
(2008) 07 MP CK 0005
In the Madhya Pradesh High Court

S.P. Anand

APPELLANT

Vs

Registrar General

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 216, 225, 226, 235

Court Fees Act, 1870 — Section 35

States Reorganisation Act, 1956 — Section 54, 59, 60, 61, 62

Citation : AIR 2009 MP 1 : (2008) ILR (MP) 2172 : (2008) 4 MPHT 279 : (2008) 4 MPJR 105 : (2008) 3 MPLJ 596

Hon'ble Judges : A.K. Patnaik, C.J.;S.K. Kulshrestha, J;A.M. Sapre, J

Bench : Full Bench

Judgement

A.K. Patnaik, C.J.

This is a reference made to the Full Bench by a Division Bench of this Court in a pending Public Interest Litigation filed by the petitioner under Article 226 of the Constitution of India.

The relevant facts for appreciating why the reference has been made to the Full Bench are that the petitioner filed Writ Petition No. 988 of 1999 as a Public Interest Litigation (for short "PIL") challenging the grant and payment of pension to Ex-Legislators of the State of Madhya Pradesh as well as the vires of the M.P. Vidhan Sabha Sadasya Vetan Tatha Bhatta Tatha Pension Adhiniyam. A Division Bench of this Court hearing the PIL found that the issue raised in the PIL had already been settled by another Division Bench of this Court in Raghu Thakur Vs. State of Madhya Pradesh, and the grant and payment of pension to Ex-Legislators had been held as intra vires the Constitution. The Division Bench further held in the order dated 9-9-1999 in W.P. No. 988 of 1999 reported in Ram Chandra Vs. Prem Bai and Others, that the petitioner was still persisting in his efforts to file series of writ petitions on constitutional and other issues which stood settled only to hog publicity. The Division Bench also held in the order dated 9-9-1999 in W.P. No. 988 of 1999 that the PIL media in this way is being

used contrary to the purpose for which it was evolved, namely, redressal of public injury and hence, it was necessary to regulate filing of PIL before the Court and accordingly issued the following directions:

- (1) A "PIL" shall disclose petitioner's social public standing/professional status and his public spirited antecedents and specify the nature of cause and interest involved. It shall be supported by an affidavit on each averments/allegation and contain a statement/declaration that issue raised was not dealt with or decided and that a similar or identical petition was not filed earlier;
- (2) It shall be accompanied by a security deposit of Rs. 2,000/- and unless dispensed with on the recommendation of Registrar, shall not be processed for listing before the Court;
- (3) It shall be scrutinized by the Registrar to ascertain the status/standing of petitioner and the nature of cause disclosed in it and in case it was found wanting in either respect and was not supported by some prima facie proof wherever warranted, Registrar shall return the petition for making up the deficiency to his satisfaction;
- (4) If petitioner was aggrieved by the order of Registrar, he/she could take appeal to the Court on deposit of Rs. 500/-; and
- (5) Media, both print and electronic are required to desist from publishing the subject-matter of any "PIL" unless its cognizance was taken by the Court by issuing notice to respondents.

After issuing the aforesaid directions, the Division Bench dismissed the PIL W.P. No. 988 of 1999 by order dated 9-9-1999.

One of the directions issued by the Division Bench in W. P. No. 988 of 1999, quoted above, was that the writ petition filed as PIL shall be accompanied by security deposit of Rs. 2000/- and unless dispensed with on the commendation of the Registrar, shall not be processed for listing before the Court. Yet the petitioner filed another writ petition, W.P. No. 1882 of 2000 without depositing the security amount and contended before another Division Bench of this Court that the order dated 9-9-1999 of the Division Bench in W. P. No. 988 of 1999 was a nullity inasmuch as it was contrary to the judgment in Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad, in which the Supreme Court has held that the Rules framed by the Supreme Court requiring deposit of security amount is in violation of the fundamental right guaranteed to citizens to move the Supreme Court under Article 32 of the Constitution and was, thus, invalid, but the Division Bench held that unless the order dated 9-9-1999 passed in W. P. No. 988 of 1999 is set aside by a larger Bench or by a higher Court, another Division Bench was bound to follow the said order.

