
(2006) 08 MP CK 0079
In the Madhya Pradesh High Court
Case No : Writ Petition No. 443 of 2005

S.P. Anand

APPELLANT

Vs

U.O.I and Others

RESPONDENT

Date of Decision : 17-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 8
Court Fees Act, 1870 — Section 35
Presidential and Vice-Presidential Elections Act, 1952 — Section 5B, 5C

Citation : (2006) 3 MPJR 340

Hon'ble Judges : S.K. Kulshrestha, J; N.K. Mody, J

Bench : Division Bench

Judgement

N.K. Mody J.

This order shall also govern Writ Petition Nos. 1908/06, 1235/04, 2596/06, 1946/06, 1924/06, 2637/06, 2756/06 and 1925/06.

In all these petitions, the petitioner has not paid the requisite court fee payable upon filing of writ petition. Petitioner has also not deposited the security amount of Rs. 2000/- which is payable on a petition filed in public interest.

In some of the cases, petitioner has moved an application for exemption from payment of requisite security amount. But that application is also without payment of court fee. No affidavit has been filed by the petitioner in support of his petition. In all the writ petitions, office has pointed out the defects which can be summarized as under :-

- (i) non payment of court fee on petition
- (ii) non depositing security amount
- (iii) non filing of index form.
- (iv) non filing of affidavit and,

(v) non filing of full second set

(vi) petition not filed in form prescribed under rules

Petitioner who is well experienced in law submits that since the petitioner has come in public interest, therefore, neither the petitioner has to cure the defects nor to pay court fee or deposit security amount. In his long arguments which continued a number of days, the petitioner placed reliance on following citations:

1. Sheela Barse Vs. Union of India (UOI) and Others,

Lakshmi Kant Pandey Vs. Union of India (UOI),

State of U.P. and Another Vs. Satya Narain Kapoor (Dead) by Lrs. and Others,

Kapila Hingorani Vs. State of Bihar,

Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and Another,

Krishan Lal Vs. State of Jammu & Kashmir,

Rajeshwar Singh Vs. Rajendra Singh and Others

Bandhua Mukti Morcha Vs. Union of India (UOI) and Others,

Ashok Kumar Vs. State of M.P. {(1990) J.L.J. 544}

Shankar Dass Vs. Union of India (UOI) and Another,

Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta,

Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others,

P. Ramachandra Rao Vs. State of Karnataka,

In W.P. No. 443/2005 also, all these defects were pointed out and the petitioner was heard on the following questions:

(i) whether no court fee is payable in respect of a writ petition filed by way of Public Interest Litigation under Article 226 of the Constitution of India ?

(ii) whether requiring a petitioner in a PIL to pay a security deposit violates the fundamental right of the petitioner ?

(iii) whether the requirements relating to indexing paginaton and filing of second set etc. should not be raised, or alternatively have to be waived in a PIL?

After hearing at length, vide order dated 5.7.2005, Hon,ble Justice Shri R.V. Raveendran, the then Chief Justice and Hon. Shri Justice A.M. Sapre observed as under:

4.3 : There is no provision in the Court Fees Act exempting writ petition in general or PIL in particular, from court fee. Nor is there any provision in the said Act enabling this Court or the Subordinate Courts to exempt the payment of

Court Fee payable under the Act.

4 the petition does not claim to be an indigent person entitled to the benefit of Order 33 Rule 8 of CPC.

In view of the mandatory requirement of Section 4 read with Article 1(e) (ii) of II Schedule of the Court Fees Act, for payment of court fee of Rs. 100/- on petitions under Article 226 of the Constitution, and in the absence of a provision enabling the Court to exempt any class of persons or class of cases from payment of court fee, the question of exempting the petitioner from paying court fee in regard to writ petition (Public Interest Litigation) does not arise. The petitioner has to pay the court fee.

The petitioner submitted that no court fee is payable on a petition filed in public interest under Article 226 of the Constitution of India, having regard to decision of the Supreme Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, . He relies on the following observations:

The constitution makers therefore advisedly provided in clause (1) of Article 32 that the Supreme Court may be moved by any "appropriate" proceedings, "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 bonafide 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 section of the community and in such a case, a letter addressed by him can legitimately be regarded as an "appropriate" proceeding.

