
(2013) 10 P&H CK 0256
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24148 of 2013

Shyam Lal Thukral

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) 2 PLR 329

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—Present case is yet another glaring example of blatant misuse of process of law at the hands of an unscrupulous and chronic litigant, by way of instant writ petition, which is on the face of it frivolous, vexatious and belated, as the petitioner is challenging the order dated 19.01.2007 (Annexure P-11) after more than six and a half years and that too without there being any explanation for this long delay. A brief narration of essential facts would be required to unravel the controversy involved between the parties. Petitioner claims himself to be a retired Senior Medical Officer of State of Punjab. It is the further pleaded case of the petitioner that he worked as a Senior Medical Officer at Talwandi Sabo, District Bathinda w.e.f. 01.05.2006. He also claims to have worked as Sub Divisional Appropriate Authority in view of notification dated 19.06.2001 (Annexure P-1), issued under the Pre-Conception and Pre Natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 (PNDT Act, for short). While working as Sub Divisional Appropriate Authority-cum-Senior Medical Officer, Talwandi Sabo, under PNDT Act, petitioner inspected the premises of Garg Ultrasound Scan Centre at Maur Mandi, District Bathinda, which was being run by respondent No. 3. Petitioner claims that he found grave irregularities being committed by respondent No. 3, at her above said Centre.

2. Taking cognizance of the irregularities, petitioner seized the record of the said Centre. Respondent No. 3 was given opportunity of being heard on 10.05.2006.

She could not give satisfactory explanation. Finally, petitioner cancelled the registration of the Ultrasound Centre of respondent No. 3 vide his order dated 26.05.2006. Respondent No. 3 filed appeal before the District Appropriate Authority which was dismissed vide order dated 31.07.2006 (Annexure P-5). FIR No. 80 dated 09.09.2006 also came to be registered against respondent No. 3. So far as the criminal case arising out of this FIR is concerned, that issue is not involved herein.

3. However, appeal filed by respondent No. 3 before the State Appropriate Authority came to be allowed by a detailed order dated 19.01.2007 (Annexure P-11), which is the impugned order in the present writ petition. Petitioner made repeated representations to the State authorities. He also approached this Court by way of Criminal Miscellaneous No. M-7801 of 2011 (Dr. Sham Lal Thukral v. State of Punjab and others) which was disposed of by this Court vide order dated 17.03.2011 (Annexure P-17), directing the State authorities to decide the representation of the petitioner within a period of one month. In compliance of the orders dated 17.03.2011 passed by this Court vide Annexure P-17, Principal Secretary, Health and Family Welfare, Punjab, vide his order dated 12.01.2012 (Annexure P-18) set aside the order dated 19.01.2007 passed by the State Appropriate Authority.

4. Feeling aggrieved against order dated 12.01.2012 (Annexure P-18), respondent No. 3 challenged the same before this Court as Annexure P-10 in CWP No. 5323 of 2012 (Dr. Kiran Garg v. State of Punjab and another). The writ petition was allowed by this Court vide detailed order dated 28.05.2013 (Annexure P-19). It was held by this Court that the order dated 12.01.2012, passed by the Principal Secretary, Health and Family Welfare, Government of Punjab, was an order without jurisdiction and the order dated 19.01.2007 passed by the State Appropriate Authority was revived.

5. Thereafter, instead of challenging the order dated 28.05.2013, passed by this Court allowing CWP No. 5323 of 2012 filed by respondent No. 3, petitioner has filed the present writ petition seeking quashing order dated 19.01.2007, as Annexure P-11 passed by the State Appropriate Authority which already stood upheld and revived by the above said order dated 28.05.2013 passed by this Court.

6. Learned counsel for the petitioner submits that the impugned order was contrary to the record and also against the relevant provisions of law. The State Appropriate Authority under the PNDT Act-respondent No. 2, misdirected itself while passing the impugned order. Petitioner was not granted proper opportunity by respondent No. 2 while passing the impugned order (Annexure P-11). She next contended that respondent No. 2 made unwarranted remarks against the petitioner while passing the impugned order. District Appropriate Authority whose order was under challenge, was not impleaded by respondent No. 3 as party-respondent before the State Appropriate Authority. The State Appropriate Authority was not properly constituted. She concluded that the impugned order

was patently illegal and it was liable to be set aside. She places reliance on a judgment dated 25.11.2011 rendered by this Court in CWP No. 18698 of 2009 (Dr. Jatinder Gambhir v. State Appellate Authority and others). She prays for allowing the present writ petition by setting aside the impugned order.

