

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 70 OF 2015

M/s.F.A.Construction. ... Applicant.

AND
CIVIL APPLICATION NO. 71 OF 2015

M/s.F.A.Enterprises. ... Applicant.

IN
PUBLIC INTEREST LITIGATION NO. 63 OF 2012

Mayank Ramesh Gandhi and others. ... Petitioners.

V/s.

FA.Enterprises and others. ... Respondents.

Amit Desai, Senior Advocate with Ravindra Adsure i/by A.M.Nathani & Mrs.Jyotsna Wahane for the applicant in CAI No.70/15,

A.Y.Sakhare, Senior Advocate with Ravindra Adsure i/by A.M.Nathani & Mrs.Jyotsna Wahane for the applicant in CAI No.71/15,

Mihir Desai, Senior Advocate with Ms.Lara Jasani for respondent Nos.1 to 4 in CAI Nos.70/15 and 71/15 i.e. petitioners in PIL.

Dilip Shinde with Amol P. Mhatre for Respondent No.6,

Anil Singh, Advocate General with A.B.Vagyani, Government Pleader and Vikas Mali, AGP for State.

Nikhil Patil i/b. Vishwajit Sawant for petitioner in WP No.11974/2013,

Pradeep M. Patil with Sachin Bagal for Respondent No.7.

CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.

RESERVED ON : 7th August 2015.

PRONOUNCED ON : 28th August 2015.

PC. :

Civil Application No.70/2015 and Civil Application No.71/2015 are filed in Public Interest Litigation No.63/2012.

2. By an order dated 17.9.2014, PIL No.63/2012 was admitted. The objection raised by the respondents therein towards maintainability of the petition as PIL at the instances of the second and third petitioner namely Anjali Damania and Ajay Mathankar, were kept open.

3. The petition was mainly restricted to the prayer clause (F) which reads as under :

“(F) That this Hon'ble Court be pleased to order an independent inquiry to investigate into the sanctioning of various dams listed in Exhibit R to the Petition in Konkan Division, and more specifically in the instant case, including the manner of sanctioning the dams, the pre tendering and post tendering process, the award of contracts and inflation of costs subsequent to award of such contracts with further direction to take punitive action as also action under the criminal law against all private parties as also public officials found guilty.”

4. The petition and the prayer clauses were later on amended with leave of Court.

5. Against the order passed on 30.3.2015 in CA No.47/2015 in PIL No.63/2012, a Special Leave Petition was preferred by M/s. F.A. Enterprises. By an order dated 30.3.2015, the Apex Court passed following order :

“Dismissed. However, we request the High Court to decide the maintainability of PIL No.63 of 2012 as a preliminary issue, at the earliest.”

6. Consequent to passing of said order, the present two applications have been preferred with a prayer to decide the preliminary objection raised by the applicants regarding maintainability of the present petition in the form of PIL.

7. Four persons have filed the PIL. The applicants have raised objection to the maintainability of the petition as PIL at the behest of petitioner no.2- Anjali Damania and petitioner No.3- Ajay Mathankar.

8. The petitioners have prayed for order or direction for an independent inquiry and investigation into the sanctioning of construction of various dams listed at Exhibit R annexed to the Petition in Konkan Division, the pre-tendering and post-tendering process, the award of contracts and escalation costs etc. The petitioners have prayed for direction to take punitive action under the criminal law against all the persons and public officials found guilty. By subsequent amendment to

the petition, the petitioners have prayed for several other reliefs including the reliefs concerning Kondhane Irrigation Project. The petitioners have also raised issues falling under the Environment Protection Act, 1986, Forest Act and the Ancient Monument and Archaeological Survey of India Act, 1958 (as amended in 2010).

9. Learned senior counsel Shri Sakhare appearing for the applicant in CA No.71/2015, submitted that the petitioner nos.2 and 3 have personal interest in the subject matter of the PIL. The properties of petitioner nos.2 and 3 were getting affected by the Kondhane Irrigation Project. The petitioner nos.2 and 3 are personally interested, so they cannot maintain the present PIL. The State has initiated open inquiry into the matter through Anti Corruption Bureau. In this view of the matter, the prayer made in prayer clause (F) is taken care of and the present PIL is required to be disposed of accordingly. The prayer clause in the petition itself has got worked out in view of the subsequent development, according to the learned senior counsel. Learned counsel has referred to some of the orders passed by this court in other PIL/Petitions.

