

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CR.PUBLIC INTEREST LITIGATION NO.10 OF 2016

Balu @ Shivaji Tukaram Choudhary .. Petitioner
Versus
State of Maharashtra & Anr .. Respondents

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Mr.Debajyoti Talukdar for the petitioner.
Mrs.PP. Shinde APP for the State.

CORAM: S.C. DHARMADHIKARI &
SMT.BHARATI H.DANGRE,JJ.
DATED : 12th FEBRUARY, 2018

P.C :-

1 By this petition which is claimed to be filed in the public interest, the prayer is that this Court should set up a Judicial Committee which would include Advocates to make enquiry and to investigate the allegations made in the petition about the infringement and deprivation of rights of the prisoners in Yerwada Central Jail, Pune by the Jail Authority and this Judicial Committee should be directed to conduct a fair and impartial investigation and thereafter, report such violation of rights.

Tilak

2 The implementation of the Jail Manual has not been done by the authorities administering Yerwada Central Jail, is another grievance.

3 Before we refer to the allegations and the averments in this petition, we wish to remind all concerned that the tendency of filing multiple PILs on the same subject or cause of action ought to be discouraged and deprecated as observed in an order passed by a Division Bench, to which one of us (Hon'ble Shri Justice S.C. Dharmadhikari) was a party, at Aurangabad. The Registry was directed not to register multiple Public Interest Litigations or applications or writ petition styled as 'Public Interest Litigations'. The order to the extent relevant reads as under :-

3 At the outset, we must express our strong displeasure at multiple Public Interest Litigations being filed and registered as such on the same subject matter and issue. It may be that there are several public spirited citizens and interested allegedly in efficient, proper and smooth administration of the affairs of Shri

Saibaba Sansthan Trust (Shirdi) but that does not justify the Registry allowing filing and lodging, so also registration of these number of PILs. More so, when the issue raised is identical, the subject matter is the same and even the reliefs prayed are similar. Each one of them claims to be aggrieved and dissatisfied with such appointment as are made under the above order of the State Government. Once there is a PIL and earlier in point of time, duly registered as such, then, it is the bounden duty of the Registry to verify and scrutinize the record and with the aid of modern technology it is not too much to expect from the Registry, if it informs an interested litigant allegedly moving in public interest that a PIL is already registered on the same subject and is pending. If the subsequent applicant still insists on his application being treated as a PIL, the Registry can, in such circumstances, place the matter before the competent Court and seek its directions. It is then for the Court to adopt an appropriate course so that multiplicity of PILS on the same subject matter is avoided and equally repetitive arguments. When one Public Interest Litigation is registered any public spirited citizen can pray to the Court orally or by an appropriate application that he may be also allowed to participate and be heard when the earlier PIL is taken up. It is then for the Court to adopt an

appropriate course consistent with the Rules framed in relation to filing, lodging and consideration of PILs by the Bombay High Court, Appellate Side.

4 In one of the judgment and order delivered recently by us in the case of *Sunil s/o. Supadu Mahajan and Anr. vs. Hon'ble Minister of State for Urban Development Department and Ors.*¹, decided on 14th July, 2017, the tendency of lodging and filing successive PILs on the same subject matter has been commented upon and even the Registry's practice is deprecated. Even the tendency to register them indiscriminately has been deprecated. We quote the following observations from that judgment and order :-

17] Before proceeding further we find a practice and prevailing in this Court to be little peculiar. PIL No. 102 of 2015 was filed in this Court on 11/10/2015. PIL No.119/2015 is filed in this Court on 24/26/10/2015. It is strange that the Registry was unaware of the pendency of one PIL on the same subject and yet proceeded to register the second PIL.

18] We see no reason to register such multiple PILs. PIL is an exceptional litigation. It is not an handle or a tool to settle private disputes or matters of purely private nature in the garb of public interest. There are directions issued by the Hon'ble Supreme Court to all the High Courts that they must ensure that only genuine PILs are filed and taken up. One of the directions is that multiple PILs would defeat the very object and purpose of PIL. It is strange therefore that though the rules have been notified the registry of this bench has not taken any steps. We do not see

