
(2016) 04 AHC CK 0030
In the Allahabad High Court
Case No : Misc Bench No. 8216 of 2016.

Hindu Personal Law Board

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(c)(i)

Citation : (2016) 5 ADJ 146 : (2016) 3 ALLJ 639 : (2016) 3 AllWC 2801

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice;Rajan Roy, J.

Bench : Division Bench

Advocate : C.S.C., A.S.G., Abhinav Trivedi, U.N. Misra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The sesquicentennial celebrations of the High Court of Judicature at Allahabad were inaugurated on 13 March 2016. The new building of the High Court at Lucknow was inaugurated on 19 March 2016. A programme was organised at Lucknow to mark the sesquicentennial celebrations, on 14 April 2016. The programme at Lucknow received the wholehearted cooperation of the members of the Bar and Oudh Bar Association. The programme was organised after taking into confidence the learned President, General Secretary and the members of the Managing Committee of Oudh Bar Association. It has received uniformly their unstinted support and cooperation. Indeed, both the Bench and the Bar are the two pillars upon which the administration of justice stands.

2. In this background, soon after the inauguration of the sesquicentennial celebrations of the High Court at Allahabad on 13 March 2016, a writ petition was filed by Shri Asok Pande, a practising Advocate (who is also the petitioner before the Court representing an organisation called the Hindu Personal Law Board). The petition was presented as a public interest litigation for seeking a direction to the Union of India and the Allahabad High Court not to hold the sesquicentennial

celebrations primarily on the ground that the completion of 150 years was founded on an erroneous assumption and even otherwise, amounted to celebrating "the subservient legacy of the British Rule" as the petitioner described it in those proceedings.

3. A Division Bench of this Court considered the writ petition and by a judgment dated 10 March 2016 came to the conclusion that it was lacking in substance. In the concluding observations, the Division Bench exhorted earnestly all members of the legal fraternity to make the forthcoming event a memorable success:

"The petition having failed to stand the scrutiny of law in the extraordinary jurisdiction of Article 226 of the Constitution of India, is hereby rejected with an earnest request to all members of the legal fraternity, particularly those who have nurtured the High Court with their toil and blood including the petitioner, to make the forthcoming events of celebrations a memorable success notwithstanding their diverse opinions."

4. Having failed in his endeavour to restrain the observance of the event at Allahabad, the petitioner filed the present proceedings in respect of the cultural programme which was held at the new campus of the High Court building on 14 April 2016. The reliefs which the petitioner seeks are in the following terms:

"(a) Issue a writ of Mandamus thereby directing the Chief Justice of Allahabad High Court to order an enquiry that under what circumstances and under what conspiracy the High Court function started with Sufi songs of Allah-hu, Allah-hu and in the falahar room, non-veg items were kept and to take action accordingly

(b) Issue a writ of Mandamus commanding the respondents to ban the cooking and serving of veg and non-veg items for dinner together in the same venue and by the same caterers in all public functions and for public dinner/lunch at public expenses

(c) Issue a writ of Mandamus commanding the respondents to evolve a policy not to permit praising of religious symbols and shrines of any particular religion in the name of Sufi gayan."

5. During the course of the hearing of the petition, an intervention application has been filed by a member of the Bar, Shri Saurabh Shankar Srivastava. In the interests of justice, we permit the learned member of the Bar to intervene in these proceedings.

6. At the outset, it must be noted that the cultural programme which was held on 14 April 2016, comprised of events drawn from a cross section representing the diversity of the ethos and culture of Indian society. The cultural programme included a Sufi recital by Shri Manak Ali, a singer of repute besides a number of performances by folk artistes drawn from various genres. The petitioner, as the petition indicates, has a grievance in respect of three aspects. The first grievance is in regard to the rendering of Sufi music on the occasion. The second grievance which the petitioner seeks to portray is to the effect that uncooked non-

vegetarian food items were stored in the room/hall in which "falahar" arrangements were made for those who were observing the Navratri fast. The third grievance which the petitioner has, is in the nature of a suggestion to the effect that the service of non-vegetarian food should be prohibited in "any public function held on public property at public exchequer".

