

(1993) 10 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 9326 of 1993-I

Janabodhana Samathy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 10 KL CK 0013

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; Thottathil B. Radhakrishnan, for 4th Respondent and K.P.G. Menon, Central Government Standing Counsel for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—The Petitioner Janabodhana Samathy represented by Dr. A. Achuthan, a member of its Advisory Board has instituted this petition under Article 226 of the Constitution of India to have the appointment of the Respondent number 4 K. Sreekandan Nair, as News Reader/Translator in the Kozhikode Station of All India Radio, set aside. The Respondent number 3 and Respondent number 4 represented by counsel appeared and made submissions on behalf of their respective clients.

2. A solitary post of News Reader/Translator was advertised. 464 applications were received. 254 candidates appeared for the written test held on 26th July 1992. The letter dated 15th July 1992 a specimen of which is produced as Ext. P-1 to this petition addressed to the candidates calling them for the written test, informed them that "those who pass the written test will be called for a voice test/interview on a date to be intimated later". Instead of communicating, "a later date" for voice test/interview, the candidates were told in the examination hall that they have to appear for the interview/voice test on the following day i.e. 27th July 1992. The answer papers of the 254 examinees were evaluated by

three examiners on 26th July 1992 itself. The interviews were held on the next day. After the interview, 39 candidates were called for audition tests which were held on 28th July 1992 and 29th July 1992. The select list was not published until 18th May, 1993. On 30th September 1992 the Assistant News Editor of the All India Radio, Kozhikode Station made certain notings, a copy of which is annexed to the petition as Ext. P-4. The note records "it is understood that the first rank in N.R.C.T. selection to the vacant post has gone to Mr. Sreekandan Nair of Trivandrum". The Directorate was taking time to clear his appointment. The note therefore proposed that Sreekandan Nair should be appointed on casual basis as the All India Radio, Kozhikode Station was short of efficient and experienced hands. Accordingly, the names of Sreekandan Nair and Vasudevan who stood second in the test were approved for appointment on casual basis.

3. Learned Counsel for the Petitioner urged that the selection of the Respondent number 4 suffers from bias and malafides.

The first ground urged is that it was humanly impossible to evaluate 254 answer papers within a few hours on 26th July 1992. If that is so the written test was a farce and a decision to select the Respondent number 4 was already taken. Counsel for the Respondent numbers 3 and 4 brought to my notice that a substantial number of questions were objective. In view of this statement and having regard to the fact that three examiners were engaged for this work I do not think that it was impossible for one examiner to examine in a day about 80 answer papers consisting of partly objective answers.

The second argument urged is that the select list was published on 18th May 1993 but decision to appoint the Respondent number 4 was taken on 30th September 1992, nearly 8 months before the actual publication of the select list. I do not see how this fact proves that oblique motive, ulterior purpose or malafides entered into the selection of the Respondent number 4. The audition tests of 30 candidates were complete on 29th July 1992. It is reasonable to expect that soon thereafter the select list was prepared though not published. The note annexed by the Petitioner as Ext. P-4 to the petition records that its author "understood that the first rank...has been given to Mr. Sreekandan Nair of Trivandrum". Therefore on the date on which the proposal to appoint was made, the names of the candidates who ranked first and second in the select list were known to the Assistant News Editor. The knowledge of the names of candidates who ranked 1st and 2nd does not mean that selection was not made before that date. It is clear therefore that on 30th September 1992 the rank list was known to the Respondent number 3. The prior knowledge of the rank list does not necessarily mean that the selection of the Respondent number 4 was pre-determined or biased. The note merely proves the knowledge of the author about the names of the candidates who ranked first and second in the select list. The submission that the appointment of the Respondent number 4 is, for this reason, biased is unfounded.

The note refers not only to the first rank holder Sreekandan Nair but also to the

second rank holder Vasu-devan. It is not suggested that Vasudevan too is a candidate favoured by anyone.

4. The argument of malafides and bias is based on unfounded suspicion and is not based on facts.

5. Learned Counsel for the Respondent number 4 urged that the Petitioner does not represent the unsuccessful candidates. None of the 252 unsuccessful candidates have come forward to urge that the selection of the Respondent number 4 is illegal. In other words, the locus standi of the Petitioner to institute this petition is seriously questioned. Learned Counsel for the Petitioner, on the other hand, urged that the Petitioner is a society consisting of distinguished men in public life whose names appear in the letter addressed by them on 24th May 1993 (Ext. P-5). According to the Petitioner this is a public interest litigation in which the Petitioner has interest in the subject matter of this petition.

6. The question, therefore, is whether the Petitioner has such interest in the subject matter as entitles him to file this petition.

7. The narrow rule of locus standi which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress, has been widened and enlarged by the Supreme Court in *G.P. Gupta S.I. Gupta and Ors. v. President of India and Ors.* AIR 1982 S.C. 149 and *Janata Dal Vs. H.S. Chowdhary and Others*, . The rule laid down by the Supreme Court enables the institution of judicial proceedings to redress grievances relating to injuries to public interest. It is, therefore, necessary to understand the extent and limits of the relaxation of the traditional rule of locus standi. The principles which define and delineate the extent of the modern rule of locus standi are these:

(i) It should be shown that for "some sufficient reason" it is not possible for the aggrieved individual to file legal proceedings before a Court as in *Durayappa v. Fernando* (1967) 2 A.C. 337 Quoted in paragraph 16 in *S.P. Gupta's case* or *Sunil Batra Vs. Delhi Administration and Others etc.*, . Quoted in paragraph 16 in *S.P. Gupta's case*.

