

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8/10/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE Ms.JUSTICE P.T.ASHA

Writ Petition No.26510 of 2018

Varaaki

Petitioner

...

Vs

1. The State
rep. By the Secretary
Ministry of Law
Government of Tamil Nadu
Secretariat
St. George Fort
Chennai 9.

2. The Registrar General
Madras High Court
Chennai 104.

3. Duraisamy

4. K. Balu

5. V. Gandhimathi

6. Traffic Ramasamy

...

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the second respondent to frame regulations, rule or scheme for presenting and registration/filing of Public Interest Writ Petitions and also withdrawing the same before this Court.

For petitioner ... Mr.C.Chokkalingam

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Claiming himself to be an editor of a magazine, Indian Reporter and Founder and President of the Indian Makkal Mandram, a forum for readers of Indian Reporter, petitioner has sought

for a writ of mandamus, directing the Registrar General, High Court, Madras, Chennai, to frame regulations, rule or scheme, for presenting and registration/filing of the public interest writ petitions and also withdrawing the same, before this Court.

2. When this Bench posed a question, as to whether the petitioner has made any averments, regarding framing of regulations, relating to public interest writ petitions, filed under Article 226 of the Constitution of India, by the High Court and the Notification issued, Mr.Chockalingam, learned counsel for the petitioner replied that the petitioner has not made any averments.

3. Grievance of the petitioner is that certain public interest writ petitions have been filed by political personalities and being withdrawn, thereby the precious time of the High Court is wasted by the writ petitioners and consequently, there is a delay in justice being rendered to other people.

4. Paragraph Nos.5, 6 and 7, reasons assigned by the petitioner, for filing the instant writ petition, for a mandamus, as stated supra, are extracted hereunder:-

"5. I submit that many PILs are dismissed by the Hon'ble High Court which shows how the PILs are being filed some personal interested people without reasonable merit. I further submit that some PILs are dismissed as withdrawn after admission and notices to the respondents and it is known how much Court Official time are required and man power used for numbering, listing before the Court and hearing to get admission and notice. And I suspect the PILs are being withdrawn and must be disposed of on merit by the Hon'ble Court.

6. I submit that regarding Ex.CM Karunanithi burial allotment at Marina beach case was hearing, few PILs were withdrawn which had been filed with similar nature. These cases had been pending for long period before this Hon'ble Court with hearing of several hours

by Hon'ble Judges; and simply these petitions were withdrawn for political and personal benefits which had been criticised by the public people and media. I came to know that third, fourth and fifth respondents withdrawn the PILs which were questioning the allotments of burial at Marina beach to the political personalities. All these petitions are withdrawn only for the political purpose/gain without any justification.

7. I submit that the sixth respondent Mr.Traffic

Ramasamy filed similar PIL who warned by this Hon'ble Court for taking different stands frequently in the Court itself and he is condemning the Hon'ble Judges before the media and public which are degrading the judicial system which creates adverse impression to the public about the Court, which seems his personal motive in the PIL and he should be punished."

5. On the above averments, Mr.C.Chokkalingam, learned counsel for the petitioner has made submissions.

6. Attention of this Court was also invited to paragraph No.20 of the judgment, in ASHOK KUMAR PANDEY Vs. STATE OF WEST BENGAL {(2004) 3 Supreme Court Cases - 349}, wherein, the Hon'ble Supreme Court, has extracted paragraph No.46 of the judgment, in SACHIDANAND PANDEY Vs. STATE OF WEST BENGAL {(1987) 2 SCC 295}, held as follows:-

"Public Interest Litigation has now come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If Courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

7. Reasons for filing the instant writ petition are that the Court's time is wasted and that there is a delay in rendering justice to other litigants. Petitioner has contended that PILs are filed, for personal interest. PILs are dismissed as withdrawn, after admission and notice to the respondents. One such case, relates to the allotment of place, for burial of former Chief Minister Mr.M.Karunanidhi. PIL was filed by R.S.Bharathi, Organising Secretary, Dravida Munnetra Kazhagam, Party Anna Arivalayam, Chennai, against the Chief Secretary, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai 600 009; Secretary to Government, Public Department, Secretariat, Fort St. George Chennai 600 009; Secretary to Government Home Department Secretariat, Fort St. George Chennai 600 009; Secretary to Government, Public Works Department, Secretariat, Fort St. George Chennai 600 009; Commissioner, Corporation of Chennai, Chennai; and Commissioner of Police, Greater Chennai City, Vepery, Chennai-8, respondents therein, not to permit any place, in Marina beach, for burial, but the

said PIL has been withdrawn, for political purpose.