7. Each of the submissions is thoroughly lacking in substance. Firstly, we are disturbed by the attempt on the part of the petitioner, who is a practising Advocate, to impute communal overtones to what was essentially a cultural event to mark a historic occasion of the High Court. The cultural programme involved a demonstration of the talent of artistes drawn from a cross section of society and covered, besides a Sufi music recital, a demonstration of folk art from various parts of the country including Haryana and West Bengal.

8. The petitioner may have a sensitivity. If the petitioner is sensitive to the rendering of Sufi music, he was welcome to leave the event. However, we have no manner of doubt that it was not open to an individual guest on such an occasion to disrupt a programme on the ground of his or her own inclination or sensitivity. The manner in which the petitioner did so has been spelt out by the intervenor. If this were to be permitted, no programme can be completed and there is a danger that a marginal element may disrupt an event at which an overwhelmingly large part of the audience drawn from the Bar and Bench is watching the performance with a sense of appreciation and equanimity. The intervenor in these proceedings has, in his intervention application, highlighted the manner in which Shri Asok Pande attempted to disrupt the sesquicentennial celebrations on 14 April 2016 by inciting the members of the Bar, though he had failed in his attempt to stall the programme in the public interest litigation which had been dismissed by the Division Bench on 10 March 2016.

9. We also find no merit in the second grievance that non-vegetarian food was stored in the hall on the evening of 14 April 2016. As a matter of fact, the dinner which was held on 14 April 2016 was an event at which only vegetarian food was served to the members of the Bar, employees, Judges of this Court as well as former Judges who were invited to participate in the event. The contention that non-vegetarian food has been served is, thus, nothing but a desperate attempt to disturb the tranquility and functioning of the Court.

10. Thirdly, we find no merit, as a matter of principle, in the contention that only vegetarian food should be served at public events involving the public exchequer. The petitioner himself may be a vegetarian. Nobody compels him to desist from his own preferences. However, it is not open to any individual to foist his personal preferences in regard to food upon others. Food preferences of an individual cannot determine the nature of arrangements which are made in public events of this nature. If any individual considers it inappropriate to participate in a programme, he is at liberty to desist from doing so. However, no one can dictate that food of only a particular nature should be served on such an occasion.

11. Having found no substance in the petition, we find it necessary to dwell on an aspect of the matter of which we have placed Shri Asok Pande on notice immediately after the petition was called out. We did so in the hope that better sense would prevail. In paragraphs 9 and 10 of the writ petition, the petitioner has made the following averments against a sitting Judge of this Court:

"9. That it appears that this "Harkat" to hurt the sentiments of Hindus was planned by the Chairman of the organising committee, Sri Shabibul Hasnain and his other religious men in the High Court administration to give the befitting reply to the Governor Sri Ram Naik as during the day session, in the presence of Sri Hamid Ansari, Vice President of India, Sri Ram Naik did Ram Katha and congratulated the persons gathered there on the eve of the Navratri and Ram Navami

10. That it appears that only to give befitting reply to the Governor and other Hindus, the evening culture program, which should have been started with Saraswati Vandana and Vande Mataram started with Allah-hu, Allah-hu, in the name of so-called Sufi gayan."

12. We find prima facie that the manner in which the petition has been drafted and an effort has been made to target the Chairperson of the Organising Committee at Lucknow, who is a sitting Judge of the High Court, is a scandalous attempt to lower the dignity of the Court. The event in relation to which the allegations have been levelled is intrinsically connected with the High Court as an institution for the administration of justice. The event was to mark the sesquicentennial of the High Court as a court of justice under the law. The averments in the petition, including those which have been extracted above, prima facie, indicate that a conscious and premeditated attempt has been made to bring the Court and the Judge of the Court into disrepute. This is a calculated attempt to sow the seed of hatred and to divide the institution on communal lines.

13. Section 2(c)(i) of the Contempt of Courts Act, 1971 defines the expression "criminal contempt", inter alia, to mean the publication of any matter or doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court.

