
(1993) 01 GUJ CK 0033
In the Gujarat High Court

Valjibhai H. Patel

APPELLANT

Vs

S.N. Sundaram and Others

RESPONDENT

Date of Decision : 30-01-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 16, 16, 216

Citation : (1995) 1 GLR 807

Hon'ble Judges : R.A. Mehta, J;M.S. Parikh, J

Bench : Division Bench

Judgement

R.A. Mehta, J.—This appeal under Clause 15 of the Letters Patent arises out of Special Civil Application No. 7300 of 1992 which was filed by the appellant who claimed to be a public spirited citizen interested in purity of administration of justice and a prayer was made that the order dated October 9, 1992 promoting respondent No. 7 from the post of Asstt. District Judge to the post of Joint District Judge be quashed and set aside as being bad in law, illegal, arbitrary, suffering from the vice of favouritism, unconstitutional and in violation of Article 233 read with Article 216 and Articles 14 and 16 of the Constitution of India. A notice was issued on the petition to respondent No. 6, Registrar of High Court and affidavit-in-reply and further affidavits by the petitioner were filed. The petition was also amended by adding paras 6(A), (B) and (C) and adding prayers (AA) and (CC). Ultimately, the learned single Judge dismissed the petition on the ground that the petitioner had no locus standi.

2. An objection has been taken to the constitution of this Special Bench for hearing of this Letters Patent Appeal, by filing an additional affidavit. Ordinarily, Letters Patent Appeals are heard by the first Court consisting of the learned Chief Justice and another learned Judge. However, since the learned Chief Justice has been made a respondent in this proceeding, he has appropriately and fairly decided not to hear the matter, but in that case, the matter had to be assigned to some other Bench. Since the petitioner had joined five senior learned Judges of this Court as respondents, the matter has been assigned to this Bench

wherein one of us happens to be the senior most of the remaining learned Judges of this Court. It is not understood as to what objection can be taken for the constitution of such a Bench. It is only the learned Chief Justice who has power to constitute a Bench and, therefore, this objection of the petitioner has no merit. In fact, the learned Advocate for the petitioner submitted that he has personally no objection for hearing of the matter by this Bench.

3. The learned Counsel for the appellant submitted that the appellant is the Secretary of Council for Social Justice. However, no particulars whatsoever have been given. It is not known as to what this Council for Social Justice is; what is its constitution, who are its members and since when it is in existence; what activities have been done by that Council and social actions or public activities which are carried on by the appellant or that Council. It is also not stated as to what is the social, public and educational standing of the appellant.

4. In the affidavit-in-reply, the appellant's locus standi has been seriously challenged and in para 3 of the reply, it is submitted that the petitioner (appellant) in a most vindictive manner and with utmost mala fide obviously at the dictates of some hostile elements had picked and chosen respondent No. 7 alone. This would indicate lack of bona fide on the part of the appellant-petitioner because the order by which the respondent No. 7 was promoted, two other Assistant District Judges including one who was even junior to respondent No. 7 were also promoted, but their promotions had not been challenged. It is only at a later stage that by an amendment, their promotions were challenged. In the rejoinder, the appellant had denied the allegation of having acted in a vindictive manner or with utmost mala fide or at the dictate of someone. However, it is not possible to accept the word of the appellant having regard to the total lack of his interest and standing in the matter. On the so-called issue of public interest and importance, curiously only the appellant has come up who has not shown anything significant of his standing or his background or his interest even by way of public interest in this matter.

5. The learned Counsel for the appellant has relied on a judgment of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, at page 194 and it is submitted that fear of being flooded with litigation would not deter the Court from entertaining a public interest litigation. Para 22 which has been relied by the petitioner shows that Supreme Court held that any member of the public having "sufficient interest" can maintain an action for judicial redress or public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty. The Supreme Court was careful to emphasize and underline the word "sufficient interest" and this has been repeatedly emphasized in the judgment by using the same words "sufficient interest" or someone with real public interest or sufficient interest in the matter and acting bona fide. In para 23, the Supreme Court cautioned that the Courts 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. In the present case, the appellant has utterly failed to indicate any interest and the averments and language in the petition clearly indicated that he was not acting bona fide and he was acting for an oblique consideration. Therefore, this judgment, instead of supporting the cause of the appellant, clearly goes against him.