We may point out 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 Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Court under Article 226, 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 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 any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.

It is no doubt true that the Supreme Court has held that a letter addressed to

the High Court, can be regarded as an application invoking the writ jurisdiction of the High Court. It is also true that when a letter is treated as an application for exercise of the jurisdiction under Article 226, no court fee is required to be paid on the letter petition. But, there is a basic difference between such a letter and a regular Writ petition filed under Article 226 of the Constitution. When a letter is received, the same is examined on the administrative side and it is purely within the discretion of the Chief Justice or the designated Judge either to act on them or file the letter as no action being necessary. There is no need for a hearing before ordering the letter to be filed. If it is decided to file the letter, there is no need to list the letter before the Court for judicial consideration (that is preliminary hearing). The letter itself is not a writ petition. Only when the Chief Justice or his designate, on the basis of information contained in the letter considers it a fit case for examination, it is taken up suo motu, and is registered as a writ proceedings under Article 226. It is in these circumstances, no court fee is required to be paid on letter petitions.

On the other hand, when a petition drafted in the form of a regular writ petition under Article 226, is filed before the High Court, the relevant rules require the matter to be listed for judicial consideration (preliminary hearing) before the Court. There is no question of such petition being examined on the administrative side and being closed without hearing the petitioner, which is possible in the case of a letter. A person filing a writ petition is entitled to be heard as a matter of right, whereby a person sending a letter has no such right.

All that, the Supreme Court has observed in *Bandhua Mukti Morcha's* case is that the High Court may be moved by a letter, to exercise its writ jurisdiction. It nowhere lays down a proposition that when a regular writ petition is filed by someone as a Public Interest Litigation, it should be exempted from payment of Court fee or exempted from complying with other procedural requirements. If the petitioner wants to move this Court without paying court fee or without complying with High Court Rules relating to writ proceedings, it is open to him to send a letter giving the very same information. It will then be considered appropriately. Alternatively, it is open to the petitioner to give a representation to the State Government for issuance of appropriate Notification u/s 35 of the Court Fees Act for exempting writ petitions in public interest (PIL) from payment of court fee. Be that as it may. The decision in *Bandhua Mukti Morcha's* case (*supra*) is, therefore of no assistance to the petitioner to avoid payment of court fee on the writ petition.

The petitioner next relied on the decision of the Supreme Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, to contend that in appropriate cases, court fee can be exempted. That was a petition under Article 32 of the Constitution challenging the constitutional validity of section 5B and 5C of the Presidential and Vice Presidential Elections Act, 1952. Along with the petition, the petitioner therein had filed an application seeking exemption from payment of court fee. Having perused the said application, the said application was allowed.

There is no discussion or statement of Principle relating to court fee payable on PIL. In fact it becomes clear from the decision that there is no automatic exemption from payment of court fee, but an application has to be filed for exemption. Presumably the Supreme Court Rules provide for such exemption. Secondly, the Court Fees Act, 1870 obviously does not apply to petitions under Article 32 filed before the Supreme Court. Therefore, the fact that the Supreme Court gave exemption from paying court fee on a petition under Article 32 of the Constitution does not help the petitioner to contend that there should be an exemption from paying court fee in regard to a petition under Article 226, ignoring the mandatory requirements of Section 4 of the Court Fees Act, 1870.

We therefore answer both parts of the first question in negative.

Re: Question (ii)(security deposit in a PIL)

The Registry is requiring all persons who file Public Interest Litigations, to deposit a sum of Rs. 2,000/- as security deposit, unless dispensed with by the Court, in compliance with the directions given by a Division Bench of this Court in petitioner's own case, reported in Prakash Jain and others Vs. Vijay Saxena and another, . The relevant portions of the directions issued in that case are extracted below:

(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 averment / 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.