¹ Writ Petition No. 7730 of 2015

why when one PIL is filed by a resident, person, individual that another and from the same city or town is able to approach this Court by independent proceedings. None is preventing this tendency and practice. We find that this practice continues by allowing people to intervene in PILs. We do not think if one resident or citizen and claiming to be public spirited citizen brings to the notice of this Court inaction of the Statutory Authorities or the State or some deliberate and intentional act, on their part, then, the Court will proceed to register it as PIL and treat it as a truly representative litigation. That one individual or one PIL petitioner in the earlier PIL would represent the cause of all the residents is the presumption on which this Court would proceed. There is therefore, no warrant to register subsequent PIL or allow repeated interventions for that would introduce an unhealthy practice of other litigants introducing purely private causes or settling political or private disputes. Nothing should be done which would defeat the salutary and laudable object sought to be achieved by a PIL. A adversary of the PIL petitioner would enter the fray or jump into the arena and the purpose of the litigation, namely, in public interest, would be frustrated. We have found a intervenor being introduced to malign the PIL petitioner by attacking his character. This could be a deliberate ploy by those whose actions are under scrutiny of this Court. We hope this much is enough and hereafter Registries of this Court will ensure that multiple PILs are not registered.

19] Be that as it may. PIL No. 119/2015 is presented by a person claiming to be agriculturist but resident of Jalgaon city. He has impleaded as party respondents a Minister of State, the Deputy Secretary in the Urban Development Department Jalgaon Municipal Corporation and Mr.Eknathrao Khasde the then Minister for revenue/Guardian Minister.

20] The petitioner in P.I.L. No. 119/2015 narrates the very same facts. The petitioner also reiterates the very same history of the litigation by the shop keepers against whom eviction orders have been passed but unsuccessfully resisted and challenged by them. The very Resolution No.135 dated 20/10/2014 is referred by this petitioner. The very act of sealing

the premises and the subsequent steps are set out in this PIL, and then it is stated that the fourth and fifth respondent have tried to influence the Government in passing favourable orders but which would be detrimental to the interest of the Municipal Corporation.

5 We hope and trust that hereafter the Registry will take steps and in accordance with the aforesaid suggestions and, if necessary and required, make changes and amendments to the existing Rules.

4 It is common ground that Public Interest Litigation, whether civil or criminal, is an exceptional one. There is a departure from the ordinary and normal rules and at times, they are relaxed for entertaining Public Interest Litigations. However, when prison reforms or lack of facilities and basic amenities of prisoners, violation of their human rights are the issues projected in one PIL and that PIL i.e. Cr. PIL (L) No.46 of 2015 has taken care of all the aspects and particularly those highlighted in this petition, then, we do not see any purpose of this petition.

5 The Registry has now to take steps and comply with the orders and directions of this Court and move for bringing about necessary changes and modifications in the PIL Rules. We hope and trust that this would be done expeditiously. A copy of this order be forwarded to the Registrar General of this Court for information and necessary action.

6 In this PIL, the petitioner Balu @ Shivaji Tukaram Choudhary says that he was a witness to certain incidents in Yerwada Central Jail. The petitioner, on the date of lodging of this petition, claims to be languishing in High Security Block of Yerwada Central Jail, Pune. He claims to be a victim of deprivation of fundamental rights. He claims that he is not being treated as a human being. Then, the petitioner claims he is a witness to all the inhuman treatment and deprivation of the basic rights of the inmates at Yerwada Central Prison and particularly this block. The petitioner claims that by virtue of the mandate of Article 21 of the Constitution of India, he can bring to the notice of this Court

the said grievances, the violation of the basic rights and equally the prison atrocities.

7 He had impleaded to this writ petition the State of Maharashtra, the Superintendent of Yerwada Central Prison and the Deputy Inspector General of Prisons, Inspector General of Prisons, Director General of Prisons and Home Minister as party respondents.

8 It is stated that C.R.No.116 of 2014 was registered at Bharati Vidyapeeth Police Station. The petitioner says that he is an under-trial prisoner incarcerated at Yerwada Central Jail, Pune.

9 The petitioner says that the inmates in High Security Block have been living in a miserable condition. There is lack of cleanliness and no hygiene. The rooms in the said block are of 10 x 12 feet. The toilets are not clean. The inmates have to survive in unhygienic and stinky conditions. In such circumstances, being there and having such food and

having to live in such conditions may invite serious health issues. There are mosquitoes, bed-bugs and other infective insects in large numbers in the entire jail premises.

10 Our attention is invited to Maharashtra Prisons (Prison Building and Sanitary Arrangements) Rules 1964. Rule 26 thereof provides for cleaning of latrines and urinals. The walls and structures of toilets are old. They are not maintained. Rule 28 of the above Rules are therefore violated.