(ii) Secondly, it should be shown that the persons aggrieved by an action of the authorities, are not in a position to move the Court for judicial redress by reason of their socially and economically disadvantaged position as in *Dr. Upendra Baxi v. State of U.P.* Referred to in paragraph 16 of *S.P. Gupta's case*.

(iii) The injury complained of must be a public injury as distinguished from private injury *S.P. Gupta Vs. President of India and Others*, .

(iv) The member or members of the public claiming the right to initiate legal proceedings must have sufficient interest in the subject matter of the proceedings *S.P. Gupta Vs. President of India and Others*,

(v) The concept of public interest litigation is an innovation intended to ensure the advancement of "the cause of the community or disadvantaged groups and

individuals or public interest Janata Dal Vs. H.S. Chowdhary and Others, ".

8. Before applying the principles set out above the undisputed facts of this case need to be borne in mind. They are:

(i) There is no assertion in the petition that it is impossible for the unsuccessful candidates to present their case before any Court.

(ii) Nor is it the case of the Petitioner that the unsuccessful candidates are unable to approach this Court by reason of poverty, helplessness, disability or socially or economically disadvantaged position.

(iii) All the unsuccessful candidates are graduates aspiring to be news readers. Therefore, they are aware of their rights.

(iv) The press reports publishing the "illegal appointment" arc dated 9th August 1992 (Ext. P-2) and 27th September 1992 (Ext. P-3). This petition was filed on 14th July 1993 when the Respondent number 4 is about to be appointed.

9. I will now proceed to consider, in the light of the principles enumerated in paragraph 7 above, whether the Petitioner is entitled to institute this petition. The Petitioner, no doubt, claims that its object is "to see that purity is there in public life." This is not enough. The facts must show that the Petitioner complains of a public injury and that the aggrieved candidates are not in a position to approach this Court by reason of the circumstances similar to those stated in the Supreme Court's judgments.

10. The first question is whether the unsuccessful candidates are not in a position to seek redress from this Court by reason of adverse circumstances. The circumstances which may prevent the aggrieved persons from seeking judicial redress are illustrated by the cases referred to by the Supreme Court. In *Durayappah Quoted in S.P. Gupta Vs. President of India and Others*, Paragraph 16, the Jaffna Municipal Council who was aggrieved by its dissolution was not in a position to seek legal redress. In *Sunil Batra Quoted in S.P. Gupta Vs. President of India and Others*, Paragraph 16, the person who was brutally assaulted by the jail warden was not in a position to file habeas corpus petition. In *Dr. Upendra Baxi Quoted in S.P. Gupta Vs. President of India and Others*, Paragraph 16, the inmates of the protective home of Agra were not in a position to move the Court ""by reason of their socially and economically disadvantaged position".

These circumstances are not exhaustive. New circumstances, new situations or misfortunes may make it difficult for the aggrieved to seek judicial remedy. But such circumstances have to be pleaded in support of the right to file a public interest petition.

11. The facts set out in paragraph number 8 above show that none of these circumstances exist in the Petitioner's case. No reason, why, not even a single candidate from among the 252 candidates is not in a position to file a petition to challenge the appointment of the Respondent number 4, is discernible from the

petition.

The unsuccessful candidates aspired to be chosen as news readers in the All India Radio. They are educated and aware of their rights. Social or economic disadvantage is not even pleaded.

12. Then the question is whether the injury complained of is a public injury. In S.P. Gupta's case the Petitioners were held to "have a vital interest in the independence of the judiciary". In Durayappah's case Quoted in S.P. Gupta Vs. President of India and Others, paragraph 16 dissolution of a municipal council undoubtedly involved public injury. In the case of Dr. Upendra Baxi the inhuman and degrading condition in which the inmates of the protective home lived, pointed at the public character of the interest of the Petitioners.

13. What is the nature of the injury the Petitioner complaints of? The complaint is that the Respondent number 4 has been appointed illegally. This illegality may have injured the rights of the unsuccessful candidates. If the Petitioner was aggrieved by the "corrupt" selection process, he would not have waited till the appointment of the Respondent number 4 became imminent. The fact that he chose to wait for 9 months after the "illegal" selection became known and until the Respondent number 4 was about to be appointed suggests that his concern for "purity in public life" is an excuse for advocating the private grievance of one or more of the unsuccessful candidates. In paragraph 3(i), the Petitioner complaints of injustice meted out to the applicants who appeared for the selection to the post of News Reader/Translator". In paragraph 5 of the petition the complaint is that "the 4th Respondent is about to be appointed". The statements in the petition do not bring out the public interest or injury to the public. The substance of the complaint is about selection of the Respondent number 4 which is a private injury.

No doubt in every case an individual being or group of human beings is bound to be involved. But this by itself does not mean that the matter complained of relates to a private injury. For instance in Dr. Upendra Baxi, the inmates of the Protective Home and in Sunil Batra, the prisoners, were the beneficiaries of judicial process. But the injury complained of was of public character.

14. The appointment of the Respondent number 4 and the rejection of the 252 candidates in the circumstances of this case, raises issues which concern private interests. The cause of the community or the public is absent. The Petitioner does not therefore have public interest entitling it to file this petition.

15. Learned Counsel for the Petitioner drew my attention to the judgment of a Division Bench of this Court in Raghavan Nair v. S. Padmakumar and Ors. ILR 199 Kerala and urged that persons other than those who have personal interest have been allowed to agitate their grievance. The questions whether the Petitioners complained of public injury and whether the aggrieved persons were not able to file the petition did not fall for consideration by the Division Bench. The locus standi of the Petitioners in that case was not the subject of challenge.

The judgment does not assist the Petitioners.

16. For the reasons stated in paragraphs 9, 10 and 11 above the Petitioner is not entitled to file this petition.

17. The petition is dismissed.