7. Having heard the learned counsel for the petitioner at considerable length; after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of the present case, no interference is warranted at the hands of this Court while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. Since the writ petition is frivolous and motivated which amounts to sheer misuse of process of law, it is liable to be dismissed with costs for the following more than one reasons.

8. It is a matter of record that while allowing CWP No. 5323 of 2012 (Dr. Kiran Garg v. State of Punjab and another) and that too, after hearing the counsel for the present petitioner as respondent No. 2 therein, the present impugned order dated 19.01.2007 (Annexure P-11) was ordered to be revived by this Court. The relevant observations made by this Court in the order dated 28.05.2013, reads as under:-

In view of the above legal framework, this Court has no doubt whatsoever that the impugned order dated 12.01.2012 (P-10) suffers from patent illegality and want of jurisdiction. It is non est and ab initio void. The order is extralegal and extramural. The ex-parte order dated 17.03.2011 passed in Crl. Misc. No. 7081-M of 2011 was not intended to be an expression on the question of jurisdiction. In fact the Principal Secretary, Health and Family Welfare, Government of Punjab, Chandigarh was aware of the legal position when he admitted that: There were some merits in their arguments that Section 21 empowers only the Scan. Centres to file an appeal and not to the Govt. Officers or private person." and still went on to pass a patently perverse order violating settled rights of the petitioner in appeal at the hands of a disgruntled business rival of the petitioner who had no locus standi to poke his nose before the appellate authority and intervene in the matter. Strangely, he records in the impugned order that the controversy of jurisdiction has been settled by this Court in Crl. Misc. No. 7081-M of 2011. The ex-parte order passed in that case reads;

Present Ms. Anju Arora, Advocate, for the petitioner.

This petition is disposed of with a direction to the authorities to decide the representation made by the petitioner within a period of one month.

The Principal Secretary, Health & Family Welfare, Government of Punjab, Chandigarh has deliberately misconstrued the aforesaid order of this Court and has abused his office and authority as a Government servant to cause injury to the petitioner not warranted by law and to expose her to harm at the behest of a third party, a retired Government servant smarting from criminal action against him and his wife under the PC & PNDT act. I have little doubt that at his level of

administrative experience, the Principal Secretary, Health & Family Welfare knew well how this Court sets at rest legal controversies. These are done by reasoned judgments and not orders disposing of petitions with directions to decide representations and that too ex parte without hearing the State or the affected party. It was not legally permissible for him to treat a mere non-statutory representation preferred outside the pale of law as a statutory appeal under the Act and to proceed to decide it as though he were exercising plenary jurisdiction thinking in delusion that he is Court or a quasi judicial authority empowered by statute and under legal obligation to act. I am not sure whether considerations other than law were at play or was he playing footsie with Dr. Thukral. Instead of deciding the representation in the clumsy but laboured manner done he ought to have rejected it outrightly in terms of the Act for want of jurisdiction or lack of authority to decide and to have sought the opinion of the Advocate General, Punjab in the matter or of his more knowledgeable colleagues before proceeding further, if he was unable to grope in the dark. The appeal provisions of the Act are so clear as would not admit any ambiguity, to my mind, and to his mind as well because he says in the impugned order that, and to repeat, "There were some merits in their arguments that Section 21 empowers only the Scan Centres to file an appeal and not to the Govt. Officers or private person.

Resultantly, the writ petition is allowed. The impugned order dated 12.01.2012 (P-10) is quashed. The order dated 19.01.2007 passed by the State Appropriate Authority is revived.

It may be noted that this order is confined only to the examination of the impugned order from the point of view of jurisdiction and the merits of the case have neither been examined nor debated before this Court and nothing said in this order than on the issue of jurisdiction would be taken as an expression on the merits of the case for whatever they may be worth.

9. During the course of hearing, when a pointed question was put to learned counsel for the petitioner about the focus standi of the petitioner and also why he was so deeply interested in pursuing this frivolous litigation, if he was not having any professional rivalry with respondent No. 3, besides pursuing the cause of his own wife-Dr. Ramesh Rani Thukral, who was also running a nursing home in Civil Lines, Bathinda under the name and style of Thukral Nursing Home including running an Ultra Sonography Centre, learned counsel had no answer.

