

(2016) 03 SHI CK 0123
In the High Court Of Himachal Pradesh
Case No : CWP No. 4838 of 2015

Sh. Ali Mohammed

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) ILRHP 290

Hon'ble Judges : Mansoor Ahmad Mir, CJ. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Dushyant Dadwal, Advocate, for the Petitioner; Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Mr. Romesh Verma, Addl. Advocate Generals and Mr. J. K. Verma, Dy. Advocate General, for the Respondent No. 1; Mr. B.S. Attri, Advocate, for the

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.—The petitioner claims to have filed this petition as Pro Bono Publico against the so called illegal constitution of the Himachal Pradesh Waqf Board as well as the arbitrary nomination made by the State to the electoral college to be constituted under the Waqf (Amendment Act, 2013), (herein after referred to as the Act for short).

2. This Court vide its order dated 30.12.2015 had directed the petitioner to justify the maintainability of the writ petition. Mr. Dushyant Dadwal learned counsel for the petitioner would submit that the petitioner being a Muslim has every right to file the present petition, as he has sufficient interest in the subject matter of the present petition.

3. At the outset, we may observe that save and except by claiming that the petition has been filed in public interest, there is no material whatsoever placed on record whereby it can be gathered that the petitioner is a pro bono publico or that the petition in fact has been filed in public interest. Rather, if one would go through the entire petition, it would be evident that the element of public interest

is conspicuously absent.

4. The credibility of the petitioner further becomes doubtful when one would go through the history of the previous litigations regarding the constitution of this very Board. In the year 2005 one Bashir Khan along with other persons filed CWP No. 12 of 2005 before this Court assailing the notification issued by the State Government on 9th December, 2004, whereby it had nominated members to the Waqf Board. When the said petition came up for hearing on 7.1.2005, it was fairly conceded by the State Government that owing to some technical reasons, the State Government may be permitted to revert/revoke and withdraw the said notification and the petition was consequently dismissed. Thereafter, in the year 2010 another petition by way of CWP No. 7647 of 2010 came to be filed before this Court assailing therein again the notification constituting the Waqf Board and this petition came to be withdrawn on 24th May, 2012.

5. It is not the result of this petition that we are concerned, rather we are primarily concerned with the averments made in all these petitions (*supra*), which are verbatim the same as those in this petition. This in itself does not only suggest, but clearly indicates that this is a proxy litigation where the petitioner has been set up at the behest of someone else. Not only has the petitioner failed to satisfy this Court about his credibility, but has even failed to satisfy the *prima facie* correctness of the nature of information given by him, which is discussed in the latter part of this judgment. What we can, therefore, infer is that the petitioner has indulged in public mischief for oblique motive and in such circumstances the Court has to act ruthlessly while dealing with such imposters, busybody and meddlesome interlopers impersonating as public spirited holy men. The petitioner cannot masquerade as crusader of justice and is only pretending to act in the name of *Pro Bono Publico*, though he has no interest in the public to protect. The instant petition has been filed under ploy for achieving oblique motives.

6. The growing menace of so called public interest litigation has been repeatedly noticed by this Court and we need only to refer a recent judgment delivered by this Court on 6th October, 2015 in CWP No. 405 of 2014, titled *Satish Kumar Singh v. Union of India and others*, wherein it was held:-

"6. It is settled law that before entertaining public interest litigation, the Courts have to be satisfied about bona fide of the petitioner and it is the cause of the public which he seeks to espouse through such litigation. This Court is repeatedly coming across litigations under the brand name of public interest litigation, whereas, the same is used for suspicious products of mischief. This Bench has repeatedly warned against such mis-adventure. Reference in this regard can conveniently be made to CWP No. 7249 of 2010 titled as *Devender Chauhan Jaita v. State of Himachal Pradesh and others*, decided on 03.12.2014, being lead case, CWP No. 9480 of 2014 titled as *Vijay Kumar Gupta v. State of Himachal Pradesh and others*, decided on 09.01.2015, CWP No. 2775 of 2015 titled as *Anurag Sharma and another v. State of Himachal Pradesh and others*, decided on

07.07.2015. It may be pertinent to observe here that the decision in CWP No. 9480 of 2014 was assailed before the Hon''ble Supreme Court by way of SLP(C) No. 8459 of 2015 and the same was dismissed in limine on 23.03.2015.