Thereafter, the petitioner filed repeated writ petitions in this Court. W. P. No. 1351 of 2001, W. P. No. 747 of 2001 and W. P. No. 443 of 2005, reiterating that the directions of the Division Bench in the order dated 9-9-1999 passed in W. P.

No. 988 of 1999 is a nullity for the reason that it was contrary to the judgment of the Supreme Court in *Prem Chand Garg v. Excise Commissioner* (supra), but the contention was turned down in each of the cases. In the order dated 5-7-2005 in W.P. No. 443 of 2005, a Division Bench of this Court in particular held that the principle laid down in *Prem Chand Garg v. Excise Commissioner* (supra) was with reference to an aggrieved individual approaching the Supreme Court under Article 32 of the Constitution complaining of infringement of his fundamental right and will not apply to a PIL under Article 226 of the Constitution. In the order dated 5-7-2005 in W.P. No. 443 of 2005, the Division Bench further held referring to the caution of the Supreme Court with regard to PIL in *Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others*, that the initial noble role of public interest litigations has now mutated into vicious, extortionist private interest litigations and all that the Division Bench of this Court has done in the order dated 9-9-1999 in W.P. No. 988 of 1999 is to take some steps to discourage vicious litigation by laying down some guidelines in regard to such a public interest litigations, one of which is that public interest litigation should be accompanied by a security deposit of Rs. 2000/-.

In the present writ petition (W.P. No. 5806 of 2006), the petitioner has reiterated that the order dated 9-9-1999 of the Division Bench in W.P. No. 988 of 1999 was a nullity but has raised a new contention that the Division Bench, while issuing the directions in the order dated 9-9-1999 in W.P. No. 988 of 1999, was in effect making orders or laying down rules relating to practice and procedure in relation to filing of PILs under Article 226 of the Constitution of India, but the power to make such orders or rules relating to practice and procedure relating to filing of PILs was not vested in a Division Bench of the High Court in the judicial side but was vested in the Full Court of the High Court u/s 54 of the State Re-organization Act, 1956 (for short "the Act of 1956").

The petitioner has also reiterated relying on the decision in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, that no court-fee is payable for enforcement of fundamental rights as a letter petition without any court-fee can also be entertained by the Supreme Court as well as by the High Court for enforcement of the fundamental rights of the poor and of the deprived sections of the community. Mr. Ashok Kutumble, learned Additional Advocate General appearing for the State submitted that the petitioner has been filing PILs only on the basis of information derived from newspapers and such PILs cannot be entertained by the Court.

Considering the aforesaid contentions raised by the parties, the Division Bench passed orders in the present writ petition W.P. No. 5806 of 2006 on 15-4-2008 referring the following substantial questions of law for opinion of a Larger Bench:

(1) Whether the powers conferred u/s 54 of the States Reorganisation Act, 1956 on the High Court of Madhya Pradesh to make rules and Orders relating to practice and procedure in the High Court can be exercised by the Division Bench of the High Court under Article 226 of the Constitution of India so as to lay down

the practice and procedure of PIL ?

(2) Whether the Division Bench of the High Court could have laid down some rules with regard to practice and procedure relating to PIL in the absence of any such rules and orders issued by the High Court u/s 54 of the States Reorganization Act, 1956?

(3) Whether the Division Bench could have laid down the five conditions regarding PIL in the order in case of S. P. Anand, reported in 2000 (2) MPLJ 448, when such conditions have not been laid down by the Supreme Court in the judgments relating to PIL?

(4) Whether court-fees are payable on a PIL?

(5) Whether PIL can be entertained only on the basis of information published in the newspapers ?

By the order dated 15-4-2008 in the present case, the Court also directed that copy of the order will be sent to the Presidents of the High Court Bar Associations at Jabalpur, Indore and Gwalior with a request to nominate Advocates on their behalf to assist the Court at the time of hearing and further directed that Mr. Piyush Mathur, Advocate who was earlier engaged by the Registrar General of the High Court as Amicus Curiae to assist the Court will continue to assist the Court.

We have heard the petition and Mr. R. N. Singh, learned Advocate General and Mr. Ashok Kutumble, learned Additional Advocate General for the State of M.P. Mr. B. L. Pavecha, learned senior counsel appearing for the High Court Bar Association, Indore and Mr. Piyush Mathur, appearing as Amicus-Curiae at length.