6. The learned Counsel for the appellant has relied on the judgment of this Court in the case of Mahendra B. Shah v. State of Gujarat and Anr. 1992 (2) GLH 93 and "strongly relied on the observations made therein by the learned Judge on the question of locus standi and particularly sub-para (v) wherein the learned Judge has observed as under:

Keeping the aforesaid position of law in mind, I am of the opinion that a public minded citizen must be given opportunity to rely on legal process. Even if the person is not sufficiently affected personally he has right to knock the doors of the Court if he can satisfy the Court that the State action or executive action of the Government is likely to violate the law or is contrary to the well established principles of law. Such a person cannot be repelled by narrow pedantic concept of locus standi nor can he be branded as a stooge of another especially when the challenge posed by him to the Government action is not false, frivolous, baseless and vexatious. In my opinion, in cases like the present, the approach adopted by the House of Lords in the case of IRC v. National Federation of Self-Employed reported in 1982 AC 617 shall have to be adopted. House of Lords held that the requirement of locus standi is to be determined by examination of merits of the case and Dr. M.A. Fazal in his book Judicial Control of Administrative Action recommends the solution to merge the issue of locus standi with the merits of the case. On this approach, if on merits, the case is proper for judicial review the Court would accept the standing of the applicant. I think, if the application is not meritorious, the applicant would be deemed not to have standing in the case. The very approach is applied by the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, with one rider that the Court would look into the motives of the petitioner to see if it was a bona fide or for personal gains or out of political motives. Therefore, in my opinion, if on merits, it is found that the petitioner was justified in approaching this Court for judicial review of administrative action, he will not be denied the locus standi if it is found that he was acting bona fide.

The petitioner has more particularly relied on the underlined portion.

7. Even in this judgment which the appellant has relied, the learned Judge has put a rider that the Court will look into the motives of the petitioner to see if it was a bona fide or for personal gain or political motives. In the present case, the petition is clearly not bona fide. Even the observation of the learned Judge in the above quoted paragraph relied by the petitioner that such a person cannot be repelled and he cannot be branded as a stooge of another would not be a correct approach, because if he is acting as a stooge of another, the petitioner would be

lacking in bona fide and as a front for anonymous, nameless and faceless person trying to abuse the process of the Court under the name of the petitioner. The observation of the learned Judge that if on merits, the case is proper for judicial review, the Court will accept the standing of the applicant, is not wholly correct. In the case of Janata Dal Vs. H.S. Chowdhary and Others, , para 61 the Supreme Court, while considering the question of locus standi in matters of public interest litigation, held that the requirement of locus standi is mandatory and has to be determined at the threshold. Para 61 reads as under:

Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought to has to be primarily ascertained at the threshold.

8. Therefore, the observation of the learned single Judge in the case of Mahendra B. Shah (supra) that if on merits, the case is proper for judicial review, there is standing of the applicant and if there is no merit, there is no standing, of the applicant, is too wide and sweeping. If there is a case on merit, that may but not necessarily give a person a standing. Even if there may not be a case on merit, yet there can be sufficient standing. In every public interest litigation, espoused by a proper petitioner having sufficient and bona fide public spirit and standing, even if he loses in the petition, that does not mean he loses the locus standi.

9. In the case of Janta Dal (supra), even when the Supreme Court held that in the matters of public interest, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved to enable persons to bring such public causes before the Court, however, the Supreme Court has emphasized that they must be "acting bona fide and having sufficient interest" in instituting action for redressal of public wrong or public injury, but who is not a mere busybody or a meddlesome interloper since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person having no personal gain or private motivation, but acting bona fide and having sufficient interest, can maintain the action. After considering the earlier judgments of the Supreme Court in the case of S.P. Gupta, Bandhua Mukti Morcha, Sheela Barse, Sunil Batra and People's Union for Democratic Rights and Ors. in para 88 at page 244 of the report, the Supreme Court held that the summit Court had widely enlarged the scope of PIL by relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or association complainaing of violation of fundmental rights and rendered many virtuosic pronouncements and issued manifold directions for the betterment of the public at large in many fields in conformity with constitutional prescriptions of what constitutes the good life in a socially just democracy. In S.P. Gupta's case (supra), the Supreme Court had to make it clear that when an individual moves the Court for judicial redress in cases of this kind he must be acting bona fide with a view to vindicating the

