

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

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

WP.No.25895 of 2018

Y.Akbar Ahmed ... Petitioner in person

vs.

1. The Secretary to Government of Tamilnadu,
Food, Civil Supplies, Consumer Protection and
Price Control,
Secretariat, Chennai - 600 009.

2. The Under Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.

3. The Commissioner of Labour,
Chennai - 600 006.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents herein to consider my representation dated 27.09.2017 and to file a compliance report before this Honourable Court.

For Petitioner : Mr.Y.Akbar Ahmed
Party-in-person

ORDER

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

Contending inter alia that rates of the food items (vegetarian and non-vegetarian) in hotels, restaurants etc are different and therefore, Government should come forward with a regulation to fix a common rates for the food items (vegetarian and non-vegetarian) in grade hotels such as Grade 2, 3, 4, 5 and 7 star hotels, restaurants, etc., representation seemed to have been made on 27.09.2017 to the Secretary to Government, Food, Civil Supplies, Consumer Protection and Price Control, the 1st respondent. Petitioner has also sent an application dated

20.11.2017, under right to information Act, 2005 to the said authority. Reply dated 24.11.2017 has been given from the office of the Co-operation, Food and Consumer Protection Department, Chennai that his representation has been forwarded to 2nd respondent. Contending further that said representation has not been answered, instant writ petition has been filed for a mandamus, directing the respondents to consider the representation dated 27.09.2017, to pass orders and to file compliance report before this Court.

2. The entire averments relate to food items (vegetarian and non-vegetarian) in hotels. Before Mr.Akbar Ahmed, party-in-person commenced his arguments, he was informed that public interest writ petition is an extraordinary remedy to be invoked. He has also been informed that if this Court finds that there is no public interest in the instant writ petition, costs would be imposed.

3. Petitioner reiterated the averments made in the supporting affidavit and contended that a common rate has to be fixed for vegetarian and non-vegetarian, items in the hotels, restaurants, fast foods, dhaba and star hotels.

4. Concept of Public Interest Litigation and decisions of the Hon'ble Supreme Court on public interest writ petition are extracted.

(i) In S.P.Anand v. H.D.Deve Gowda reported in 1996 (6) SCC 734, the Hon'ble Supreme Court, at Paragraph 18, held as follows:

"It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the court

should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filling a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on cow slaughter cases, freedom of speech and expression, uniform civil code, etc., we need say no more except to point out that indiscriminate of this important lever of public interest litigation would blunt the lever itself."

(ii) In *Balco Employees' Union (Regd.) v. Union of India* reported in 2002 (2) SCC 333, the Hon'ble Supreme Court, held that,

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public."

(iii) In Ashok Kumar Pandey v. State of W.B., reported in 2004 (3) SCC 349, the Hon'ble Apex Court, after considering few decisions, on the aspect of public interest litigation, observed as follows:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in The Janta Dal v. H.S.Chowdhary [1992 (4) SCC 305] and Kazi Lhendup Dorji vs. Central Bureau of Investigation (1994 Supp (2) SCC 116). A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See Ramjas Foundation v. Union of India (AIR 1993 SC 852) and K.R.Srinivas v. R.M.Premchand (1994 (6) SCC 620).

5. It is necessary to take note of the meaning of expression 'public interest litigation'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as

gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

6. In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :

"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

7. In Janata Dal case (supra) this Court considered the scope of public interest litigation. In para 52 of the said judgment, after considering what is public interest, has laid down as follows :

"The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

"Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 96 of the said judgment, it has further been pointed out as follows:

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows:

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold".

11. It is depressing to note that on account of such trumped up proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the

minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The

information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu [(1994 (2) SCC 481)] and Andhra Pradesh State Financial Corporation v. M/s.GAR Re-Rolling Mills and Another [AIR 1994 SC 2151]. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr.) v. K.Parasaran, (1996) 7 JT 265]. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public. सत्यमेव जयते

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 large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in 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 Dr.Duryodhan Sahu and Ors., v. Jitendra Kumar Mishra and Ors., (AIR 1999 SC 114), 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 Court 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 afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

17.

