
(2006) 03 AHC CK 0010
In the Allahabad High Court

Hari Shankar Jain

APPELLANT

Vs

Bar Council of India and Others

RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:

Advocates Act, 1961 — Section 33, 35, 6, 7
Constitution of India, 1950 — Article 124, 217, 218, 226, 235

Citation : (2006) 4 AWC 3893

Hon'ble Judges : Jagdish Bhalla, J; Dharam Veer Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dharam Veer Sharma, J.—The petitioner, a practising advocate, has initiated the Public Interest Litigation under Article 226 of the Constitution of India seeking an appropriate writ, order or direction. He has prayed for following reliefs:

- (i) issue a writ, order or direction in the nature of mandamus commanding opposite parties to ensure that no advocate who is connected/associated with a Judge or he has been a counsel for or against such Judge, be allowed or made to appear in his Court and to further ensure that their cases are not listed before such Hon"ble Judges;
- (ii) issue any other appropriate writ, order or direction as the Hon"ble Court may deem, fit and proper in the interest of Justice;
- (iii) allow the petition with costs.

2. The petitioner has argued that no advocate should appear before any Judge with whom they are connected or associated in any manner. In case. if any counsel has ever been engaged by a Judge before or after his elevation, then the counsel should not be allowed to plead and act before a learned Judge as it will restore confidence of masses in judicial system and maintain glory of the institution. As such it was suggested that no lawyer or lawyers should be allowed to appear before the Hon"ble Judge during his tenure and suitable directions may

be Issued to opposite parties to ban the appearance of such lawyer before the Hon"ble Judges to whom they are associated or connected or at any point of time put in their appearance on their behalf of any Court/Tribunal.

3. The petitioner has argued that he has a sufficient Interest in the proceeding has *locus standi* and can approach the Court. We have given our anxious thoughts to the facts of the case.

4. It is expedient to take note of the meaning of the PIL.

5. In Stroud's Judicial Dictionary. Vol. 4, 4th Edn., "Public Interest" is defined thus:

Public interest--(1) A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected.

6. In Black's Law Dictionary, 6th Edn. "public interest" is defined as follows:

Public interest.--Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of particular localities, which may be affected by the matters in question interest shared by citizens generally in affairs of local, State or National Government.

7. In Janata Dal Vs. H.S. Chowdhary and Others, this Court considered the scope of public interest litigation. In para 53 of the said Judgment, after considering what is public interest, the Court has laid down as follows: (SCC p. 331).

53. The expression "litigation" means a legal action including all proceedings therein, initiated in a Court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression "P.I.L." means a legal action initiated in a court of law for the enforcement of public Interest or general interest in which the public or a class of the community have pecuniary interest or some Interest by which their legal rights or liabilities are affected.

8. In para 62 of the said Judgment, it was pointed out as follows: (SCC p. 334)

62. Be that as it may, it is needless to emphasise that the requirement of *locus standi* of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily at the threshold.

9. In para 98 of the said Judgment, it has further been pointed out as follows: (SCC pp. 345-46)

98. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of P.I.L., it has also hastened to sound a red alert and note of severe

warning that Courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.

10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of P.I.L. 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. Similarly, a vexatious petition under the colour of P.I.L. brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

11. Public Interest litigation is a weapon which has to be used with great care and circumspection and the Judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of "public interest litigation" should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or a member of the public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases, with exemplary costs.

12. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "politics interest litigation" or for moving the Courts with oblique motive for personal gains. It should be properly regulated and should be averted. It should not be allowed to become a tool in unscrupulous hands to release vendetta and wreak vengeance as well. There must be real and genuine public Interest involved in the litigation and not merely an adventure of a knight errant or poke one's nose into for a probe. It cannot also be Invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of Justice should not be allowed 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 fundamental rights and genuine Infracton of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

13. Keeping in view the law laid down in Janata Dal Vs. H.S. Chowdhary and Others, Kazi Lhendup Dorji v. Central Bureau of Investigation 1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873 and Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, , we are of the considered opinion that in such type of case, P.I.L. is not maintainable. The petitioner has failed to convince us the circumstances under which this instant petition is maintainable. He has also failed to point out whether he has ever approached All India Bar Council, State Bar Council and has ever tried to convince them that their exist necessity to amend the Advocates Act or to change the Rules framed by All India Bar Council. Thus, the petition is devoid of any merit and is not maintainable. No relief as prayed can be granted for the reasons referred above.

14. It appears that the petitioner has tried to Impose a ban on advocates on their appearance before the Judges in the given situation, to preserve the confidence of masses in judicial system and to maintain the glory of the institution. We do not find any substance in the argument that advocates after taking a brief if a Judge in their personal matter acquire a position to exercise undue influence over Judges in other pending matters.