Before we answer the questions referred to us, we extract herein below Section 106 of the Government of India Act, 1915, Articles 216 and 225 of the Constitution and Section 54 and 68 of the Act of 1956, which are relevant to the questions referred to us for our opinion:

Section 106 of the Government of India Act, 1915

106. (1) The several High Courts are Courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction, in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to make rules for regulating the practice of the Court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdictions, powers and authority as are vested in those Courts respectively at the commencement of this Act.

(1a) The letters patent establishing or vesting jurisdiction, powers or authority in a High Court may be amended from time to time by High Majesty by further letters patent.

(2) The high Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the

collection thereof according to the usage and practice of the country or the law for the time being in force.

Articles 216 and 225 Constitution of India.

216. Constitution of High Courts - Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

Jurisdiction of existing High Courts - Subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

Sections 54 and 68 of the Act of 1956

54. Practice and Procedure - Subject to the provisions of this Part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, with necessary modifications, apply in relation to the High Court for a new State, and accordingly, the High Court for the new State shall have all such powers to make rules and orders with respect to practice and procedure as are, immediately before the appointed day, exercisable by the High Court for the corresponding State:

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, until varied or revoked by rules or orders made by the High Court for a new State, apply with the necessary modifications in relation to practice and procedure in the High Court for the new State as if made by that Court.

Interpretation - For the purposes of Sections 59 - 66:

(a) proceedings shall be deemed to be pending in a Court until that Court has disposed of all issues between the parties, including any issues with respect to the taxation of the costs of the proceedings and shall include appeals, applications for leave to appeal to the Supreme Court, applications for review, petitions for revision and petitions for writs;

(b) references to a High Court shall be construed as including references to a Judge or Division Court thereof, and references to an order made by a Court or a Judge shall be construed as including references to a sentence, judgments or decree passed or made by that Court or Judge.

On the first two questions, our opinion is that under Article 225 of the Constitution and Section 54 of the Act of 1956, the Chief Justice and all the Judges of the Madhya Pradesh High Court have the powers to make orders or rules with regard to practice and procedure relating to PILs and the order dated 9-9-1999 of the Division Bench in W.P. No. 988 of 1999 in so far as it has laid down the five conditions for filing of PIL is without jurisdiction. The reasons for this opinion will be clear from a discussion of the relevant provisions that will follow. The High Court of Nagpur was established by a Letters Patent and the power to make rules for regulating the practice of the Court was vested by Section 106 of the Government of India Act, 1915 and Clause 27 of the Letters Patent. When the Constitution of India was adopted in 1950, this power to make the rules of the Court continued to be the same as immediately before the commencement of the Constitution, as provided under Article 225 of the Constitution and therefore continued to be vested in the High Court of Nagpur. When the new State of Madhya Pradesh was formed under the Act of 1956 with effect from 1st November, 1956, the Rules made by the High Court of Judicature at Nagpur in respect to the practice and procedure continued to apply with necessary modifications to the State of Madhya Pradesh but the High Court of Madhya Pradesh was to have all such powers to make rules and orders with respect to the practice and procedure as were exercised by the High Court of Judicature at Nagpur under Article 225 of the Constitution. Article 216 of the Constitution provides that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Hence, High Court in Article 225 as well as Section 54 of the Act of 1956 would mean the Chief Justice and all the Judges of the High Court of M.P. i.e. the Full Court of the High Court and would not mean a single Judge or a Division Bench exercising judicial powers. This will be further clear from Section 68 (b) of the Act of 1956, which provides that for purposes of Sections 59 to 66, reference to a High Court shall be construed as including references to a Judge or Division Bench of the High Court, whereas for the purpose of Section 54 of the Act of 1956, reference to a High Court was not to be construed as a reference to a Judge or a Division Bench of the High Court.

