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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION No. 217 OF 2014

Dr. Ravindra T. Deoghare & Ors. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Uday Warunjikar, for the Petitioners.

Mr. Sunil V. Manohar, Advocate General with A. B. Vagyani,
Government Pleader with V. B. Thadani, AGP for the Respondents.

CORAM : V. M. KANADE, &
REVATI MOHITE DERE, JJ.

DATE : DECEMBER 24, 2014

PC.

1. Learned Advocate General has filed affidavit-in-reply. It is taken on record. Learned counsel appearing on behalf of the Petitioner seeks time to file rejoinder.

2. The learned Advocate General has raised a preliminary objection regarding maintainability of the petition. It is submitted that by this petition, Petitioner is seeking appropriate writ order and direction for setting aside the appointment of Dr. Bhavaniprasad Pand (Respondent No. 4 herein), who has been appointed by the State with the approval of Hon'ble Chief Justice of India, and therefore, petition

is essentially a service matter PIL. He has submitted that the Apex Court in – *Duryodhan Sahu (Dr) Vs. Jitendra Kumar Mishra [(1998) 7 SCC 273]* has held that service matter PIL should not be entertained. He also relied on judgment of the Apex Court in the case of *Dr. B. Singh, Petitioner Vs. Union of India & Ors, Respondents [(2004) 3 Supreme Court Cases 363]* and more particularly paragraph 16 of the said judgment.

3. Mr. Warunjikar, learned counsel appearing for the Petitioner submits that this submission is made for the first time across the bar, and therefore, he would like to check the position, and secondly, the Petitioner has appointed a senior advocate Mr. Ane, and he would like, therefore, to take assistance of the said senior counsel and also show the affidavit-in-reply to his client.

4. We are of the view that no further adjournments can be granted. We, therefore, decline the request made by the learned counsel appearing for the Petitioner. Mr. Warunjikar, then made submissions on merits of the case. He invited our attention to Section 28(1) of the Maharashtra National Law University Act, 2014 and submitted that the said provision clearly indicates that Vice-Chancellor

had to be appointed by the Government of Maharashtra with the approval of the Chancellor. He submitted that though the letter of appointment has been issued by the State of Maharashtra, the other material, which is on record, clearly indicates that the appointment was made by the Hon'ble Chief Justice of India. It is then submitted that in an application, which was made under the Right to Information Act to the Public Information Officer, Jt. Director Office, Higher Education, Mumbai, the information, which was sought, was not given on the ground that this information is not available with the said office. Our attention is also invited to the correspondence between General Secretary, Supreme Court of India, New Delhi and the Secretary, Higher and Technical Education Department, dated 21st July, 2014 and 29th August, 2014. He submitted that from the said two letters, it was apparent that the Hon'ble Chief Justice has constituted the Search Committee, consisting of three members, and that after the Committee had recommended four names for appointment as the Vice Chancellor, out of them the Hon'ble Chief Justice of India had recommended the name of Prof. (Dr.) B. P. Panda. He submitted that therefore said letter indicates that this did not amount approval of the

Chancellor. The Hon'ble Chief Justice of India had virtually appointed the said Vice-Chancellor. It is submitted that this is contrary to the provisions of Section 28 of the said Act. He also tried to distinguish the judgment on which reliance is placed by the learned Advocate General. He took us to the entire judgment and tried to urge that ratio of the judgment is not applicable to the facts of the present case.

5. On the other hand, the learned Advocate General Mr. Manohar submitted that upon a request being made by the Government of Maharashtra, Hon'ble Chief Justice of India had constituted a Search Committee of three members, viz. (i) Hon'ble Dr. Justice S. Radhakrishnan (Retd.), Former Judge, Bombay High Court, (ii) Mr. Rafique A. Dada, Senior Advocate, Bombay High Court, (iii) An academician to be nominated by the above two members of the Committee. He submitted that accordingly three member Committee was constituted. Accordingly after an advertisement was issued by the State of Maharashtra, a Search Committee invited the people for interview and four persons were selected; their names were then sent by the State; and out of them one person was selected. He submitted that the word "approval", which is found in Section 28 of the said Act

has different shades and hues, and as such, therefore, it cannot be said that by recommending name of one person, Hon'ble Chief Justice of India has appointed him.

6. After having heard the learned counsel appearing on behalf of the parties at length, we are of the view that since copy of the affidavit-in-reply has been tendered across the bar today, and since we have declined to grant time to file an affidavit-in-rejoinder, we do not propose to look into the said affidavit-in-reply.

7. So far as preliminary objection, which is raised by the Advocate General is concerned, we are of the view that there is much substance in the said objection, which is raised. It is settled position in law that Supreme Court has deprecated practice of entertaining the service matter PILs by the High Court. It would be profitable and fruitful to reproduce the observations made by the Apex Court in the case of *Dr. B. Singh, Petitioner Vs. Union of India & Ors, Respondents [(2004) 3 Supreme Court Cases 363]*. In paragraph 15 and 16, the Apex Court has observed as under:

15. “Courts must do justice by promotion of good faith, and prevent law from crafty invasions, Courts must maintain the social balance by interfering where

necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu [(1994) 2 SCC 481], and Andhra Pradesh State Financial Corporation v. Gar Re-Rolling Mills [(1994) 2 SCC 647]. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See Buddhi Kota Subbarao (Dr.) V. K. Parasaran [(1996) 5 SCC 530]. Today people rush to Courts to file cases in profusion under this attractive name of public interest. Self styled saviours who have no face or ground in the midst of public at large, of late, try to use such litigations to keep themselves busy and their names in circulation, despite having really become defunct in actual public life and try to smear and smirch the solemnity of court proceedings. They must really inspire confidence in Courts and among the public, failing which such litigation should be axed with heavy hand and dire consequences.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest

litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts at time are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra (1998) 7 SCC 273, this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining publicity and giving adverse publicity to their opponents. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to

possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases show proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the Court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.”

