

(2012) 12 DEL CK 0172

In the Delhi High Court

Case No : Writ Petition (C) No. 6609 of 2012

Manmeet Kaur

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 21, 226, 32

Citation : (2013) 196 DLT 301 : (2013) 133 DRJ 727 : (2013) 117 SCL 343

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Amit Agarwal and Mr. Pradeep Chhindra, for the Appellant; Rajeeve Mehra, ASG with Mr. Sumeet Pushkarna, CGSC with Mr. Gaurav Sharma and Mr. Aditya Malhotra for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This writ petition, filed in public interest, by an Advocate practicing in this Court, draws the attention of this Court

to the state of affairs prevailing in the Securities Appellate Tribunal, Mumbai, established under The Securities and Exchange Board of India Act,

1992 (SEBI). It is stated, that the said Tribunal was constituted to hear appeals against the orders of the Adjudicating Officers and comprises of a

Presiding Officer and two technical members; that only a sitting or a retired Judge of the Supreme Court or a sitting or a retired Chief Justice of a

High Court is eligible to be appointed as the Presiding Officer of the said Tribunal; that the last Presiding Officer of the Tribunal retired on 28th

November, 2011 and none has been appointed as the Presiding Officer till date; that treating the absence of the Presiding Officer as temporary,

the Ministry of Finance has vide order dated 5th December, 2011, invoking Rule

5(2) of the Securities Appellate Tribunal (Procedure) Rules, 2000, permitted the sittings of Tribunal to be presided over by one of the technical members; that since then the Tribunal comprising only of technical members has been entertaining, adjudicating and disposing of appeals. It is the contention of the petitioner that such functioning of the Tribunal without the Presiding Officer and the order dated 5th December, 2011 are illegal and the Rule aforesaid invoking which the order dated 5th December, 2011 has been issued is ultra vires the SEBI Act and the law. Reliance in this regard is placed on L. L. Chandra Kumar Vs. Union of India and others, , R.K. Jain Vs. Union of India and Others, Union of India (UOI) Vs. R. Gandhi, President, Madras Bar Association, and judgment dated 13th September, 2012 of the Supreme Court in W.P.(C) No. 210/2012 titled Namit Sharma Vs. Union of India.

2. It is further the contention of the petitioner that the cases before the said Tribunal involve intricate questions of law and which cannot be adjudicated without a person with wide adjudicatory experience and qualifications and status defining a Presiding Officer and which the members of the Tribunal do not have.

3. It is yet further the contention of the petitioner that such absence of the Presiding Officer cannot be treated as temporary. In this regard it is stated that the search for the Presiding Officer was not commenced in time and the counsel for the petitioner has argued that since the date of retirement of the earlier Presiding Officer was known, the selection process ought to have been initiated well in advance to avoid any contingency as has arisen. It is contended that even now there is inaction in the matter of appointment of Presiding Officer.

4. The petitioner further contends that the absence of the Presiding Officer also vitiates the process of selection of a member of the Tribunal. It is contended that the process for such selection for a member in place of one of the Members who is to retire on 27th December, 2012 has begun and an officiating Presiding Officer cannot take the place of a Presiding Officer who is to be a member of the Selection Committee. In this context it is pleaded that though Rule 3 of the Securities Appellate Tribunal (Salaries, Allowances and other Terms and Conditions of Presiding Officer and other Members) Rules, 2003 provides that appointment of Presiding Officer or

Members shall not be invalidated merely for the reason of any vacancy or any defect in the constitution of the Selection Committee but the said Rule cannot provide a carte blanche power to the executive to

remain cognizant of the defects and yet take actions with the presence of such defects only to subsequently claim the shelter of the said provision.

5. It is yet further contended that civil servants are being given illegal preference in the matter of appointment as Members of the Tribunal. Reliance

in this regard is again placed on R. Gandhi supra.

6. This petition came up first before us on 17th October, 2012 when we had directed the learned ASG appearing on advance notice to inform us

as to what steps are being taken for selection of Presiding Officer and had also directed that the said appointment be expedited.

