

(2008) 01 BOM CK 0181

In the Bombay High Court

Case No : Public Interest Litigation No. 170 of 2007

Shaikh Mohammad Miran Mohammad Ibrahim

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Citation : (2008) 2 ALLMR 619 : (2008) 5 BomCR 225

Hon'ble Judges : Swatanter Kumar, C.J.;J.P. Devadhar, J

Bench : Division Bench

Advocate : P.B. Kakade, for the Appellant; R.P. Behere, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—This Public Interest Litigation has been filed by Shri Shaikh Mohammad Miran Mohammad Ibrahim who retired as Assistant Police Inspector on 31st October, 2006, praying that the police sepoy recruitment examination held from 10th September, 2007 to 28th September, 2007 be quashed as it was conducted in a very arbitrary manner and without following guidelines. It is stated in the writ petition that on 10th September, 2007, test of running was held of hundreds of candidates. They were made to run on the streets of Mumbai. Many of them fell down on the streets of cement concrete roads, rough surface roads. One of the candidate vomited blood, several of them were admitted in various hospitals. An article in this regard was published in local Marathi newspaper 'Navakal' in its edition of 11th September, 2007. The grievance of the petitioner is that the Additional Commissioner of Police, Arms Division under whose supervision the test was conducted, did not bother to take cognizance of the said news and even post the event the authorities have not taken any decision to hold fresh physical test which should be held on a ground and, therefore, the entire process of selection should be set aside by the court.

2. In response to this petition, an affidavit was filed by Gulabrao Dharmu Pol, Additional Commissioner of Police, Armed Police, Mumbai stating that the

recruitment for the post of Police Constable was commenced on 17th August, 2007. Various steps for holding selection/recruitment to the post of Constable were finalized by the Additional Director General of Police (Training and Special Units) as communicated vide letter dated 9th July, 2007. Nearly 40,256 forms were sold and nearly 30,642 male and 2,299 female candidates submitted their forms. The 19559 candidates who passed the physical test were subjected to written examination. It is denied that any authorities acted negligently and did not take proper measures for conducting the physical test including the running test. The physical test was not only of running but also included shot put, 100 meters running, 800 meters running, long jump and pull ups. Different criteria was provided for female candidates. The physical test was held at Naigaon Police Ground for the events viz. shot put, long jump and pull ups between 8 a.m. to 5 p.m. As there was heavy rains in Mumbai and suburban areas, the physical test was not taken between 27th August, 2007 to 30th August, 2007. On 6th September, 2007, due to heavy rains and keeping in view the benefit of the candidates, announcement was made that the said test would be taken on road as the ground was wet and muddy due to rains. Many candidates who were coming to Mumbai from outstations were not interested to come again to Mumbai and, therefore, the candidates were first asked whether they were willing to run on the road or not, and after seeing their overall positive response, their running test was conducted on road. 100 meters running was conducted on 6th September, 2007 at Priyadarshini Park at Walkeshwar between 19th September, 2007 to 24th September, 2007; two physical tests of 100 meters and 800 meters running were also conducted at Priyadarshini Park. It is also stated that even previous year, the running test was conducted on the same road due to rains. It is specifically stated in the affidavit that mobile toilets, firstaid kit and the medical officer alongwith his assistants and ambulance were made available on all the dates when the physical tests were conducted. Out of the total candidates of around 23000, only 224 candidates were injured or suffered physical set back. The injuries were caused to the candidates who fell down because of stress. Some vomited because they were not able to complete the running of 800 meters due to weakness etc. However, it is denied that anybody vomited blood. In regard to the news item dated 11th September, 2007, it is stated that it does not disclose correct facts. According to the authorities, there was no occasion for holding of the physical retest for the selection.

3. Besides this plea, it is stated that the present writ petition is motivated by the reason that the petitioner's son also appeared as candidate and was declared failed on 27th September, 2007. It is stated that he was not made to run 100 meters but 800 meters and he only obtained 48 marks. The eligibility of passing the examination is 50 marks. The chart, indicating the details of marks obtained by the petitioner's son, has been annexed wherein his marks and roll number appear at Serial No. 7. This chart is signed by the entire five members of the Selection Board and is even signed by the petitioner's son which shows that he only got 48 marks. Number of other candidates have also got marks lower than

48 but nobody getting marks below 50 has been considered by the authorities.

4. At the outset, we need to consider whether this petition can be entertained as a Public Interest Litigation. None of the rejected candidates have approached the court, not even the son of the petitioner who could be an aggrieved party. If there is any iota of correctness in the averments made in the writ petition aggrieved candidates could have approached the court. For the reasons best known to him, candidate himself has not approached the court and father of the candidate has filed this petition claiming it to be a public interest litigation. In our opinion, this petition does not satisfy the basic ingredients of Public Interest Litigation as spelt out by the Supreme Court in its various judgments. The Division Bench of this Court after referring to the various Supreme Court judgments (Writ Petition No. 4 of 2007 with Criminal Appeal No. 1 of 2007, Dr. M. Furquari v. Jet Airways India Ltd.) clearly stated the principle governing the Public Interest Litigation. The judgment also records the limitation for exercise of writ jurisdiction in Public Interest Litigation. The court held as under:" It is settled principle of law that public interest litigation is a weapon which has to be used with great care and circumspection. The courts have to be careful while entertaining such writ petitions. In the case of Rajiv Ranjan Singh "Lalan" and Another Vs. Union of India (UOI) and Others, , the Supreme Court has held as under:

The learned Solicitor General further submitted that there had been no interference by Mr. Lalu Prasad Yadav or his wife in any of the matters whether in the appointment of Judges or in the change of the prosecutor or in the decision not to file an appeal in the income tax cases. The learned Solicitor General cited T.N. Godavarman Thirumalpad Vs. Union of India (UOI) and Others, (Hon. Y.K. Sabharwal C.J. and Arjit Pasayat and S.H. Kapadia, JJ), and submitted that : (SCC p.37, para 23):

Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose bona fides and credentials are in doubt...(and that) no trust can be placed by the court on a mala fide applicant in public interest litigation.