8. The ratio of this judgment of the Apex Court, in our view, squarely applies to the facts of the present case. Petition has been

filed, challenging appointment of Respondent No. 4 to the post of Vice Chancellor, Maharashtra National Law Universities, Mumbai University. Petitioner No. 1 claims to be an advocate, who is interested in education and the other Petitioners also made similar claim. The Petitioners are seeking following reliefs:

- “(A) Be pleased to issue appropriate writ, order and directions in the nature of mandamus or any other writ declaring the procedure followed for appointment to the post of Vice-Chancellor Maharashtra National Law Universities is *per se* illegal and in contravention of the provisions of Maharashtra National Law university Act, 2014.
- (B) Be pleased to issue appropriate writ, order and directions in the nature of mandamus or any other writ declaring the appointment of Respondent No. 4 as Vice-Chancellor of Maharashtra National Law University as *void ab initio*.
- (C) Be pleased to issue appropriate writ, order and directions in the nature of mandamus or any other writ to the concerned authority to initiate fresh proceedings for appointment of Vice Chancellors of Maharashtra National Law Universities according to the Maharashtra National Law University Act, 2014.

- (D) Be pleased to issue appropriate writ, order and directions in the nature of mandamus or any other writ to the State Government of Maharashtra to establish all the three Universities at Mumbai, Aurangabad and Nagpur region simultaneously and appoint Vice-Chancellors, simultaneously.
- (E) During pendency of the above referred PIL, be pleased to direct Respondent No. 1, to refrain the Respondent No. 4 from joining duties as Vice Chancellor.
- (F) Ad-interim and interim relief in terms of prayer clauses A to E above.
- (G) Any other suitable and equitable relief may kindly be granted in favour of the Petitioners, in the interest of justice and facts and circumstances of the case.”

9. Perusal of the reliefs, which are claimed by the Petitioners, clearly reveal that this is clearly a service matter PIL. Therefore, ratio of the judgment, on which reliance is placed by the learned Advocate General clearly applies to the facts of the present case. Therefore, in our view, present PIL cannot be entertained on this ground alone.

10. Even otherwise, so far as merits of the case are concerned, submissions made by the learned counsel appearing on

behalf of the Petitioners, in our view, are without any substance. Section 28 of the Maharashtra National Law University Act, 2014 reads as under:

“28. (1) The Vice-Chancellor shall be appointed by the Executive Council in accordance with the regulations made in that behalf and in consultation with the Chancellor:

Provided that, the first Vice-Chancellor shall be appointed by the Government of Maharashtra, with the approval of the Chancellor.

(2) Subject to the specific and general directions of the Executive Council, the Vice-Chancellor shall exercise all powers of the Executive Council in the management and administration of the university.

(3) The Vice-Chancellor who shall be an academic person and a Professor of Law at the university, shall hold office for a term of five years, which shall be renewable by a resolution to that effect by the Executive Council or upto the age of retirement of the members of the teaching staff, whichever is earlier. Upon the expiry of his term, he shall continue in office until his successor is appointed and enters upon his office.

(4) The Vice-Chancellor shall,-

(i) ensure that, the provisions of this Act, and the regulations

are duly observed, and he shall have all powers, as are necessary for that purpose;

(ii) convene the meetings of the General Council, the Executive Council, the Academic Council and shall perform all other acts, as may be necessary to give effect to the provisions of this Act;

(iii) represent the university in suits or proceedings by or against the university, sign powers-of-attorney and verify the pleadings or depute representatives for the purpose;

(iv) have all powers relating to the proper maintenance of discipline in the university.

(5) If in the opinion of the Vice-Chancellor, any emergency has arisen, which requires that immediate action be taken, he shall take such action as he deems necessary and shall report the same for confirmation to the next meeting of the authority, which, in the ordinary course, would have dealt with the matter.”

11. Perusal of the said section reveals that the appointment has to be made by the State of Maharashtra with the approval of the Chief Justice of India, who is a Chancellor of the Maharashtra National Law University, as per the provisions of the said Act. Letter of appointment reveals that Vice-Chancellor has been appointed by the

Principal Secretary to the Government by order and in the name of the Governor of Maharashtra. Perusal of the letters, on which reliance is placed by the learned Counsel for the Petitioner also reveals that Hon'ble Chief Justice of India has only recommended name of one person. As such, therefore, we do not see any illegality in the manner in which appointment is made.

12. We are satisfied that petition filed is without any substance, and therefore, the writ petition is dismissed in *limine*, with no order as to costs. However, we hope that the Government of Maharashtra will also consider making appointment of the Vice-Chancellor for the city of Nagpur. We hope that this suggestion will be considered seriously.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]

Vinayak Halemath