

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 63 OF 2016****IN****PUBLIC INTEREST LITIGATION NO. 55 OF 2016**

Smt. Sunita Prashant Patil	..	Applicant
<u>In the matter between :</u>		
Smt. Vidya Bal & Anr.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

Mr. Subhash Jha with Ms Rushita Jain, Mr. Raju Gupta and Ashish Shukla for applicant in CA 63 of 2016.

Ms Kalyani Tulankar for original petitioners.

Mr. Rohit Deo – Acting Advocate General with Mr. A. B. Vagyani – GP and Mr. C. P. Yadav – AGP for respondents – State.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.**

Date of Reserving the Order : 20 April 2016

Date of Pronouncing the Order : 10 June 2016

ORDER :

1] Heard Mr. Jha for the applicant, Ms Kalyani Tulankar for original petitioners and Mr. Rohit Deo – Acting Advocate General, Mr. Vagyani – AGP for respondent nos. 1 to 7.

2] Mr. Jha, learned counsel for the applicant, upon reference to paragraphs 1 and 2 of the civil application has submitted that since the applicant is engaged in several social, cultural and religious activities, the applicant has right to seek recall of order dated 1 April 2016, by

which the public interest litigation no. 55 of 2016 came to be disposed of.

3] Mr. Jha has submitted that the order dated 1 April 2016, by which the public interest litigation no. 55 of 2016 came to be disposed of was obtained by the petitioners through misrepresentation and/or fraud. He submitted that the petitioner failed to inform this Court that the co-ordinate bench on 27 January 2016, had declined interim relief in similar petition and this, according to him, constitutes practice of fraud upon this Court. He also submitted that the Maharashtra Hindu Places of Public Worship (Entry Authorisation) Act, 1956 (said Act) does not deal with the issue of gender discrimination. In as much as the petitioner and the State Government did not point this out to this Court, misrepresentation, which is nothing short of fraud was practised by them, upon this Court. Mr. Jha placed reliance upon the decisions in ***A.R. Antulay Vs. R.A. Nayak*¹, *S.P. Chengalvaraya Naidu Vs. Jagannath*², *Deepa Gourang Katre Vs. The Principal, V.A.V. College*³, *Vijay Shekhar Vs. Union of India*⁴, *S. Nagaraj Vs. Karnataka*⁵, *Jaipur Mineral Development Vs. Commissioner of IT*⁶, *Budhia Singh Swain Vs. Gopinath Deb*⁷, *Jet Ply Wood Pvt. Ltd. Vs. Madhukar Nowalkha*⁸, *Asit Kumar Kar Vs. West Bengal*⁹, *Lachman Dass Bhatia Vs. Assistant Commissioner IT*¹⁰, *Surajdeo Vs. Board of Revenue*¹¹, *Bhartiya Gauvansh Rakshan Sanvardhan Parishad Vs. State of Maharashtra, Bombay Suburban Beef***

1 (1988) 2 SCC 602

2 (1994) 1 SCC 1

3 (2007) 14 SCC 108

4 (2004) 4 SCC 666

5 (1993) Supp. (4) SCC 595

6 (1977) 1 SCC 508

7 (1994) 4 SCC 396

8 (2006) 3 SCC 699

9 (2009) 2 SCC 703

10 2011 (121) DRJ 451 (FB)

11 AIR 1982 ALL 23

Dealer's Welfare Association & Anr.¹², Sastri Yagnapurushdasji Vs. Muldas Vaishya¹³ and Yeshwant Balwant Badawe vs. Yogi Rajendra Guru¹⁴.

4] Mr. Rohit Deo, the Acting Advocate General submitted that in the civil application, there are no allegations about misrepresentation or fraud. In any case, the Acting Advocate General submitted that such allegations of misrepresentation or fraud cannot be made in a casual manner. He submitted that the order dated 1 April 2016 has merely recorded the statements made on behalf of the State Government and the factum that the petitioners were not pressing the petition any further, in view of said statements. Accordingly, he submitted that there was no case made out for recall or review at the behest of the applicant who was not even a party to the original proceedings. In fact, the Acting Advocate General submitted that in case the applicant had any grievance with the policy of the State Government, as reflected in the statement made, then, it was for the applicant to challenge the same by institution of appropriate proceedings as available under the law. For these reasons, the Acting Advocate General submitted that the civil application is liable to be dismissed.

