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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

PUBLIC INTEREST LITIGATION NO. 8 OF 2016

Raju Hamirmal Shah
Age-53 years, Occ. Business
502, Hamirmal Tower, Station Road,
Bhayandar (West), Dist. Thane. ... Petitioner.

V/s.

1. The State of Maharashtra
Through Department of Personnel,
Mantralaya, Mumbai.
2. Mira Bhayandar Municipal Corporation
Through the Commissioner,
Chhatrapati Shivaji Marg,
Bhayandar (West), Dist. Thane.
3. Satyawar Dasharath Dhanegave,
Assistant Town Planner, Town Planning
Department, Collector Office, Thane.
4. Dileep Prabhakar Ghevare,
Town Planner, Mira Bhayandar Municipal
Corporation, Chhatrapati Shivaji Marg,
Bhayandar (West), Dist. Thane. ... Respondents.

Mr. Susheel Shukla for the Petitioner.

Mr. A.B. Vagyani, Govt. Pleader a/w. P.P. Kakade for Respondent 1.

Mr. R.S. Apte, Senior Advocate a/w. N.R. Bubna for Respondent 2.

Mr. A.Y. Sakhare i/b. Joel Carlos for Respondents 3 and 4.

*CORAM : DR. MANJULA CHELLUR, C.J. &
N.M. JAMDAR, J.*

RESERVED ON : JULY 20, 2017.

PRONOUNCED ON : AUGUST 21, 2017.

P.C. :-

This Petition, purportedly moved in public interest by the Petitioner, seeks to question the posting and continuance of the Respondent Nos. 3 and 4 in the Town Planning Department of the Mira Bhayandar Municipal Corporation.

2. The Petitioner, who is a resident of Mira Bhayandar, is a developer by profession. The Respondent No.1 is the State of Maharashtra. The Respondent No.2 is the Mira Bhayandar Municipal Corporation. It is established under the provisions of Maharashtra Municipal Corporation Act. The Respondent No.3 was working as an Assistant Town Planner in the Respondent No.2 – Corporation. He is presently working at Thane. The Respondent No.4 is working as a Town Planner in the Respondent – Municipal Corporation.

3. The cause sought to be espoused by the Petitioner in this Public Interest Litigation is twofold. First is that, in spite of a statutory embargo, since in the year 1996 the Respondent Nos. 3 and 4, alternatively, are being posted as Town Planners in the Respondent No.2 – Corporation. Second is that, the Respondent Nos.3 and 4 do not possess the requisite qualification to occupy the posts. On behalf of the State, the Joint Director of Town Planning has filed a reply. The Respondent Nos. 3 and 4 have filed their replies, so also the Respondent No.2 – Corporation. Rejoinder has been filed by the Petitioner.

4. We have heard Mr. Shukla, learned Advocate for the Petitioner, Mr. Vagyani, the learned Govt. Pleader, Mr. Apte, learned Senior Advocate for Respondent No.2 – Corporation and Mr. Sakhare, learned Senior Advocate for Respondent Nos.3 and 4.

5. On behalf of the Petitioner it was contended as follows. The post of Town Planner in the Respondent No.2 – Corporation is an important post. Large scale construction activity is going on in the Mira Bhayander area. It has become a common phenomenon that only a particular Government servants occupy important posts for a long period of time. There is an inherent danger in keeping the same Government servant on the same post for a longer period of

time. It results in favouritism and various other illegal activities. The Respondent Nos.3 and 4, who are Government servants. They have been posted on deputation in the Respondent No.2 – by the State Government Municipal Corporation right from the year 1996. The Respondent No.3 was posted in the Respondent No.2 – Corporation firstly in June 1995. Except for intermittent posting elsewhere he is repeatedly being appointed as a Town Planner in the Corporation. Similar is the position with the Respondent No.4. He who was posted in the Respondent No.2 – Corporation in June 1996. Except for few other postings, he has been appointed as a Town Planning Officer even in the year 2015. The Respondent No.4 does not possess the requisite qualifications. Such alternative postings of Respondent Nos. 3 and 4, for period of 17 years out of 19 years is illegal. These two officers have never been posted outside Thane District. Both the officers have committed various illegalities. They are instrumental in allowing large scale unauthorized constructions to come up in the Mira Bhayandar area. As per Section 3 of the Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, the Respondent Nos.3 and 4 cannot be posted as Town Planner in the Respondent No.2 – Corporation. The Act of 2005 needs to be implemented and the Respondent No.4 should be forthwith removed from the post of Town Planner. An enquiry needs to be carried out in respect of occupation of the Respondent No.3 as a Town Planner between 24

