
(2019) 10 BOM CK 0057

In the Bombay High Court

Case No : Public Interest Litigation No. 119 Of 2018

Mrinall Shashi Shekhar

APPELLANT

Vs

Election Commission Of India And Anr

RESPONDENT

Date of Decision : 09-10-2019

Acts Referred:

Representation Of The People Act, 1951 — Section 77, 78, 78A
Constitution Of India, 1950 — Article 14, 21, 226, 324, 324(1)

Citation : (2019) 10 BOM CK 0057

Hon'ble Judges : R.K. Deshpande, J; Vinay Joshi, J

Bench : Division Bench

Advocate : Mrinall S. Chakravorty, N.G. Choubey, U.M. Aurangabadkar

Final Decision : Dismissed

Judgement

Vinay Joshi, J

1. Heard the Petitioner in-person and learned Counsel for the respective respondents.

2. The challenge in this Public Interest Litigation (PIL) is to the Constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 ("the Symbols Order"), as well as to the validity of explanation added to Section 77 and to the Section 78-A of the Representation of the People Act, 1951 ("the 1951 Act"). The challenge is based on the premise of violation of Article 14 of the Constitution of India.

3. The petitioner has prayed for the following reliefs in his petition :

"a. Freeze the presently reserved symbols for a period of 20 years.

b. Stay the effect, operation and execution Election Symbols (Reservation and Allotment) order 1968.

c. Grant ex-parte ad-interim relief in terms of prayer clause b.

d. Pass orders to allot unreserved election symbols to all candidates at the same time before elections. It be further clarified that candidates of the same party but from different constituencies should have different symbols. Alternatively the photograph of the candidate may be displayed on the EVM/Ballot paper.

e. Pass orders to hold no classification as recognized party and unrecognized party.

f. Declare the Election Symbols (Reservation and Allotment) Order 1968 made by The election Commission of India as Illegal, arbitrary and unconstitutional as it is violative of Art.14 of The Constitution.

g. Hold explanations to Sec 77 of RP Act 1951 as ultra vires and cause it to be understood as interpreted by the Honourable Supreme Court in Kanwar Lal Gupta vs Amar Nath Chawla and Ors on 3 October, 1974 and declared Sec 78 of The RP Act 1951 as unconstitutional.

h. Pass orders to grant equivalent privileges to all candidates in an election.

I. Grant any other relief and pass such other order as this Hon'ble Court may deem fit and proper in facts and circumstances of the case and in the interest of justice.

4. Initially, the petitioner prayer for grant of ad-interim relief in the nature of freezing of election symbols and stay to the effect and operation of the Symbols order, till the final disposal of the petition. This Court declined to grant ad-interim relief, since there exists a presumption of validity of the enactment and the Rules. The petitioner has challenged refusal of interim order by way of filing a Petition for Special Leave to Appeal (C) No. 557/2019. The Hon'ble Supreme Court has also refused to interfere in the matter, but, has requested this Court to hear and decide the Writ Petition (PIL) as expeditiously as possible.

5. Accordingly, we have heard exhaustively the petitioner in-person, learned Counsel and A.S.G.I., for respondent nos. 1 and 2. Though the respondent no.1 in its reply-affidavit resisted the petition on facts, however, during the course of arguments, has strongly objected to the maintainability of the petition contending that the petitioner has no locus to challenge the constitutional validity of Symbols order and the statutory provisions of law. In short the very maintainability of the PIL is questioned.

6. The objection raised to the validity of the Symbols Order is on the ground that it was legislative in character and the Commission has no power to issue it, in absence of entrustment of Rule making power in relation to elections. Apart from the challenge to the validity of the Symbols Order, the petitioner has contended that the Symbols Order vide Rule 6 made unreasonable distinction and classification between the recognized political parties and unrecognized political parties. It is his contention that such uncalled classification is against the right of equality guaranteed in terms of Article 14 of the Constitution of India. The petitioner's focus is on the pictorial symbols allotted to the candidates contesting

election. According to the petitioner, a candidate of a recognized political party contests the election on the symbol which is reserved for the party and the same symbol is being used for years together. Such party/parties starts campaigning with the reserved symbol much earlier than the election, which puts them into an advantageous position. As against this, for a candidate from unrecognized party, as well as for an independent candidate, unreserved symbols are allotted barely near about 15 days prior to the election, which puts them into a disadvantageous position. As such, this artificial distinction carved out by the Symbols Order is discriminatory and violates the constitutional goal.

