
(2015) 09 CAL CK 0075
In the Calcutta High Court
Case No : M.A.T. No. 916 of 2015

Kunal Saha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 144, 226
Criminal Procedure Code, 1973 (CrPC) — Section 24
Penal Code, 1860 (IPC) — Section 304A

Citation : AIR 2015 Cal 370

Hon'ble Judges : G.C. Gupta and Shib Sadhan Sadhu, JJ.

Bench : Division Bench

Advocate : Samrat Sen, Pratap Chatterjee, Senior Advocates, Amitava Mitra, Debojyoti Dutta, S. Mukherjee, M. Roy and M. Mitra, for the Respondent

Judgement

Shib Sadhan Sadhu, J.—The subject-matter of challenge in the appeal is a judgment and order dated 22nd December, 2014 by which the Learned Trial Court dismissed the writ petition on the ground that the petitioner had no locus standi and was not entitled to maintain the writ petition. Briefly stated the facts and circumstances of the case are as follows:

"The writ petitioner, ordinarily a resident of the United States of America, accompanied by his wife Anuradha Saha came to Kolkata in the year 1998. Anuradha developed skin allergy. She was hospitalized and treated by a team of doctors comprising amongst others the respondent No. 2. It was alleged that due to gross medical negligence of the respondent No. 2 Dr. Sukumar Mukherjee, amongst others, she died. The petitioner instituted both civil and criminal cases against the doctors including the respondent No. 2 seeking to hold them liable for medical negligence which ultimately was decided in his favour on 7th August, 2009 in the case of Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others, ."

The Supreme Court held that:

"The treatment line followed by Dr. Mukherjee which entailed administration of 80 mg of depomedrol injection twice is not supported by any school of thought. The treatment line, in this case, does not flow from any considered affinity to a particular school of thought, but out of sheer ignorance of basic hazards relating to use of steroids as also lack of judgment."

2. While the Supreme Court did not interfere with the order of acquittal from charge under Section 304A of the Indian Penal Code but civil liability was fixed. The judgment of the National Commission holding to the contrary was set aside, the matter was remitted to the National Commission for determining the amount of compensation. Costs assessed at a sum of Rs. 1,00,000/- was imposed upon the respondent No. 2.

3. In an appeal from the order of the National Commission the matter was ultimately decided by a judgment of the Supreme Court passed on 24th October, 2013 in the case of Dr. Balram Prasad Vs. Dr. Kunal Saha and Others, wherein the Supreme Court referring to respondent No. 2 held as follows:

"Since he is a senior doctor who was in charge of the treatment of the deceased, we are inclined to mention here that Dr. Mukherjee has shown utmost disrespect to his profession by being so casual in his approach in treating his patient. Moreover, on being charged with the liability, he attempted to shift the blame on other doctors. We, therefore, in the light of the facts and circumstances, direct him to pay a compensation of Rs. 10 lakhs to the claimant in lieu of his negligence and we sincerely hope that he upholds his integrity as a doctor in the future and not be casual about his patients" lives."

4. The case of the writ petitioner is that he was shocked to know from a news item published in "Ei Samay" on Friday 16th May, 2014 disclosing that 14 persons including the respondent No. 2 herein had been selected for the prestigious "Bangabibhushan" award. He challenged the aforesaid act of the State by the present writ petition contending, inter alia as follows in paragraph 7:--

"That being deeply aggrieved, hurt and dissatisfied with the arbitrary, capricious and mala fide decision of Respondent No. 1 with a mindless and deliberate attempt to glorify Respondent No. 2 by selecting him to receive the prestigious "Bangabibhushan " award for his illustrious medical service which is in sharp contrast to the observations made by two separate Benches of the Hon"ble Supreme Court that has found respondent No. 2 as a negligent, reckless and unethical doctor Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others, ,....."

5. The writ petition was moved upon notice on 20th May, 2014 which was also the day when the awards were to be given away. Prayer for an interim order restraining the State from conferring award upon the respondent No. 2 was made. On behalf of the State locus standi of the writ petitioner was challenged. The writ petition was admitted with the direction that the grant of the award shall

be subject to the result of the writ petition. To be precise the following observations were made while passing the aforesaid order.

"This Court is of the opinion that it will be necessary to consider at the stage of further hearing of this, writ petition, the rationale behind the administrative decision to confer the award on the respondent No. 2 in the face of the aforementioned observations and findings of the Hon''ble Apex Court.

