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(1999) 03 DEL CK 0079

In the Delhi High Court

Case No : Civil Writ No.140/99

H.M. Sethi Wg. Cdr.(Retd.) APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 1

Hon'ble Judges : Devinder Gupta, Acting C.J.;Kripa Shankar Gupta, J

Bench : Division Bench

Advocate : Mr. Soli J.Sorabjee, Attorney General and Mr.Rajat Sethi, Advocat, for the Appellant;

Final Decision : Dismissed

Judgement

Devinder Gupta, A.C.J.

1. The petitioner claims that having served in the defense of the country actively for a period of 28 years he retired prematurely from the Indian Air Force as Wg. Commander and ever since has been engaged in espousing the public cause in general and national cause in particular and is the president of "Public Redressal Forum", a society registered under the Societies Registration Act, 1860. By profession he is enrolled as an Advocate and claims that being an ex-defense officer is seriously concerned in the events leading to the abrupt dismissal of Ex Navy Chief Admiral Vishnu Bhagwat. It is alleged that unpleasant and unhealthy developments leading to and connected with the dismissal of Ex Naval Chief are likely to adversely affect the morale and discipline of the serving soldiers in the Army, Navy and Air force. Accordingly, a prayer has been made for issuance of or writ, order of direction commanding the respondent to divulge the reasons, grounds and charges, which led to the dismissal of Ex Naval Chief and to issue appropriate orders for convening a High Level Probe under the supervision of this Court to unfold the mystery behind the dismissal and to reinstate the Ex Naval Chief with due honour.

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2. This petition was filed on 8.1.1999 and came up for admission on 12.1.1999. Without issuing notice to the respondent a direction was made calling upon the respondent to produce relevant record on the next date of hearing. Mr. Vaidyanathan, learned Additional Solicitor General, who had put in appearance stated that without prejudice to the rights and contention of the Government at the first instance, the record may be perused and thereafter, if the Court considers necessary, an order can be passed directing the Government to file an affidavit. On the adjourned date, Mr. Soli J. Sorabjee, learned Attorney General informed the Court that in a similar matter a decision had been rendered by the High Court of Bombay and copy was likely to be made available shortly. Case was adjourned. Copy of the judgment delivered by the Bombay High Court in Prem Nath Hoon Vs. Union of India and others, writ petition N.76/99, decided on 8.1.1999 was placed on record along with written submissions made on behalf of the respondent raising a preliminary objection therein that the writ petition is not maintainable and is liable to be dismissed in view of the settled legal position that when the person aggrieved consciously and diligently chooses not to question the decision or action affecting him, it is not permissible for a third party to file a writ petition challenging that decision or action. We heard the petitioner and learned Attorney General appearing for the respondent on the question of maintainability of the writ petition. Locus standi of the petitioner either as an Ex defense Personnel or as an Advocate to file the petition is not under challenge. The challenge is to the maintainability of the petition for the reliefs prayed for when the Ex Naval Chief till date has diligently chosen not to question the decision and action of the respondents affecting him. It was contended by learned Attorney General that Ex Naval Chief had publicly declared that he does not wish to challenge the decision affecting him in a Court of Law. It is not the case of the petitioner that Ex Naval Chief Bhagwat is under any disability or is unable to approach the Court and seek the reliefs available to him in law. Can in this situation the petitioner be permitted to maintain this petition and pray for a relief, which the Ex Naval Chief, being affected party has chosen not to claim, is the question arising for our consideration.

3. In S.P. Gupta Vs. President of India and Others, , the Constitution Bench examining the question of locus standi and taking abroad and liberal view by majority held that any public spirited advocate acting bona fide and not for private gain or personal profit or political motivation or any other oblique consideration, may file a writ petition in the High Court challenging an unconstitutional or illegal action of the Government or any other constitutional authority prejudicially affecting the administration of justice and in such writ petition he may claim relief not for himself personally but for those who are the direct victims of such unconstitutional or illegal action, because granting such relief to them would repair the injury caused to administration of justice. The majority judgment says that this of course will be subject to the condition that the person for whom the relief is sought must be ready to accept it; they must appear and make it known that they are claiming such relief, which cannot be

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thrust upon them unless they wish. The Court was examining the locus standi of Shri V. M. Trakunde, a Senior Advocate to file writ petitions challenging the constitutional validity of circular issued by the Law Minister affecting three additional Judges of this Court. Shri S. N. Kumar, one of the affected Judge had appeared in the petition and filed an affidavit supporting the writ petition but Shri O. N. Vohra did not join as a party. As Shri O. N. Vora did not come forward to seek any relief from the Court in regard to his continuance as an Additional Judge, the Court declined to hear the petitioner observing that it is difficult to see how the Court can be called upon to examine his case for the purpose of determining that whether he was wrongly discontinued as an Additional Judge. In para 24 of the judgment, it was observed:

"Cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief, on the person or specific class or group of persons primarily injured, which they do not want."

4. Relying upon the decision in S. P. Gupta''s case (supra), objection as regards maintainability of writ petition for the reliefs claimed for the benefit of Mr. Justice V. Ramaswamy without impleading him as a party to the petition was upheld and the absolute right claimed by the petitioner therein, namely, Raj Kanwar to file public interest litigation was turned down in Krishna Swami Vs. Union of India and another,

5. Similarly in K. Ashok Reddy Vs. Government of India and others 1994 (2) S.C.C., which dealt with justifiability of transfer of High Court Judges from one High Court to other, it was held that transferred Judge himself can question the validity of his transfer and that also on the limited area of justiciability, as indicated in Supreme Court Advocates-on-Record Association and another Vs. Union of India, .

6. In Special Reference No.1 of JT 1998 (7) S.C. 304, it was reiterated that only at the instance of the transferred Judge himself and no one else, the order of transfer was justiciable and that also on the grounds indicated in the Supreme Court Advocates-on-Record''s case (supra).

7. Bombay High Court in Prem Nath Hoon''s case (supra)) dismissed similar petition holding that the petitioner therein had no locus standi and the petition did not merit consideration as Public Interest Litigation since it was not shown

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that Ex Naval Chief Bhagwat, the person aggrieved and directly affected was disabled from seeking relief.

8. In S. P. Gupta''s case (supra), it was held that an affected person or a determinate class of person when by reason of helpless or disability or socially or economically disadvantage position is unable to approach the Court for relief any member of the public can maintain an application for an appropriate direction, order or writ of the Court under Article 226 of the Constitution of India where legal wrong or legal injury is caused to a person by reason of violation of some constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law.

9. In view of the settled position in law aforementioned, we uphold that the submission made by learned Attorney General that permitting the petitioner to maintain this petition would be highly undesirable especially when Ex Navy Chief Bhagwat has not come forward himself for redressal of his grievances, if any. Entertaining this petition will also have the effect of looking into the question whether the impugned action was or was not legal or was not justified. Any findings recorded by this Court naturally affect directly the interest of Ex Naval Chief. Adopting such a course of action by entertaining the petition at the behest of a third person has been deprecated by the Supreme Court in Krishna Swami''s case (supra).

10. Resultantly while upholding the objection raised by learned Attorney General, we dismiss this petition as not maintainable. The record was kept ready in Court and it was stated that it will be kept ready at all times; but as we have not entertained this petition, we decline to look into the record.

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