11 In Cr.PIL (L) No. 46 of 2015, this Court expressed its serious concern on the issue of unhygienic and bad conditions of the toilets. There was a report submitted by the learned Sessions Judge in the PIL. That shows the pathetic conditions of toilets and sanitation as a whole. No steps have been taken by jail authorities to improve them.

12 Then, the petitioner complains that minimum quantity of water necessary for bath and drinking is never

provided. The inmates have to manage with insufficient water and dirty utensils. There are no proper arrangements for taking bath as well. Even the quality of food is not as per the required standards. It is in these circumstances and particularly, when the jail authorities are not supplying even the books i.e. the religious texts and scriptures, then, the Maharashtra Prisons (Facilities to Prisoners) Rules, 1962 are violated. As far as summer season or conditions of heat are concerned, it is stated that there is no fan in the High Security Block for the inmates to survive in unbearable heat. This is also a violation of the rules.

13 Then, it is stated that there are some newspapers provided to the inmates, but at their costs, charges and expenses. Once a newspaper is read and next day it is of no utility, then it is collected as a scrap but disposed of by prison authorities reimbursing the prisoners of the necessary expenses.

14 Then, even canteen food is not provided as per the Jail Manual on payment. Then, it is complained that there are some illegal activities in the prison, particularly smuggling of *ganja*, *hashish* etc. That is done with the help of jail staff.

15 Finally, it is stated that there is 24/7 police guards in the High Security Block. In addition to that, close circuit T.V cameras are also installed. These cameras can cover the bathroom and toilet area. The wall of the toilet is hardly 1 ½ feet high. The inmates are, therefore, embarrassed because the CCTV camera can catch the footage of any inmate answering the nature's call.

16 It is also stated that the routine as per Maharashtra Prisons (Routine) Rules 1965 is being followed and there is no modification in the timing. It is in these circumstances that though orders are passed in the other Criminal Public Interest Litigation, no steps are taken to comply with the same. It is stated that several prison visits by high powered officials are of no avail.

17 The above issues and other matters pertaining to prisoners health etc, still remain unattended for there is no serious effort made to tackle the prisoners and the issue of improvement of the conditions of the inmates in prisons.

18 On such a petition, we find that the Court on 1st July 2016 specifically passed an order pointing out that there are two PILs in which similar issues are raised. They are pending in this Court. They are assigned to a Bench presided over by Hon'ble Shri Justice A.S. Oka. This Court directed that the present PIL should be listed along with the two PILs. Though this direction was issued by the Division Bench, what transpires is that the concerned Advocate did not supply numbers of two PILs to the Registry because of which the clubbing of PILs could not take place.

19 We are aghast at such a remark by the Registry. Eventually, these are orders and directions of the Division Bench of this Court. They bind the Registry officials. If

Advocates do not co-operate, that does not mean that the Registry Officials can get away, or avoid the consequences, or refuse compliance with the Court's orders and directions. It is their bounden duty to search from the records the PILs on the similar issue and when it is claimed that the technology is so advanced, then, it is not difficult to trace out the matters.

20 Be that as it may, later on, on 24th November 2016, this PIL appeared before a Bench headed by Hon'ble Justice A.S. Oka. The Registry, however, did not take the requisite steps even on 1st December 2016 and continued to blame the petitioner's Advocate. That is how the report of the Registry dated 12th July 2017 would read. Then, this PIL was listed before a Division Bench on 6th October 2017, but prior thereto when this matter was placed on 9th June 2017, nobody appeared on behalf of the petitioner. At that time, the learned APP informed the Court that the Director General of Prisons would file an affidavit. Hence, the matter stood adjourned to 30th June 2017. The Registry however, throughout the year 2017 took no such steps as were

contemplated in the order passed by this Court on 1st July 2016. This matter continued to appear as per the roster before a Bench assigned Criminal Public Interest Litigations. We were surprised that when this matter was listed on 24th January 2018, it was not brought to our notice that because the PIL petitioner did not co-operate this Court's order and these directions could not be implemented. Secondly, it was pointed out in the absence of the petitioner that there is no affidavit and even when the petition alleges as above.