It is brought to the attention of this Court that the present writ petition being moved at the eleventh hour, it is not possible for the respondent No. 1 to arm itself with the records pertaining to the decision making process behind the grant of the award in favour of the respondent No. 2. It is thus necessary to call for a comprehensive affidavit on the part of the respondents, particularly, the respondent No. 1 to explain the rationale behind the decision to grant the award in favour of the respondent No. 2. Such explanation becomes necessary in the context of the settled law that the writ court must examine the decision making process.

This Court also holds that in the particular facts and circumstances of the case, the locus standi of the writ petitioner to prefer the present writ application cannot be ignored.

However, in the absence of further materials from the respondent No. 1 explaining the decision making process behind the grant of the award as challenged before this Court, this Court does not think it fit to stay the grant of such award at the present stage.

However, this Court makes it abundantly clear that the grant of the said award shall be subject to the result of the writ petition."

6. The State in its affidavit-in-opposition affirmed by Sri R.N. Basu Roychowdhuri challenged (a) locus standi of the writ petitioner stating inter alia that he was not a party aggrieved and contended that during the period of 16 years after the death of the petitioner's wife the respondent No. 2 made substantial contribution to the cause of medicine; (b) that the Committee constituted for the purpose of conferring the "Bangabibhushan" award also considered the order of the Hon''ble Supreme Court in its proper perspective and (c) the Committee considered the meritorious records of the respondent No. 2 during the period between 1967-2008, a detailed meeting was held by the Committee constituted for the purpose of conferring the "Bangabibhushan" award on 17th May, 2014 and a copy of the minutes of the meeting dated 17th May, 2014 was disclosed from which it appears that the Chief Minister, the Finance Minister and three other Secretaries were present at the meeting. During such meeting 13 persons including the respondent No. 2 were chosen for the "Bangabibhushan" award. The discussion which took place as regards the respondent No. 2 when translated in English would read as follows:

"The Hon''ble Supreme Court had censured Dr. Mukherjee for his faults. Dr.

Mukherjee has also paid fine pursuant to the order of the Hon'ble Supreme Court. If this were to be taken into account that would amount to double jeopardy. He is still a renowned Physician and a teacher respected by all. The various awards received by him include National Excellence award of 1993. In the year 2008 he received "Dhanvantari " award. In the year 2006-07 he acted as the advisor to Royal College of Physicians an International Organisation. He deserves "Bangabibhushan" award for his lifetime achievement."

7. In reply to paragraph 7 of the contents of the writ petition, quoted above, the State had the following explanation to offer in paragraph 10 of its affidavit which reads as follows:

"There was no mindless or deliberate attempt to glorify the respondent No. 2 by selecting him to receive the prestigious "Bangabibhushan" award as alleged or at all. Rather, the respondent No. 2 richly deserved the same for his illustrious medical service. It is denied that such conferment is in sharp contrast to the observations made by two separate Benches of the Hon'ble Supreme Court. The Hon'ble Apex Court had, no doubt, found the respondent No. 2 guilty of negligent and reckless conduct with regard to his actions in a case pertaining to 1998. The Hon'ble Supreme Court did not condemn him for all times to come nor did the Hon'ble Supreme Court observe that despite subsequent exemplary accomplishments he could never redeem himself. It is denied that the selection of the respondent No. 2 to receive the prestigious "Bangabibhushan" award in recognition of his role as an exceptional medical doctor in the State, infringes Article 144 of the Constitution. It is denied that the selection of the respondent No. 2 to receive the "Bangabibhushan" award indicates to the ordinary citizens that which is the exact opposite view expressed by two Benches of the Hon'ble Apex Court. The description of the respondent No. 2 as reckless or negligent or unethical was, it is respectfully submitted, in relation to a solitary case in a distinguished and otherwise unblemished career. It is denied that there is any glorification of the respondent No. 2 with the prestigious "Bangabibhushan" award or that suggesting his outstanding contribution to medicine undermines the sanctity or credibility of the Hon'ble Apex Court or allegedly makes a mockery of the justice delivery system.....It is denied that the best candidates from different professions have not been chosen to receive the "Bangabibhushan" award, being the highest honour from the state. This process has been conducted strictly on the basis of merit of the candidates in an impartial, transparent and honest manner. It is denied that rewarding the respondent No. 2 with the "Bangabibhushan" award as an outstanding physician through a high-profile public ceremony on May 20, 2014 is a politically motivated or blatant attempt with a mala fide intention on the part of the respondent No. 1 to restore the tarnished public image of the respondent No. 2."