14. The petitioner is habituated to filing petitions ostensibly styled as public interest litigation. The present writ petition has not been filed as a public interest litigation but has been instituted in the form of a miscellaneous writ petition. On numerous occasions, various Courts have found Shri Asok Pande to have indulged in drafting pleadings which would not give credit to a member of the legal profession. A Division Bench of the Gujarat High Court in a judgment dated 14 April 2011 in a petition instituted by Shri Asok Pande, Writ (PIL) No. 129 of 2011, to challenge the appointment of the Governor of the State of Gujarat, observed as follows:

"This petition is a fine specimen of abuse of process of the Court in the name of

Public Interest Litigation. It was expected from a member of a noble profession not to invoke jurisdiction of the Court in a matter where the position of law is abundantly clear."

15. The Division Bench further observed:

"We are of the view that the petition is not only wholly misconceived, but, we find that the bonafides of the petitioner in preferring this petition also appears to be doubtful.

We are disturbed to note that a member of a noble profession, a practicing lawyer has not exercised any restraint even while drafting the petition. We also find that the avements are quite derogatory and not acceptable at least from the petitioner who is appearing as a Party-in-Person."

16. Shri Asok Pande challenged the aforesaid judgment of the Gujarat High Court, before the Supreme Court by means of a special leave petition (Petition for Special Leave to Appeal (Civil) No. 9767 of 2012) which was dismissed on 22 March 2012 with costs of Rs. 1,00,000/- in addition to costs imposed by the High Court. The said judgment reads as under:

"After hearing the petitioner in detail, we are of the view that the High Court has not committed any error whatsoever while dismissing the petition filed by the petitioner which is styled as Public Interest Litigation. We add that the petition filed by the petitioner is not only frivolous but highly mischievous. Therefore, while affirming the order passed by the High Court, we dismiss the special leave petition. For wasting precious public time of this Court, we feel that the petitioner should be mulcted with exemplary costs. Accordingly, we direct that the petitioner shall pay a further sum of Rs. 1 lac, apart from the costs already imposed by the High Court with the Gujarat State Legal Services Authority in three week's time from today. If for any reason, the petitioner fails to deposit the costs as directed, the Gujarat State Legal Services Authority shall initiate appropriate recovery proceedings against the petitioner.

Order accordingly."

17. Challenging the said order, Shri Asok Pande filed a review petition 4, which was dismissed by the Supreme Court on 29 August 2012.

18. Another writ petition which was filed by Shri Asok Pande (Asok Pande v. N.K. Mehrotra, Review Petition (C) No. 1782 of 2012 in SLP (C) No. 9767 of 2012), sought to challenge, inter alia, the appointment of the Lokayukta in which a former Chief Justice, a retired Judge of this Court and a sitting Judge of the Supreme Court were impleaded. A Division Bench of this Court in its order dated 31 May 2011 held as follows:

"A reading of entire writ petition only reflects and exposes the own assumption, personal grouse and personal view of the petitioner regarding the judges and the orders passed by them and his own interpretation of such orders.:

19. The Division Bench also observed that:

"We are constrained to observe that the manner in which the petition has been drafted, the language used and the allegations made, which besides being inappropriate, uncalled for and without any basis, not only reflect the personal grudge of the petitioner, but also show that he has scant respect for the Court. The Courts cannot be allowed to be maligned for settlement of personal grievances of a litigant, may be a lawyer. The dignity of the Court and the majesty of law have to be maintained."

20. In a judgment of a Division Bench of this Court in *Ashok Pandey, Advocate v. Satish Chandra Mishra*, (2003) 2 UPLBEC 1294, delivered on 3 March 2003, the Division Bench noted that the PIL which was instituted by the petitioner was misconceived, ill-advised and untenable and the petitioner "wants to remain in limelight by way of filing such PILs." The petition was dismissed with costs.

21. Among the petitions which have been instituted by Shri Asok Pande included a petition seeking a writ of certiorari for quashing the appointment of the Governor of Uttar Pradesh, Misc. Bench No. 6349 of 2014, which was dismissed with costs, a writ petition seeking to challenge an order of the Governor recalling the appointment of the Advocate General of the State, Misc. Bench No. 7335 of 2014, which was dismissed, among various other writ petitions.

22. The petitioner is habituated to instituting petitions either in his own name or in the name of the body through which the present petition has been filed. We are affirmatively of the view that repeated recourse to the jurisdiction of this Court under Article 226 of the Constitution is initiated merely as a means of publicity and without any supervening cause or justification based on public interest. The time, effort and attention of the Court which should be devoted to dealing with genuine causes and cases is deflected in the hearing of these petitions which are conducted without a sense of restraint and are drafted without any concern for the rules of pleadings and without a sense of responsibility. Proceedings are argued *ad nauseam* and are reduced to a spectacle of frivolity.