7. The learned ASG has today produced the records pertaining to appointment of the Presiding Officer before us and on the basis thereof has

contended that no Judge of the Supreme Court or Chief Justice of High Court, sitting or retired, have shown willingness to take up the appointment

as Presiding Officer of the Tribunal and which has led to the proposal for amendment of the SEBI Act to make even a sitting or a retired Judge of

the High Court eligible for appointment as the Presiding Officer. It is contended that amendment to the said effect is proposed to be moved in the

Parliamentary session underway.

8. In the face of the aforesaid, we can only direct the Government to ensure that the proposed amendment to the SEBI Act is moved within the

current Parliamentary session and the consequent steps also taken in right earnest to ensure appointment of the Presiding Officer of the Tribunal at

the earliest. We direct accordingly.

9. The counsel for the petitioner has pressed for other reliefs claimed in the petition, of quashing of the order dated 5th December, 2011 supra, of

declaration of Rule 5(2) supra as ultra vires and unconstitutional, of quashing of process of selection of member and issuance of directions to

ensure that civil servants or bureaucrats who have retired or are on the verge of retirement are not inducted as members of the Tribunal.

10. It being the plea of the petitioner as aforesaid that the functioning of the Tribunal in the absence of a Presiding Officer is illegal, the petitioner

also seeks the interim relief of stay of the order dated 5th December, 2011; of

stay of the process initiated of selection of member and which would have the effect of bringing the functioning of the Tribunal to a standstill.

11. Finding it a little strange as to why an Advocate practicing in this Court should be interested in bringing the functioning of a Tribunal situated in

Mumbai to a standstill, we have enquired from the counsel for the petitioner as to the locus of the petitioner to maintain the present petition even in

public interest and drawn the attention of the counsel to *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI)* and *Another*, reiterating that vires

of a statutory provision cannot be challenged in a vacuum and without any cause of action. It is also enquired from the counsel whether the

petitioner Advocate has any practice or cases before the Tribunal.

12. The counsel for the petitioner has fairly stated that the petitioner is not a legal practitioner before the Tribunal and has never appeared before

the Tribunal. He has however contended that she as an Advocate is entitled to maintain a challenge to statutory provisions in public interest and

reference in this regard is made to *S.P. Gupta Vs. President of India and Others*, *S.P. Sampath Kumar and Others Vs. Union of India (UOI)* and

Others, and to *Salem Advocate Bar Association Vs. Union of India (UOI)*, (where amendments of the year 2002 to the CPC were challenged)

and *Pareena Swarup Vs. Union of India (UOI)*, .

13. The counsel however again fairly admits that in none of the said judgments the aforesaid question was raised or decided. The Supreme Court

in a catena of decisions has held that a decision is an authority for what it decides and not for what can logically be deduced therefrom. (See

Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, and *Inderpreet Singh*

Kahlon and Others Vs. State of Punjab and Others, Lord Halsbury in *Quinn v. Leathem* (1901) A.C. 495 said, ""...The other is that a case is only

an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a

mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at

all..."". The judgments mentioned in preceding paragraph, can thus not be treated as precedents to the maintainability of this petition filed in public

interest though by an Advocate but who is not a practitioner in the field and

before the Tribunal grievance with respect to functioning whereof is made.

14. The Supreme Court recently in *Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others*, has again cautioned the courts

against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. It

was held that the right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human

rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided.

The courts, whenever any public interest is invoked, must examine the case to ensure that there is in fact, genuine public interest involved. It was

also directed that the courts must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome

bystanders are not granted a Visa".

