On the basis of the said application, respondent No. 1 was permitted to withdraw the petition.

4. The learned Additional Solicitor General further submitted that on the face of this petition the petitioner has approached this Court after a lapse of 5 years from the date of withdrawal of the petition. He submitted that this is an abuse of the process of Court proceedings only for some oblique purpose so that the entire process of appointment aspersion here and there. He contended that the motive is also to run down respondent No. 1. Hence, this type of petition be not entertained by this court.

5. With regard to prayer (b) he submitted that it is a known fact in respect of the HDW/SSK Submarine deal, the matter is being investigated by the C.B.I. Since 1988, but for the reasons best known to the petitioner he has made such prayer.

6. With regard to the conduct of the respondent No. 3, previously also writ petition was filed before this court, being writ petition No. 3518 of 1990, and the Division Bench of this Court by its order dated 30th Nov. 1990 dismissed the said petition. In that case also the petitioner of that case has raised the following three contentions:--

"(i) Sinking of warship INS Andaman in the sea on 20th/21st August, 1990 during exercise of the fleet of ships.

(ii) Second Respondent's daughter Kavita married a Pakistani National in U.S.A. whose father has been serving as a Senior Officer in the armed forces of Pakistan; and

(iii) The second respondent has changed the domicile on three occasions to earn personal benefits."

The Court negatived all three contentions. The Court observed that "we do not see how it can be said that the 2nd respondent was guilty of suppression of going to U.S.A. to attend his daughter's marriage." The court further held that "it was factually incorrect and has no bearing on the appointment of L. Ramdas" (Respondent No. 3 in the present petition). While dealing with the third contention the Court held that the fact of sinking of INS Andaman was very much before the Cabinet Committee and the Honourable President, in consultation with the Cabinet Committee, has approved and appointed the 2nd respondent as the Chief of Naval Staff.

7. The learned Additional Solicitor General, therefore, submitted that this petition for the same relief be summarily rejected.

8. In the present case the petitioner has based the entire petition on the basis of the previous petition filed by respondent No. 1 for redressal of his grievance particularly for deletion of the adverse remarks in his A.C.Rs. The petitioner wants to utilise the said petition for some other purpose and he intends to utilise the averments made in the said petition and submits that the withdrawal of the said writ petition in such circumstances leave grave doubts in public mind regarding the bona fides of the said writ petition. This is stated in paragraph 3.2 of the petition. He has also stated in paragraph 4 of the petition that respondent

No. 4, Admiral J.G. Nadkarni, the then Chief of Naval Staff had filed affidavit in reply in the aforesaid petition and made out certain points regarding the competence as well as integrity of respondent No. 1. In paragraph 5 also he has referred to the affidavit in reply filed in the aforesaid petition by Admiral S. Jain, the respondent No. 5 herein, and submitted that in the said affidavit each and every allegations, contentions and submissions of the respondent No. 1 were denied and with regard to the character and integrity of the respondent No. 1 allegations were made. Thereafter he produced some portions of the said affidavit in reply. In paragraph 6 he has further stated about the impact on public mind on account of filing of writ petition No. 2757 of 1990 by respondent No. 1 on the appointment of next Naval Chief. Thereafter he has quoted the reports of the various Newspapers. In paragraph 7 he has quoted what was published against the Respondent No. 3 in the Newspaper at the relevant time. In paragraph 9 he has submitted as under:--

"9. It is necessary to note that affidavits in reply were filed by respondent Nos. 4 and 5 herein on 17 Nov. 1990 and it appears that these affidavits in reply were not considered by his Hon"ble Court while allowing the withdrawal of the said writ petition No. 2757/90 of respondent No. 1 herein."

In paragraph 10 it is contended that once respondent No. 1 has made serious allegations in his petition, he ought not to have been permitted to withdraw the petition without examining and ascertaining the veracity or otherwise of the serious complaints and allegation made by him. It is, therefore, submitted that this petition is filed in the public interest and in the interest of safety, security and integrity of the Nation.

9. In paragraph 13.7 the petitioner has quoted the Press Report reported in Business Standard, Bombay dated 22nd April, 1991 as under:--

"Strangely, the Division Bench of the High Court permitted withdrawal of the writ even though only one of 12 respondents the Union of India was served with a notice of motion.

The court permitted the withdrawal without taking into cognisance of the affidavits filed by Jain and Nadkarni against the writ.

In his affidavit, Jain had accused Bhagwat of, among other things stealing some confidential paper."