The learned Solicitor General submitted that now it is time to give a severe warning and sound alert since these are basic issues which are required to be satisfied by every public interest litigant. He also cited paras 25 and 26 in support of the contention that the writ petition is not maintainable at the instance of the political rivals.

Mr. Ram Jethmalani in regard to the maintainability of the writ petition cited the following decisions:

Janata Dal Vs. H.S. Chowdhary and Others,

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 an personal grievance, deserves rejection at the threshold;

Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, (Hon. Arjit Pasayat and Hon. S.H. Kapadia, JJ) and invited our attention to paras 4,5,9,10,12 and 14.

Ashok Kumar Pandey Vs. The State of West Bengal and Others, :

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 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 inquiry and not publicity oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or a member of the 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 motive. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate case, with exemplary costs.

S.P. Gupta Vs. President of India and Others,

24. But we must be careful to see that the member of the public who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the courts to further their aims". These are some of the dangers in public interest litigation which the court has to be careful to avoid. It is also necessary for the court to bear in mind that there is a vital distinction between locus standi and justifiability and it is not every default on the part of the State or a public authority that is justiciable. The court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the executive and the legislature by the Constitution. It is a

fascinating exercise for the court to deal with public interest litigation because it is new jurisprudence which the court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born.

The courts while exercising jurisdiction and deciding a public interest litigation have to take great care, primarily for the reason that this wide jurisdiction should not become a source of abuse of process of law by a disgruntled litigant. The courts have also held that no efforts should be spared in fostering and developing the laudable concept of PIL and extending its 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. It has to be a genuine litigation, unmotivated and imposes an obligation upon a litigant to come to the court with true facts and clean hands. Public interest litigations result in taking large court's time, which could not be used by the court for the benefit of common litigant. Thus it is more imperative that petitions which are bona fide and to further the public cause alone should be entertained in this category.

In the case of Ashok Kumar Pandey Vs. The State of West Bengal and Others, the Supreme Court has held that the court has to strike a 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 this very judgment the Court further enunciated that the principles of credentials of the applicant; prima facie correctness and nature of information given by him and also that the information is not vague and indefinite, are the criteria which the litigant should satisfy. The scope and gravity of the grievance is another relevant consideration for the court to entertain such litigations. If these ingredients are lacking, the Supreme Court further said that the courts should not entertain such public interest litigations. Similar view was also taken in the case of Gurpal Singh Vs. State of Punjab and Others, .

It is also true that a petition involving the question of public interest must be directly relatable to actual interest of the public at large, which has to be a substantial interest. It is not the title of the petition which would satisfy the ingredients of public interest litigation but it is the substance of the petition, which would be the determinative factor.

5. Similar view was also taken by the another decision of this Court in PIL No. 14 of 2007 (Kandivli Education Society College and anr. V. Manoj J. Joshi and ors.) which reads thus

The present litigation ex facie appears to be a private litigation in the garb of a

Public Interest Litigation. The principles enunciated by the supreme Court in the cases of *Kushum Lata Vs. Union of India (UOI) and Others*, ; *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, ; *Gurpal Singh Vs. State of Punjab and Others*, and *Dr. B. Singh Vs. Union of India (UOI) and Others*, , are clear that where the private interest is more significant than a public interest or where the litigation is for an ulterior motive and is intended to settle personal vendetta rather than public good, the Court should essentially dismiss such writ petitions. In the case of *Dr. B. Singh (supra)*, the Supreme Court while observing that the Courts should discourage such litigations held as under:

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.*, this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

6. In view of the above settled principles, the present petition can hardly be termed and accepted as Public Interest Litigation. The very locus standi of the petitioner to bring this so-called PIL itself would be questionable in the facts of the present case. As already noticed, none of the aggrieved candidate not even one out of 19559 candidates have approached this Court by filing any substantive writ petition which, obviously, would mean that none of the candidates is aggrieved. Filing of this writ petition by father of one of the unsuccessful candidate itself would create doubt regarding the very maintainability of this petition.

7. Besides the fact that the present writ petition would not be maintainable as Public Interest Litigation and even the petitioner would have no locusstandi to file this petition, still we will examine the merits of the case so as to avoid unnecessary controversy into the selection process where thousands and thousands of candidates have participated. The entire allegations of arbitrariness and colourable exercise of power of the respondents hinges on the averments that why physical test of running was taken on the rough roads and not on the ground. The affidavit filed on behalf of the respondents clearly shows that it was because of the rains and there being mud in the ground that announcement was made and consent of the applicants were accepted that they would prefer to run on the roads rather than to go back and come to Mumbai again for the running test. It is stated that even in the past, the applicants were made to run on the roads. Even otherwise, we can hardly see any arbitrariness in requiring the candidates to run on the roads. The person who expects to be selected in the police force, obviously, cannot state that he would not run on the roads but would only run where there is proper field. The very nature of duties of police constable do not admit such irrational approach. What kind of physical test the applicant should be subjected to is for the competent authority to decide. Only important aspect of such selection is that this criteria for test should be uniformly applied to all candidates in a fair way. The authorities had taken all possible measures to ensure fairness in the process of selection. It had even engaged ambulances. Firstaid was made readily available to the applicants. In these circumstances, we are of the considered view that the process of selection is not vitiated on any count. There has been no violation of rules or guidelines and in fact, none is averred in the writ petition.

8. For the reasons aforestated, we dismiss this petition leaving the parties to bear their own costs.