

(1995) 11 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7228 of 1995

Ratnesh Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0005

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—Whether the present writ petition filed by Shri Ratnesh Kumar Singh, an Advocate of this Court, as Public Interest Litigation (for short "P.I.L.") is maintainable, and whether the relief claimed that the examinees may be allowed choice examination centre/residential centre in the various Entrance Examinations for Admission in the Technical Institution (Medical/Engineering etc.) and other competitive examinations can be allowed, particularly in respect of subsequent year when the examination has already been held in May-June, 1995, are, short but significant questions for our determination in the present writ petition filed under Articles 226/227 of the Constitution of India.

2. We are conscious that the facts form raw material out of which, finished product of judicial findings is fabricated after processing through established legal principles, as in life so in law. It is as fatal, at the same time cowardly not to bring full facts because they are not to out taste. Factual foundation of the petition appears, therefore to be imperative. By the instant writ petition relief has been sought for issuance of a writ in the nature of mandamus directing the Respondents not to cause harassment to a number of candidates appearing in the various entrance examinations for admission in Technical Institutions (Medical/Engineering etc.). The Respondents conduct the examinations for selecting candidates for admission in the Technical Institutions. The centres for holding such examinations are fixed arbitrarily at a considerable and inconvenient distance, particularly to the girl students. The principal prayer is that the Respondents be directed to hold examinations on the choice Centres of

the examinees. The Petitioner being an Advocate has however, nowhere averred in the petition as to how he is interested in the welfare of the examinees. Even after residential centres are not allowed to hold examination, there has been no noticeable reform in the matters of unfair means and/or leakage of question papers etc. The policy of the Government is in violation of the Bihar Conduct of Examination Act, 1981.

3. By a supplementary affidavit it has been averred in paragraph 4 that the "Petitioner is also the guardian of the examinees". The simple meaning of this sentence that "the Petitioner is the guardian of all examinees" appearing in such examinations. It is in fact surprising as to how an Advocate of this Court can be guardian of the examinees, without indicating the names of the students under his guardianship. The expression is too vague to be appreciable.

4. On behalf of the Petitioner it was urged that the order for fixing Centres for examination at distant places has adversely affected the legal and fundamental rights of the students appearing for Technical Examinations concluded in May-June, 1995.

5. The learned Counsel for the Respondents raised a preliminary objection that the present P.I.L. would not be maintainable, as the same has not been filed by the aggrieved person or by any of the examinees or his/her natural or legal guardian. The Petitioner being an Advocate, belongs to the noble profession of law but has not specifically stated as to how he is interested in the welfare of the examinees, except a bald averment in the supplementary affidavit that he is guardian of all the examinees. It was also urged that the examination for 1995 for which the relief was sought, has already been held in May-June, 1995 and no relief for further examinations has been claimed. The preliminary objection raised, was refuted on behalf of the Petitioner, and the petition as P.I.L. is maintainable and reliance was placed on *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, and *S.P. Gupta Vs. President of India and Others*, and on *Rural Litigation and Entitlement Claim v. State of U.P.* (judgments Today (1988 (3) SC 787).

6. On behalf of the Respondents reliance was placed on a Division Bench case of this Court in *Arijit Dutta v. Union of India* (1994) 2 BLJR 839 and on *Dr. Nandjee Singh Vs. P.G. Medical Students Association and others*,

7. Having scrutinised the submissions of the learned Counsel for the parties the main questions are, as to whether the present petition in the form of P.I.L. is maintainable and as to whether in absence of any prayer in the relief portion for future examinations (after May-June, 1995), can the relief be granted in respect of the future examinations.

8. As regards the first question, the present petition was filed as P.I.L. by an Advocate of this Court and the relief was claimed for the benefit of the students who appeared at the various entrance examinations for admission in the Technical Institution (Medical/Engineering etc.). The Petitioner has not shown any

relationship with the students. By a Supplementary Affidavit, however, it has just been stated that the students are under his guardianship, without stating specifically as to who are the students under his guardianship. Such vague averments cannot be appreciated. He who seeks equity must do equity. He must come with clear averment that the Petitioner is also the guardian of the examinees. The aggrieved persons were the students but none of the students has come forward. The vague statement that the Petitioner is guardian of the students cannot be accepted for want of precision. No doubt in *S.P. Gupta Vs. President of India and Others*, Hon''ble Bhagwati, J. dealing with the question about the locus standi or standing in P.I.L. on the preliminary question being raised by the Respondents ruled as follows:

Where a legal, wrong or a legal-injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal, wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for an appropriate direction, order or writ in the High Court under Article 226, and in case of breach of any fundamental right of such person or determinate class of persons in the Supreme Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the affected persons are really helpless, the Supreme Court will not insist on a regular writ petition to be filed by the public-spirited individual espousing their cause and seeking relief for them. The Court will really respond even to a letter addressed by such individual acting pro bono public despite the fact that formal rules exist with regard to filing of petitions under Article 32.

The aforesaid observations under paragraph 17 of the aforesaid decision have to be taken in the matter of locus standi as also it is indicated to the effect that in such matters a Court has to scrutinise to ascertain whether there was any helplessness or disability on the part of persons aggrieved or not and whether it was bona fide. The following observations in *S.P. Gupta's case* (supra) also appear to be imperative:

But the individual who moves the Court for judicial redress in cases of this kind, must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or some other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court.

9. From the aforesaid observations of their Lordships of the Apex Court in *S.P. Gupta's case* (supra) it is manifest that the bona fide of the Petitioner in a P.I.L. has to be ascertained by the Court and it has to be also ascertained whether the

Petitioner was acting bona fide and the Court has to be satisfied that the petition has been filed bona fide and not with an oblique motive as emphasised by the Apex Court. Even in the matter of the letter addressed by any person for treating it to be a writ petition precaution has to be taken as to whether it is bone fide or not. In the aforesaid case Shri S.P. Gupta was an Advocate practising in Allahabad High Court and he was interested in the working of the judiciary. In that view of the matter the petition on his behalf was treated to be maintainable; whereas in the instant case the facts are entirely different.

