

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.5805 of 2019

and WMP.Nos.6640 & 6643 of 2019

G.Vijayakumar

... Petitioner

vs.

1. The Director General, (Personnel),
Railway Board,
Ministry of Railways,
Government of India, New Delhi.

2. The Central Bureau of Investigation,
Rep. by its Director,
Plot No.5B, 6th Floor, CGO Complex,
Lodhi Road, Jawaharlal Nehru Stadium Marg,
New Delhi - 110 003.

3. The Central Vigilance Commissioner,
Central Vigilance Commission,
Satarkata Bhavan A Block,
GPO Complex, INA,
New Delhi -100 023.

4. The Commissioner of Railway Safety,
(Southern Circle),
No.7, Seshathri Bandi Nagar,
Bangalore.

5. The Joint Director,
Central Bureau of Investigation,
Shastri Nagar, Adyar,
Chennai - 600 020.

6. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

7. The Chief Administrative Officer (CAO),
Construction, Southern Railway,
Egmore, Chennai - 600 008.

8. The Chief Vigilance Officer,
Vigilance Department, Southern Railway,
CAO/Construction Complex,
EVR Periyar Road, Egmore, Chennai - 600 008.

9. M/s. MARS ENGINEERING,
Tamil Nadu Housing Board / HIG,
Avadi, Chennai - 600 054.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to appoint an independent enquiry officer to conduct an investigation into the illegalities, corruption and malpractices took place in the proposed third line (track) between Tambaram and Chengalpattu, in filling the banks, based on the petitioner's representation dated 14.02.2019 within a stipulated time.

For Petitioner : Mr.M.Sathish Kumar

For Respondents: Mr.P.T.Ramkumar

(For R1, R4, R6 to R8)

Standing Counsel for Railways

ORDER

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

Mr.G.Vijayakumar, a practicing lawyer, has filed the instant writ petition for a mandamus, to direct the Director General (Personnel), Railway Board, Ministry of Railways, Government of India, New Delhi, the Central Bureau of Investigation, represented by its Director, New Delhi, the Central Vigilance Commissioner, Central Central Vigilance Commission, New Delhi, the Commissioner of Railway Safety, (Southern Circle), Bangalore, the Joint Director, Central Bureau of Investigation, Chennai, respondents 1 to 5 respectively and other respondents, to appoint an independent enquiry officer to conduct an investigation into the illegalities, corruption and malpractices took place in the proposed third line (track) between Tambaram and Chengalpattu-BG, based on his representation dated 14.02.2019. He has averred as follows:

(i) Southern Railway, has proposed a project of laying a 3rd line (track) between Tambaram and Chengalpet-BG. For this purpose Southern Railway has issued tenders for Earth Work and cutting in forming bank, leading and forming bank using cutspoils Tambaram Yard, Protective Retaining wall, Pitching and Yard drains etc.

(ii) Petitioner has further contended that said project has commenced and some basic formation works have been done. As of now, work of filling the banks is undertaken. Petitioner has come to know that M/s.Mars Engineering, Avadi, Chennai, 9th respondent herein, was allotted only Earth Work but the 9th respondent is engaged in blanketing the banks from Tambaram and Chengalpet-BG, which according to the petitioner was not allotted.

(iii) Petitioner has contended that for blanketing, dumping materials would be furnished by Southern Railways or the 9th respondent himself should arrange for the material, according to the Specifications for Railway Formation.

(iv) Petitioner has contended that 9th respondent is dumping substandard boulders and debris, in the banks, on which, the railway third line is put up. Petitioner has contended that the 9th respondent is dumping wood, organic silts, peat, dispersive soils, poor graded gravel, clays and silts of high plasticity brick bats, shales and soft rocks, big boulder and debris from demolished buildings, which do not satisfy the Specifications for Railway Formation. Thus, according to the petitioner, substandard boulders and debris are dumped and above would lateron result in banks creating voids and cracks in the rail track.

(v) Petitioner has contended that no sooner he came to know about the illegalities and violations by the said M/s.Mars Engineering, the 9th respondent herein, he personally visited Guduvancherry Railway Yard, where the work is going on.

(vi) Petitioner has contended that Mr.N.Jayaraman, the Executive Engineer (XEN) and Mr.S.Jaisankar, Deputy Chief Engineer, have engaged M/s.Mars Engineering, 9th respondent to indulge in such illegalities for their illegal benefits. The said officials have colluded with M/s.Mars Engineering.