21 Now, the affidavit in reply has been filed, but prior to that, we must indicate that a praecipe was filed by Ms.Shubhada Khot, Advocate for petitioner in Cr.Writ Petition No.2761 of 2011 and Cr.W.P No.3528 of 2011, and another praecipe by the petitioner in present Cr.PIL for clubbing and placing the matters along with specially assigned Cr.PIL No.9 of 2017 which was earlier listed as Cr.PIL St.No.46 of 2015. Then, it was stated that Cr.PIL No.9 of 2017 was specially assigned to the Bench presided over by Hon'ble Shri Justice A.S.Oka.

22 However, in terms of the praecipe of the Advocates, the Registry made a report to the Hon'ble the Acting Chief Justice and stated that Cr.PIL No.9 of 2017 is disposed of on 1st March 2017 and the order therein directs the State Government to comply with the directions of this Court and place the matter for consideration of any compliance report. That PIL is being regularly placed before the Bench presided over by Hon'ble Justice A.S.Oka.

23 This PIL concerns more or less identical issues. If the rights of prisoners are violated, and what are styled as Basic Human Rights or Fundamental Rights then, we do not see why in the teeth of the pending PIL, this matter was registered again as a PIL, and if at all, it was so registered, was the petitioner prevented in any manner from approaching the Bench which decided the Cr.PIL No.9 of 2017. Even the Registry has messed up the matters by its inaction or complete lack of knowledge of procedural matters or sheer ignorance. We direct the Registrar (Judicial) to take note of

this order and he must also move immediately if any change or modification is to be brought about in the procedural rules. He must also seek an explanation from all concerned as to why there was a lapse on the part of Registry officials in not clubbing the matters earlier.

24 The petitioner in this petition can always approach the Bench presided over by Hon'ble Shri Justice A.S.Oka whenever it is taking any compliance report for consideration. We do not think that another PIL on the same subject matter should remain on our file. There is one more reason why it should not remain on our file. There is an affidavit filed by the Deputy Inspector General of Prisons, Western Region, Pune. It is stated that Yerwada Central Prison is established in the year 1871. At the relevant time, the total inmate capacity of the prison was 2323. Due to increase in the crime rates, there are presently more than 5,000 under-trial and convict prisoners. The prisoners are admitted into the prison, and thereafter, they are segregated as under-trial and convicts. The habitual prisoners who are

sentenced to undergo Simple Imprisonment are kept separately from those sentenced to Rigorous Imprisonment. In paragraph no.5 of this affidavit, the procedure at the time of admission of the prisoner is set out.

25 Then, it is stated that co-accused in the same case are generally kept in different barracks so that no untoward incident is reported. As far as the petitioner is concerned, it is stated that he belongs to local gang and as per the directions of the Judicial Magistrate First Class, Pune issued on 7th July 2014, he was to be kept in a separate lockup. The petitioner had also filed application about the threat to his life and that he should be kept in a separate lockup. On that application, the Sessions Court, Pune passed an order on 19th January 2015, and that is how the petitioner has been kept in a separate cell known as “Special Security Cell/block”. The Superintendent of Prison visits this block on every Monday and Dy. Superintendent visits on each Thursday. On each visit, the prisoners are free to disclose to them their difficulties and problems and their grievances also can be

brought to the notice of these authorities. The Superintendent checks the concerned Special Cell as well as prison premises, toilets and bathrooms and ensures that proper hygiene is maintained. This disinfectant cleaners are regularly used to clean the toilets and bathrooms. The prison has two fogging machines which are used for fumigation. Prisons are also provided with mosquito repellent. Then, Rule 20 of Chapter XXXVII of the Rules is referred and it is stated that there are about 15 special security cell and presently, 10 prisoners are kept in the Special Security Cell. There are 15 ceiling fans at each Special Security Cell/Block and there are 5 blower fans in the said Cell. Then, it is stated that all measures are in place and basic amenities are provided in the prison. In order to minimize over crowding, eight barracks are proposed to be newly constructed, and out of these, work regarding two barracks is at final stage. Then, the repair and renovation work has been undertaken in existing toilets and bathrooms. Total 27 toilets are newly constructed. Presently, 13 toilets and 14 bathrooms have been renovated. The repair works with the assistance of Public Works Department is

undertaken and this affidavit pertinently refers to the Committee appointed by this Court headed by Hon'ble Mr. Justice S. Radhakrishnan (Retired) to monitor the modernization of all prisons in the State. There is a monthly visit of District Judge, Pune and in such visit as well, the petitioner can bring to the notice of the learned District Judge and the authorities his grievances and complaints.