8. The respondent No. 2 maintaining that the writ petitioner had no locus standi to present the writ petition offered the following justifications:

"g. Save the wrongful and unjust slur on my reputation and character cast on me

by the writ petitioner and save the allegation that my negligence, in part, contributed to the death of Late Anuradha Saha my career has been distinguished and unblemished so far.

h. The allegations and/or slur cast on my reputation, competence and ability by the writ petitioner are disbelieved by the city at large and by the scores of patients that I have both in Kolkata as well as all over India. Consequently, and as a result of my distinguished and significant contribution in the medical field, the State Government, in its absolute discretion, has decided on diverse steps which have been challenged by the writ petitioner."

9. When the writ petition came up for final hearing, contrary to the order dated 20th May, 2014 the learned Trial Court did not examine the rationale behind the administrative decision to confer the award on the respondent No. 2 and chose instead to consider the preliminary objection as regards his locus standi to maintain the writ petition and held as follows:

"There is no averment in the writ application as to whether any personal or individual right of the petitioner has been infringed or as to whether the petitioner has been prejudiced in any manner due to the grant of the said award, which is necessary for the petitioner to establish his locus standi. No issue of fraud has also surfaced through the pleadings. There is also no pleading to the effect that the procedural impropriety is of such a magnitude that it has operated to the severe detriment and prejudice to the petitioner. From the said averments it is explicit that no legally protected right of the petitioner, which can be judicially enforced, has been infringed save and except a psychological or an imaginary injury.

The writ application being W.P. No. 9758 (W) of 2011 has been preferred by the respondent No. 2 herein challenging an order passed by the Medical Council of India and the other writ application being W.P. No. 16879 (W) of 2012 is a public interest litigation preferred by the petitioner. Mr. Roy contends that in view of pendency the said writ applications, the locus standi of the petitioner cannot be questioned. Such contention of Mr. Roy is not acceptable since it has not been shown to this Court that the issue of locus of the petitioner herein has been considered and decided, in the backdrop of an identical fact situation involved in the instant lis.

The judgment delivered in the case of Jasbhai (supra) has been relied upon by the petitioner in support of the contention to the effect that in exceptional cases involving a grave miscarriage of justice, even a stranger to the proceedings can maintain a writ application. In the instant case no such exceptionality has occasioned and the said judgement is also distinguishable on facts inasmuch as in the same the appellant was a rival in the same trade being the proprietor of a Cinema Hall who challenged the grant of no objection certificate in favour of the private respondent. In the said judgment the Hon'ble Supreme Court also observed that the business competition, being a lawful activity, causing even

pecuniary harm and loss of business is not wrongful in the eye of law because it does not result in injury to a legal right or a legally protected interest.

The judgment delivered in the case of Gadda (*supra*), as relied upon by the petitioner, is not applicable in the instant matter since the appellant therein was a representative of a committee who has all throughout represented the committee in all its dealings and such fact coupled with the acquiescence on the part of all the members of the said committee was recognized to be sufficient to maintain the writ application.

The judgment delivered in the case of Bar Council of Maharashtra (*supra*), as relied upon by the petitioner, is also distinguishable on facts inasmuch as in the backdrop of the facts to the effect that the Bar Council of a State is required to uphold the standards of professional conduct and etiquette in the profession and is the custodian of the high traditions of the noble profession, the State Bar Council was held to be an aggrieved person.

The other two judgments in the cases of Bangalore Medical Trust (*supra*) and Adarsha Shiksha Mahavidyalaya (*supra*) have no manner of application in the instant case since the same were public interest litigations.

The law relating to locus standi is now well-settled. The existence of a right and infringement thereto are the foundations of the exercise of jurisdiction under Article 226 . Such right can either be a fundamental right or can be an ordinary legal right. When a person complaining of violation of a non-fundamental right, such legal right must either be a statutory one or other right or interest recognized by law. However, the rights that can be enforced under Article 226 must ordinarily be the rights of the petitioner himself except in the case of habeas corpus, quo warranto or public interest litigation. The instant writ application does not fall under the aforesaid three categories.