5] Ms Kalyani Tulankar, learned counsel for the original petitioners submitted that the perusal of the civil application makes it clear that there is no allegation of violation of any '*legal rights*' of the applicant, made in the civil application. Ms Tulankar submitted that merely because the applicant may have some different views in the matter, that by itself, does not entitle the applicant to maintain application of this nature. She relied upon the decision of the Hon'ble Supreme Court

¹² Chamber Summons (L) No. 72 of 2015 in WP (L) No. 618 of 2015

¹³ AIR 1966 SC 1119

¹⁴ (2015) 2 Mh.L.J. 291

in ***Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors.***¹⁵, to submit that an application of this nature is not maintainable and should therefore be dismissed.

6] The applicant was admittedly not a party to the public interest litigation no. 55 of 2016. PIL has been finally disposed of by order dated 1 April 2016 *inter alia* on the basis of statements made by learned Acting Advocate General that the respondents concerned, including in particular, respondent no. 3 will ensure due compliance and enforcement of the provisions of said Act and in order to ensure that the policy and purposes of the said Act is fully carried out, necessary instructions and guidelines will be issued to all District Superintendent of Police and Collectors in each districts of the State of Maharashtra. Learned Acting Advocate General had also clarified and assured this Court that the State Government is duty bound to prevent any discrimination based on gender and keeping in view the provisions of Articles 15, 25 and 51-A(e) of the Constitution of India, the State Government should take proactive steps to ensure that the fundamental rights of women are fully realized and not allowed to be encroached upon by any authority or individual. Based upon such statements, the petition was not pressed for any further order by the petitioner and the same was accordingly disposed of.

7] If the civil application is perused, learned Acting Advocate General is right in his submission that there are hardly any pleadings in the matter of misrepresentation and fraud. Mr. Jha, merely pointed out to the averments in paragraph 1(xiv) to submit that the co-ordinate bench of this Court on 27 January 2016 had declined to grant interim order in similar matter and this fact was suppressed by the parties

¹⁵ (2013) 4 SCC 465

when the petition was disposed of on 1 April 2016. In our judgment, this hardly amounts to any fraud or suppression. As noted earlier, PIL came to be disposed of finally by recording the statement made by learned Acting Advocate General. The refusal of the interim relief in PIL no. 16 of 2016, was obviously no bar to the disposal of PIL finally, particularly since the reliefs applied for in PIL were general in nature and not restricted to any particular temple or place of worship. In any case, an order refusing interim order cannot be regarded as a binding precedent, when it comes to final disposal of another petition.

8] The applicant may be entitled to have her own view in the matter of interpretation of the said Act or for that matter the provisions contained in the Constitution of India. However, merely because the parties in PIL may not have projected petitioners view or understanding certainly does not constitute any misrepresentation. Clearly therefore, this is not a case where any fraud or misrepresentation was practised by the parties at the stage of disposal of PIL no. 55 of 2016. The decisions in **S. P. Chengalvaraya Naidu** (supra), **Deepa Gourang Katre** (supra), **Vijay Shekhar** (supra), **S. Nagaraj** (supra), **Jaipur Mineral Development** (supra), **Budhia Singh Swain** (supra), take the view that any order obtained by fraud or misrepresentation can always be recalled and in fact, it is the duty of the Court to recall the same. In this case, since the applicant, has failed to establish any fraud or misrepresentation, the said decisions will not be applicable.

9] The applicant, in civil application, has merely pleaded that she is engaged in '*several social, cultural and religious activities*'. Despite, opportunity the applicant failed to place on record any material to elaborate this statement. That apart, in paragraph 2 of civil application,

the applicant has pleaded as follows :

“2. The Applicant apart from being a social activist is extremely religious and would frequently visit religious places, including Shani Shingnapur temple. The Applicant is of the firm opinion that the religious practises, traditions and customs which are followed in this country for centuries are to be respected and they cannot be matter of debate and/or controversy and therefore although the Applicant is a woman and is not allowed to enter the area of chautara and sanctum sanctorum as is popularly known, but the Applicant does not feel anything objectionable in such religious practises and those who are seeking to find fault with such religious practises followed for centuries as a matter of fact are seeking to make dent in such sacrosanct practises and traditions followed in the country.”