cause of justice and if he is acting for personal gain, private profit or for other consideration, the Court should not allow itself to be activated at the instance of such person and must reject his petition on the threshold. It was further pointed out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class. In S.P. Gupta's case (supra), Venkataramiah, J. had made it clear that it cannot be said that even lawyers have locus standi to file a petition in respect of every matter concerning Judges, Courts and administration of justice. It was then observed that in that group of cases, even on the question of non-appointment of Mr. S.N. Kumar, on the question of transfer of K.B.N. Singh, those petitioners may have no voice and the petitions regarding reliefs concerning them individually would become liable to be dismissed on the ground that the lawyers have no locus standi to make these prayers. In para 97, the Supreme Court observed as follows:

While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.

10. The Supreme Court further observed that the decision in Gupta's case is a golden master key which has provided access to the Courts for the poor and down-trodden.

11. This severe warning and red alert should always guide the Court whenever a litigation is brought in the name of public interest and the Court should be careful to see that it does not allow, its process to be abused by a mere busybody without sufficient & real interest or concern.

12. The learned Counsel for the appellant has also relied on a Full Bench judgment in the case of Hardwari Lal Vs. Ch. Bhajan Lal and others, . In mat case, an Ex-member of Parliament had instituted action against Bhajan Lai describing it as a public interest litigation, but the Full Bench observed that "we do not find that the locus standi of the petitioner to approach the Court was seriously questioned" and the Court had come to a conclusion that the petitioner who was an Ex M.P. was not a busybody or an interloper. Full Bench also observed that spiteful allegations of personal nature and being politically mischievous may not be permitted to be made in the garb of public interest litigation and the Court must caution itself that it should protect its jurisdiction, authority and time from abuse of the process. This judgment in no way helps the appellant in view of the fact that the appellant has not shown sufficient interest and sufficient bona fide. In fact, the petition is totally lacking in bona fides.

13. The appellant submitted that on merits, there is a patent violation of the

constitutional provision of Article 233 of the Constitution. It is submitted that the violation is so patent that no Court would tolerate it. It is submitted that under Article 233, appointments, postings and promotions of District Judges are not to be made by the High Court but are to be made by the Governor in consultation with the High Court. Articles 233 (1), 235 and 236 read as under:

233. Appointment of district judges : (1) Appointments of persons to be and the posting and promotion of district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

xxx xxx xxx xxx 235. Control over subordinate Courts : The control over district Courts and Courts subordinate thereof including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district Judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

236. Interpretation : In this chapter... (a) : the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) : the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

14. In the case of N.J. Mankad Vs. State and Others, it is clearly held that "It is only the initial appointment of persons to be District Judges as well as the initial posting and promotion of persons to the District Judges which could be with the Governor." Once a person is appointed to the cadre of District Judges as defined in Article 236 (including Assistant Judges), further promotions and postings within that cadre as Joint District Judges or District Judges or transfer as City Civil Judges are within the control and jurisdiction of the High Court under Article 235 of the Constitution.

15. Same proposition has been laid down by the Supreme Court also in the case of State of Assam and Another Vs. Kuseswar Saikia and Others, wherein it has been observed that Article 233 is intended to take care of direct appointment to the cadre of District Judges and Article 233 "concern initial appointment and initial promotion of persons to be either District Judges or any of the categories included in it and further promotion of District Judges is a matter of control of the High Court. What is said of District Judges here applies equally to Additional District Judges and Additional Sessions Judges."

16. In the case of High Court of The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others, also it was observed that the words "appointment and posting" in Article 233 have been held to mean initial appointment by direct recruitment. In para 34 at page 620 of the report, the Supreme Court observed that the initial appointment as well as initial promotion of persons to be District Judges (which expression includes Addl. District Judge, Addl. Sessions Judge and Assistant Judge) is with the Governor and once they are appointed and promoted to be "District Judges," the entire control is thereafter vested in the High Court.