7. Even the Hon''ble Supreme Court has viewed the abuse of public interest litigation very seriously and in this regard reference can conveniently be made to the judgment of the Hon''ble Supreme Court in *State of Uttaranchal v. Balwant Singh Chaufal and others* (2010) 3 SCC 402, where after noticing the instances of misuse of public interest litigation, the necessity to check such abuse was emphasized. It was held:-

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.

144. In *BALCO Employees' Union v. Union of India & Others* AIR 2002 SC 350, this Court recognised that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bona fide." Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs" as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations.

145. In *S.P. Gupta v. Union of India* 1981 Supp SCC 87 this Court has found that this liberal standard makes it critical to limit standing to individuals "acting bona fide. To avoid entertaining frivolous and vexatious petitions under the guise of PIL, the Court has excluded two groups of persons from obtaining standing in PIL petitions. First, the Supreme Court has rejected awarding standing to "meddlesome interlopers". Second, the Court has denied standing to interveners bringing public interest litigation for personal gain.

146. In *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.* (1990) 4 SCC 449 the Court withheld standing from the applicant on grounds that the applicant brought the suit motivated by enmity between the parties.

147. Thus, the Supreme Court has attempted to create a body of jurisprudence that accords broad enough standing to admit genuine PIL petitions, but nonetheless limits standing to thwart frivolous and vexations petitions. The Supreme Court broadly tried to curtail the frivolous public interest litigation

petitions by two methods-one monetary and second, non-monetary.

148. The first category of cases is that where the court on filing frivolous public interest litigation petitions, dismissed the petitions with exemplary costs. In *Neetu v. State of Punjab & Others* AIR 2007 SC 758, the Court concluded that it is necessary to impose exemplary costs to ensure that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

149. In *S.P. Anand v. H.D. Deve Gowda* AIR 1997 SC 272, the Court warned that (SCC p. 745, para 18) it is of utmost importance that those who invoke the jurisdiction of this Court "seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed".

150. In *Sanjeev Bhatnagar v. Union of India* AIR 2005 SC 2841, this Court went a step further by imposing a monetary penalty against an Advocate for filing a frivolous and vexatious PIL petition. The Court found that the petition was devoid of public interest, and instead labelled it as "publicity interest litigation." Thus, the Court dismissed the petition with costs of Rs. 10,000/-.

151. Similarly, in *Dattaraj Nathuji Thaware v. State of Maharashtra & Others* (2005) 1 SCC 590, the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious PIL petition. This Court found that the petition was nothing but a camouflage to foster personal dispute. Observing that no one should be permitted to bring disgrace to the noble profession, the Court concluded that the imposition of the penalty of Rs. 25,000 by the High Court was appropriate. Evidently, the Supreme Court has set clear precedent validating the imposition of monetary penalties against frivolous and vexatious PIL petitions, especially when filed by advocates.

152. This Court, in the second category of cases, even passed harsher orders. In *Charan Lal Sahu v. Zail Singh* AIR 1984 SC 309, the Supreme Court observed that, "we would have been justified in passing a heavy order of costs against the two petitioners" for filing a "light-hearted and indifferent" PIL petition. However, to prevent "nipping in the bud a well-founded claim on a future occasion," the Court opted against imposing monetary costs on the petitioners." In this case, this Court concluded that the petition was careless, meaningless, clumsy and against public interest. Therefore, the Court ordered the Registry to initiate prosecution proceedings against the petitioner under the Contempt of Courts Act. Additionally, the court forbade the Registry from entertaining any future PIL petitions filed by the petitioner, who was an advocate in that case.

153. In *J. Jayalalitha v. Government of T.N.* (1999) 1 SCC 53, this court laid down that public interest litigation can be filed by any person challenging the misuse or improper use of any public property including the political party in power for the reason that interest of individuals cannot be placed above or preferred to a larger public interest.

154. This court has been quite conscious that the forum of this court should not be abused by any one for personal gain or for any oblique motive. In BALCO (supra), this court held that the jurisdiction is being abused by unscrupulous persons for their personal gain. Therefore, the court must take care that the forum be not abused by any person for personal gain.

155. In Dattaraj Nathuji Thaware v. State of Maharashtra (2005) 1 SCC 590 this court expressed its anguish on misuse of the forum of the court under the garb of public interest litigation and observed (SCC p.595, para 12) that the-

"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 armoury of law for delivering social justice to the citizens?. The court must not allow its process to be abused for oblique considerations. ?."