26 In paragraph no.12, 13 and 14 of this affidavit, it is stated as under :-

12 I say that pursuant to the order dated 01.03.2017 passed in PIL No.9/2017, State of Maharashtra has issued resolution dated 19.06.2017 directing the concerned Collectors to constitute a committee comprising of nominated dietician by Director Health, as President and one male social worker and one female as member of the said committee. I say that as per the said G.R. Committees have been formed at all divisions. The said committee has visited Yerwada Central Prison on 2.11.2017, 28.12.2017 and 31.01.2018 and had suggested certain recommendation regarding quality of food, cleanliness and hygiene. The said recommendations are complied by the concerned jail authorities. I say that the food which is being supplied to the prisoner is regularly been checked by the Superintendent as well as Medical Officer of

Yerwada Central prison. The prisoners who has been given work of cooking are regularly medically examined.

13 I say that as per Chapter 31, Rule 28 and 29 of Maharashtra Prison Manual, 1979, a library having total 9,500 books on religious, biography and spiritual books are made available to each prisoner free of costs. Every day news paper in regional and English language is provided as per list approved by the State Government. The said newspapers are thereafter sold and the amount recovered from the said is kept in Prisoner Welfare Fund and is utilized for the Welfare of prisoners. I say that if there is any objectionable news in a particular newspaper, a paper cutting is provided in the interest of security and to avoid any untoward incident.

14 I say that the jail staff and prisoners are regularly been checked and there is no smuggling of narcotic substances inside the prison. There is security door frame, metallic detector, hand metallic detector and bag scanners in jail premises and the contention of the petitioner regarding illegal activities in the jail premises is not true and correct.

27 There is a justification provided in paragraph 15 for installation of CCTV cameras. There was a gang fight and war in the prison premises in the year 2012 in which one

prisoner lost his life. That is how the justification for installation of CCTV.

28 Finally and importantly, it is stated that there are regular medical and counselling camps conducted by NGOs. Even yoga classes are conducted. The prisoners' mental and physical health is taken care of by providing recreational facilities. They are also given training for any technical and mechanical work. They are taught carpentry work, painting work etc. Many prisoners who want to take education are allowed to seek admission in open Universities. Even the directions of the Hon'ble Supreme Court and which are now enumerated in a G.R dated 4th December 2006 are being followed and implemented. This is an affidavit of 3rd February 2018.

29 If after this affidavit as well, a copy of which has been provided to the petitioner and his Advocate, there are any grievances and complaints, then the petitioner has two fora available to him. Firstly, the Committee set up by this

Court under the Chairmanship of a retired High Court Judge and secondly, the compliance reports that are filed in Cr.PIL No. 9 of 2017. Once these remedies are available, then we are not obliged to pursue this PIL any further.

30 A PIL petitioner and equally parties like the prisoners before us ought to understand that this Court will not entertain the grievances unless they are of specific nature, details thereof are provided, and a petitioner or litigant is courageous and bold enough to affirm his allegations on oath. We find that general statements and bald allegations are made. We do not find any justification or reason to condemn everybody, either in the Government or in-charge of prisons. If there are officials working tirelessly and day to day, not everybody can be condemned, and in such a blanket manner. It is not as if the petitioner or persons advising them are unmindful of the hierarchy. It is a fashion nowadays to file PILs without doing any research and without adherence to the PIL rules by implicating high ranking officials as parties and seeking from them the details on affidavits. Thus, on the

affidavits of these high ranking officials filed in answer to this Court's query, parties like the petitioner try to latch on to some omissions or deficiencies therein. This is not the way to argue a PIL. If the affidavits are not satisfactory or they do not highlight the matters which are in issue, or do not seek to reply or deal with the queries posed by the Court, it is the Court which will take the officials to task and particularly the deponents of such affidavits.

31 PIL petitioners should not bother to do this for what we find is there is sometimes a trap laid in such PILs. In that trap, the officials need not fall for they are not obliged to respond to every PIL, copy of which is served on them, unless called upon by the Court to do so.

32 If there is no substance in the matter or application of the petitioner is not fit for being registered as a PIL, it can be thrown out at the threshold and without even any response from the respondents. At least Advocates are aware of all this and they should be responsible enough while

arguing PILs. We expect this much from the members of the Bar. They owe to the general public a duty and that is not to mislead or misinterpret court procedures and proceedings.

33. In such circumstances, while cautioning this PIL petitioner as also the members of the Bar as above, we dispose of this PIL.

(SMT.BHARATI H. DANGRE,J)

(S.C.DHARMADHIKARI)