March 2013 to 31 March 2015, since he occupied the post without charge. An enquiry needs to be made into the plans sanctioned by the Respondent Nos.3 and 4.

6. Taking exception to the locus of the Petitioner and his bonafides it was contended on behalf of the Respondent Nos. 3 and 4 as follows – Petitioner is a developer in Mira Bhayander. Six FIRs were lodged against the Petitioner under Sections 52, 53, 54 of the Maharashtra Regional Town Planning Act for carrying out illegal constructions. A Public Interest Litigation No. 171 of 2012 was filed challenging the appointment of Respondent No.4. This Public Interest Litigation was dismissed on 16 June 2014. The Petitioner is an accused in Criminal Case No. 983 of 2005. On 13 October 2014, the Petitioner was convicted under Section 406 of the Indian Penal Code and Section 13 of the Maharashtra Ownership of Flats Act (MOFA), 1970.

7. On behalf of Respondent No.3 it was contended that Respondent No. 3 was originally appointed on 7 April 1986 as a Planning Assistant on the basis of diploma in Civil Engineering, which is the only qualification for the post of Planning Assistant. Thereafter, the Respondent No.3 has been promoted from time to time.

8. Respondent No.4 asserted that the qualification for the post of Town Planner is a diploma in Civil Engineering or Architecture with minimum experience of four years in town planning or valuation. Respondent No.4 has a diploma in Civil Engineering and has also completed four years of experience in town planning. He has not relied upon the B.E. Degree from Dnyaneshwar Vidyapeeth, Pune for his employment and therefore, the issue whether the Dnyaneshwar Vidyapeeth is recognized or not, is not relevant. All allegations in respect of permissions for unauthorized construction are denied. The Public Interest Litigation is entirely motivated.

9. The State contended that the Respondent Nos.3 and 4 were not appointed in Mira Bhayandar Municipal Corporation continuously as contended. They were appointed outside Mira Bhayander from time to time. Both the Respondent Nos. 3 and 4 hold the diploma in Civil Engineering which is the minimum requisite qualification for the post of Town Planner. The Act of 2005 has been duly followed.

10. Municipal Corporation has filed the affidavit of Assistant Commissioner. The period of occupation on the post of Assistant Town Planners by various Officers is placed on record.

11. In the rejoinder, it is stated by the Petitioner that the Respondent Nos.3 and 4 have indulged in illegal activities and the prosecutions against the Petitioner have been needlessly made capital of as the prosecution was a result of a civil dispute.

12. The learned Counsel for the Petitioner submitted that another Petition has been filed by the Petitioner seeking removal of the Respondent Nos. 3 and 4 on the ground of various illegalities committed by them and therefore he is not arguing that aspect. In the present Public Interest Litigation, we are not concerned with the averments made in the said pending Petition. In the present Petition, we have dealt with the arguments of the Petitioner regarding the allegation of infraction of statutory provisions in respect of appointment of the Respondent Nos. 3 and 4.