8. Petitioner has further contended that Mr. Traffic Ramasamy, has even gone to the extent of condemning this Court, in media. Thus, according to the petitioner, in public interest, he has filed the instant writ petition, for a mandamus, directing the Registrar General, High Court, Madras, to frame Regulations, Rules or Scheme for presenting and registration/filing a public interest writ petition, and also for withdrawing the same, before the High Court.

9. In exercise of the powers, under Article 225 of the Constitution of India, High Court of Madras, has framed Rules, to regulate public interest writ petition, filed under Article 226 of the Constitution of India. Registrar General, High Court, Madras, has issued a Notification, in R.O.C.No.670-7/2010/F-1, in S.R.O.No.C-2/2010, dated 26th July 2010, and the said Rules are reproduced hereunder:-

NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC

JUDICIAL NOTIFICATION

Rules to Regulate the Public Interest Litigations
filed under Article 226 of the Constitution of India
(Roc.No.670-A/2010/F-1)

"By virtue of Article 225 of the Constitution of India and of all other powers hereunto enabling the High Court makes the following Rules to regulate Public Interest Litigations (PIL) filed under Article 226 of the Constitution of India.

Every Public Interest Litigation must be filed in accordance with the following rules -

1. Every PIL must indicate that the petitioner has no personal interest in the case if he has any personal interest he must disclose the same. In the event of the High Court finding the claim as frivolous or vexatious, the PIL shall be dismissed with exemplary costs.

2. If the PIL is filed on behalf of a class of persons, the details of the persons for whose benefit the PIL is filed must be indicated. If it is a society or association of persons, the writ petitioner must enclose a resolution from such society or association of persons, authorising the petitioner to file the writ petition and if the body is duly registered with competent authority, a copy of the bye-laws of the said body authorising the petitioner to file the writ petition shall be enclosed.

3. If the petitioner has filed any PIL earlier, the details of the petition and the final order if any

passed in that petitioner, the relief granted and costs, if any, awarded shall be indicated. No Public Interest Litigation Petition will be entertained in respect of civil disputes between individuals or in service matters. The petitioner shall give an undertaking that he will pay the costs, if any, if it is found to be intended for personal gain or lbblique motive.

4. The petitioner must disclose whether he has filed the petition out of his own funds or from other sources if it is the latter, the particulars should be given.

5. The petitioner must state in the affidavit that to his knowledge, no PIL arising on the same issue has been filed anywhere.

6. The affidavit filed by the petitioner must contain the averments that he has filed the writ petition based on his information and his personal knowledge. If he has filed the writ petition based on an information received from any other source, he must clearly indicate the source. If it is a newspaper report, the affidavit shall clearly state as to whether the deponent has verified the facts by personally visiting the place or talking to any responsible person or Reporter or Editor of the newspaper concerned.

7. If the petitioner has given any representation to any authority, a copy of the same shall be filed in the typed set of papers along with reply, if any, received from the authority. He shall file the proof of service of representation before the Court.

The above rules will not be applicable to the Public Interest Litigations taken on file by the High Court suo motu."

10. Thus, for the purpose of filing/registration, rules have already been framed, and the petitioner, though claimed to be a Editor of magazine, Indian Reporter and Founder and President of the Indian Makkal Mandram, has not taken any steps, to ascertain as to whether any rules/regulations have been framed, by the High Court, on the above aspects. We also deem it fit to consider as to whether the petitioner, has any constitutional or statutory right, to demand that the Registrar General, High Court, Madras, should frame any regulations, as to how, writ Courts should exercise the jurisdiction, and decide, as to when PILs can be permitted to be withdrawn or not? Our answer is a clear "No". Registrar General of this High Court cannot frame regulations/rules, as to how a writ Court, in

exercise of the powers, under Article 226 of the Constitution of India, should exercise powers, when orders are passed allowing the petitioner, to withdraw PILs.