156. In Thaware's case (supra), the Court encouraged the imposition of a non-monetary penalty against a PIL petition filed by a member of the bar. The Court directed the Bar Councils and Bar Associations to ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of Public Interest Litigation. This direction impels the Bar Councils and Bar Associations to disbar members found guilty of filing frivolous and vexatious PIL petitions.

157. In Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra (2007) 14 SCC 281, this Court observed as under: (SCC pp. 287d-288a, para 10)

"10."?.12. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, the time which otherwise could have been spent for disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy, whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters -government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or

as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system".

158. The Court cautioned by observing that: (Holicow case (2007) 14 SCC 281 pp.288-89, para 10)

"10. "...13. 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. ?

* * *

15. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. 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 busybodies 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."

8. In Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others (2014) 1 SCC 161, the Hon"ble Supreme Court felt the need to revisit certain authorities pertaining to public interest litigation, its abuses and the way sometimes the courts perceive the entire spectrum. It was observed as under:-

"24. Ordinarily, after so stating we would have proceeded to scan the anatomy of the Act, the Rules, the concept of the Scheme under the Act and other facets but we have thought it imperative to revisit certain authorities pertaining to public interest litigation, its abuses and the way sometimes the courts perceive the entire spectrum. It is an ingenious and adroit innovation of the judge-made law

within the constitutional parameters and serves as a weapon for certain purposes. It is regarded as a weapon to mitigate grievances of the poor and the marginalized sections of the society and to check the abuse of power at the hands of the Executive and further to see that the necessitous law and order situation, which is the duty of the State, is properly sustained, the people in impecuniosity do not die of hunger, national economy is not jeopardized; rule of law is not imperiled; human rights are not endangered, and probity, transparency and integrity in the governance remain in a constant state of stability. The use of the said weapon has to be done with care, caution and circumspection. We have a reason to say so, as in the case at hand there has been a fallacious perception not only as regards the merits of the case but also there is an erroneous approach in issuance of direction pertaining to recovery of the sum from the holder of the post. We shall dwell upon the same at a later stage.

25. As advised at present, we may refer to certain authorities in the field in this regard. In *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161 Bhagwati, J., (as his Lordship then was) had observed thus: (SCC p.183, para 9)

"9?.When the Court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programme, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives."

26. In *Dr. D.C. Wadhwa and others v. State of Bihar* (1987) 1 SCC 378 the Constitution Bench, while entertaining a petition under Article 32 of the Constitution on behalf of the petitioner therein, observed that it is the right of every citizen to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional provisions. It has also been stated therein that the rule of law constitutes the core of our Constitution and it is the essence of rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitation and if any practise is adopted by the executive which is in flagrant violation of the constitutional limitations, a member of the public would have sufficient interest to challenge such practise and it would be the constitutional duty of the Court to entertain the writ petition.

27. In *Neetu v. State of Punjab* (2007) 10 SCC 614 the Court has opined that it is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigation. Commenting on entertaining public interest litigations without being careful of the parameters by the High Courts the learned Judges

observed as follows: (SCC p. 617, para 5)

"5. "16?.Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives. High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. (Ashok Kumar Pandey v. State of West Bengal (2004) 3 SCC 349, SCC p.358, para 16)"

Thereafter, giving a note on caution, the Court stated:-

"6. "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 armoury of law for delivering social justice to the citizens." (B. Singh v. Union of India (2004) 3 SCC 363, SCC p.372, para 12)"

28. In State of Uttaranchal v. Balwant Singh Chaufal (2010) 3 SCC 402 this Court adverted to the growth of public interest litigations in this country, and the view expressed in various PILs and the criticism advanced and eventually conceptualized the development which is extracted below: (SCC p. 427, para 43)

"43??We deem it appropriate to broadly divide the public interest litigation in three phases:

Phase I. - It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalized groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.

Phase II. - It deals with the cases relating to protection, preservation or ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments etc. etc.

Phase III. - It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance."

29. In Bholanath Mukherjee v. Ramakrishna Mission Vivekananda Centenary College (2011) 5 SCC 464 it has been laid down that public interest litigation would not be maintainable in service law cases.