(vii) Petitioner has further contended that the dumping of site by such substandard boulders and debris is contrary to the Specifications for Railway Formation issued by the Government of India, Ministry of Railways, 2018 which reads thus

5.0 Materials for Formation and Soil encountered in Cutting:

Embankment is to be constructed normally with soil available in nearby area, with properly designed slope. However, there are some soils, which are normally unsuitbale for construction of formation as listed below.

5.1 Unsuitbale Soils for Construction:

5.1.1. Soils to be normally avoided are:

a) Organic clays, organic silts, peat, chalks,

dispersive soils, and poorly graded gravel / sand having uniformity coefficient less than 2,

b) Clays and Silts of high plasticity (CH & MH) in top 3m of Embankment.

10.2 Suitability tests at Source:

10.2.1 Borrow material (Embankment fill as well as prepared subgrade):

a) Following specific tests to be conducted on borrow Material:

- i) Sieve analysis
- ii) Hydrometer analysis
- iii) Consistency limits
- iv) CBR test
- v) Test for organic content in soil
- vi) Crumb test, double hydrometer test, pin hole & chemical test - for Dispersive soil only
- vii) OMC/MDD

Fill material proposed to be used either from Railway land or from outside (as per Para 5.0) would have to be assessed for its suitability as well as to decide thickness of the blanket layer after conducting soil classification and other relevant tests as per site requirement. On the basis of the tests, areas for borrow material, especially from outside the Railway land, needs to be earmarked. Once the material has been found fit for use as fill material for Embankment, further lab tests, to assess OMC, MDD / Relative Density, need to be conducted. In case, slope stability analysis, as explained in para 11.0 is required, triaxial shear test will also need to be done to find effective shear strength parameters.

b) Frequency of Testing: The frequency of testing at source for borrow material should be as detailed in Para 10.3

10.2.2 Blanket material:

The source(s) of blanket materials, needs to be identified based on final location survey report, tests & studies conducted and conformity to the Specification as stipulated in Table 4/5 (25T axle load) & Table 7/8 (32.5T Axle load).

a) Method of Test: Blanket material should be tested as per IS: 2720 (part 4) to plot particle size distribution curve, so as to assess its suitability. It would be necessary to carry out wet analysis to assess actual percentage of fines.

b) Frequency of Tests: The frequency of testing at

source for blanket material should be as detailed in Para 10.3.

c) Following tests / checks are to be conducted:

- i) Sieve analysis and hydrometer analysis to determine CC & CU & percentage fines.
- ii) CBR test
- iii) Los Angeles Abrasion value.
- iv) Filter criteria (as applicable for 32.5T axle load)
- v) Gradation Analysis
- vi) Check for conformity with enveloping curves (as applicable for 32.5T axle load)"

(vii) Petitioner has further contended that Mr.S.Jaisankar, Deputy Chief Engineer, is a chronic alcoholic and use to come to office drunk. According to him, this is degrading the quality of an officer that too an officer who has to look after the safety measures of Railways and to safeguard the human life. Petitioner has contended that he is playing with people's life deliberately.

(viii) At paragraph No.13, petitioner has also contended that when a wall was constructed in St. Thomas Mount, under the supervision of Mr.S.Jaisankar, Deputy Chief Engineer, it collapsed, resulting in death of five people. Thereafter, Mr.S.Jaisankar, Deputy Chief Engineer, was transferred from Park Town to Tambaram Division and he is creating the same situation, in the 3rd line project also.

(ix) Citing the above, petitioner has sent a representation dated 14.02.2019 to the respondents to take action against M/s.Mars Engineering and the abovesaid officials. Since no action has been taken by the respondents, instant writ petition is filed.

2. Inviting the attention of this Court to the photographs enclosed at pages 16 to 19 of the typed set of papers, Mr.Karthik, learned counsel for the petitioner submitted that substandard boulders and debris are dumped in the site. He made vehement submissions on the averments made.

3. Learned counsel for the petitioner submitted that the work entrusted to the 9th respondent was only earth work, but the 9th respondent is doing blanketing the banks from Tambaram to Chengalpet BG, and that there is no valid contract. It is also the contention of the learned counsel for the petitioner that the continuation of earth work is beyond the period prescribed in the contract, and therefore, there is no authority for the 9th respondent to continue.