15. Public interest litigation has its genesis in providing access to justice to persons who by reasons of poverty, helplessness or disability or socially

or economically disadvantaged position, are unable to themselves approach the court for relief. (see *Vinoy Kumar Vs. State of U.P. and Others*,

That is not the position here. Persons appealing to or parties to proceedings before the Tribunal can neither be classified as poor or helpless or

suffering from any disability or disadvantage. That is not the argument of the counsel for the petitioner also. On the contrary the learned ASG has

invited our attention to judgment dated 26th November, 2012 of the Division Bench at Bombay where the relief sought of prohibiting the members

of the Tribunal from functioning was declined and the Government was held to be justified in issuing the order dated 5th December, 2011 for

dealing with the present contingency. All these circumstances lead us to suspect the motives in filing the present petition, as aforesaid intended to

bring the functioning of the Tribunal to a standstill.

16. The Supreme Court, in *Ghulam Qadir Vs. Special Tribunal and Others*, while holding that the orthodox Rule regarding locus standi, that rights

under Article 226 of the Constitution of India can be enforced only by an aggrieved person (except in the case of a writ for habeas corpus or quo

warranto) has undergone a sea change in the context of writ petitions filed in

public interest, still observed that a mere stranger having no right would still not have locus standi. The Supreme Court in *Ayaaubkhan Noorkhan Pathan supra* also summarized the law in this regard to the effect that a person who raises a grievance, must show how he has suffered legal injury and generally, a stranger having no right whatsoever cannot be permitted to intervene in the affairs of others. Reliance can also be placed on *Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, .*

17. We may however clarify that public interest litigation affecting the administration of justice, at the instance of the Advocates practicing in the court/fora and representing litigants before that court/fora can be entertained in as much as those lawyers would have locus to the extent of being directly affected by the functioning of the said courts/foras. However as aforesaid, the petitioner herein who is represented through another counsel who is registered with the Bar Council of Rajasthan and has given the address of his Jaipur office also are indeed strangers and not concerned with the Tribunal qua functioning whereof grievance has been made. We are thus not inclined to entertain the present petition, which appears to be for the benefit of persons interested in delaying the proceedings before the Tribunal, rather than in public interest. It is the averment in the petition itself that the Tribunal deals with matters of high monetary value and we are sure that any of the parties to the said matters is competent to, if aggrieved, have access to courts.

18. We also do not find the reliefs claimed in this petition, aimed at bringing the functioning of the Tribunal to a standstill to be in public interest. We however hasten to clarify that our observations herein are in the context of locus standi to maintain the petition only and are not meant to come in the way of any person aggrieved by the order of the Tribunal and desirous of challenging the same on the same grounds as raised in this petition.

The Supreme Court, in *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, though laid down the following

guidelines in relation to public interest litigations:-

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested

person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

(ii) Issues of public importance, enforcement of fundamental rights of large number of public vis-a-vis the constitutional duties and functions of the

State, if raised, the Court treat a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings.

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in Articles 14 and 21 of the Constitution of

India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the

deprived, the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.

(v) When the Court is prima facie satisfied about violation of any constitutional right of a group of people belonging to the disadvantaged category,

it may not allow the State or the Government, from raising the question as to the maintainability of the petition.

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would

apply depend on the nature of the petition as also facts and circumstances of the case.

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation.

(viii) However, in an appropriate case, although the petitioner might have moved a Court in his private interest and for redressal of the personal

grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the

interest of justice.

(ix) The Court in special situations may appoint Commission, or other bodies for the purpose of investigating into the allegations and finding out

facts. It may also direct management of a public institution taken over by such committee.

(x) The Court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete

justice to the parties, it does not have a power akin to Article 142 of the Constitution of India.

(xi) Ordinarily the High Court should not entertain a writ petition by way of Public Interest Litigation questioning constitutionality or validity of a

Statute or a Statutory Rule.

but nevertheless held that it is difficult to draw a strict line of demarcation as to which matters and to what extent PILs should be entertained. We

have examined the present matter on the touchstone of above guidelines and having given our anxious consideration to the matter in entirety, are of

the opinion that the present is not a fit case for being entertained any further, in public interest.

We therefore dismiss this petition save for the directions contained in para 9 hereinabove. In spite of our observations aforesaid, we refrain from

imposing costs.