15. In this context, we would like to point out that the judiciary in this country is the backbone of the functioning of democratic Government in accordance with the Constitution. It is duty of legal fraternity to strengthen the Institution of judiciary by all means. Independent judiciary is providing a ring of protection to the citizens advocates being the officers of the Court, have to play vital role in the administration of justice. Advocates Act, 1961 (hereinafter referred as "the Act") provides a comprehensive scheme about the legal education enrolment of advocates, about the duties and responsibilities and obligations towards the Courts and Society. Thus, the enrolled advocate is expected at all times to conduct himself in a manner befitting to his status as an officer of the Court. He should be fair, reasonable, disciplined and true to his profession. He is socially duty bound to help the poor, uneducated and exploited masses of the people and to render legal assistance to everybody. Besides the spirit of the enactment long standing convention cast a duty upon every member of the legal profession to make every attempt for the smooth functioning of judicial system and uphold the majesty of justice.

16. In past, Law Commission of India made certain recommendations from time to time. Many recommendations were made to regulate the functioning of the judicial system and to improve the legal education. On the basis of the suggestion of Law Commission it was considered expedient to implement them. With this ends in view, All India Bar Committee was set up in the year 1953. It was considered that the provision of Indian High Courts Act, 1861, could not

have the pace with the time. Government of India felt the necessity for going to a legislation. In this back ground, Advocates Act, 1961 was enacted.

17. Let us read relevant Sections 6, 7, 33 and 35 of the Advocates Act which are as below:

Section 6. Functions of State Bar Councils.--(1) The functions of a State Bar Council shall be:

- (a) to admit persons as advocates on its roll;
- (b) to prepare and maintain such roll;
- (c) to entertain and determine cases of misconduct against advocates on its roll;
- (d) to safeguard the rights, privileges and interests of advocates on its roll.

Section 7. Functions of Bar Council of India.--(1) The functions of the Bar Council of India shall be:

X X X

- (a) to safeguard the rights, privileges and interests of advocates;
- (b) to promote and support law reform;
- (c) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;
- (d) to exercise general supervision and control over State Bar Councils.

Section 33. Advocates alone entitled to practise.--Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any Court or before any authority or persons unless he is enrolled as an advocate under this Act.

(a) Section enforced on and from 1.6.1969.

Section 35. Punishment of advocates for misconduct.--(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of profession or other misconduct, it shall refer the case for disposal to its disciplinary committee.

18. Various provisions of Advocates Act, 1961, were judicially tested from time to time by the Hon"ble Apex Court and High Courts. Although the misconduct has not been defined in the Act, but in the light of the judgment of the Hon"ble Apex Court certain professional norms and standards have been set up for observance.

19. Indeed the members of the legal profession occupy a very high status and this carries with it equally high responsibilities. From the members of the bar the Courts expect a much higher standard of conduct. The Bar Councils have been conferred with the jurisdiction to initiate disciplinary proceedings against erring advocates. They have to behave in a manner, which is worthy of their profession.

Conventions have a very important place in our society. A legal practitioner is conventionally bound to conduct himself in a manner befitting to this high and honourable profession. Misconduct although has not been defined under Advocates Act, but infamous conduct in profession field constitute misconduct.

20. Hon"ble Apex Court in E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another, , approved the views of Lord Reid and Lord Denning. Lord Reid in Rondel v. Worsley (1967) 3 ALLER 993 has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as below:

Every counsel has a duty to his client fearlessly to raise every Issue, advance every argument and ask every question, however distasteful, which he thinks will help his client's case. As an officer of the Court concerned in the administration of justice, he has an overriding duty to the Court to the standards of his profession, and to the public which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the Court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not without authorities or documents which may tell against the clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.

12. Again as Lord Denning, M.R. in Rondel V. W (1966) 3 ALLER 657. would say. He (the counsel) has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve and he should not be under pressure to decide it wrongly when a barrister (or an advocate) puts his first duty to the Court, he has nothing to fear." In the words of Lord Denning:

It is a mistake to suppose that he is mouthpiece of his client to say what he wants....He must disregard to most specific instructions of his client, if they conflict with his duty to the Court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

21. In our country, admittedly a social duty is cast upon the legal profession to show the people beckon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country.

22. By introducing Section 33 of Advocates Act, the Legislature was wise enough to permit only the enrolled advocates to practise in any Court or before any authority or persons. In case, for argument sake suggestion of the petitioner is

accepted that a particular advocate if appears for a Judge in any Court, then he should not be allowed to appear before him in future in that situation, no advocate would like to plead or act for a Judge in any Court. The Judges would be compelled to plead their cases and fall out would be detrimental to the glory of judicial administration.

23. Learned Counsel for the petitioner has failed to substantiate his argument that by accepting the brief of any Judge the counsel who appears before him in other cases, will be at advantageous position. Looking the tradition, we are of the view that the traditionally counsels have no axe to grind in pending matter in which they appear for their clients. If the contention of the petitioner is accepted then the counsels should not be treated as officers of the Court and ought to be reduced to the position of the agent of their clients. It would amount to be a misconduct u/s 33 of Advocates Act. Advocates being the officer of the Court assist the Judges to arrive at the just decisions of the case. The apprehension of the petitioner is ill-founded that the advocates who appear for Judges as of right would like to influence them in other matter. Generally advocates do not care for the result of the cases. They do not expect any favours from the Court and conventionally they do not like to join their hands with their clients for their personal gains. Consequently, we feel that no specific rule is required to be framed to ban the advocates to appear before the Judges to whom they were or associated or as counsels in their cases. There is no necessity to debar the advocates in contravention of provision of Section 33 of the Advocates Act. The absence of the rules increases the responsibility of the members of the profession attached to the Court as to how they are conducting themselves in such a situation.