7. Secondly, it is petitioner's case that the explanation newly added to Section 77 of the 1951 Act, creates unreasonable classification between recognized political parties and unrecognized political parties. So is the position regarding Section 78 of the 1951 Act. The petitioner would submit that the explanation to Section 78 provides certain privileges to recognized parties, as regards to the election expenses, than unrecognized parties, which violates the rights of unrecognized parties. As regards to Section 78-A of the 1951 Act is concerned, it provides supply of free of costs copies of electoral roll to recognized parties, which puts them in advantageous position, and as such it creates discrimination.

8. So far as the first challenge about validity of Symbols Order is concerned, respondents submitted that the said issue is concluded by the decision of the Hon'ble Supreme Court in case of *Kanhiya Lal Omar .vrs. R.K. Trivedi and others* (AIR 1986 SC 111).

Respondents particularly took us to the observations contained in paragraph no.16 of the said judgment, the text of which reads as under:

"16. Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules, the power of the Commission under Article 324[1] of the Constitution which is plenary in character can encompass all such provisions. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' as well as 'conduct of all elections' are the broadest terms which would include the power to make all such provisions. See *Mohinder Singh Gill v. Chief Election Commr..New Delhi* (1978) 2 SCR 272 : (AIR 1978 SC 851) and *A.C. Jose v. Sivan Pillai* (1984) 3 SCR 74 : (AIR 1984 SC 921)."

9. Be that as it may, it would be logical to first deal with the issue relating to the maintainability of the petition. Respondents contend that the Constitutional validity of the provisions of the Act/ Order/Rules cannot be challenged in Public Interest Litigation in absence of bonafides. In this regard, respondents have relied on the reported judgment of the Gujarat High Court in case of *Raj Sanjaybhai Tanna .vrs. Union of India* [2018(17) G.S.T.L. 370] and the another by Madras High Court in case of *G.V. Vairam Santhosh .vrs. State of Tamil Nadu* (Writ Petition No. 12036/2014, decided on 26.08.2014).

10. Obviously it is for the petitioner to satisfy the Court about the maintainability

of the petition, which is projected as Public Interest Litigation. Undisputedly, the petitioner is not espousing his own cause, but, he is challenging the provisions of law branding it to be in public interest. On bare reading of the entire petition, we do not find a single word which could convey that the petitioner is a person who is directly aggrieved. Therefore, the maintainability of the petition requires close examination, though it is projected as Public Interest Litigation.

11. Only a person who has suffered from some legal injury can challenge the Act/Orders/Rules etc., in the Court of law. Writ Petition under Article 226 of the Constitution of India is maintainable for the purpose of enforcing a statutory or legal right, where there is a complaint of breach of statutory duty on the part of the Authorities. We are aware that rule of locus standi in public interest litigation requires no rigid litmus test, but, certainly Courts are empowered to examine the case on settled parameters. The dominant object of public interest litigation is to ensure the observance of the provisions of Constitution or the Law, which can be best achieved to advance the cause of a community or disadvantaged groups. However, only a person acting bonafidely or having sufficient interest in the proceedings of public interest litigation, will alone have locus and can approach the Court for the poor and needy suffering from violation of their statutory rights. This necessitates us to examine the case to ensure the bonfides and whether there is involvement of genuine public interest. The Court is expected to maintain strict vigilance to ensure that there is no abuse of the process of law and that ordinarily the by-standards are not granted passport.

12. In Black's law Dictionary (6th Edition), 'public interest' is defined as "something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything to narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government..."

13. In our country, the concept of Public Interest Litigation initially surfaced in the year 1976. After germination of the seeds of concept of public interest litigation in the soil of our judicial system, this Rule of public interest litigation was nourished, nurerched and developed by the Supreme Court in the series of decision. The traditional syntax of law in regard to locus standi for a specific judicial redress, has been relaxed to achieve the avowed purpose. The recognition for departing with the strict rule of locus standi was to echo the voice of down trodden or poor who are unable to approach the Court for one reason or the other. Gradually, the Courts have perceived, misuse of public interest litigation, hence, as a note of caution, examination of bonafides of petitioner has become an order of the day.

