
(2014) 09 MAD CK 0193
In the Madras High Court
Case No : Writ Petition No. 26696 of 2014

K.R. Ramaswamy

APPELLANT

Vs

Secretary

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (2014) 7 MLJ 257

Hon'ble Judges : S. Vaidyanathan, J;R. Mahadevan, J

Bench : Division Bench

Judgement

S. Vaidyanathan, J.—This Writ Petition, in the nature of a PIL has been filed, pro bono publico, seeking for the issuance of a Writ of Mandamus, to direct the respondents, to consider and pass appropriate orders on the representation dated 29.9.2014 sent by the petitioner for providing security and safe the citizens of Tamilnadu and ensure the fundamental rights guaranteed under Article 19 and 21 are complied in the present situation which is in question in the state of Tamil Nadu, within stipulated time period as may be fixed by this Court. We have carefully gone through the affidavit filed by the petitioner in support of the writ petition filed by invoking Article 226 of the Constitution. The sum and substance of the writ petition as stated in para. 5(d) and (e) of the affidavit filed by the petitioner, is as follows:

"5.(d) The petitioner has also pointed out to the Chief Minister of Tamil Nadu that she is the Nodal Authority of the mechanism set-up by the whistle blowers protection Act, wherein she is the nodal authority so far as the entire whistle blowers Act is defeated if a person chargesheeted with corruption charges take up charges against fellow ministers under corruption act on public interest disclosures as per the Whistle Blowers Act and it applies to any other CM aspirant of Tamil Nadu as long as he swears allegiance to the convicted criminal J. Jayalalitha as a AIADMK supremo.

The petitioner approach this Hon"ble Court on the basis that the Governor is duty

bound to consider with there is a proper candidate for the post of Chief Minister and since there is no internal inner party/intra party mechanism in regional party without a central high command like congress or BJP there would be no guarantee that the person who is elected as floor leader by the majority party is a clear candidate like in the case of the Chief Minister of Tamil Nadu and therefore the lack of disqualification for prescribing the chief minister and his or her minimum qualification and lack of criminal back ground it was for the governors of the states to ensure that the chief minister candidate serves the purpose of corruption free democracy. The petitioner had cited the judgment in BCCI Srinivasan case wherein it was held that a person in a top post even if found to have a relative, facing corruption charges, would be presumed to have a conflict of interest with respect to holding that post inspite of closure relative in the same organization facing corruption charges.

9. I submit that the petitioner has approached this Hon"ble Court for the issue of a direction by way of a writ of mandamus, or guidelines ensuring that the legitimate expectation of a citizen who is having an elected Chief Minister would also have a Chief Minister who is without corruption/criminal charges against him/her or a person who accepts a person who accepts a convicted criminal as his undisputed leader can still occupy position as Chief Minister or can be invited by the governor of Tamilnadu to be the chief minister while professing unquestionable allegiance to a convicted criminal who is the life long party chief of A.I.A.D.M.K.

10. I am the 1st petitioner herein filing this petition under Article 226 to restore the right to liberty of the general public along with 2nd petitioner for preventing the misuse of the silence of the constitution regarding the maintainability of the government formed by A.I.A.D.M.K.

11. It is submitted that several telephonic requests on the issue of writ petition were declined by the office of the governor and the office of the governor has failed to confirm the request for appointment by the petitioner and owing to a constitutional urgency and the need for implementing the spirit of the order in Manoj Narula"s case the petitioners have urgently approached this hon"ble court."

2. Narrating the above, the petitioner ultimately sought for issuance of writ of mandamus, to direct the respondents 1 to 4 to consider and pass appropriate orders on the representation dated 29.09.2014 for providing security and safe the citizens of Tamilnadu and ensure the fundamental rights guaranteed under Article 19 and 21 are complied in the present situation which is in question in the State of Tamil Nadu.