24. We are unable to agree with the submission of the petitioner that the advocates would not work honestly, Impartially and fearlessly. There is hardly any occasion to raise a doubt in such a noble profession which has given us great leaders like Father of Nation and others, who took part in the fight for freedom and liberated our country from the clutches of the foreigners.

25. We would further like to say that Judicial administration in the system has a complete transparency. No erring advocate is Immune from the action. State Bar Council and Bar Council of India have framed certain rules. The advocate can be punished for "misconduct". Thus, in a given situation, we presume that the provision of Advocates Act, 1961, are comprehensive and accordingly there is no necessity for issuing any direction for introducing any rule or to suggest the authority concerned to amend Section 33 of the Advocates Act.

26. At this Juncture, we may further add that the erring Judges are also not immune from action and every Judge is answerable to his conscious. At the cost of the repetition, we may refer to that in State the judiciary is divided into two wings, i.e., subordinate judiciary and High Court. As regards the appointment of High Court Judges, it is being made under Article 217 of the Constitution of India and the Judges are appointed only after administering the oath. In case of any

dereliction of duties or proved misbehavior, they can even be impeached. Vide Article 218, the Hon''ble Apex Court has issued certain guidelines not provided a forum as to how any complaint against a Judge should be dealt with vide C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee and Others,

27. We presume that proper safeguards have been provided to the litigants and the society, which are sufficient to strengthen faith of the masses in the judicial administration and we do not agree with the petitioner that the provisions of Judges Enquiry Act, 1968, removal of Judges under Article 124 read with Article 218 of the Constitution of India are not sufficient to regulate the functioning of the Judges. Thus, on this count also, we do not find any Justification to grant any relief to the petitioner.

28. As regards subordinate judiciary, let us read Article 235 of the Constitution of India:

The control over district courts and courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

29. High Court exercises complete disciplinary control over subordinate judiciary. The Hon''ble Supreme Court in State of Haryana Vs. Inder Prakash Anand H.C.S. and Others, and in State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, , held that the control vested by the Constitution in the High Court, under Article 235, would be rendered nugatory if the decision of the High Court in respect of foregoing matters is not binding on the State Government. Control in Article 235, means exclusive and not dual control vide State of Gujarat and Another Vs. Ramesh Chandra Mashruwala,

30. High Court can hold enquiries against judicial officers and can impose punishment. The recommendation of the High Court about removal or reduction in rank of a judicial officer is conclusive and binding on the Governor.

31. Vis-a-vis the aforesaid Constitutional position, we are unable to agree with the contention of the petitioner that any advocate after misusing his position or proximity with the Judge can shake the confidence of the masses in the judicial system. The control of the High Court is enough to have a deterrent effect on any erring judicial officer of the subordinate court. Thus, the apprehension of the petitioner is Ill-founded that a lawyer and Judge if join their hands can cause any damage to any litigant if they wish to do so or in that situation there would occasion a failure of justice or cause irreparable injury to the aggrieved party.

32. The High Court has been invested with the power of administrative control

over subordinate judiciary. In case of any delinquency of a Judge, a complaint can be made by a litigant to the High Court and the same shall be dealt with in accordance with law. Thus, no lawyers can obstruct the course of justice. Provisions of transfer of the case from one Court to another and from one district to another also exist, which are enough to meet the ends of justice.

33. In the surrounding situation, we have no hesitation to say that the existing Judicial system provides complete transparency and through which every body is entitled to get Justice and it requires no change. The function of the Judges are divine and it is duty of the judiciary to ensure that public at large does not lose faith in the Judicial system.

34. We would also like to quote the relevant extract of the Judgment delivered by the Division Bench of this Court in Writ Petition No. 1160 (S/B) of 2002, Yash Pal Singh v. State of U.P. and Ors.:

We are of the considered opinion that the Bench and Bar have strong but delicate relationship with certain responsibilities. This institution can function best when both Bar and Bench respect each others purpose and responsibilities. A Bar functions best when its speech is untrammelled but guided by deep scholarship. A counsel serves the institution best when knows that it is not his job to win cases by all means but to assist the Court with all his mastery of facts and law. A Judge serves the institution best when he does not fear to hear but does not decide out of fear, when he fears with compassion, but does not decide out of favour (e.s.).

Before parting, we would like to observe that Members of Bar should impose self-restraint upon themselves of being party to the scandalous methods adopted by the litigant and advise them properly in the interest of the Institution.

35. In view of the above discussions, the petition is devoid of any merit and is dismissed. No order as to costs.