We find authority from for our aforesaid opinion in State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, in which the Supreme Court while referring to the rule making power of the High Court under Articles 225 and 226 of the Constitution has relied on Article 216 to say that the High Court in Articles 225 and 235 of the Constitution would mean the Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint and has further held that the Administrative Judge or the Administrative Committee can also be authorized by the High Court to exercise its powers under Articles 225

and 235 of the Constitution. Paragraph 10 of the judgment of the Supreme Court in *State of U. P. v. Batuk Deo Pati Tripathi* (supra), in which this discussion finds place is quoted herein, below:

Article 225, it is true, preserves inter alia the pre-Constitution powers of existing High Courts to frame rules and it may be assumed for purposes of argument, an assumption which is largely borne out by provisions of the laws mentioned in the preceding paragraph, that the High Court of Allahabad did not, prior to the enactment of the Constitution, possess the power to frame rules authorizing a Judge or a Committee of Judges of the High Court to act on behalf of the Court. But Article 225 is not the sole repository of the High Courts' power to frame rules. The relevant part of Article 235 of the Constitution provides that the control over District Courts and Courts subordinate thereto shall be vested in the High Court. Since Article 216 provides that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint, Article 235 has to be construed to mean that the control over District Courts and Courts subordinate thereto is vested in the entire body of Judges who together constitute the High Court and not in the Chief Justice as representing the High Court or an Administrative Judge or a smaller body of Judges acting as an Administrative Committee. But though the control over subordinate Courts is vested institutionally in the High Courts by Article 235, it does not follow that the High Courts have no power to prescribe the manner in which that control may in practice be exercised. In fact, the very circumstance that the power of control, which comprehends matters of a wide-ranging variety, vests in the entire body of Judges makes it imperative that rules must be framed to make the exercise of control feasible, convenient and effective. The seeds of the jurisdiction to frame rules regulating the manner in which the control over subordinate Courts is to be exercised are thus to be found in the very nature of the power and in the fact that the power vests in the entire body of Judges. The High Court has, therefore, the power under Article 235 itself to frame rules for regulating the manner in which the control vested in it may be exercised. The power to do a thing necessarily carries with it the power to regular the manner in which the thing may be done. It is an incident of the power itself and indeed, without it, the exercise of the power may in practice be fraught with difficulties which all frustrate, rather than further, the object of the power. It is undoubtedly true that the rules framed for prescribing the manner in which a power may be exercised have to be truly regulatory in character. The reason is that under the guise of framing rules, the essence of the power cannot be permitted to be diluted. But that is a separate matter which we will consider later. The limited object of the present discussion is to show that High Courts possess the power under Article 235 to prescribe the manner in which the control over subordinate Courts vested in them by that article may be exercised. That explains why the Allahabad High Court framed Rules of 1952 not only in the exercise of power possessed by it under Article 225, but in the exercise of all other powers enabling it in that behalf. One of such powers is to be found in

Article 235 itself and therefore the abstract power of the High Court to frame the impugned rules cannot be doubted and must be conceded.

As a matter of fact, we find from Section 3 of the Madhya Pradesh High Court Rules and Orders presently in force that various rules to regulate the proceedings under Article 226 of the Constitution have been made by the High Court of Judicature at Nagpur in exercise of powers under Article 225 of the Constitution and clause 27 of the Letters Patent which are in force by virtue of Section 54 of the Act of 1956. These rules and orders do not provide for security deposit to be made along with a writ petition filed under Article 226 of the Constitution and it is only the High court comprising of the Chief Justice and all Judges of the High Court of Madhya Pradesh appointed by the President or a Committee of the High Court Judges or a Judge authorized to make orders or rules relating to practice and procedure of the High Court, which could make fresh orders or rules providing for a security deposit along with every PIL filed to prevent the abuse of PILs and hence the order dated 9-9-1999 of the Division Bench in W.P. No. 988 of 1999 was without jurisdiction. We answer the questions 1 and 2 referred to us by the order dated 15-4-2008 of the Division Bench accordingly. Since we have held that the Division Bench did not have the jurisdiction to pass the order dated 9-9-1999 in W.P. No. 988 of 1999, the conditions for filing PILs in the order dated 9-9-1999 are not valid in law and question No. 3 which relates to the validity of the conditions becomes academic and need not be answered by us.