Every right must involve a vinculum juris or bond of legal obligation. Amongst the petitioner and the respondents there is no such bond or co-relation. There is absolutely no scope for exercise of the writ powers only because the petitioner has brought to the notice the fact of grant of the award. The petitioner in the present case is aggrieved for glorification of the respondent No. 2 through conferment of the award against whom the Hon''ble Supreme Court has made trenchant remarks which would be having a profound demoralization effect on all victims of medical negligence and public at large and would be extremely painful to the petitioner. The injury and prejudice as alleged to have been suffered by the petitioner has its roots on psychological anguish.

Admittedly, the petitioner has no adversarial claim pertaining to such grant of award. The petitioner has endeavoured to establish that he has a personal cause of action when he has none. No legal right of the petitioner has been infringed, he has not suffered any legal wrong or injury and is not prejudiced.

In a private action, the litigation is bipolar; two opposed parties are locked in

confrontational controversy which pertains to the determination of the legal consequences unlike in public action. The character of such litigation is essentially that of vindication of private rights, proceedings being brought by the persons in whom the right personally inheres. Such strict rule of locus standi is applicable to private litigation. The petitioner is not a competitor in the award giving process. The impugned conferment of the award does not operate as a decision against the petitioner, much less it does not wrongfully affect his title to something. The petitioner has not been subjected to any legal wrong and he has suffered no legal grievances.

For the reasons discussed above, I hold that the petitioner has no locus standi and is not entitled to maintain the present writ application and accordingly, I dismiss the writ application on the said ground."

10. Aggrieved by the order the writ petitioner has come up in appeal. Appearing in person he submitted that the act of the State is arbitrary and capricious and is in patent violation of Article 14 of the Constitution of India. The act of choosing to confer the award on the respondent No. 2 is an unholy attempt on the part of the State to restore his image and/or is an attempt to dilute the findings of the Apex Court and is also contrary to Article 144 of the Constitution of India. He also relied upon the judgment in the case of S.P. Gupta Vs. President of India and Others, to press the point that the question as regards locus standi has been freed from the shackles of the past and the restrictive concept of party aggrieved, has been liberalized.

11. Mr. Sen learned Senior Advocate appearing for the State submitted that the cause of the writ petitioner is either based on sentiment or is altogether imaginary. A sentiment or imaginary cause does not entitle him to present a petition invoking the jurisdiction under Article 226 of the Constitution. In support of his submissions he relied upon the following judgments:

"1. Vinoy Kumar Vs. State of U.P. and Others,

2. State of U.P. and Another Vs. Johri Mal,

3. Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,

4. Ayaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others,

12. Mr. Chatterjee, learned Senior Advocate appearing for the respondent No. 2 advanced the following submissions:

"(a) Right and duty must co-exist.

(b) The writ petitioner stands on the same footing as any other person. He does not have any cause of action.

(c) If he could not file a suit he cannot file a writ petition.

(d) He does not have any legally enforceable grievance which could only be the basis of his cause of action.

(e) In any event, all that has been done by the act of the State is to confer an honour upon the respondent No. 2. The writ petitioner does not have a right to obtain an order of prohibition against grant of such honour.

(f) The cause of action of the writ petitioner which arose with the death of his wife in the year 1998 merged in the decree for compensation which has admittedly been satisfied. In support of his submission he relied on a judgment in the case of Ishwar Dutt Vs. Land Acquisition Collector and Another, .

(g) The writ petitioner cannot maintain the writ petition because of the emotional distress or the pain suffered by him. Mr. Chatterjee, in this regard, drew our attention to paragraph 181 of the judgment in the case of Balaram Prasad v. Kunal Saha (supra) to impress upon us that the Supreme Court had declined to grant him any compensation for the emotional distress, pain and suffering.

(h) Mr. Chatterjee concluded by saying that the writ petition amounts to an abuse of the process of Court because the petitioner does not have any cause of action."

13. The first submission advanced by Mr. Chatterjee that right and duty must co-exist is neither comprehensible nor acceptable. Right and duty can be contemplated as co-relatives in the sense that if "A" has a right, there must be someone who is under an obligation or a duty to respect that right, without which the right of "A" is meaningless. But how can it be suggested that "A" must have both right and duty simultaneously on the same subject before he can be said to have a standing to file a writ petition.