13. We have considered the rival contentions concerning the matter at hand. The Petitioner has challenged the action of the Respondent No.1 – State of posting the Respondent Nos. 3 and 4, who are Government Servants, in the services of the Respondent No.2 – Corporation. The Respondent Nos.3 and 4 are in employment of the Respondent No.1 – State. The State exercises control over their postings, continuance and appointment of the Respondent Nos.3 and 4. The State has a power to appoint the Town Planners on deputation to the Municipal Corporations. Being

an employer, the State has the power, within the ambit of law, to transfer and appoint suitable and qualified persons on the public posts. The relationship between the State and its servants is in the realm of service law. The scope of interference by writ Courts in a Public interest litigation in the matters of service law is limited. The Apex Court in the decisions of *Dattaraj Nathuji Thaware v/s. State of Maharashtra and Ors.*¹ and *Hari Bansh Lal v/s. Sahodar Prasad Mahto and Ors.*² has laid down that the Courts should be extremely reluctant, if not at all, in interfering in a Public Interest Petition in the matters concerning service law. The learned Judges, in the decision of *Hari Bansh Lal*, have observed as under :-

11. About maintainability of the Public Interest Litigation in service matters except for a writ of quo warranto, there are series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a Member in terms of Section 5(4) and from among the Members of the Board, considering the qualifications specified in sub-section (4), the State Government, after getting a report from the vigilance department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence.

1 (2005) 1 SCC 590

2 (2010) 9 SCC 655

12. *We have already pointed out that the person who approached the High Court by way of a Public Interest Litigation is not a competitor or eligible to be considered as a Member or Chairman of the Board but according to him, he is a Vidyut Shramik Leader. Either before the High Court or in this Court, he has not placed any material or highlighted on what way he is suitable and eligible for that post.*

13. *In Dr. Duryodhan Sahu and Others vs. Jitendra Kumar Mishra and Others, (1998) 7 SCC 273, a three- Judge Bench of this Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated". In para 21, this Court reiterated as under:*

"21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

14. *In Ashok Kumar Pandey vs. State of W.B., (2004) 3 SCC 349, this Court held thus:*

"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 a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting

valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra 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 to throw them out on the basis of the said decision. 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. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

The same principles have been reiterated in the subsequent decisions, namely, *Dr. B. Singh vs. Union of India and Others*, (2004) 3 SCC 363, *Dattaraj Nathuji Thaware vs. State of Maharashtra and Others*, (2005) 1 SCC 590 and *Gurpal Singh vs. State of Punjab and Others*, (2005) 5 SCC 136.

15. The above principles make it clear that except for a writ of quo warranto, Public Interest Litigation is not maintainable in service matters."

(emphasis supplied)

14. A writ of *quo warranto* can be sought to question the occupation of a public post by a person who is not entitled in law to hold the post. The Petitioner will thus have to point out the provision of law, for violation of which, a writ of *quo warranto* can be issued against the Respondent Nos. 3 and 4.

15. First ground for seeking writ of *quo warranto* is that the Respondent Nos. 3 and 4 do not possess the requisite educational qualifications. As regard Respondent No.4, it is also alleged that the Respondent No.4 has a degree from Dnyaneshwar Vidyapeeth, which is not a recognized University. The submission of the Petitioner on the educational qualification of the Respondent Nos.3 and 4 cannot be accepted. The minimum qualification for the post of Town Planner is a Diploma in Civil Engineering. Both, the State, as well as the Respondent Nos.3 and 4 have placed on record that these Respondents hold Diploma in Civil Engineering. Thus, they hold the minimum requisite qualification for the post of Town Planner. The Respondent Nos.3 and 4 have also been promoted in service. The Respondent No.4 has clarified that the degree from Dnyaneshwar Vidyapeeth is not used by him for the purpose of service. Therefore, there is no merit in the challenge regarding the lack of qualification of Respondent Nos.3 and 4.

16. The second ground on which a writ of *quo warranto* is sought is on the aspect of repeated postings. This is based on Section 3 of Chapter II of the Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005. Chapter II of the Act deals with subject of tenure of posting and transfer and transferring authority. Section 3 reads thus :-

“3. Tenure of posting :- (1) For All India Service Officers and all Groups A, B and C State Government Servants or employees, the normal tenure in a post shall be three years;

Provided that, when such employee is from the non-secretariat services, in Group C, such employee shall be transferred from the post held, on his completion of two full tenures at that office or department, to another office or Department;

Provided further that, when such employee belongs to secretariat services, such employee shall not be continued in the same post for more than three years and shall not be continued in the same Department for more than two consecutive tenures.