Question No. 4 referred to us is whether court-fee is payable or not on a PIL. The contention of the petitioner on this question is that if a letter without court-fees can be entertained as a PIL as per the judgment of the Supreme Court in *Bandhua Mukti Morcha* AIR 1994 SC 802 (supra), then no court-fee should be payable on a PIL. The relevant portion of the judgment of the Supreme Court in *Bandhua Mukti Morcha* on which the petitioner relies upon is quoted hereunder:

The constitution makers therefore advisedly provided in Clause (1) of Article 32 that the Supreme Court may be moved by any appropriate proceeding, "appropriate" not in terms of any particular form, but "appropriate" with reference to the purpose of the proceedings. That is the reason why it was held by this Court in the *Judges' Appointment and Transfer* case that where a member of the public acting bona fide moves the Court for enforcement of a fundamental right on behalf of person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the Court for relief, such member of the public may move the Court even by just writing a letter, because it would not be right or fair to expect a person acting pro bono publico to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in Court for enforcement of the fundamental right of the poor and deprived sections of the community and in such a case, a letter addressed by him can legitimately be regarded as an appropriate proceedings.

We may point out that what we have said above in regard to the exercise of

jurisdiction by the Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Court under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantages which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.

(Emphasis supplied)

A Division Bench of this Court comprised of R. V. Raveendran, J., the then Chief Justice of this Court and A. M. Sapre, J. however has considered this contention in its order dated 5-7-2005 in W.P. No. 443 of 2005 and has held that there is no provision in the Court-fees Act, 1870 exempting writ petitions in general or PILs in particular from court-fees nor is there any provision in the Act enabling this Court or a subordinate Court to exempt payment of court-fees payable on writ petitions or PILs and power is only vested u/s 35 of the Court Fees Act in the appropriate Government to reduce or remit all or any of the fees mentioned in the First and Second Schedules to the Court Fees Act but the State Government of Madhya Pradesh has not passed any orders u/s 35 of the Court Fees Act exempting a petitioner from payment of court-fees in a PIL. The Division Bench has further held that the aforesaid decision of the Supreme Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, applies to a letter addressed to the High Court and not to regular writ petitions filed under Article 226 of the Constitution. The Division Bench has explained that when a letter is received, the same is examined on the administrative side and it is purely within the direction of the Chief Justice or any other Judge, either to act or file the letter as no action is deemed necessary and in such a case, the letter itself is not a writ petition, and only when the Chief Justice or his designate, on the basis of the letter considers it a fit case for examination, it is taken up suo-motu for registration as writ petition under Article 226 of the Constitution and it is in these circumstances that no court-fee is required to be paid on the letter petition. We agree with these conclusions of the Division Bench in the order dated 5-7-2005 in W.P. No. 443 of 2005 and we accordingly, hold that court-fees are payable on a PIL filed as a writ petition under Article 226 of the Constitution, except where the Chief Justice or a Judge designate directs on the basis of information received in a letter or any other document and considers that it is fit case for registering a case under Article 226 of the Constitution even though no court-fee is paid on such letter or document.

The last question is whether a PIL can be entertained only on the basis of information published in the newspapers. Normally, a PIL cannot be entertained

solely on the basis of information published in the newspapers but if the Chief Justice or a Judge designate finds that a particular information published in the Newspapers reveals gross violation of a fundamental right guaranteed under Part-III of the Constitution of a person who does not have ready access to the Court for some incapacity or the other, particularly the right to life and liberty granted under Article 21 of the Constitution, and the Chief Justice or a Judge designate has reason to believe the information to be true, a PIL can be entertained only on the basis of such information published in the newspapers for the same reasons as have been given by the Supreme Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, for entertaining a letter petition.

In the result, we hold that the directions contained in the order dated 9-9-1999 passed in W.P. No. 988 of 1999 by Division Bench of this Court will no longer hold good and that the rules in Section 3 of the High Court Rules for proceedings under Article 226 of the Constitution made under Article 225 of the Constitution and Clause 27 of the Letters Patent made by the High Court of Judicature, Nagpur, as amended from time to time, will continue to apply to all public interest litigations filed under Article 226 of the Constitution of India until replaced or amended by rules made by the High Court of M.P. in exercise of its powers u/s 54 of the Act of 1956 read with Article 225 of the Constitution.