14. The first submission of Mr. Chatterjee, according to us is of no consequence and is rejected.

15. The sixth submission of Mr. Chatterjee recorded above, according to us, is equally fallacious. There can be no quarrel with the proposition that -the cause of action merges into the decree. The cause of action for the present writ petition is not the death of Anuradha Saha due to negligence of the respondent No. 2. That cause of action has certainly merged into the decree passed by the Supreme Court in the case of Balaram Prasad v. Kunal Saha & Ors. (supra). The cause of action for the present writ petition as alleged by the petitioner is that the State capriciously and in violation of Article 144 chose to confer the honour of "Bangabibhushan" on the respondent No. 2 in May, 2014, when the Supreme Court in its judgment pronounced on 24th October, 2013 held that the respondent No. 2 "has shown utmost disrespect to his profession by being so casual in his approach in treating his patient. Moreover on being charged with the liability he attempted to shift the blame on other doctors."

16. The writ petitioner contends that although the State professes to have decided on 17th May, 2014 to confer the award amongst others on the respondent No. 2, the news had already been published on 16th May, 2014 by one of the persons, who allegedly attended the meeting dated 17th May, 2014,

indicating the names of the awardees of "Bangabibhushan" including the respondent No. 2. He contends that the alleged meeting dated 17th May, 2014 including the alleged deliberations is a mere eyewash and has been concocted.

17. The learned Trial Court by its order dated 20th May, 2014 while admitting the writ petition not only upheld the standing of the writ petitioner to maintain the petition but also held that "it will be necessary to consider at the stage of further hearing of this writ petition, the rationale behind the administrative decision to confer the award on the respondent No. 2 in the face of the aforesaid observations and the findings of the Hon'ble Apex Court." The State pursuant to the aforesaid order dated 20th May, 2014 has come up with the alleged minutes of the meeting allegedly held on 17th May, 2014 to supply the rationale which was not there, when the decision to confer the award was taken and published on 16th May, 2014.

18. Even the reasons assigned in the alleged discussions allegedly held on 17th May, 2014 are restricted to, achievements of the respondent No. 2 until the year 2008 when he was bestowed with "Dhanvantari" award. The two consecutive judgments of the Supreme Court were passed on 7th August, 2009 and 24th October, 2013 respectively. Therefore, the alleged achievements allegedly taken into account do not justify the award which is a pointer to show that the same was intended at diluting the judgments of the Supreme Court which is also contrary to Article 144 of the Constitution of India.

19. The State in its affidavit-in-opposition contended that the selection process was conducted strictly on the basis of merit in an impartial, transparent and honest manner, but no rules or guidelines have either been identified or disclosed.

20. In the case of Balaji Raghavan and S.P. Anand Vs. Union of India, the Apex Court commented upon the existing procedure for choice of the persons to be decorated with the awards like "Padmabibhushan", "Padmashree", "Padmabhushan" etc. by saying that:

"The existing procedure for selection of candidates is wholly vague and is open to abuse at the whims and fancies of the persons in authority. Conferment of Padma awards without any firm guidelines and foolproof method of selection is bound to breed nepotism, favouritism, patronage and even corruption."

21. Their Lordships in paragraphs 33 and 40 of the judgment also directed both the Union of India and the States to form Committees for the purpose of framing guidelines for granting awards. Importance of rules for exercise of discretion vested in the executive can hardly be overemphasized. In the case of S.G. Jaisinghani Vs. Union of India (UOI) and Others, , their Lordships opined as follows:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon

executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey-"Law of the Constitution"-Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in *United States v. Wunderlich*, , (1951) 342 US 98 , "when it has freed man from the unlimited discretion of some ruler....Where discretion is absolute, man has always suffered ". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes*, (1770) 4 Burr 2528 at p.2539 " means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful."

22. For the aforesaid reasons we are not prepared to accept the last submission of Mr. Chatterjee that the writ petition amounts to an abuse of the process of Court. The rest of the submissions advanced by both Mr. Chatterjee and Mr. Sen are on the question of standing of the writ petitioner to maintain the writ petition which shall hereafter be answered.