10. Shri Sakhare relied upon the judgment of the Supreme Court in the case of *Sakiri Vasu v. State of Uttar Pradesh*, (2008) 2 SCC 409 wherein it was observed as under:

“18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and

every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

11. Learned senior counsel Shri Amit Desai appearing for the applicant in CA No.70/2015 submitted that the Anti Corruption Bureau of the State has initiated inquiry, the partners of the company are called for the purpose of inquiry and they are attending and cooperating with the inquiry. The petition filed by the petitioner nos.1 and 2 is with a purpose to show political upmanship. This is not a genuine PIL. There are different authorities prescribed for redressal of grievances under the legislation governing, environment, forest and penal subjects. The petitioners have failed to resort to alternate remedy. The Bombay High Court had disposed of identical Public Interest Litigations. Learned counsel has referred to such orders passed by this court and the Division

Bench at Nagpur. In the submission of the counsel, the present PIL cannot be distinctively considered for the purpose of further hearing. It is submitted that the petitioner nos.2 and 3 have personal interest as their properties located in the area would be affected by execution of Kondhane Irrigation Project. Reliance was placed on the affidavit filed by the State.

12. It was further submitted by the learned senior counsel Shri Amit Desai that in PIL No.137/2012, similar issue is covered. This court is not monitoring the inquiry and investigation in respect of present subject matter of the petition. In view of personal interest of two of the petitioners, the entire petition is required to be dismissed on that ground alone. Shri Amit Desai, in support of his submissions, relied upon the judgment of the Apex Court in the case of ***Soma Isolux NH One Tollway (P) Ltd. v. Harish Kumar Puri***, (2014) 6 SCC 75 and the orders passed by this Division Bench i.e. order dated 15th July 2015 passed in PIL No.137/12 (*Dr.Kirit Somaiya v. Mr.Sunil Tatkare, Minister of Water Resources*) and order dated 9th July 2015 in PIL No.164/12 (*Shri Vishnu Radhaji Musale v. The State of Maharashtra*).

13. Learned senior counsel Shri Mihir Desai appearing for the petitioners in PIL No.63/2012, the respondents herein, submitted that the petition is not restricted to Kondhane Irrigation Project alone. It encompasses various issues concerning the sanctioning of irrigation projects, construction of dams, violation of environment, forest laws, role of the officers involved and the escalated tender costs. In para 3 of the petition it has been made clear that petitioner no.2 is a trained medical

technologist and agriculturist. Petitioner no.2 has been active member of India Against Corruption since August, 2011. He devotes substantial time for its social activities. A categorical statement was made that the family of petitioner no.2 owns plots of land in the area affected by the Kondhane Dam. It is contended that petitioner no.3 also owns plot of land in the area where the Kondhane Dam was being constructed. Learned senior counsel, therefore, submits that petitioner nos.2 and 3 did not suppress that they own lands in the surrounding area of Kondhane Dam, but that would not dis-entitle them to raise various issues in public interest considering the wider spectrum of the alleged illegalities. The petition deals with not only Kondhane Dam, but 15 other dams. Petitioner nos.2 and 3 filed individual affidavit in respect of their landed property.

14. The State Government had appointed Chitale Committee to inquire into the allegations made in respect of irrigation scams in the State and the petitioner nos.2 and 3 participated before the said committee. In the alternative, learned counsel submits that even if this court comes to the conclusion that the petitioner nos.2 and 3 are not entitled to continue as petitioners, there is no embargo with other petitioners to continue as petitioners.

15. It was submitted that the Apex Court dismissed the challenge raised by the applicants to the amendment made in the PIL. Due to persuasion of the petitioners, the State Government had constituted a Committee and now the matter has been handed over to the Anti Corruption Bureau. This itself demonstrates seriousness of the matter and

the issues involved therein. Learned counsel, therefore, submits that considering seriousness of the issues and the fact that there has been large scale irrigation scams in the State of Maharashtra, monitoring by this Court is essential.

16. Mr.Mihir Desai placed reliance on the judgment of the Apex Court in the case of ***Vishwanath Chaturvedi v. Union of India***, (2007) 4 SCC 380 wherein it was observed as under:

“39. The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. In our view, it is wrong in law for the Court to judge the petitioner's interest without looking into the subject matter of his complaint and if the petitioner shows failure of public duty, the Court would be in error in dismissing the PIL.”

In the case of ***Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi***, reported in (1987) 1 SCC 227, the Apex Court has observed as under:

“36. The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public

interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.”

On the issues of locus, the Apex Court in the case of ***Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar***, (2008) 9 SCC 54 has observed as under:

“This Court, however, when a question is raised, can take cognizance of a matter of such a grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a *lis* is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so.”