The petitioner contended that the said direction is per incuriam and should not be followed as it runs counter to the decision of the Constitution Bench of the Supreme Court in the case of Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad, . In that case, it was held that Rule 12 of Order 35 of the Supreme Court Rules and Orders, 1950, in so far as it required giving of security for costs in a petition under Article 32 to move the Supreme Court and, therefore, was invalid. The Supreme Court held:

It may be that in some cases, the respondent may not be able to recover its costs from the petitioner even if the petition is dismissed on the merits. But that, in our opinion, cannot: justify the making of an order for security, because even impecunious citizens, or citizens living abroad, must be entitled to move this Court if they feel that their fundamental rights have been contravened. That obviously is the content of the fundamental right guaranteed under Article 32 and since the impugned rule, in so far as it relates to security for costs, impairs the content of that right, it must be struck down as being unconstitutional."...if a

rule or an order imposes a financial liability on the petitioner at the threshold of his petition and that too for the benefit of the respondent, and noncompliance with the said rule or order brings to an end the career of the said petition, that must be held to constitute an infringement of the fundamental right guaranteed to the citizens to move this Court under Article 32. That is why we think Rule 12 in respect of the imposing of security is invalid.

The said observations were made in the context of an individual approaching the Supreme Court for protection of his fundamental rights under Article 32 of the Constitution of India. The Supreme Court held that no person who complains that his fundamental right has been infringed, should be denied access to the Supreme Court merely because he is financially incapable of making security a deposit for costs. It held a requirement for security for costs, if insisted on a person approaching the Supreme Court complaining of infringement of fundamental rights, would itself constitute an infringement of the fundamental right guaranteed to the citizen to move the Supreme Court under Article 32. The said decision related to a restriction on a person whose fundamental right has been infringed, that is on the aggrieved person himself.

The position of Public Interest Litigation is entirely different. Such litigation were not in existence when *Prem Chand Garg* was decided. PIL is different from the traditional litigation under Article 226. It is an exception to the rule that the person who seeks relief must be an aggrieved person. *Locus standi* plays a pivotal role in writ petitions which are not public interest litigation. On the other hand, in a Public Interest Litigation, the petitioner need not have any private or personal interest. He can espouse the cause of any person or a class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the Court for relief. Such a petition can be brought by any citizen where an authority fails to perform its statutory obligation in spite of their attention being drawn to such obligations. Further while a petition under Article 32 is only in regard to infringement of a fundamental right, a petition under Article 226, that too a PIL can be in respect of infringement of a fundamental right. Therefore, the principle laid down in *Prem Chand Garg* with reference to an aggrieved individual approaching the Supreme Court under Article 32 complaining of the infringement of his fundamental right will not apply to a PIL under Article 226.

Secondly, Public Interest Litigations started with a noble motive. The petitions were moved bonafide for enforcement of fundamental rights on behalf of person or class of persons who on account of poverty or disability or socially or economically disadvantaged position could approach the Court for relief. But things have moved a long way from the initial noble role and some Public Interest Litigations have mutated into vicious, extortionist private interest litigations. A stage has reached where the Supreme Court has time and again cautioned against several Public Interest Litigations being really "publicity interest litigation" or "private interest litigation" or "political interest litigation". *Dattaraj*

Nathuji Thaware Vs. State of Maharashtra and Others, is the latest case where Supreme Court has strongly cautioned against such cases, in the following very strong terms :

Though we spare no effort 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 grievance go unnoticed, unrepresented and unheard, yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances, are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either or themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling 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.

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 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 be publicity- oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or 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 consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or for as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity.

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.

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. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with cost as aforesaid so that the message goes in the right direction the petitions filed with oblique motive do not have the approval of the courts.

All that the Division Bench of this Court has done in *S.P. Anand (2000) (1) MPHT 2003* is to take some steps to discourage frivolous or vexatious litigation. It had laid down certain guidelines in regard to public interest litigations, one of which is that a public interest litigation should be accompanied by a security deposit of Rs. 2,000/-. It is essentially a provision to weed out pseudo public interest litigation and not a condition to discourage genuine public interest litigation. The very requirement for payment of security deposit has a built-in-provision for exemption/dispensation. Whenever a PIL is filed espousing a genuine cause or espousing the cause of the poor or downtrodden, on application for exemption, this Court will and has been routinely exempting the petitioners from giving a security deposit. In fact, we find that the present case is itself one where a genuine cause is being espoused and we are granting exemption, while considering the petitioner's application for exemption. But seeking and securing exemption from payment of security deposit is different from contending that there cannot be a condition for payment of security deposit.