23. In the case of *Inland Revenue Commissioners v. National Federation of Self-Employed & Small Businesses Ltd.*, reported in (1982) AC 617 prayer for judicial review was made in the following facts and circumstances of the case:

"Some 6000 casual workers in Fleet Street were nominated by their trade unions to work for newspapers on specified occasions. They were given call slips and then collected pay dockets to enable them to draw their pay from their employers but a substantial number of them gave false names and addresses so that it was impossible for the Inland Revenue to collect the tax which was due from them. The consequent loss to the revenue was estimated at 1 million a year. In view of the frauds the Inland Revenue after discussions with the employers and the unions, introduced a special arrangement which would ensure that for the future tax would either be deducted at source or be properly assessed and made it clear that, if the arrangement were generally accepted, and subject to certain other conditions, investigation into tax lost in certain previous years would not be carried out. A federation representing the self-employed and small businesses, who contrasted the attitude taken by the revenue to the tax evasions of the Fleet Street casuals with that adopted by the revenue in other cases where tax evasions were suspected, applied for judicial review under R.S.C., Ord. 53, R.1, and claimed a declaration that the Inland Revenue acted unlawfully in granting the amnesty and an order of mandamus directed to the revenue to assess and collect income-tax from the casual workers.

The Divisional Court granted leave *ex parte*, but at the hearing *inter partes*, on the Inland Revenue's objection that the federation had no *locus standi*, the Divisional Court held that the federation had not "sufficient interest " within

R.S.C., Ord. 53, R.3 (5), to claim the declaration and order sought.

On the federation's appeal which proceeded on the assumption that the Inland Revenue had no power to grant such a tax "amnesty ", the Court of Appeal (by a majority) allowed the appeal holding that the body of taxpayers represented by the federation could reasonably assert that they had a genuine grievance in the alleged failure of the Inland revenue to do its duty and the granting of an unlawful tax indulgence to the casual workers, and accordingly they had a " sufficient interest " within the meaning of R.S.C. Ord. 53, R.3 (5) to apply for judicial review under that order."

24. Lord Wilberforce in an appeal to the House of Lords by the Inland Revenue Commissioners held as follows:

"I think that it is unfortunate that this course has been taken. There may be simple cases in which it can be seen at the earliest stage that the person applying for judicial review has no interest at all, or no sufficient interest to support the application: then it would be quite correct at the threshold to refuse him leave to apply. The right to do so is an important safeguard against the courts being flooded and public bodies harassed by irresponsible applications. But in other cases this will not be so. In these it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers or duties, and to the breach of those said to have been committed. In other words, the question of sufficient interest can not, in such cases, be considered in the abstract, or as an isolated point: it must be taken together with the legal and factual context. The rule requires sufficient interest in the matter to which the application relates. This, in the present case, necessarily involves the whole question of the duties of the Inland Revenue and the breaches or failure of those duties of which the respondents complain."

Lords Diplock and Scarman agreed with the aforesaid views of Lord Wilberforce.

25. The aforesaid judgment of the House of Lords was considered by Their Lordships in the case of S.P. Gupta Vs. President of India and Others, wherein their Lordships held in favour of the locus standi of the learned advocates to challenge the circular issued by the Ministry seeking to transfer the Judges and a host of such other issues.

26. The judgment of the House of Lords was also considered by a learned single Judge of this Court in the case of S.N. Bose v. State of West Bengal, reported in 1984 (1) CHN 110 : (AIR 1984 (NOC) 183 (Cal)). The writ petitioner in that case was aggrieved by renaming of Bose Para Lane in the Bagbazar area as Maa Saradamoni Sarani. The writ petition was allowed. A writ in the nature of mandamus was issued directing that no further effect be given to the decision to rename the Bose Para Lane.

27. In the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, the

question as regards the locus standi was raised when the writ petitioner raised his grievance against the conversion of a public park into a private nursing home. The views expressed by the House of Lords were also echoed in this case and the Apex Court held as follows:

"Locus standi to approach by way of writ petition and Refusal to grant relief in equity jurisdiction are two different aspects, may be with the same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in the wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing,. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in power and effective administrative guidance is forcing citizens to expose challenges with public interest flavour. Therefore, it is too late in the day to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact, public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yard stick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards free movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the" executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."

28. The view expressed by the House of Lords in the case of Inland Revenue was also echoed in the case of M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, wherein their Lordships held as follows:

"In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which

auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits."