In the case of ***Babubhai Jamnadas Patel v. State of Gujarat***, (2009) 9 SCC 610, has observed as under:

“40. The area of dispute ultimately narrows down to the question as to whether the Courts can monitor investigations in respect of offences alleged to have been committed when the investigation had already been commenced by the investigating agency.

41. There is little doubt that normally investigation of offences is the function of the investigating agencies and the Courts do not ordinarily interfere with the

same. But, at the same time the High Court is vested with such powers, though the same are invoked only in cases where extraordinary facts are involved, necessitating such monitoring by the Courts. In the circumstances, we are only required to see whether such an extraordinary fact situation exists in this case which warranted such a course of action to be adopted by the High Court.”

17. Learned acting Advocate General Shri Anil Singh appearing on behalf of the State, submits that the State Government has clear perception of the issues raised herein. The State has initiated open inquiry into the subject matter of the present issues on its own and not due to persuasion of petitioner or due to any order passed by the Court. The petitioners, therefore, should not have any apprehension that the State either will be slow or hesitate to proceed further. The State has filed the status report in respect of the inquiry initiated by the Anti Corruption Bureau from time to time. It is submitted that there are alternate remedies available to the petitioners and the same can be availed of in respect of the subject matter. It is submitted that monitoring by the High Court is not required.

18. We have heard the learned counsel appearing for the respective parties at length.

19. The main challenge on the ground of maintainability of the petition is that petitioner nos.2 and 3 own certain landed property in the surrounding area of Kondhane Irrigation Project or Konkan Dam. This fact

has not been suppressed by the petitioners. In para- 3 of the petition, the petitioners have made it clear that they own certain landed properties.

20. Therefore, prima facie, we find that owning of certain property itself may not be a disqualification of a person to raise genuine issues in Public Interest. Initially the petition was confined to prayer clause (F), but later on, by an order dated 30.3.2015 passed in CA No.47/2015, the petition was allowed to be amended. This Court had kept the issue of maintainability of the petition filed by the respondent nos.2 and 3 open for consideration.

21. Subsequent to the filing of the petition, the Bombay High Court and other Benches had dealt with certain PIL and orders were passed disposing these petitions. Learned counsel appearing for the applicants placed reliance on some of such orders, to submit that as open inquiry by the Anti Corruption Bureau of the State was initiated, the PIL could be disposed of. Needless to say that each petition is required to be considered in the light of the issues emerging therein, facts and surrounding circumstances. The present petition not only deals with the issue concerning Kondhane Dam, but 15 other dams. It refers to the appointment of Chitale Committee by the State. The State Government had initiated open inquiry through Anti Corruption Bureau in respect of the subject matter. The State had submitted the progress report on the earlier occasion which this court had kept in sealed covers. The concern of the petitioners is that the seriousness of the issues raised in the petition in the larger interest required that the petition is kept pending and the court

monitors, so that the agencies function effectively in conducting inquiry and investigation into the serious allegations made by the petitioners. The original petitioners have, therefore, opposed the application seeking disposal of the petition which has been admitted by this Court after careful consideration of the various issues, facts and attending circumstances.

22. Though the petition was pending since year 2012, the State Government of late decided to initiate inquiry through its Anti Corruption Bureau. That itself is an indication that the material placed on record and the allegations levelled by the petitioners are now being looked into by the investigating agency of the State. The allegations made by the petitioners are serious in nature but the competent investigating agency is required to go into various aspects of the matter, questions of fact and arrive at reasonable and proper conclusion.

23. We have noticed that this Court had granted leave to amend the petition by which scope of the petition got enlarged. The order passed by this Court granting leave to amend was a subject matter of challenge in special leave petition before the Apex Court. The special leave petition was dismissed by the Apex Court. This fact is also necessary to be kept in mind.

24. In the facts, we do not find any prejudice would be caused if the petition is kept pending as it has already been admitted. We do not concur with the view of the State that as the State has initiated inquiry through its Anti Corruption Bureau, there is no need to keep the petition

pending. In view of the allegations made and the apprehension expressed on behalf of the petitioners, as and when required this Court will have to look into the matter and the steps taken by the State after instituting inquiry through Anti Corruption Bureau.

25. It was submitted on behalf of the applicants that there were alternate remedies available to the petitioners under various different laws. In the light of all these developments, various orders passed from time to time by this court, and the order passed by the Apex Court, we are of the view that this PIL cannot be dismissed on the pleas raised by the applicants herein.

26. We have perused the orders passed by this Court and other benches while disposing of some of the Public Interest Litigations. Because some of the petitions were disposed of, it is not necessary that this petition too is required to be disposed of in the identical way. We do not find any merit in the applications.

Both the civil applications are rejected.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)