10. It is also a matter of record as reported by the Deputy Inspector General of Police, Bathinda Range, Bathinda, in his communication dated 03.11.2006 (Annexure P-10) that FIR No. 425 dated 05.08.2006 under Sections 4, 5, 6, 23, 29 of PNDT Act and Sections 313 and 315 IPC was registered against the petitioner and his wife Dr. Ramesh Rani Thukral, at police station Kotwali Bathinda at the instance of none else but Dr. Kuldip Kumar, Civil Surgeon, Bathinda. This material fact of registration of FIR against the petitioner as well as his wife under the PNDT Act itself clearly goes to show that the petitioner was pursuing the cause of his wife who was running the Nursing Home and Ultra

Sonography Centre in Civil Lines, Bathinda.

11. Thus, the petitioner was trying to settle his personal score with respondent No. 3, by way of this proxy litigation. Having said that, this Court feels no hesitation to conclude that the petitioner was not only chronic but an unscrupulous litigant who have neither any respect for law nor hesitates from misusing the process of law and the present writ petition is liable to be dismissed with costs for this reason alone.

12. The arguments raised by learned counsel for the petitioner that the District Appropriate Authority whose order was under challenge before the State Appropriate Authority was not impleaded as party-respondent was found to be factually incorrect. A bare reading of impugned order (Annexure P-11) itself would show that District Appropriate Authority was the first respondent before the State Appropriate Authority. Unwarranted interest taken by the petitioner in this litigation would become more glaring from his presence before the State Appropriate Authority-respondent No. 2, at the time of passing the impugned order. Even after hearing of the parties when the order was reserved by the State Appropriate Authority on 31.10.2006, petitioner moved a representation before the State Appropriate Authority seeking opportunity of being heard which was granted to him before passing of the impugned order.

13. Whatever the petitioner stated before the State Appropriate Authority and also the manner in which he conducted himself was recorded in the impugned order. Now the petitioner is feeling aggrieved against those very remarks which he himself invited. The relevant part of the impugned order in this regard, reads as under:-

Orders in this case were reserved on 31.10.2006 and lateron representation was received from Dr. S.L. Thukral who was the sub divisional appropriate authority when the orders were passed. He made representation to the afforded opportunity of hearing accordingly he was summoned to appear before us on 19.01.2007. He appeared before us at 3.30 P.M. At the outset he was asked to disclose his locus standi to address us in a case in which he was not a party. Instead of replying our query, he behaved in a very unbecoming manner. Without creating any unpleasant situation, we afforded him an opportunity of hearing to address on merits of the case. He reiterated the same arguments which were addressed by the district appropriate authority. He did not raise any fresh ground. Therefore, we have no reason to modify our earlier orders. During the course of arguments, it transpired that wife of Dr. S.L. Thukral is also running a nursing home in Civil Lines, Bathinda under the name and style of Thukral Nursing Home and she is also doing ultra sonography. Allegations and counter allegations were raised by the parties against each other and it was admitted before us that on the complaint of Civil Surgeon, Bathinda, a case under the relevant provisions of PNDT act was registered against Dr. S.L. Thukral was suspended from service but lateron he was reinstated. Therefore, prima facie we feel that the manner in which Dr. S.L. Thukral put forth his arguments was

nothing sort of personal rivalry between the two nursing homes. Be as it may, we do not consider these facts to be taken into consideration for deciding the present appeal. Therefore, irrespective of these facts, the appeal is being decided on merits only."

14. On the maintainability of the present writ petition, when a pointed question was put to the learned counsel for the petitioner, particularly in view of the above said order dated 28.05.2013 (Annexure P-19) passed by this Court, she tried to justify its maintainability saying that the impugned order was illegal. However, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality apparent on record in the impugned order passed by respondent No. 2, i.e. the State Appropriate Authority.

15. Further, once this Court ordered the revival of impugned order dated 19.01.2007 (Annexure P-11) vide above said order dated 28.05.2013, relevant part whereof has been reproduced herein above, the present writ petition was not maintainable at the hands of the petitioner. Thus, the irresistible conclusion is that the present writ petition is the result of frivolous and vexatious litigation which amounts to abuse of process of law.