10] In terms of the aforesaid averments, the applicant has merely asserted her own '*firm opinion*' and further stated that she '*does not feel anything objectionable*' in religious practices which do not allow women to enter the chautara or sanctum sanctorum of a place of public worship. These are hardly any averments in support of some legal right vested in the applicant. On basis of such pleadings, the applicant, cannot seek a recall of the order dated 1 April 2016. Time and again it was made clear that in case, the applicant is of the opinion that her legal rights have been infringed by the State Government or any other persons, it is for the applicant to institute independent proceedings before the appropriate forum for vindication thereof. However, on the basis of such averments, the applicant cannot seek to maintain an application for recall of order dated 1 April 2016. The decisions in ***Jet Ply Wood Pvt. Ltd.*** (supra), ***Lachman Dass Bhatia*** (supra), ***Surajdeo*** (supra) or ***Bhartiya Gauvansh Rakshan Sanvardhan Parishad*** (supra), deal with, inter alia, powers of the Court to recall its own orders, even, at the instance of affected person, who may not have been a party to the original proceedings.

The existence of power is one thing but in order to seek exercise of such power, the applicant is required to make out a proper case, which, applicant in the present case, has failed to do so. The decisions are therefore, of no assistance to the applicant herein.

11] The decision in **A. R. Antulay** (supra) is also distinguishable, in as much as the party directly affected, applied for recall and further, demonstrated that the order made earlier, was in fact, a nullity. No such case has been made out by the applicant in the present case.

12] The decision in **Sastri Yagnapurushdasji** (supra) or **Yeshwant Balwant Badawe** (supra) relate to the merits of the matter. Learned Acting Advocate General did attempt to urge that the expressions '*all sections and classes of Hindus*' and '*no Hindu of whatsoever section or class*' as they appear in section 3 of the said Act are of wide import and include within their sweep men as well as women. Learned Acting Advocate General also made attempt to make submissions on the basis of Articles 14, 15, 25 and 26 of the Constitution of India. However, since, at this stage, we were mainly concerned with the issue of maintainability of civil application at the behest of applicant herein, we did not permit the parties to make submissions upon these aspects. Accordingly the decisions in **Sastri Yagnapurushdasji** (supra) or **Yeshwant Balwant Badawe** (supra) can be of no assistance to the applicant, at this stage.

13] In **Ayaaubkhan Noorkhan Pathan** (supra), the Hon'ble Supreme Court at paragraphs 9, 10 and 17 has observed thus :

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved

persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under [Article 226](#) of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : [State of Orissa v. Madan Gopal Rungta](#), AIR 1952 SC 12; [Saghir Ahmad v. State of U.P.](#), AIR 1954 SC 728; [Calcutta Gas Company \(Proprietary\) Ltd. v. State of West Bengal](#), AIR 1962 SC 1044; [Rajendra Singh v. State of Madhya Pradesh](#), AIR 1996 SC 2736; and [Tamilnad Mercantile Bank Shareholders Welfare Association \(2\) v. S.C. Sekar](#), (2009) 2 SCC 784).

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: [Shanti Kumar R. Canji v. Home Insurance Co. of New York](#), AIR 1974 SC 1719; and [State of Rajasthan v. Union of India](#), AIR 1977 SC 1361).

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.”

14] As noted earlier, the applicant has failed to plead or establish her legal right in terms of the decision of the Hon'ble Supreme Court in ***Ayaaubkhan Noorkhan Pathan*** (supra). The unsubstantiated statements that the applicant is engaged in several social, cultural or religious activities or that the applicant does not feel anything objectionable in religious practice which prevent women to enter the area of chautara or sanctum sanctorum are hardly sufficient to spell out any legal right sufficient to maintain an application of this nature.

15] In view of the aforesaid, civil application no. 63 of 2016 is dismissed. There shall however be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)

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