30. In Duryodhan Sahu v. Jitendra Kumar Mishra (1998) 7 SCC 273 a three-Judge, Bench posed a question whether the administrative tribunals constituted under the Administrative Tribunals Act, 1985 can entertain a public interest litigation. A post of lecturer was created in a Government Medical College recognised by the Medical Council of India and the State Government requested the Public Service Commission to recommend a suitable candidate from the reserved list. At that stage, a third party described himself as the Secretary of a particular Surakhya Committee, filed an original application for quashing the

Government order creating the post of the teacher. A grievance was also put forth that the post was not advertised. The tribunal restrained the appointment of the beneficiary, the appellant before this Court. The learned Judges opined that the administrative tribunal constituted under the said Act cannot entertain a public interest litigation at the instance of a total stranger. While so stating the three-Judge Bench opined that as the prayer was for quashment of the creation of post itself and preventing the authorities and for preventing the Government from appointing any candidate as Lecturer, the prayer would not come in the sphere of quo warranto.

31. Thus, from the aforesaid authorities it is quite vivid that the public interest litigation was initially evolved as a tool to take care of the fundamental rights under Article 21 of the Constitution of the marginalized sections of the society who because of their poverty and illiteracy could not approach the court. In quintessence it was initially evolved to benefit the have-nots and the handicapped for protection of their basic human rights and to see that the authorities carry out their constitutional obligations towards the marginalized sections of people who cannot stand up on their own and come to court to put forth their grievances. Thereafter, there has been various phases as has been stated in *Balwant Singh Chaufal* (supra). It is also perceptible that court has taken note of the fact how the public interest litigations have been misutilized to vindicate vested interests for the propagated public interest. In fact, as has been seen, even the people who are in service for their seniority and promotion have preferred public interest litigations. It has also come to the notice of this Court that some persons, who describe themselves as *pro bono publico*, have approached the court challenging grant of promotion, fixation of seniority, etc. in respect of third parties."

9. The issue regarding public interest has elaborately been dealt with by this Bench in CWP No. 9480 of 2014, titled *Vijay Kumar Gupta v. State of Himachal Pradesh and others*, decided on 09.01.2015 and after taking into consideration the entire law on the subject, it was concluded as follows:-

"29. From the aforesaid exposition of law, it can safely be concluded that the Court would allow litigation in public interest only if it is found:-

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest or on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

- (iv) That such person or group of persons is not a busy body or a meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;
- (v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;
- (vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judicial and the democratic set up of the country;
- (vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;
- (viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;
- (ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;
- (x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons of groups with mala fide objective or either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest."

10. In the above background, this Court is required to first satisfy itself regarding the credentials of the petitioner, the prima-facie correctness of the information given by him because after all the attractive brand name of public interest litigation cannot be used for suspicious products of mischief. It has to be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta or private motive. The process of the Court cannot be abused for oblique considerations by masked phantoms who monitor at times from behind. The common rule of locus-standi in such cases is relaxed so as to enable the Court to look into the grievances complained of on behalf of the poor, deprive, deprivation, illiterate and the disabled and who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. But, then while protecting the rights of the people from being violated in any manner, utmost care has to be taken that the Court does not transgress its jurisdiction nor does it entertain petitions which are motivated. After all, public interest litigation is not a pill or panacea for all wrongs. It is essentially meant to protect basic human rights of the weak and disadvantaged. 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

public interest seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering justice to the citizens. Courts must do justice by promotion of good faith and prevent law from crafty invasions. It is for this reason that the Court must maintain social balance by interfering for the sake of justice and refuse to entertain where it is against the social justice and public good."

7. It would be thus clear that public interest can only be entertained at the instance of a bona fide litigant. It cannot be used by unscrupulous litigants to disguise personal or individual grievance as public interest litigation.

8. That apart, this Court cannot be oblivious to the fact that it is dealing with a Waqf, as defined in Section 3 (r) of the Waqf Act, 1995, as amended vide the Waqf (Amendment) Act, 2013 (27 of 2013) which means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes-

(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkan or by any other name entered in a revenue record;

(iii) "grants", including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognised by Muslim law, and "waqf" means any person making such dedication." It would be evident that the waqf means the permanent dedication of any person of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and therefore, the scope of public interest litigation in matters of such institutions is extremely limited. This dedication and institution is governed by a particular legislation, which provides for a proper mechanism for its management and it is not proper for this Court to entertain litigation, much less, public interest litigation qua the same.