17. In the present case, Article 233 does not come into picture at all. Respondent No. 7 is not appointed or promoted in the cadre of District Judge by the impugned order. Respondent No. 7 has been long back appointed as an Assistant District Judge. Article 236 of the Constitution defines the expression "District Judge" to include "Assistant District Judge". Therefore, once the person is appointed as an Assistant District Judge, he enters the category of the "District Judge" as defined in Article 236. Thereafter, further postings and promotion are not required to be done under Article 233 of the Constitution at all and, therefore, Article 233 has no application in the present case.

18. In view of the aforesaid well settled legal position, there is no merit in the contention that the promotion of respondent No. 7 should have been by the Governor and not by the High Court.

19. In the alternative, it was contended that even under Article 235 of the Constitution, when promotion is to be done by the High Court, it is to be done by the Full Court consisting of the Chief Justice and all other Judges under Article 216 and not by the Standing Committee of the High Court. It is argued that even the selection and promotion of respondent No. 7 is not done by the High Court: meaning thereby the "Full Court" and that the "Full Court" is not even consulted and, therefore, it is not a decision of the High Court. For the purpose, reliance has been placed on the judgment of the Supreme Court in the case of Prem Nath and Others Vs. State of Rajasthan and Others, . In that case, a Committee of three Judges of the High Court had made the selection and sent it to the Government and that was challenged and the Supreme Court held that the Committee was not the High Court and the High Court was not consulted and, therefore, there was violation of Article 233 of the Constitution and the Supreme Court relied on its earlier judgment in the case of Mohan v. State of U.P. AIR 1966 SC 1987 and more particularly on the following observation:

the U.P. Higher Judicial Service Rules were constitutionally void as they clearly contravened the constitutional mandate of Article 233(1) and (2). Under the Rules, the consultation of the High Court is an empty formality. The Governor presented the qualification, the Selection Committee appointed by him selects the candidates and the High Court has to recommend from the lists prepared by the Committee. This is a travesty of the constitutional provision. The Governor in effect and substance does neither consult the High Court nor act on its

recommendations.

It is, thus, clear that it was a selection committee, though consisting of three Judges of the High Court, appointed by the Governor and it was not a committee of the High Court and, therefore, there was no consultation with the High Court and, therefore, it was held that the rule and the selection were void.

20. The learned Counsel for the appellant also referred to the judgment of this Court in the case of N.J. Mankad Vs. State and Others, more particularly the observation on page 910 of the report. The Committee had considered the matter and had made a recommendation and which recommendation of the committee of three Judges of the Court was approved and accepted by the chamber meeting unanimously. The learned Counsel for the appellant, therefore, submits that in the present case, the decision of the committee is not placed before the chamber meeting and, therefore, it is not a decision of the "Full Court". When that judgment was rendered, the Rules of Business provided for consideration of such questions by the chamber meeting. However, later on, these rules have been changed and the matter of promotion is left by the Full Court to entirely and exclusively within the powers of the Standing Committee consisting of the Hon"ble the Chief Justice and other four senior most Judges. It is the whole chamber - Full Court which has framed these rules and constituted the Standing Committee and conferred on it the powers of the High Court in the matter of promotions. The orders of promotions issued in pursuance of the decision of the Standing Committee are issued for and on behalf of the High Court. The procedure followed for promotion of respondent Nos. 7, 9 and 10 is the same as has been followed in all similar promotions (more than 30) given since December 1988 by the decisions of the Standing Committee as per Annexure 3 (Page 40) to the affidavit-in-reply filed by the Registrar. Annexure 4 (Page 41) shows that the seniors who are superceded this time have been superceded earlier by 25 juniors on six occasions. Therefore, when they are superceded this seventh time, there is nothing unusual significant or surprising. It is, thus, clear that there is no infirmity in the selection and promotion of respondent Nos. 7, 9 and 10 by the Standing Committee.

21. These were the only contentions raised. All of them fail. Hence, the appeal is dismissed. No orders on Civil Application.