18. In S.P.Gupta v. Union of India [1981 Supp. SCC 87], it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution: (SCC p.219, para 24)

"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

19. In State of H.P. vs. A Parent of a Student of Medical College, Simla and Ors. (1985 (3) SCC 169), it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

20. Khalid, J. in his separate supplementing judgment in Sachidanand Pandey vs. State of W.B., (1987 (2) SCC 295, 331) said:

"Today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46)

* * *

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. (SCC p.334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants." (SCC p.335, para 61)

21. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in ramsharan Autyanuprasi v. Union of India (1989 Supp (1) SCC 251), was in full agreement with the view expressed by Khalid, J. in Sachidanand Pandey's case (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases. [See also separate judgment by Pathak, J. (as he then was) in Bandhua Mukti Morcha v. Union of India (1984 (3) SCC 161).

22. Sarkaria, J. in Jasbhai Motibhai Desai v. Roshan Kumar (1976 (1) SCC 671) expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)

"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or

meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. Krishna Iyer, J. in *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India* (1981 (1) SCC 568) in stronger terms stated: (SCC p.589, para 48)

"48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

24. In *Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P.*, (1990 (4) SCC 449), Sabyasachi Mukharji, C.J. observed: (SCC p.452, para 8)

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. In *Union Carbide Corporation v. Union of India* (1991 (4) SCC 584, 610), Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p.610, para 21)

"I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with

jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26 In *Subhash Kumar v. State of Bihar*, (1991 (1) SCC 598) it was observed as follows:

"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".

27. In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants".

(iv) In *Vikas Vashishth v. Allahabad High Court* reported in 2004 (13) SCC 485, the Hon'ble Supreme Court held as follows:

"At the very outset, we put it to the petitioner that a bare perusal of the petition shows that it is based entirely on newspaper reports and asked him whether before filing the petition he has taken care to verify the facts personally. His answer is in the negative. In the writ petition all the 21 High Courts have been included as respondents and Union

of India has also been impleaded as the 22nd respondent. We asked the petitioner what has provoked him to implead all the High Courts as respondents and he states that it is his apprehension that similar incidents may occur in other High Courts though there is no factual foundation for such appreciation.

5. After affording the full opportunity of hearing, we are satisfied that what purports to have been filed as a public interest litigation is nothing more than a "publicity interest litigation". It is writ large that it has been filed without any effort at verifying the facts by the petitioner personally."

(v) In R & M.Trust v. Koramangala Residents Vigilance Group reported in 2005 (3) SCC 91, the Hon'ble Supreme Court, at Paragraphs 23 and 24, observed as follows:

"23. Next question is whether such Public Interest Litigation should at all be entertained & laches thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this

jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities."

(vi) In *Gurpal Singh v. State of Punjab* reported in 2005 (5) SCC 136, the Hon'ble Supreme Court, while considering the scope of a petition styled as a public interest litigation, held as follows:

"5. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6.

7. 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 large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High 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 *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), 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 Court 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 afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

8.

9. It is depressing to note that on account of such trumped-up proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions

of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(vii) In Common Cause (A Regd. Society) v. Union of India reported in 2008 (5) SCC 511, Hon'ble Mr. Justice Markandey Katju (as he then was), held as follows:

"59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in Dattaraj Nathuji Thaware v. State of Maharashtra reported in AIR 2005 SC 540, public interest litigation has nowadays largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paaise income litigation'. Much of P.I.L. is really blackmail.

60. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together."

In the same judgment, concurring with the view of his Brother Judge, Hon'ble Mr. Justice H.K.Sema (as he then was), further added, as follows:

"69. Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation in the guise of public interest litigation; or publicity interest litigation; or political interest litigation is to be examined in the facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to subserve public interest. Therefore, each case has to be examined on its own facts."