16. Learned counsel for the petitioner failed to substantiate any of the arguments raised by her. No prejudice has been shown to the case of the petitioner by passing the impugned order. Further, he never challenged the validity of impugned order for all these more than six and a half long years. Learned counsel for the petitioner also failed to explain this inordinate long delay at the hands of the petitioner in filing the present writ petition. In this view of the matter, the unassailable conclusion is that the petitioner was trying to settle his score with respondent No. 3, espousing the cause of his wife by way of present frivolous litigation because of which the instant writ petition is liable to be dismissed with costs for this reason as well.

17. So far as the judgment relied upon by learned counsel for the petitioner in Dr. Jatinder Gambhir's case (supra), there is no dispute by the law laid down therein, however, the judgment is clearly distinguishable on facts and is of no help to the petitioner. Further, it is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judge made law thereto. Sometimes, even one additional fact or different circumstance can make the world of difference as held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

18. The view taken by this Court for dismissing the instant writ petition with costs, is also supported by a catena of judgments rendered by the Hon''ble Supreme Court, such as P.G.F. Limited and Others Vs. Union of India (UOI) and Another, , M. Manohar Reddy and Another Vs. Union of India (UOI) and Others, and Dalip Singh Vs. State of U.P. and Others, . The Hon''ble Supreme Court vide its judgment rendered in M/S. PGF's case (supra), dismissed the appeal with an

exemplary costs of Rs. 50 lacs. The relevant observations made by the Hon''ble Supreme Court in para 54 of the judgment in PGF's case (supra), which aptly applies to the present case, read as under:-

Having noted the conduct of PGF Limited in having perpetrated this litigation which we have found to be frivolous and vexatious in every respect, right from its initiation in the High Court by challenging the vires of Section 11AA of the SEBI Act without any substantive grounds and in that process prolonged this litigation for more than a decade and thereby provided scope for defrauding its customers who invested their hard earned money in the scheme of sale of land and its development and since we have found that the appellants had not approached the Court with clean hands and there being very many incongruities in its documents placed before the Court as well as suppression of various factors in respect of the so called development of agricultural land, we are of the view that even while dismissing the Civil Appeal, the PGF Limited should be mulcted with the exemplary costs. We also feel it appropriate to quote what Mahatma Gandhi and the great poet Rabindranath Tagore mentioned about the greediness of human being which are as under:-

Earth provides enough to satisfy every man's need, but not every man's greed.

Mahatma Gandhi-

The greed of gain has no time or limit to its capaciousness. Its one object is to produce and consume. It has pity neither for beautiful nature nor for living human beings. It is ruthlessly ready without a moment's hesitation to crush beauty and life out of them, molding them into money.

Rabindranath Tagore-

19. As a sequel to the discussion made hereinabove, it is unhesitatingly held that neither the petitioner was having any locus standi nor the writ petition was maintainable in view of the peculiar facts of the case and particularly because of the above said order dated 28.05.2013 passed by this Court in CWP No. 5323 of 2012. Further, the writ petition was also found to be suffering from delay and laches, having been filed after an unexplained delay of more than six and a half years.

20. Above all, the present writ petition has been found to be based on malafide intentions of the petitioner to settle his personal score with respondent No. 3 because of professional rivalry between respondent No. 3 and the wife of the petitioner. Petitioner has misused his position as a public servant being Senior Medical Officer-cum-Sub Divisional Appropriate Authority under the PNDDT Act for espousing the cause of his wife against whom above said FIR No. 425 dated 05.08.2006 had been registered for violation of the provisions of PNDDT Act and petitioner was also a co-accused. Thus, the present writ petition has been found to be frivolous, vexatious and motivated which was liable to be dismissed with costs.

21. No other argument was raised.

22. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in the peculiar, fact situation of the present case, the instant writ petition has been found to be frivolous, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

23. Consequently, the present writ petition is ordered to be dismissed with costs, which are quantified at Rs. 50,000/-. Petitioner is directed to deposit the costs with Punjab State Legal Services Authority within a period of one month from the date of receipt of certified copy of this order, failing which the Secretary, Punjab State Legal Services Authority shall be at liberty to recover the amount of costs of Rs. 50,000/- from the petitioner. Resultantly, the present writ petition stands dismissed with costs, as aforementioned.