

(1988) 09 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 2335 of 1988

Manubhai Paragji Vashi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-09-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 3 BomCR 521

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; D.R. Dhanuka and S.M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Daud, J.—This petition purporting to be in the public interest seeks various directions to the State of Maharashtra - being the 1st respondent to make disclosures and launch actions for recovery of dues and eviction against respondents 2 to 10 and others similarly situated.

2. The Gujrati daily "Janmabhoomi" in its issue dated 1 July, 1988 had an item drawing attention to the outstandings of occupation dues from ex-and the-then-ministers of the State Government. Exh. A is claimed to be an English rendition of the same. Stirred by the same, petitioner addresses a letter to the Chief Secretary to the Government to ascertain in the true position. There was no response to the said letter advocate hence this petition.

3. The press report aforementioned reveals huge outstandings from respondent 2 to 7 who are in the present Ministry and respondent 8 an ex-minister. Respondents 9 and 10 are Ex-chief Ministers but still in occupation of spacious Government bungalows. Because of this improper and impermissible continuance, a number of new ministers are without official accommodation. The State Government has allowed this shocking state of affairs to continue. In fact it

wants to write off the arrears. This would be a gross abuse of power made obscene by recourse to coercive measures for recovery of trifling sums from the humblest of citizens. The first respondent be caked upon to---

(1) declare the names of ministers and legislators, past and present, of defaulters together with the necessary particulars :

(2) declare the names of the above category in unauthorised occupation of Government premises :

(3) reveal steps taken to recover dues and evict the illegal occupants and forthwith do the same if it has not been done already.

4. Respondent 1 has filed a provisional return to oppose the admission of the petition. It is admitted that certain arrears of rent and other charges are outstanding from most of the other respondents. No part of the arrears will be remitted and the sums due and payable in law are being collected in due course. The petition is an attempt to have courts supervising the administration of affairs by the Government of the day. That is not permissible under Article 226. Ex-ministers still in occupation of Government accommodation have been requested to vacate. Therefore, even on merits there is no case for the Court to interrogate or give directions to the State.

5. Petitioner, with a view to support the maintainability of the petition relies upon *Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others*, . In particular reliance is placed upon the following, viz.:-

"While protecting its jurisdiction authority and time from abuse of process, the High Court at the same time should not abdicate its role as the sentinel qui vive of the rights and liberties of the citizens. The accountability of the executive to the people through the judiciary cannot be set at naught by any self-induced doubts regarding the jurisdiction of the Court or the property of the Court to entertain matters raising genuine questions of annihilation of constitutional values by the executive."

It may be possible to subscribe to this view, for there are no answers when Courts are faced with what are "underline cases". It is better not to go by mere theory without an examination of the particulars that have a bearing on the issue of jurisdiction as also property. To that object I now turn.

6. The short question to be decided is whether the petition discloses a justifiable cause? For answering this question it will be necessary to categorise the grievance made in the petition. Petitioner complains of the Government dragging its feet in the matter of revealing the names of public men who are in illegal occupation of State accommodation, recovering the huge arrears of occupation charges and/or initiating effective action to recover the premises and dues. This it is alleged, is an abuse of governmental power inspired by political cronyism. Maladministration and that is what the complaint amounts to -can be corrected by judicial intervention. There are however innumerable forms of imperfections in

the administration. The administration may be that by the executive, but is not to be assumed to be limited to them. The judiciary and the legislature have their administrative set-ups and these are no more perfect than their counterparts in the executive. Some of the failings by these administrations have consequences that give rise to actionable causes. If these are sufficiently grave, a public interest petition may be entertained. This however doesn't mean that in the name of public interest, courts take over the function of supervising every fact of the administration everywhere. The polity has in it the element of checks and balances, but it should not be assumed that every organ of the constitution can act as a watchdog over others. The judiciary has to be more circumspect than the other organs, for, unlike the executive and the legislature it has a degree of permanence vis-a-vis personnel and methodology, which they lack. This is not restraint in response to critics accusing the judiciary of playing God or being imperial and imperious. The need for caution is on account of considerations of public interest which has professedly prompted this petition.

7. The petition deals with Government accommodation and the abuse of that power by respondent No. 1 with a view to favour respondent No. 2 to 10 and their ilk. The power, its exercise and misuse, take us to the realm of an abstruse bench of administrative law. The conventional view is that this power, termed the prerogative, has definite limits which the Courts take cognisance of. The extent thereof is controlled by law, whether it be the result of tradition or enactment. But the manner of its exercise within the confines is immune from judicial scrutiny and correction. There are decisions which have gone further e.g. *Laker Airways Ltd. v. Dept. of Trade* 1977 Q.B. 643 where Lord Denning M.R. went the extent of saying that the law permits intervention by the Courts where the discretion is exercised improperly or mistakenly. The Supreme Court in a recent decision, *J.R. Raghupathy and Others Vs. State of A.P. and Others*, , has opined that prerogative powers in our executives vested vide Articles 73 and 162 of the Constitution, are much wider than the prerogative powers in England (see page 1692). Mr. Justice A.P. Sen speaking for the Court in the above decisions points out that judicial opinion in England on the review ability or otherwise of prerogative power, depends on whether the subject matter is suitable for judicial control. His Lordships cites with seeming approval the following passage from H.W.R. Wade's *Administrative Law*, 5th Edn. At page 352 :---

"On the one hand, where Parliament confers powers upon some Minister or other authority to be used in discretion, it is obvious that the discretion ought to be that of the designated authority and not that of the Court. Whether the discretion is exercised prudently or imprudently, the authority's word is to be law and the remedy is to be political only. On the other hand, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion."

8. Tested thus, can it be said that the petition raises a subject suitable for judicial control. Look at the prayers : First, petitioner wants the Government to disclose the names and other particulars of the defaulters amongst the public men. This recourse to the judicial power for purposes of exposure. I agree that such revelations, at times, are healthy for a proper and democratic functioning of the administration. That task has however to be and is better performed by the legislature, the press and best of all, the electorate. Next, petitioner wants Government to disclose steps taken by it to effect recoveries and evict illegal occupants. Again, this is not within the realm of the judicial power. The Government of the day is accountable to the legislature and the people for its failure to exercise the discretionary power properly. This State has Ombudsman to inquire into administrative inaction and malfunctioning. It is not proper for Courts to interpose themselves, where the Lokayukta can act effectively. Last, petitioner wants this Court to direct Government to take appropriate steps to undo the rot. The return filed by respondent 1 contains the assurance that steps have and will be taken to recover the dues etc. etc. This assurance is enough for no one can expect Courts scrutinising steps taken and their adequacy, or otherwise, and giving directions as to what would be calculated to produce better results.

9. Having analysed the factual and legal position, it is clear that there is no ground for entertaining the petition. The questions raised are not suited to judicial control. The petition is rejected with no order as to costs.