
(2015) 03 AHC CK 0060
In the Allahabad High Court
Case No : Misc. Bench No. 1423 of 2015

Rudal Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Home Guards Act, 1963 — Section 15

Citation : (2015) 3 ALJ 401

Hon'ble Judges : D.Y. Chandrachud, C.J.;Rajan Roy, J

Bench : Division Bench

Advocate : Brijesh Kumar Singh, for the Appellant

Final Decision : Dismissed

Judgement

1. The petitioner, who is a retired Deputy Commandant General in the Home Guards Department, has invoked the jurisdiction of this Court in a public interest litigation for (i) a writ of certiorari quashing an order dated 9 December, 2014 for the commencement of the selection process for recruitment of Home Guards and; (ii) for a writ in the nature of mandamus for framing rules under Section 15 of the Uttar Pradesh Home Guards Adhiniyam, 1963 (U.P. Act No. 29 of 1963). We are not inclined to entertain a public interest litigation relating to the recruitment of Home Guards having due regard to the caution expressed in several judgments of the Supreme Court including in a recent judgment in Ayaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Others, (2013) 1 ABR 454 : AIR 2013 SC 58 : (2013) 136 FLR 574 : (2012) 11 SCALE 39 : (2013) 4 SCC 465 wherein it was observed as follows:

"14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. 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 frame work of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court 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". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide P.S.R. Sadhanantham Vs. Arunachalam and Another, AIR 1980 SC 856 : (1980) 3 SCC 141 : (1980) SCC(Cri) 649 : (1980) 2 SCR 873 : (1980) 12 UJ 403 ; Dalip Singh Vs. State of U.P. and Others, (2009) 15 JT 201 : (2009) 14 SCALE 473 : (2010) 2 SCC 114 : (2009) 16 SCR 111 : (2010) AIRSCW 50 : (2009) 8 Supreme 485 ; State of Uttaranchal Vs. Balwant Singh Chaufal and Others, AIR 2010 SC 2550 : (2010) 1 JT 329 : (2010) 1 SCALE 492 : (2010) 3 SCC 402 : (2010) 1 SCC(L&S) 807 : (2010) 2 SCR 678 : (2010) 1 SLR 581 : (2010) 2 UJ 511 : (2011) AIRSCW 2486 : (2010) 6 Supreme 569 , and Amar Singh Vs. Union of India (UOI) and Others, (2011) 5 SCALE 606 : (2011) 7 SCC 69).

15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., (1998) 6 AD 417 : AIR 1999 SC 114 : (1999) 87 CLT 86 : (1998) 3 CTC 97 : (1998) 5 JT 645 : (1998) 2 LLJ 1013 : (1998) 4 SCALE 643 : (1998) 7 SCC 273 : (1998) SCC(L&S) 1802 : (1998) 1 SCR 77 Supp : (1999) 1 SLJ 205 : (1998) AIRSCW 3467 : (1998) 6 Supreme 524 ; Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, AIR 2005 SC 540 : (2004) 5 CTC 748 : (2004) 10 JT 561 : (2004) 10 SCALE 415 : (2005) 1 SCC 590 and Neetu Vs. State of Punjab and Others, AIR 2007 SC 758 : (2007) 1 JT 452 : (2007) 1 SCALE 168 : (2007) 10 SCC 614 : (2007) 1 SCR 223)."

2. Another public interest litigation (All India Home Guards Welfare Association v. State of U.P. and Ors. Public Interest Litigation No. 5209 of 2015) was dismissed by a Division Bench of this Court at Allahabad. The order of the Division Bench reads as follows:

"The petitioners had earlier filed a petition purportedly in public interest which was disposed of by a Division Bench of this Court on 5 December, 2014. The petitioners had raised certain issues relating to the service of Home Guards in the State. This Court, inter alia, observed as follows:

"Insofar as the other reliefs are concerned, many of them pertain to the framing of appropriate service conditions. In this regard, there is now a settled rule of restraint, under which a PIL in regard to service matters or service conditions should not be entertained. All the issues raised by the petitioners relate to the question of policy. No affected individual is before the Court. In this view of the matter, since the petitioners have raised a generalised grievance, we leave it

open to them to move a representation at an appropriate level before the State Government."

At the same time, the Court clarified that if there is any subsisting grievance, it was open to the petitioners or the persons aggrieved to independently take it up with the State Government through the Director General of Home Guards for appropriate remedial action.

Again the petitioners have moved one more public interest litigation on the subject. These are matters pertaining to service, which we decline to entertain. Following the earlier decision, we leave it open to the aggrieved individual to take up the matter by invoking the appropriate remedy available in law.

The petition is, accordingly, dismissed. There shall be no order as to costs."

3. The submission of the learned counsel appearing on behalf of the petitioner is that the petitioner seeks transparency in the recruitment process for Home Guards. The simple answer to this submission is that the petitioner is not a person aggrieved. In a matter relating to recruitment and selection, the rule of restraint laid down by the Supreme Court must apply and it would not be, hence, permissible for the High Court to entertain a petition purportedly invoking the jurisdiction in public interest.

4. Moreover, the second relief which has been sought is in the nature of a mandamus for framing rules under Section 15 of the Adhiniyam, 1963. The power to frame rules is of a legislative nature and following the well settled principle of law, the writ jurisdiction under Article 226 of the Constitution cannot extend to a mandamus for undertaking a legislative or quasi legislative activity including in the nature of subordinate legislation. We, accordingly, decline to entertain the petition. The petition is, accordingly, dismissed. There shall be no order as to costs.