(2) Employees in Group D shall normally not be subjected to fixed tenure. They shall not be transferred out from the station where they are serving except on request when a clear vacancy exists at the station where posting is sought, or on mutual transfer, or when a substantiated complaint of serious nature is received against them.”

Relying on the first proviso, it was contended by the Petitioner that an employee shall be transferred on completion of two full tenures at that office or another office of the department. It was contended that the normal tenure in the post shall be three years. It was

submitted that extension of tenure as stated in Section 5 of the Act, should be in exceptional cases.

17. That this is the policy of the State Government in respect of transfer posts and tenure, cannot be disputed. However, from the above referred provision the Petitioner wants to cull out an absolute proposition. He wants the Court to read an embargo in Section 3 to the effect that when a Government servant completes two tenure on deputation, he cannot be posted again during his entire service career on that post in the same department. From the plain reading of Section 3, we do not find any such absolute embargo. The argument proceeds on complete misreading of the provision. Section 3 only states that there cannot be more than two continuous tenures by a Government servant on one post. But no rule or statutory provision is shown to us that if an employee occupies two tenures on the same position and is transferred somewhere else and after serving on the transferred post, cannot be brought back again to serve further two tenures. Therefore, merely because Respondent No.3 and 4 have been brought back, a writ of *quo warranto* cannot be issued.

18. On the factual aspect regarding the tenures, the Deputy Director of Town Planning in his affidavit-in-reply has given the details. As regard Respondent No.3, the details are as follows :-

Date of Posting	Place of Posting	Post
09.06.1995 to 08.07.1999	Assistant Director of Town Planning, Thane.	Planning Assistant
09.07.1999 to 31.08.2002	Mira Bhayandar Municipal Corporation	Asstt. Town Planner
02.11.2002 to 01.11.2004	Mira Bhayandar Municipal Corporation.	Asstt. Town Planner
06.12.2004 to 31.10.2006	Dy. Collector and Competent Authority , Ulhasnagar Camp.	Asstt. Town Planner
01.11.2006 to 23.03.2010	Dy. Collector and Competent Authority, ULC, Thane.	Asstt. Town Planner
25.03.2010 to 31.03.2015	Mira Bhayandar Municipal Corporation	Asstt. Town Planner
01.04.2015 till date	Assistant Director of Town Planning, Thane.	Asstt. Town Planner.

In respect of Respondent No.4, the details are as follows :-

Date of Posting	Place of Posting	Post
10.06.1996 to 08.07.1999	Mira Bhayandar Municipal Corporation	Asstt. Town Planner
09.07.1999 to 02.09.2005	Additional Collector and Competent Authority, ULC, Thane	Asstt. Town Planner
05.09.2005 to 20.09.2008	Mira Bhayandar Municipal Corporation	Asstt. Town Planner

21.09.2008 to 09.12.2008	Waiting period	
10.12.2008 to 12.11.2009	Office of the Minister of State, PWD	Officer on Special Duty (ATP)
13.11.2009 to 12.07.2010	Office of the Dy. Chief Minister, Mantralaya	Special Executive Officer (ATP)
13.07.2010 to 19.11.2010	Office of the Dy. Chief Minister, Mantralaya	Special Executive Officer (Town Planner)
20.11.2010 to 31.01.2011	Waiting period	
01.02.2011 to 17.06.2013	Office of the Minister of State, UD, Forest, Port, Khar land, etc. Mantralaya	Town Planner
18.06.2013 to 10.10.2013	Waiting period for posting	
11.10.2013 to 05.02.2015	Navi Mumbai Municipal Corporation	Town Planner
06.02.2015 till date	Mira Bhayandar Municipal Corporation	Town Planner

The Municipal Corporation in its affidavit has also given the details of various officers who have occupied the posts of Assistant Town Planner from 30 April 1992 to 6 February 2015. Seventeen officers have occupied these posts from 1992 to 2015. The name of Respondent No.3 appears three times in the list and name of Respondent No.4 appears three time in the list.