23. In *Kishore Samrite v. State of Uttar Pradesh*, (2013) 2 SCC 398, the Supreme Court has observed as follows:

"39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (*Buddhi Kota Subbarao v. K. Parasaran*, (1996) 5 SCC 530.)."

24. Having regard to the aforesaid position, we are of the view that the petition is thoroughly lacking in substance and should be dismissed. However, the matter cannot rest there. The remedial jurisdiction of the Court may require, in the

circumstances which we have narrated herein above, consideration of two aspects.

25. First and foremost, we direct the issuance of a notice to the petitioner and Shri Asok Pande to show cause as to why they should not be proceeded against for committing criminal contempt under the Contempt of Courts 1971. We clarify that the observations which are contained in this order on the facts which have led to the invocation of the contempt jurisdiction are only a prima facie expression of opinion of the Court in regard to the issues which may arise in the course of the contempt proceedings.

26. The petitioner and Shri Asok Pande shall submit a reply within a period of three weeks from today.

27. The criminal contempt proceedings shall be placed before the appropriate Bench according to the roster of work.

28. The second aspect of the matter on which it is necessary to dwell, is the need to ensure that petitions at the behest of Shri Asok Pande and the organisation which has presented these proceedings, are drafted with a sense of responsibility. We are of the view that before this Court entertains a petition at the behest of the aforesaid entity and person, a direction should be and is issued to the Registry to the effect that each petition be accepted for filing only if it is accompanied by a Demand Draft of Rs. 25,000/- (Rupees Twenty Five Thousands Only) drawn on a nationalised Bank. The Demand Draft shall be drawn in the name of the Senior Registrar of the High Court at Lucknow. In the event that the Court finds that the petition is a genuine effort to espouse a cause in public interest, the Demand Draft will be ordered to be returned to the petitioner by the Court. However, in the event that the petition is found to be a frivolous exercise or an abuse of the process, the amount shall abide by such orders in regard to the payment of costs as may be passed by the Court. A Division Bench of this Court was constrained to pass a similar order in *Dr. Nutan Thakur v. Union of India*, Misc. Bench No. 2976 of 2014, decided on 11.04.2014. While issuing a similar direction, the Court held that it was necessary "in order to save this Court from Tsunami of writ petitions filed by the petitioner who appears almost every other day in Court touching matters which hit the headline, treating it as public interest...". The Court has been informed that the order of the Division Bench dated 11 April 2014 was confirmed upon the dismissal of a special leave petition by the Supreme Court.

29. It has become necessary for the Court to issue this direction in the exercise of its writ jurisdiction under Article 226 of the Constitution to ensure that valuable time of the Court is not wasted in thoroughly frivolous cases which have no bearing on matters of public interest. Habitual litigants are increasingly flooding the Courts with frivolous petitions. PILs are filed to cover almost every topic under the sun. Many of them are exercises for garnering publicity. Some are intended to stall public projects, often at the behest of a competitor. This

tends to destroy the sanctity of PILs as a powerful instrument of securing socio-economic justice to the marginalised and underprivileged. The time of the Court is exhausted in dealing with frivolous cases with no genuine cause of public concern. This pernicious tendency has to be firmly stopped by providing orders for anticipatory costs. This is a means of securing an eventual award of costs in the case of a habitual litigant who, as here, has a track record of misconceived filings. Unless this is done, the Court would become a helpless spectator to the loss of public time and resources in dealing with motivated litigation. When lakhs of cases await judicial decision - including those of under trials and convicts languishing in jail for years - the Court cannot allow the institution of administering justice to become a hapless victim of frivolous filings. Parliament, or the State legislature, may have to step in to legislate on the malady of vexatious litigation. That is a legislative function. In the meantime, realistic costs must be deployed if the process of the Court is to be protected against litigious exploitation.

30. Subject to the aforesaid directions, the petition shall stand dismissed, with costs quantified at Rs. 25,000/- which shall be payable to the U P State Legal Services Authority.