(viii) In *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale* reported in 2012 (2) SCC 425, the Hon'ble Supreme Court observed as follows:

"57. In the light of the above, we shall first consider whether the High Court committed an error by entertaining the writ petition filed by Subhash Rahangdale as public interest litigation. This Court has, time and again, laid down guiding principles for entertaining petitions filed in public interest. However, for the purpose of deciding the appellants' objection it is not necessary to advert to the plethora of precedents on the subject because in *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402, a two-Judge Bench discussed the development of law relating to public interest litigation and reiterated that before entertaining such petitions, the Court must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick.

58. In paragraphs 96 to 104, the Bench discussed Phase-III of the public interest litigation in the context of transparency and probity in governance, referred to the judgments in Vineet Narain v. Union of India (1998) 1 SCC 226, Centre for Public Interest Litigation v. Union of India (2003) 7 SCC 532, Rajiv Ranjan Singh "Lalan" (VIII) v. Union of India (2006) 6 SCC 613, M.C. Mehta v. Union of India (2007) 1 SCC 110, M.C. Mehta v. Union of India (2008) 1 SCC 407 and observed:

"These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation."

59. Reference also deserves to be made to the judgment of the three-Judge Bench in Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi (1987) 1 SCC 227 in which a new dimension was given to the power of the Superior Courts to make investigation into the issues of public importance even though the petitioner may have moved the Court for vindication of a private interest. In that case the High Court had entertained a writ petition filed by Assistant Medical Officer of K.E.M. Hospital, Bombay questioning the assessment of answer sheets of the Post Graduate Medical Examinations held by the Bombay University in October 1985. He alleged malpractices in the evaluation of the answer sheets of the daughter of the appellant who, at the relevant time, was Chief Minister of the State. The learned Single Judge held that altering and tampering of the grade sheets was done by Dr. Rawal at the behest of the Chief Minister. The Division Bench affirmed the order of the learned Single Judge with some modification.

60. While rejecting the objection raised on behalf of the appellant that the writ petition filed by the respondent cannot be treated as a petition filed in public interest, this Court observed:

"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." (emphasis supplied)

5. In line with the judgments of the Hon'ble Supreme Court, High Court, Madras has issued notification in SRO C-2/2010 dated 26.07.2010, which is extracted hereunder:-

"No. SRO C-2/2010.

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 cost.

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 petition, 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 oblique 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"

6. There is no constitutional or statutory right, to demand that there should be uniform rate of food items, (vegetarian and non-vegetarian) in different hotels, restaurants, fast foods and graded hotels. Representation can be entertained, if only there is a right. Averments made in the writ petition do not contemplate any answer.

7. On the aspect as to when mandamus can be issued, we deem it fit to consider few decisions.

(i). In State of Kerala v. A.Lakshmi Kutty reported in 1986 (4) SCC 632, the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The

legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In *Raisa Begum v. State of U.P.*, reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iii) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(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.

(iv). 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)

8. A writ of Mandamus, 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, the 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 and for the failure of performance of a legal or statutory duty, by the authority, against whom, the relief is sought for.

9. In the light of the above decisions, and discussion, prayer sought for is rejected. Though, on the averments we are of the view that the instant writ petition is a fit case to impose costs, we refrain from doing so with a hope that the petitioner would go through the judgments of the Hon'ble Supreme Court on public interest writ petitions and hereinafter, refrain from invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, except for genuine, bona fide cause, where there is Public Interest.

10. With the above observations, writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The Secretary to Government of Tamilnadu,
Food, Civil Supplies, Consumer Protection and
Price Control,
Secretariat, Chennai - 600 009.

2. The Under Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai - 600 009.

3. The Commissioner of Labour,
Chennai - 600 006.

+1cc to the Government Pleader Sr.68643

WP No.25895 of 2018

pus[col]
srg 29/10/2018



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