9. For taking this view, we may conveniently refer to a recent judgment of Hon"ble Supreme Court in Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan and Others (2014) 5 SCC 530, wherein the Hon"ble Supreme Court observed as under:-

"47. The scope of Public Interest Litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of Public Interest Litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the

properties of the trust and their management thereof. It is not proper for the Court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation.

48. We feel that it is apt to quote the views expressed by this Court in Guruvayoor Devaswom Managing Committee (*supra*) wherein this Court observed:

"60. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained Code. Duties and functions are prescribed in the Act and the rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as *parens patriae* as also in discharge of its statutory duties.

* * *

64. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regard the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The Courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the Courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step. When the administration of the temple is within its control and it exercises the said power in terms of a Statute, the State, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field is inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the Courts would ask the State to perform its statutory functions, if necessary within a time frame and undoubtedly as and when an order is passed by the State in exercise of its power under the Statute, it will examine the correctness or legality thereof by way of judicial review."

10. Apart from the above observations, the Hon"ble Supreme Court further observed that under the guise of public interest litigation, it was coming across several cases where it had been exploited for the benefit of certain individuals and therefore, directed the Courts to be very cautious and careful while entertaining public interest litigations. It is apt to reproduce the following observations:-

"49. The concept of Public Interest Litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other down trodden people. Through the Public Interest Litigation, the cause of several people who are not able to approach the Court is espoused. In the guise of Public Interest Litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The Courts have to be very cautious and careful while entertaining Public Interest Litigation. The Judiciary should deal with the misuse of Public Interest Litigation with iron hand. If the Public Interest Litigation is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and down trodden will be defeated. The Courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of Public Interest Litigation, the Courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people, whose rights are adversely affected or at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum, instead of entertaining the writ petition filed as Public Interest Litigation."

11. Adverting to the facts, it would be noticed that the entire thrust of the petitioner is that the constitution of the Board is not as per the provisions of Section 14(1) of the Act and electoral college has not been constituted by the State and therefore, it should be directed to constitute the same in conformity with Section 14 of the Act and also include one person from the Shia community.

12. Section 14 of the Waqf (Amendment Act 2013) reads thus:-

"14. Composition of Board.---(1) The Board for a State and the (the National Capital Territory of Delhi) shall consist of-

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of-

(i) Muslim Members of Parliament from the State or, as the case may be, (the National Capital Territory of Delhi),

(ii) Muslim Members of the State Legislature,

(iii) Muslim members of the Bar Council of the concerned State or Union territory:

Provided that in case there is no Muslim member of the Bar Council of a State or a Union territory, the State Government or the Union territory administration, as the case may be, may nominate any senior Muslim advocate from that State or the Union territory, and;)

(iv) mutawallis of the (auqafs) having an annual income of rupees one lakh and above.

Explanation I. - For the removal of doubts, it is hereby declared that the members from categories mentioned in sub-clauses (i) to (iv), shall be elected from the electoral college constituted for each category.

Explanation II. - For the removal of doubts it is hereby declared that in case a Muslim member ceases to be a Member of Parliament from the State or National Capital Territory of Delhi as referred to in sub-clause (i) of clause (b) under sub-clause (ii) of clause (b), such member shall be deemed to have vacated the office of the member of the Board for the State or National Capital Territory of Delhi, as the case may be, from the date from which such member ceased to be a Member of Parliament from the State or National Capital Territory of Delhi, or a Member of the State Legislative Assembly, as the case may be;

(c) one person from amongst Muslims, who has professional experience in town planning or business management, social work, finance or revenue, agriculture and development activities, to be nominated by the State Government;

(d) one person each from amongst Muslims, to be nominated by the State Government from recognised scholars in Shia and Sunni Islamic Theology;

(e) one person from amongst Muslims, to be nominated by the State Government from amongst the officers of the State Government not below the rank of Joint Secretary to the State Government;

(1-A) No Minister of the Central Government or, as the case may be, a State Government, shall be elected or nominated as a member of the Board:

Provided that in case of a Union territory, the Board shall consist of not less than five and not more than seven members to be appointed by the Central Government from categories specified under sub-clauses (i) to (iv) of clause (b) or clauses (c) to (e) in sub-section (1):

Provided further that at least two Members appointed on the Board shall be women:

Provided also that in every case where the system of mutawalli exists, there shall be one mutawalli as the member of the Board.