10. In the State of Himachal Pradesh v. Parent of a Student of Medical College, Shimla and Ors. (AIR 1958 S.C. 910) (supra) no doubt, a letter Addressed to a Judge of the High court was treated to be a regular writ petition and was decided on merits, but that was a letter written by a parent of the student, in the instant case also, the parent of any student could have filed such writ petition Or any student himself could have come here. Consequently, that case has to be confined to the particular facts of that case and the ratio in respect of the maintainability of the writ petition cannot be extended to the present writ petition. The case in Rural Litigation and Entitlement Claim v. State of U.P. (supra) was based on different facts inasmuch as no individual dispute could be raised in that case.

11. The recent decision on the Apex Court should indicate that the P.I.L. unless it appear to be bona fide and genuine need not be encouraged as that hampers the cause of other traditional litigants including writ petitions for individual grievances either in connection with violation of fundamental rights or otherwise. Certain limitations have been imposed by the Supreme Court and other courts on entertaining P.I.L. and they appear to be appreciable in the circumstances of the case.

12. In Dr. Nandjee Singh Vs. P.G. Medical Students Association and others, the Apex Court has clearly indicated and declared the law on the subject very precisely under paragraph 12 at page 2267 as follows:

12. The facts narrated above would reveal that this was a dispute relating to an individual and turned on the facts there was no question of law involved in it. We have, therefore, not understood how the Respondent-Association could convert an individual dispute into a public interest litigation. We are of the view that cases where what is strictly an individual dispute is sought to be converted into a public interest litigation should not be encouraged. The present proceeding is one of the kind. The learned Counsel appearing for the Respondent-State wanted to support the Respondent-Association. We did not think it necessary to hear the State since the dispute was essentially with regard to the interpretation of the facts relating to the training of an individual medical officer, viz. the Appellant. The University had on the facts of the case accepted the contention of the Appellant that he had completed 3 years" training. We have not been able to understand as to what stake the State has in denying the said factual position.

13. In view of Article 141 of the Constitution the law declared by the Supreme Court is binding. There may be earlier declaration of the law by the Apex Court and the same law may be declared subsequently from time to time. In such a delicate situation, as a matter of fact, a judicial embarrassment is created as to whether to accept the recent declaration of law or the old one. But nonetheless every decision in respect of declaration of law is binding. In our considered opinion its recent declaration of law that has to be preferred than the earlier one. In *Dr. Nandjee Singh's* case (supra) what has been emphasised is that where an individual dispute can be raised, in that event P.I.L. should not be encouraged. Whether the Appellant in that case had undergone necessary training for two years and has not done housemanship in General Medicine for one year and whether the Appellant was posted in any of the teaching place in the Medical College was a question to be decided and for such cause of action why should the P.G. Medical Students Association come forward for the benefit of the Appellant (*Dr. Nandjee Singh*). It was held by the Apex Court that where individual dispute can be raised there need not be any P.I.L. That decision has been followed by a Division Bench of this Court in *Arijit Dutta and Others Vs. Union of India (UOI) and Others* and in our opinion very correctly. In an earlier Divisional Bench case in *Dr. Taj Singh Lakshmana and Bihar Industries Association Vs. State of Bihar and Others* we have taken the similar view.

14. In our considered opinion P.I.L. is not to be taken lightly nor the same need be encouraged. It has become luxury litigation filed by a particular Petitioner with oblique motive in one form or the other. We must have positive check on the free flow of such litigation. There is a negative approach to the problem and it is that the Court functions to deal with traditional litigation in the form of First Appeal, Second Appeal and other different cases filed in the High Court. Those disputes remain pending for long and at the same time by encouraging P.I.L. this Court would be assuming to usurp the administrative and executive functions of the State. In this connection the view we are taking, finds support from the following observations of their Lordship of the Apex Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, (paragraph 59 page 334) as follows:

...Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petition. If Courts do not restrict the free flow of such cases in the name of public interest litigation, the traditional litigation will suffer and the Courts of law, in stead of dispensing justice, will have to take upon themselves administrative and executive functions.

15. In our opinion, the dispute involved in the present writ petition is an individual dispute for which the students or their parents would have come forward and filed writ petition. In the circumstances, in our opinion, the present petition in the form of P.I.L. is not maintainable.

16. Reverting to the next question, suffice it to say that the relief has been claimed in the present writ petition in paragraph 1 and 2 in connection with the fixation of the Examination Centres of the students for their admission in the Technical Institution and though the examinations have already been held in May-June, 1995, as is clear from the Admit Cards (vide Annexures 1/A, 1/B, 1/C and 1/D to the writ petition), no relief has been claimed for future examination. In case the relief was claimed only for the examination held in May-June, 1995 and that period is over, that would not be justified in granting a relief, which has become infructuous and not maintainable, nor it appears to have been filed bona fide.

17. The above directions of the Apex Court in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, in paragraph 59 and its other decisions are substantially declarations of law to be followed by the High Court. We have to be conscious in entertaining a P.I.L. and we must ascertain whether it is genuine, bona fide and unavoidable litigation, otherwise traditional litigation of the High Court would suffer and this Court would usurp the function of the administrative and executive. In the back-draw of the aforesaid legal position we have no option but to hold that the present writ petition in the form of P.I.L. is not maintainable. Hence the present writ petition fails and the same is dismissed, but there shall be no order as to costs.

Shashank Kumar Singh, J.

18. I agree.