3. At the outset, it is to be noted that the petitioner has approached this Court on 29.09.2014 itself, on which date, he admittedly made the representation to the respondents 1 to 4. Therefore, it is clear that by submitting the representation to the respondents, the petitioner has straight away approached

this Court, stating that several telephonic requests on the issue of the writ petition were declined by the office of the governor. By this, the attitude of the petitioners is clearly established that the petitioners are very much interested to gain publicity in the form of a PIL. In fact, a news item regarding filing of the present PIL has been published in news papers.

4. On a perusal of the representation, dated 29.9.2014 said to have made to the respondents, a copy of which is available in a typed set of papers filed along with the writ petition, we find that the petitioner has made vague averments without any reliable material. The contents of the said representation are extracted hereunder:

"Respected Mandam/Sir,

Sub: A registered party having a convicted accused like J. Jayalalitha as the supreme leader cannot be invited to be in government when the same government is also the prosecuting agency as state government in charge of Spl. C.C. 208/2014 where the general secretary J. Jayalalitha is the leader of the party while the party A.I.A.D.M.K. is in power.

It is submitted that the governor is the authority to maintain vigilance and due diligence when inviting a leader of the MLAs of a party stakes claim as the head and the invitation is accepted after due satisfaction of the governor after verification of the credentials of the party and leadership.

It is submitted that ALADMK is a registered political party with the Election Commission professing constitutional values and the Election Commission and the Governor as constitutional authorities have to immediately verify if a convicted criminal J. Jayalalitha is still the supremo for ALADMK and the question after Supreme Court order in Manoj Narula case and BCCI Srinivasa case is can a convicted criminal in Spl. C.C. 208/2004 like J. Jayalalitha be a General Secretary of the ruling party in Tamil Nadu and can the party still be in power with a convicted criminal and can an elected MLA professing allegiance and worshipping a criminal be invited to be the chief minister and become head of a elected government with the leader of the ruling party and the invited C.M. OPS swear under the constitution SCH. III when the leader is a criminal in Spl. C.C. No. 208 of 2004.

It is hereby requested that the party functionaries who swear allegiance to a criminal cannot form the government and appropriate action may be taken at your end with immediate effect and urgency failing which, we will constrained to approach the court on the basis of orders of the Supreme Court in BCCI and Manoj Narula case."

5. Therefore, the petitioner sought for the action to be taken by the respondents that the party functionaries who swear allegiance to a criminal cannot form the government. This is his dogmatic statement made by the petitioner and further, he has not specifically mentioned the name of the person to whom he describes

having allegiance. Therefore, this Court is of the considered view that petitioner has made a very vague representation and within hours, he rushed to this Court by way of the present writ petition in the form of a PIL. Further, no averments have been mentioned or made out by the petitioners as regards the violation of Articles 19 and 21 of the Constitution and the citizens of the state are adversely affected in order to entertain the writ petition, wherein, the petitioners sought for direction to ensure the fundamental rights guaranteed under Article 19 and 21 are complied in the present situation.

6. It is settled law that the judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance of the State with its constitutional or statutory duties. As already held by us, none of these contingencies arose in the present case in order to make judicial interference by way of PIL. Public interest litigation was not meant to be a weapon to challenge the decisions of the Government taken in exercise of their administration power. According to the petitioners, a person who is having allegiance to a criminal cannot form the government. This is the view of the petitioners within their exclusive knowledge and in support of their view, no provision of law or decision of the Hon'ble Supreme Court were cited. Further, the person against whom allegations have been made is not added as a party to the writ.

7. What public interest litigation is meant to be has been explained at length in *S.P. Gupta v. Union of India* 1981 Supp SCC 87". Public interest litigation in that case was filed relating to the appointment and transfer of Judges and it is in this connection that the question arose with regard to the locus standi of the petitioner to file the writ petition. While deciding this aspect, this Court examined as to what is the nature of the public interest litigation and who can initiate the same. At p. 215, Bhagwati, J. observed as follows: (SCC para. 20)

"It is for this reason that in public interest litigation -- litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, "diffused" rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing."

8. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner

and entertained by the court. While observing this and highlighting its various decisions on the field, the Hon"ble Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, has categorically held as under in para. 88.

"88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court."

9. In Dr. B. Singh Vs. Union of India (UOI) and Others, , the Supreme Court, in paragraph Nos. 12 and 14, has held as follows:

"12. 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 armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to 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 member of 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 by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. 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.

13.

14. The Court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity

and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect."

10. In *Common Cause (A Regd. Society) Vs. Union of India (UOI) and Others*, the Supreme Court has held as follows:

"We have gone deep into the subject of judicial activism and public interest litigation because it is often found that courts do not realise their own limits. Apart from the doctrine of separation of powers, courts must realise that there are many problems before the country which courts cannot solve, however much they may like to. It is true that the expanded scope of Articles 14 and 21 which has been created by this Court in various judicial decisions e.g. *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , have given powerful tools in the hands of the judiciary. However, these tools must be used with great circumspection and in exceptional cases and not as a routine manner. In particular, Article 21 of the Constitution must not be misused by the courts to justify every kind of directive, or to grant every kind of claim of the petitioner. ..."

11. If this Court entertains the writ petition in the manner that the petitioners want, it would amount to judiciary interfering with the affairs of the Executive and the State and the prerogative of the elected Government, which has been deprecated in *Union of India and Another Vs. Azadi Bachao Andolan and Another*, and *Common Cause (A Reg. Society) v. Union of India (supra)*, referred supra.

12. As regards the prayer for "considering and disposing the representation, the Hon'ble Apex Court has categorically held in *Union of India (UOI) and Others Vs. M.K. Sarkar*, , the Hon'ble Supreme Court has held, in paragraphs 14 and 16, as follows:

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in *C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another*, .

"9. The courts/tribunals proceed on the assumption that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on

rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee file an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

13. Therefore, having regard to the facts and circumstances narrated above and in the light of the decision of the Hon"ble Apex Court, we are of the considered view that the present writ petition has been filed by the petitioners, primarily for gaining media publicity, coupled with defects, such as, vagueness, impracticable relief, etc., which certainly cannot be entertained. This Court is brought to the notice that the petitioner (Traffic Ramaswamy) is a person always busy and focussing the matters by number of writ petitions especially in the form of PIL and he became versatile in the PIL matters. As indicated above, the attitude of the petitioners in approaching this Court with vague averments of offensive words used in the petition as well as in the representation which is highly deprecated, we are of the view that the present writ petition deserves to be dismissed with exemplary costs and we direct so. It is also brought to our notice that the said person was already imposed with costs by this Court in earlier matter.

14. Though, this petition deserves to be dismissed with heavy exemplary costs, expecting that the petitioner would mend his ways and would not hazard any such vexatious litigations in the form of PIL in future, we dismiss the writ petition with costs of Rs. 25,000/- for having wasted the valuable judicial time which could be otherwise utilized for disposal of genuine cases. The petitioner is directed to deposit the above said amount of Rs. 25,000/- within a period of four

weeks from today. If such deposit is made, the Registry is directed to remit the same towards Jammu and Kashmir Flood Relief Fund forthwith. In case the cost is not deposited within the time stipulated, the Registry is directed to recover the same by coercive means as laid down by the Hon''ble Apex Court in Dr. B. Singh v. Union of India and Others (supra). The Registry is directed to be careful while numbering the petitions (if any) being filed by the petitioners in future and enclose the earlier orders of this Court, wherein costs were imposed. Consequently, connected MP is closed.

Though at the commencement of arguments, both of us separately asked the petitioners whether they are going to withdraw the petition or pursue the matter. However, since the petitioners addressed the arguments even after our indication, we are constrained to render this detailed order.