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed.

Provided that where the number of Muslim Members of Parliament, the State

Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board;

Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall, at all times, be more than the nominated members of the Board except as provided under sub-section (3).

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia (auqafs) and Sunni (auqafs) to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette."

13. At this stage, it shall be relevant to refer in extenso to notification issued by respondents on 22nd July, 2013 so as to appreciate as to how the Board in fact came to be constituted. The said notification reads thus:-

"Whereas, the Himachal Pradesh Waqf Board was dissolved, vide this department notification No. Rev.C(A)1-4/2008, on the 16th July, 2013 under the provisions of section 99 of the Waqf Act, 1995 (43 of 1995):

And whereas in the State of Himachal Pradesh, it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of Sub-section (1) of Section 14 of the Act *ibid* for want of non-availability of eligible members:

Now, therefore, in exercise of the powers conferred upon her under Sub-Section (1) and (3) of Section 14 of the Act *ibid*, the Governor Himachal Pradesh is pleased to nominate the following members from the Muslim community as members of the said Board with immediate effect:-

Sr.No.

Name and Address

Provision of the act under which nominated

1.

Kwaja Khaleel Ullah S/o Late Shri Khwaja Aman Ullah, 70/1, Khwaja Building, The Mall Road, Shimla-1

Nominated under sub-section (3) of Section 14 of the Waqf Act, 1995.

2.

Sh.Roshan Deen S/o Shri Mohkam Deen, Vill. Dhurgeth, P.O. Dadwin (Mehla) Bakan The. & Distt Chamba, (HP) Pin No. 176311

Nominated under sub-section (3) of Section 14 of the Waqf Act, 1995.

3.

Sh. Murad Khan H/No. 202/10, Near Pratap Bhawan, Katcha Tank, Nahan, Distt. Sirmour, (HP)

Nominated under sub-section (3) of Section 14 of the Waqf Act, 1995.

4.

Sh. Shaukat Ullah S/o Late Shri Hasmatullah, President, Shimla Muslim Welfare Committee, R/o Hamid Manjil, Sanjauli, Shimla-6

Nominated under sub-section (1) (c) of Section 14 of the Waqf Act, 1995.

5.

Sh. Mushtaq Qureshi S/o Late Shri Faquir Deen President, Muslim Welfare Committee, Sunni, Distt. Shimla.

Nominated under sub-section (1) (c) of Section 14 of the Waqf Act, 1995

6.

Sh. Mufti Muhammad Shafi Qasmi S/o Shri Hameed Muhammad (Islamic Scholar) Imam and Khateeb, Jama Masjid, Middle Bazar, Shimla. R.V.P. Jhamra Rain, PO Ghandeer, The. Jhandutta, Distt. Bilaspur (HP)

Nominated under sub-section (1) (d) of Section 14 of the Waqf Act, 1995

7.

Maulana Taj Muhammad Qasmi (Islamic Scholar) Vill. & P.O. Bikram Bagh, The. Nahan, Distt. Sirmour (HP)

Nominated under sub-section (1) (d) of Section 14 of the Waqf Act, 1995

8.

Sh. S.B. Islam, IFS Managing Director, H.P. Minorities Finance and Dev. Corp., Block-38, SDA Complex Kasumpti, Shimla-9

Nominated under sub-section (1) (e) of Section 14 of the Waqf Act, 1995

9.

Sh. Amir Hussain S/o Sh. Yousf Chairman Congress Minority Deptt. Drang Constituency Distt. Mandi, (HP), R/o Jarli, P.O. Gharan, The. Sadar, Mandi(HP),

Nominated under sub-section (1) (c) of Section 14 of the Waqf Act, 1995

The other terms and conditions of the above members will be issued separately.

By Order

Principal Secretary (Revenue) to

the Government of Himachal Pradesh."

14. It is evident from the perusal of the above notification that it was not reasonably practicable for the State Government to constitute an electoral college from any of the categories mentioned in sub clauses (i) to (iii) of clause (b) of sub section (1) of Section 14 for want of availability of eligible members and it, therefore, exercised powers under sub-section (1) and (3) of Section 14 of the Act and nominated the aforesaid members from the Muslim community as members of the Board with immediate effect. Nowhere in the entire petition has the petitioner disputed this position or even made mention about the availability of any member who may fall within sub clauses (i) to (iii) of clause (b) of sub-section (1) of Section 14 of the Act.