10. In our view prima facie the submissions made by the petitioner require to be rejected. In writ petition No. 2757 of 1990, which was filed by respondent No. 1 herein, he has pointed out that the adverse remarks made in his A.C.Rs., were required to be deleted for various reasons stated therein. He had made certain other statements in the said petition. Thereafter respondent No. 1 filed an application stating and the grounds for withdrawing the petition and in the said ground it has been specifically mentioned that the petitioner"s grievance is met by deleting the adverse remarks in his A.C.Rs. It has been further pointed out

that with regard to the other points, the enquiry is pending. With regard to grievance of appointment and promotion, a Committee was appointed by the Central Government. In such a situation, in our view, even if we can go into these questions, we cannot reopen the issue as to whether the withdrawal of the writ petition was right or wrong. It cannot be said that the permission granted by the Court to withdraw the petition was in any way illegal or erroneous.

11. With regard to the appointments of the Chief of Naval Staff, the learned Additional Solicitor General pointed out that the appointment is made by the Hon"ble President of India with the approval of the Appointment Committee of the Cabinet comprising the Prime Minister, the Defence Minister and the Home Minister. The Committee considered the names of the following 4 persons:--

(See table on next page)

12. It has been further pointed out that on the date of withdrawal of writ petition No. 2757 of 1990 on 16th April, 1991 respondent No. 1 was Rear Admiral. Thereafter he was promoted as Fleet Commander on 27th Oct. 1991. Subsequently, he was promoted as Vice Admiral on 5th Oct. 1992 and lastly he

Name of the Officer Date of Promotion as Rear Admiral Date of posting as Fleet Commander Date of promotion as Vice Admiral Date of Promo-as FOC-in-C/VONS

(1) (2) (3) (4) (5)

1. Vishnu Bhagwat 11.01.88 27.10.91 05.10.92 31.12.94

2. P. S. Das 01.07.88 31.12.90 05.10.92 31.05.95

3. K. K. Kohli 01.08.88 31.12.90 05.10.92 30.11.95

4. A. R. Tandon 01.09.88 31.10.91 01.04.93 30.04.96

was promoted on 31st Dec. 1994 as FOC-in-VONS. He further submitted that the aforesaid Committee appointed by the Honourable President of India has taken all the facts into consideration.

13. Considering the aforesaid submissions, in our view, there is no substance in prayer (a) of the petition. We do not think that any direction is required to be issued in this context.

14. With regard to prayer (b), as pointed out by the learned Additional Solicitor General that enquiry is pending in since 1988 and hence nothing further is required to be done by this Court.

15. Regarding prayer (c), in our view, the said prayer is totally vague and no such direction for taking action against persons having alleged contacts with foreign nationals and with regard to alleged influence of foreign nationals and with regard to alleged influence of foreign powers in the personnel and promotional structure of the Indian Navy is required to be given. We are sure

that this is properly taken care of by the union of India.

16. Hence, there is no substance in this petition.

17. We may, however, observe here that the purpose of filing this petition appears to be for some oblique motive. With regard to public interest litigations, since years it has been stated by the Supreme Court that appropriate care should be taken in entertaining such petitions. In this regard it would be worthwhile to reproduce the following observations made by the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, :--

"23. 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 fides 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 other to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the Courts to further their aims. "These are some of the dangers in public interest litigation which the Court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not over-step the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the court is evolving, a jurisprudence which a demands judicial statesmanship and high creative ability. They frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future are beginning to be born."

18. Similarly, the judgment rendered by the Supreme Court in the case of. Janata Dal Vs. H.S. Chowdhary and Others, also requires to be kept in mind. In paragraph 108 of the said judgment, the Supreme Court observe as under:--

"108. It is depressing to note that no account of such trumpety proceedings initiated before the Court, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigant. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our longer arm of sympathy to the poor the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances 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 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 the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue are or unauthorised collection of tax amounts are locked up, detenus 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 grievance redressed, the busy bodies, meddle some interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions 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 a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system."

In the present case also we feel that the public interest litigation is misused by the petitioner for some extraneous purpose. Unfortunately, these so-called public interest petitions are fought with more vehemence than the litigations where some personal stakes are involved; reason may be that petitioner has not to lose anything in such petitions. It is forgotten that in a public interest litigation the party has only to draw attention of the Court where some directions are required to be issued for doing justice in accordance with law. But Court process cannot be permitted to be misused for delaying legitimate administrative actions. It is not for the Court to decide suitability of some of the respondents for being appointed to the highest post in the Navy. Further, legal process cannot be permitted to be misused for tarnishing someone's reputation. The object of Public Interest Litigation is to see that provision of the Constitution or the law is enforced for advancing the cause of community or weaker section of the society or individual by a person without any private motivation or gain. Merely because a person is a journalist, it does not give him/her a right to institute litigation which affects the reputation of any individual holding high post on a crucial point, when the highest authority of the State is considering the suitability for the highest post. In this case it is difficult to say that the present petition is to vindicate any public interest.

19. In the result, the petition is rejected.

20. Issuance of certified copy of this order is expedited.

21. Petition dismissed.