29. In the case of Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, the following views were expressed:

"The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice."

30. The judgment in the case of Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, was followed in the case of Indian Banks' Association, Bombay and Others Vs. Devkala Consultancy Service and Others, their Lordships held as follows:

"Furthermore, even where a writ petition has been held to be not entertainable on the ground or otherwise of lack of locus, the court in larger public interest has entertained a writ petition. In an appropriate case, where the petitioner might have moved a court in his private interest and for redressal of his personal grievance, the court in furtherance of public interest may treat it as a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case.

We, therefore, do not agree with the submissions of the learned Counsel of the appellants that the respondent had no locus to maintain the public interest litigation or the writ petition filed by him pro bono publico before the High Court was not maintainable."

31. The case of the writ petitioner in sub-stance is that the award in favour of the respondent No. 2 is in violation of the rule of law. The learned Trial Court, after hearing all the parties, in its order dated 20th May, 2014 held:

"it will be necessary to consider at the stage of further hearing of this writ petition, the rationale behind the administrative decision to confer the award on the respondent No. 2 in the face of the aforementioned observations and findings of the Hon"ble Apex Court."

32. It was thereafter not open to the State to avoid the scrutiny of the Court or "to take shelter under cover of technicalities of locus standi" as opined by their

Lordships in the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, .

33. The power of the executive in the matter of grant of largess came up for consideration by the Apex Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, wherein their Lordships held as follows:

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

34. The State, it follows, has power to grant largess in diverse forms including by conferring awards and honours comprising of both monetary and non-monetary benefits but in the exercise of such power the State owes a duty to ensure that such powers are exercised strictly in accordance with the prescribed norms. No such norms have either been identified or alleged to have been followed in conferring the awards.

35. From a review of the authorities cited above, we are firmly of the opinion that it was no longer open to the learned Trial Court to decide the question of locus standi of the writ petitioner in isolation. Once the writ petition had been admitted and directions for final hearing after affidavit-in-opposition were issued with specific observation that rationale behind the administrative decision was required to be gone into it was incumbent upon the learned Trial Court to hear out the writ petition in its entirety.

36. The writ petitioner is the husband of the deceased victim of medical negligence. The writ petitioner is also a victim within the meaning of the amended Code of Criminal Procedure. He found his cause vindicated, when their Lordships held finally on 24th October, 2013 that:

"Dr. Mukherjee has shown utmost disrespect to his profession by being so casual in his approach in treating his patient. Moreover, on being charged with the liability, he attempted to shift the blame on other doctors."

37. Therefore the writ petitioner cannot be compared with any other person as contended by Mr. Chatterjee in his second submission. The third submission has

not impressed us because a plaintiff must have a cause of action in the traditional sense whereas a writ petitioner seeking judicial review of an act of the executive on the ground of breach of power or duty is only required to establish sufficient interest to support the application which he undoubtedly has.

38. The fourth and the fifth submission of Mr. Chatterjee are equally unmeritorious because the act of conferring the award is likely to be struck down in case it is held that power was exercised arbitrarily or in violation of Article 144 of the Constitution of India.

The State in its affidavit-in-opposition has alleged that:

"It is respectfully submitted that Article 144 of the Constitution requires all authorities including this Hon"ble Court to comply with the directions, orders and decrees of the Hon"ble Supreme Court and restrains any authority from pleading its inability to comply therewith. It is respectfully submitted that Article 144 of the Constitution has no manner of application in the instant case and the reference thereto is not only misleading but a misnomer."

39. Even assuming that the aforesaid contention of the State is correct insofar as purport of Article 144 of the Constitution is concerned, there can be no denial of the fact that the direction of the Supreme Court in the case of Balaji Raghavan and S.P. Anand Vs. Union of India, both to the Union of India and the States to frame guidelines before conferring awards, does not appear to have been complied with before granting the award to the respondent No. 2. The largess extended by the State in the form of award including monetary benefit would also be contrary to the judgement in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, if the State fails to demonstrate that the award was conferred in accordance with the prescribed norms.

40. The reasons advanced by the learned Trial Court to answer the question of locus standi in the negative are patently contrary to the view taken by this Court and the Apex Court.