What is rather surprising is that in spite of the decision in his earlier case (reported in *2000 (1) MPHT 2003*), the petitioner, who is well experienced in law (though not a Legal Practitioner) and who has filed innumerable public interest litigations, reiterates in every petition that the direction given in his earlier case *S.P. Anand Vs. The State of M.P. and Others*, regarding security deposit is per incuriam and attempts to ignore it. In fact, he has gone to the absurd length of filing an application in this case praying for initiation of contempt proceedings against the Registrar of this Court, for requiring the petitioner to pay the security deposit. If at all there is any contempt it is not by the Registrar, but by the petitioner who seeks to deliberately and willfully ignore the order of this Court and tries to threaten an officer performing his duties with contempt action. Be that as it may. We do not propose to take any action against the petitioner except to point out that the decision of this Court in his earlier case *S.P. Anand Vs. The State of M.P. and Others*, which has reached finality should be accepted graciously until and unless set aside by a Larger Bench or by the Supreme Court. The second question is also answered in the negative.

Re: Question (iii) (Removing defects in petition)

The Rules do not make any relaxation in regard to procedural requirement either in regard to public interest litigation or petitions filed by parties appearing in person. The requirements relating to filing an index sheet showing the documents filed, pagination of the petition, filing of legible copies, filing of second set etc. are all procedural requirements provided for in the Rules intended to smoothen the process of hearing and avoid wastage of valuable Court time. If the papers are not filed properly, lot of Court time is wasted at the

time of hearing. It has to be realized that saving of Court time is itself in public interest, so that it can be used for disposing of other cases. Therefore, there is nothing wrong in requiring the petitioner to comply with the office objections. Before parting, we may refer to the observation of the Supreme Court in the very decision cited by the petitioner; (in Prem Chand Garg) as to the need to comply with the Rules:

Rules framed under Article 145 which govern the practice and procedure in respect of the petitions under Article 32 with the object of aiding and facilitating the orderly course of their presentation and further progress until then decision, cannot be said to contravene Article 32. All proceedings in Court must be orderly and must follow the well recognized pattern usually adopted for a fair and satisfactory hearing; petitioner under Article 32 are no exception in that behalf.

The said observations equally apply to proceedings under Article 226. The third question is also therefore answered in the negative.

The order dated 5.7.95 passed by this Court in W.P. No. 443/05 has attained finality as it has not been challenged by the petitioner. This order is having binding effect on this Court. In view of this, this Court cannot be persuaded to consider that the petitioner is entitled to file the petition without payment of court fees or without depositing the amount of security.

Submission of the petitioner is that in PIL Registrar of this Court has no right to put the objection and stay hearing till the objections are removed because the matters are of great important and therefore, it is necessary to bring them into the knowledge of this Court, immediately. It is submitted that the act of Registrar is not only illegal but also amounts to Contempt of this Court for which he should be punished suitably under the provisions of Contempt of Courts Act.

For the purposes of scrutiny to the effect whether filing of petition is as per rules or no guideline has been issued to the subordinate staff of this Court which is also required to be quoted for the knowledge of the petitioner as the petitioner is required to approach this Court of and on :-

1. All applications shall accompany the file and shall be posted for hearing simulataneously.

The case accompanied by an incomplete of incorrect filled up Computer Sheet shall be listed in default.

Every petition and memorandum of appeal shall be accompanied by duly filled up Computer Sheet.

Defective cases shall be marked with DF in red ink and shall be struck-off as soon as the defect is rectified.

The Registry will strictly enforce the compliance of Rule 1 Part-II of Rules for proceedings under Article 226 of the Constitution of India framed by the High Court.

Every affidavit filed in the High Court should be strictly in consonance with the Rules of Chapter 3 relating to affidavit.