15. That apart, we cannot even find any fault with the action of the respondents in falling back and invoking its authority under sub-section (3) of Section 14 of the Act, which provision by virtue of its commencing with non-obstante clause has overriding effect. What is provided therein is only that the State Government has to record its satisfaction in writing that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in clauses (i) to (iii) of clause (b) of sub-section (1) of Section 14 of the Act and nominate such persons as members of the Board as it deems fit. It is evident from the notification (supra) that such satisfaction has been duly recorded and this fact has not even been disputed by the petitioner.

16. In view of the above, we have no hesitation to conclude that the Waqf Board has been constituted strictly in terms of the Act and the present petition appears to have been filed under ploy on considerations that are extraneous to public interest. The petitioner has not approached this Court with clean hands, clean heart and clean objectives.

17. Here we may also note that in compliance to the directions issued by the

Hon"ble Supreme Court in State of Uttaranchal v. Balwant Singh Chauhal (2010) 3 SCC 402, this Court vide notification dated 8.4.2010, with a view to preserve the purity and sanctity of Public Interest Litigation and also to keep a check on frivolous letters/petitions has framed Rules known as The Himachal Pradesh High Court Public Interest Litigation Rules, 2010. Rules 3 and 4 thereof read as under:-

"3. The petitions/complaints/letters and new paper clippings falling under the following categories can be treated under Public Interest Litigation.

(i) Bonded labour matters.

(ii) Neglected children.

(iii) Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases). Provided that in respect of clauses (i), (ii) and (iii) above, if any of these matters forming the subject matter of the communication relates to one person (as opposed to a group of persons) this cannot be termed as a PIL and can be at best be treated as an individual writ petition.

(iv) Petitions against atrocities on women; in particular harassment of bride, bride burning, rape, murder, kidnapping etc;

(v) Petitions complaining of harassment or torture of villagers by co-villagers or by police in respect of persons belonging to Scheduled Castes and Scheduled Tribes and economically backward classes;

Provided that in respect of clauses (iv) and (v) above if any of these matters of the communication relates to one person (as opposed to a group of persons) this cannot be called as a PIL.

(vi) Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture antiques, forest and wild life, encroachment of public property and other matters of public importance;

(vii) Petitions from riot-victims; and

(viii) Family pension.

Explanation: The test to treat a communication as PIL is whether any particular communication relates to an individual, if it does, it will be an individual, if it does, it will be an individual's C.W.P. and not a PIL irrespective of the fact whether the individual is complaining of any harassment or any violation of rights, which may also be akin to a group. If, however, the communication relates to a group and it is felt that group cannot defend itself or is not in a position to come to the Court, that would be a PIL warranting interference of the High Court in that PIL.

4. However, no petition involving individual/personal matter shall be entertained as Public Interest Litigation including the matters pertaining to landlord tenant

disputes, service matters except concerning pension and gratuity; the petitions for early hearing of cases as well as the petitions concerning maintenance of wives, children and parents."

It would be evident from the aforesaid Rules that the instant petition does not fall within any of the categories mentioned therein.

18. Apart from the above, it has clearly been stipulated in Rule 9 that before entertaining the Public Interest Litigation, following factors shall be kept in view:-

"(i) to verify the credentials of the petitioner;

(ii) satisfaction regarding the correctness of the contents of the petition;

(iii) substantial public interest is involved;

(iv) the petition which involved larger public interest, gravity and urgency must be given priority over other petitions;

(v) to ensure that the PIL is aimed at redressal of genuine public harm or public injury. It shall also be ensured that there is no personal gain, private or oblique motive behind filing the public interest litigation.

(vi) to ensure that the petition filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous consideration."

The petition does not even fulfil the criteria as prescribed in the aforesaid Rules and therefore, it can safely be concluded that even though the petition is claimed to have been filed in Public Interest Litigation, it does not even qualify to be registered as such and is therefore, not maintainable.

19. There is no genuine public interest involved in this petition and since the petitioner has abused the process of this Court, he in ordinary circumstances would have been liable for imposition of heavy costs. However, taking into consideration the fact that the notice of this petition has not been issued to the opposite party, we refrain from doing so. But at the same time, the petitioner is warned not to indulge in such misadventures in future. The petition is disposed of in the aforesaid terms, so also the pending application(s), if any.