41. We may also observe that whenever breach of power or duty on the part of the State or authority is alleged and a petition has been admitted after going into the question of locus standi of the writ petitioner to maintain the petition, even prima facie, it is not open to the Court to dismiss the writ petition at the final hearing without a meaningful enquiry into the breach complained of.

42. The judgments cited by Mr. Sen appearing for the State do not militate against the view we have taken. The first judgment cited by him is in the case of Ayaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others, , what had happened in that case was that the appellant was appointed Senior Clerk in the Municipal Corporation of Aurangabad on 6th February, 1990 as a scheduled tribe candidate on the basis of a certificate granted to him. The validity of the certificate was duly examined by the Vigilance Cell and confirmed in 1998.

43. In the year 2009, the respondent No. 5 filed a complaint alleging that the appellant had obtained employment by way of misrepresentation and that he did not belong to the scheduled tribes category.

44. It is in that context that their Lordships held that the respondent No. 5 was not a party aggrieved. The observations brought to our notice by Mr. Sen are as follows:

"A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to."

45. Our attention was also drawn to the following observations appearing from paragraph 10 of the judgment:--

"The expression, "person aggrieved " does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, and *State of Rajasthan and Others Vs. Union of India and Others*,)."

46. The question for consideration was whether the respondent No. 5 had the locus standi to make the complaint which was answered in the negative. Their Lordships have in paragraph 9 quoted above held that a writ petition is maintainable when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. The complaint of the respondent No. 5 in that case was not, as regards any breach of duty on the part of the authorities. The complaint of the respondent No. 5, in that case was that the appellant had secured the job on the basis of misrepresentation.

47. It may also be pointed out that in an earlier judgment in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the following views were expressed by the Apex Court:

"Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by the statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. " (*Judicial Review of Administrative Act* 4th Ed. R540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come

in the way of granting that relief under Article 226 . We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

48. The next judgment relied upon by Mr. Sen is in the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, . What had happened in that case was that an elected representative who was the President of the Municipal Council was removed by the Chief Minister of the State and he was also barred from contesting for a period of six years.

49. The respondent No. 5 the complainant and a political rival at the hearing before the Chief Minister urged new grounds which the appellant did not get an opportunity to meet. Before the Supreme Court, the point was agitated when direction was issued to produce the records. The records were not produced even before the Supreme Court.

It is in that context, that their Lordships have observed that:

"In case he has no legal peg for a justiciable claim to bring on, he cannot be heard as a party in a Us. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim¹ devoid of reasons."

50. The next judgment cited by Mr. Sen, is in the case of State of U.P. and Another Vs. Johri Mal, . What had happened in that case was that on 7th January, 1993 an advocate was appointed DGC (Criminal) which is deemed to be a post of a Public Prosecutor within the meaning of Section 24 of the Code of Criminal Procedure for a period of three years. His term was renewed for a year. Subsequent thereto his request for renewal was not granted. He presented a writ petition on the ground that his performance was found satisfactory both by the District Magistrate and the District Judge.

It is in that context that the Apex Court opined that:

"A writ of or in the nature of mandamus, it is trite, is ordinarily issued where the petitioner establishes a legal right in himself and a corresponding legal duty in the public authorities."

Which was brought to our notice by Mr. Sen.

51. The last judgment relied upon by Mr. Sen is in the case of Vinoy Kumar Vs. State of U.P. and Others, , what had happened in that case was that an advocate had filed a writ petition espousing the cause of action of his clients without disclosing why the affected persons themselves could not present the writ petition.

52. It is in that context that. Their Lordships held that the writ petitioner had no locus standi.

53. None of these judgments really help the State in establishing that the writ

petitioner did not have sufficient interest in the matter litigated before the Court.

54. All the points urged both by Mr. Sen and Mr. Chatterjee have thus been disposed of. We already have indicated our reasons as to why is the impugned judgment and order are not sustainable and are, therefore set aside.

55. The writ petition is remanded to the learned Trial court for Hearing on merits. It is clarified that the views expressed herein are for the purpose of disposal of this appeal which shall not preclude the Trial Court from arriving at its own conclusion in accordance with law based on the evidence which may be adduced by the parties. Costs and incidental to this appeal shall be costs in the in the cause.

56. Both Mr. Sen, learned Advocate appearing for the respondent No. 1 and Mr. Dutt, learned Advocate appearing for the respondent No. 2 prayed for stay of operation of this order. We have considered the prayer and reject the same.