11. Rules/Regulations, if any, framed governing presentation/registration of any public interest writ petition, are matters to be decided by the Registry. No authority or Court can frame any regulations, as to how, a Constitutional Court should decide a writ petition, filed under Article 226 or revision under Article 227 of the Constitution of India. In exercise of the powers, under Article 226 or 227 of the Constitution of India, Courts are empowered to decide, as to whether, PILs filed are maintainable; whether any notice is required to be issued to the respondents therein; whether, on response, required to be adjudicated or not, or to permit the petitioner therein, to withdraw the writ petition, filed under the caption, "Public Interest Writ Petition".

12. Exercise of powers conferred on the High Court, under Articles 226 or 227 of the Constitution of India, cannot be restricted, even by the High Court, in exercise of powers, under Article 225 of the Constitution of India. Powers and jurisdiction of the High Court, under Article 226 and 227 of the Constitution of India, are extraordinary in nature. No regulations can be framed by the High Court, curtailing the powers of the High Court, under Article 226 and 227 of the Constitution of India.

13. Sum and substance of the averments made in this writ petition and the prayer sought for, is to direct the Registrar General, to frame regulations, regarding withdrawal of writ petitions, captioned, as Public Interest Writ Petitions, which in our view would tantamount to interfering with the exercise of the constitutional powers of High Court, under Article 226 and 227 of the Constitution of India. Prayer is wholly misconceived. Paragraph No.20 of the judgment, in SACHIDANAND PANDEY Vs. STATE OF WEST BENGAL {(1987) 2 SCC 295}, referred to by the Hon'ble Supreme Court, in ASHOK KUMAR PANDEY Vs. STATE OF WEST BENGAL {(2004) 3 Supreme Court Cases - 349}, squarely applies to the facts of this case.

14. On the facts and circumstances of the case on hand, when we indicated to the learned counsel for the petitioner that the instant writ petition filed with a prayer to direct the second respondent to frame regulations, rule or scheme for withdrawing the writ petitions, is liable to be dismissed with costs, for wasting the time of the Court, Mr.C.Chokkalingam, learned counsel for the petitioner submitted that the petitioner has only expressed his genuine concern over the time consumed in Courts, in dealing with PILs, filed and withdrawn later, and

that there was no mala fide intention, in making reference, to the filing of writ petitions, regarding allotment of a place, at marina beach, withdrawal of the same, for political purpose.

15. Mr.C.Chokkalingam, learned counsel appearing for the petitioner seeks permission of this Court, to withdraw the instant writ petition, which in our view, is against the averments made in support of the instant writ petition. We are not inclined to grant any permission to the petitioner to withdraw the writ petition.

16. There could be regulations framed in exercise of the powers under Article 225 of the Constitution of India, as to how, a PIL should be filed. Considering the reasons assigned, that time is wasted in Courts, in entertaining Public Interest writ petitions, though on merits, and on the facts and circumstances of this case, we find that the instant writ petition is also one such writ petition and not permitted to be withdrawn, we are of the view that the petitioner, claimed to be an Editor of Magazine, Indian Reporter, has not made any effort to ascertain, as to whether, Hight Court, Madras, under Article 225 of the Constitution of India has framed any regulations, in the matter of filing/registration of a PIL and thus, wasted the time of this Court.

17. Cause for filing the instant writ petition, though claimed to be genuine, the petitioner cannot contend that there is a duty cast on the Registrar General of this High Court, to frame regulations, as to whether a writ petition should be permitted to be withdrawn or not? Exercise of powers, under Article 226 of the Constitution of India, cannot be decided by the Registrar General of this High Court.

18. On the aspect as to when a writ of mandamus can be issued. We deem it fit to consider few cases.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a

writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of

right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

19. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or

on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

20. A prerogative writ, like, a Mandamus cannot be demanded ex debito justitiae, but it can be issued by the court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

21. In the light of the discussion and decisions stated supra, this Court is of the view that writ of mandamus is not maintainable and hence the instant writ petition is liable to be dismissed. On the facts and circumstances of the case, we are of the view that the petitioner does not deserve any costs to be imposed, and accordingly, we refrain from imposing costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary
Ministry of Law
Government of Tamil Nadu
Secretariat
St. George Fort
Chennai 9.

WEB COPY

2. The Registrar General
Madras High Court
Chennai 104.

+1cc to Mr.C.Cholingam, Advocate, S.R.No. 69268

+1cc to the Government Pleader, S.R.No. 69454

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SS (CO)
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