If a document is made a part of affidavit, then, it should be annexed thereto and duly attested by a Notary or Oath Commissioner or any other officer empowered to attach the affidavit.

If any document annexed to the petition is not a part of petition filed as an affidavit, it should be duly attested by the counsel with his signature and seal.

If any application is filed for amendment in the petition or for taking documents on record, it should be supported by affidavit, as stated hereinabove.

Documents/impugned orders filed in a case should be legible.

Handwritten copy of any document filed along with the petitions or appeals, a typed legible copy thereof should also be accompanied with it.

Every Interlocutory Application besides bearing the Annual Serial Number against which it is registered shall also bear a serial number in the chronological order of its presentation in the suit or proceedings. This number shall be entered in red ink at the head of the Application. Every such application shall be put up with a separate continuation order sheet commencing with the rubber stamp provided for the purpose, the serial number pertaining to the case appearing above the stamp.

The Filing Clerk shall ensure that extra sets are provided in accordance with Rule 3 of Chapter IV, sub-rule 2, Rule 5 of Chapter V and sub-rule (1) (b) of Part-II of Chapter II of M.P. High Court Rules and Orders.

The Checkers will place the matter before the Registrar, in default, where extra sets have not been provided as per rules, or where extra sets are not in Paper Book form in writs. The Checkers shall place the extra set meant for Hon^{ble} the Junior Member in a File Cover in matters other than writs.

The Section Assistants shall in no case certify the matter as ripe for hearing, where extra set meant for Hon^{ble} the Junior Member of a Division Bench is not in order. It shall be the duty of the Dealing Assistant to maintain the set meant for Hon^{ble} the Junior Member in proper order.

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 averment/allegation and contain a statement /declaration that issue raised was not dealt with or decided and that a similar petition was not filed earlier.

It shall be accompanied by a Security Deposit of Rs. 2,000/- (Two Thousand) and unless dispensed with on the recommendation with Registrar, shall not be processed for listing before the Court.

It shall be scrutinized by the Registrar to ascertain the status of petitioner and

the nature of cause disclosed in it and in case it is found wanting in either respect and is not supported by some prima facie proof wherever warranted, Registrar shall return the petition for making up the deficiency to his satisfaction.

If petitioner is aggrieved by the order of Registrar, he/she could take appeal to the Court on deposit of Rs. 500/-.

No paper or document filed in a case on the date on which is listed for hearing shall be sent to the Court on the same day.

In case of breach of direction No.20 above, the appeals, petitions or documents as the case may be shall be returned.

Writ Petition shall be filed in the prescribed form and shall as far as possible conform to the provisions of Order 2, Rule 1,2 & 3 of the C.P.C. and Rules 2 &3 of Chapter IV of the Rules of the High Court in the matter of affidavits to be filed in support thereof.

In view of this it cannot be said that by putting objections illegality has been committed by the Registrar of this Court. In W.P. No, 443/2005 this Court while passing order dated 05/07/2005 has observed that it at all there is any contempt, then, it is by the petitioner who ignores the order of this Court and tries to threaten the Officer performing their duties with contempt action. In spite of this observation, petitioner has not complied with bare formalities but again praying for drawing contempt proceedings.

Lastly, it was submitted by the petitioner to ask to deposit the amount of security is not only illegal because of the fact that it has no statutory sanction.

In the Constitution of India itself there is no article which deals with PIL. Since it was the need of the time, therefore, under the directions of the Apex Court any person who has no personal interest and who was having no locus standi otherwise, was also permitted to approach this Court in public interest. Since by allowing to file PIL number of petitioner are being filed, therefore, it became necessary to issue some sort of instructions, guidelines, Since the guideline has been issued which also includes the guideline regarding deposit of security and the same has also been tested by a Divisional Bench of this Court in the case of petitioner himself, therefore, it can be said that asking to deposit security is illegal.

Since the petitioner has neither deposited the requisite court fee nor filed affidavit, hence, the case is adjourned for a period of two weeks for depositing the court fee and for curing the defects pointed out by the Registry. After depositing the court fee and curing the defects, this Court shall consider the application on merits for dispensing with from payment of security amount. List immediately after 2 weeks.