14. Way back in the year 1992, the Supreme Court in case of Dr. P. Nalla Thampy Thera .vrs. Union of India and others [(1992) 4 SCC 307], has observed as under :

"98. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly-developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

15. Undoubtedly, public interest litigation is a weapon which has to be used with great care and circumspection and Courts have to be extremely careful to see that behind a beautiful veil of public interest, whether any private malice, vested interest or publicity stunt is lurking. Basically, public interest litigation should be aimed at redressal of public wrong or public injury. The approach of Court is to make differentia in between bonafide cause raised for the benefit of public or it is nothing, but, for oblique consideration. The Court must not allow its process to be abused for oblique consequences. We may hasten to add, in such a proceeding volume of time of Court is consumed which time otherwise could have been spent for the disposal of cases in genuine litigation.

16. We may profitably note here the observations of Supreme Court in case of Ashok Kumar Pandey .vrs. State of West Bengal (AIR 2004 SC 280).

"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 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. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. 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.

14.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 busy bodies 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."

17. The basic idea behind diluting the concept of locus is based on the philosophy that the actual person aggrieved because of his ignorance, illiteracy, unarticulation or poverty, is unable to approach the Court for his own cause. Here the petitioner took a self motivated flag for the candidates of unrecognized political parties or independent candidates, who are desirous to contest the elections. Certainly, the said class cannot be termed as ignorant, illiterate or members from poor strata of the society. None of them has raised this challenge, therefore, it is inappropriate to examine said cause which amounts to foreclosing their rights at the behest of somebody else. Such class may have some different angle to view the changed provisions which one may not know. In the circumstances, not even a single characteristics of public interest litigation is visible.

18. We may note the observations of the Hon'ble Supreme Court in case of BALCO Employees' Union (Regd) .vrs. Union of India and others [(2002) 2 SCC 333], which reads as under :

"78. While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S.B. Sathe has summarised the extent of the jurisdiction which has now been exercised in following words :-

"PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive:

- Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, under trial prisoners, prison inmates).
- Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganised labour etc.).
- Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
- Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).
- Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water".

79. There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

80. 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. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same."

19. In case of *Janta Dal .vrs. H.S. Chowdhary* [(1992) 4 SCC 305], the Hon'ble Supreme Court has opined as under:

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

20. The Hon'ble Supreme Court in case of *Guruvayoor Devaswom Managing Committee and another .vrs. C.K. Rajan and others* [(2003) 7 SCC 546], took survey of various decisions in the field and summarized the position in paragraph no.50 of the judgment. One of the principle which the Hon'ble Supreme Court noted, is reproduced hereinbelow :

"50[i] ...

[ii] ...

[xi] Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule."

21. Present petition is silent about any nexus of petitioner with the cause which has been self shouldered. In this luxury litigation, the petitioner has nothing to lose, but, is trying to gain and thus, it is a wastage of valuable time of the Court. Our system should not afford us to succumb to such attacks. No doubt the doors of Courts are open in entertaining the real and genuine public interest involved matters, but, certainly the adventurous experiments are to be nipped into the bud. The system is not so fragile which can be usurped by anybody for no reason by invoking the extra ordinary jurisdiction which has its own sanctity and object.

22. In the result, we are not inclined to entertain the petition which is styled as Public Interest Litigation. We are of the opinion that this is not a fit case where Public Interest Litigation jurisdiction should be invoked or exercised. There is nothing to suggest that none of the affected person can take up the cause and

approach to the Court of law. Majority, if not, all of them who are contesting or desiring to contest the election would be person with proper means who can also avail proper legal remedy. This is not a case where the petitioner is espousing the cause of a weaker section of the society, who on account of hardships and handicaps inherently faced by them, are unable to knock the doors of justice. In substance, there is no reason why such an issue can be examined in public interest, as stated above. Accordingly, we dismiss the petition on account of non-maintainability. We make it explicit clear that we have not dealt with the challenges raised by the petitioner on merit. No order as to costs.