19. From these charts, which have been supplied by the State Government and the Municipal Corporation from their official record, it is clear that Respondent Nos. 3 and 4 have not continuously occupied the post beyond the two consecutive tenures years after the Act of 2005 has come into force. That being the position, the contention of the Petitioner that Respondent Nos. 3 and 4 are continued on the post in the Town Planning Department of the Municipal Corporation illegally, is entirely baseless. The Petition is filed on a non-existent statutory and factual foundation.

20. In spite of pointing out the scope of public interest litigation in the matters of service law, the Petitioner has repeatedly sought to urge that the Respondent Nos.3 and 4 should not be posted as Town Planner in the Respondent No.2 – Corporation. The learned Counsel for the Petitioner, on instructions, persisted in making various submissions disregarding the above stated settled position of law.

21. The insistence of the Petitioner to pursue this Petition targeting the Respondent Nos.3 and 4 in spite of the clear dicta of the Apex Court does not appear to us to be a mere ignorance of law. The Petitioner himself is a developer operating in the Mira Bhayander area. As a developer, he must be applying for various

permissions. The applications need to be processed by the Town Planning Department. In the Petition, the Petitioner has stated in one line that the Petitioner has filed the Criminal Appeal No. 242 of 2014. He has not given any particulars whatsoever regarding the same. It is only after the replies have been filed by the Respondents that the Petitioner has sought to explain why the Criminal Appeal had to be filed. Six First Information Reports have been lodged against the Petitioner. Three FIR were filed for offences under the town planning laws. The Petitioner has also been convicted by the Magistrate for violating the provisions of Maharashtra Ownership of Flats Act, 1970 which, as a developer, he was obliged to follow. The Criminal Appeal filed by the Petitioner has also been dismissed. Thus, the Petitioner, a developer, who has been prosecuted for various town planning offences, is brazenly attempting to replace the Town Planners for his own benefit. The Respondents are therefore fully justified in making a serious grievance. We are convinced that this Petition is a purely motivated exercise of the Petitioner. It is not filed in Public Interest. It is filed to settle a personal grudge against the Respondent Nos.3 and 4.

22. We are facing a deluge of motivated petitions masquerading as Public Interest Petitions. It is a matter of grave concern. We spend substantial judicial time in analysing each petition only to find that many of them are filed for oblique motives.

Such petitions frustrate the efforts of the Court to advance substantial justice in public interest where it is really needed. Quite often the Court is hard pressed for time to redress genuine causes because of the time spent in weeding out bogus petitions. The Apex Court in the case of *Ashok Kumar Pandey v/s. State of West Bengal*³ has taken a serious note of this malady. The Apex Court has opined that the Court has to act ruthlessly while dealing with imposters, busy bodies or meddlesome interlopers impersonating as public-spirited men. It is observed that no litigant has an unlimited right to draw on the Court time and public money in order to get his affairs settled in the manner he wishes. Access to justice cannot be treated as a licence to file misconceived and frivolous petitions. Those who file petitions under the name of Public Interest, must inspire confidence in Courts and among the public. The Apex Court has directed the Courts should dismiss such petitions by imposing exemplary costs. A message needs to be sent that the Court strongly disproves petitions filed with oblique motive and that abuse of Public Interest jurisdiction will entail serious consequences.

23. When we find that this Petition is nothing but an attempt to settle a personal score and an abuse of the Court process, we will fail in our duty if we do not impose punitive costs. Such costs are necessary to inculcate a scene of discipline and to deter future abuse.

3 2004(3) SCC 349

24. We therefore dismiss the Public Interest Litigation with costs of Rupees One lakh. The costs shall be recovered from the Petitioner by the concerned Collector as arrears of land revenue and compliance report be submitted to the Registry of this Court within eight weeks from today.

(N.M. JAMDAR, J.)

CHIEF JUSTICE