4. However, inviting the attention of this Court to another set of photographs produced before us, Mr.P.T.Ramkumar, learned Standing Counsel for the Railways submitted that the photographs enclosed in the typed set of papers by the writ petitioner do not pertain to the project site. Thus he disputed the same.

5. Contention as to whether substandard boulders and debris in the banks are dumped cannot be accepted on the basis of photographs, when this fact is being disputed by both sides.

6. Mr.P.T.Ramkumar, learned Standing Counsel for the Railways submitted that the Railways had proposed to lay 3rd line track between Tambaram and Chengalpet-BG. Earlier after floating the tender, contract was given to one Excel Engineering Company in 2017 at an estimated cost of Rs.15 Crores. Railways decided to commission the 3rd line by May 2019. But, even after the expiry of a considerable period, Excel Engineering Company could complete only 10% of the work. Therefore, Railways was constrained to bifurcate and split up the nature of works and issued another tender. After finalising the tender M/s.Mars Engineering, Avadi, Chennai, the 9th respondent was entrusted with the work of formation of earth work for laying the railway line.

7. Inviting the attention of this Court to paragraph Nos.13 and 14 of the supporting affidavit to the writ petitioner, Mr.P.T.Ramkumar, learned standing counsel for the Railways strongly objected to the character assassination of Mr.N.Jayaraman, the Executive Engineer (XEN) and Mr.S.Jaisankar, Deputy Chief Engineer.

8. Learned standing counsel for the Railways submitted that Mr.S.Jaisankar, Deputy Chief Engineer was not the officer in the year 2000, when construction of a compound wall at St. Thomas Mount was made and he was not responsible for the accident.

9. Learned standing counsel for the Railways further submitted that Mr.S.Jaisankar, Deputy Chief Engineer has been transferred from Park Town to this project only six months ago.

Mr.S.Jaisankar, Deputy Chief Engineer, present in Court also submitted that he was not the officer-in-charge in the year 2000, for the abovesaid site.

10. Heard the learned counsel for the petitioner and the learned standing counsel for the Railways.

11. Nobility of the profession, Advocate has been noticed and emphasised in several decisions of the Hon'ble Supreme

Court. Courts have also noticed that an Advocate is not only to litigate on behalf of his client, but he is an officer of the Court.

12. At this Juncture we deem it fit to consider the following few cases:---

(i) In V.C Rangadurai v. D. Gopalan, reported in (1979) 1 SCC 308, the Hon'ble Supreme Court, at Paragraphs 4 and 5, held as follows:

"4. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people - the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.

5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility - a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon. This approach makes it a reproach to reduce the punishment, as pleaded by learned counsel for the appellant."

(ii) In Pandurang Dattatraya Khandekar v.. Bar Council of Maharashtra reported in (1984) 2 SCC 556: 1984 SCC (Cri) 335)), the Hon'ble Supreme Court observed as hereunder:

"9.....An advocate stands in a loco parentis towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need."

(iii) In J.S.Jadhav v. Mustafa Haji Mohammed Yusuf reported in AIR 1993 SC 1535, the Hon'ble Apex Court has defined legal profession as follows:

"Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the

hallmark. Sincerity of performance and the earnestness of endeavour are the two wings that will bar aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades."

(iv) In *Sanjiv Bitta v. Deputy Secretary, Ministry of Information and Broadcasting* reported in (1995 (3) SCC 619), the Honourable Apex Court observed as follows:

"It is in the hands of the members of the legal profession to improve the quality of the service they render both to the litigant public and to the courts, and to brighten their image in the society. The legal profession is a solemn and serious occupation. It is noble calling and all those who belong to it are its honourable members. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but also the administration of justice, which is the foundation of the civilised society. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life."

(v) In *R.D Saxena v. Balram Prasad Sharma* reported in (2000) 7 SCC 264, the Hon'ble Supreme Court observed that a social duty is cast upon the legal profession to show the people a beacon light by their conduct and actions. The poor, uneducated and the exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession.

(vi) In *D.P. Chadha v. Triyugi Narain Mishram*, reported in (2001) 2 SCC 221, the Supreme Court, at paragraph 26, held as follows:-

26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.

(vii) In *Satish Kumar Sharma v. Bar Council of H.P.*, reported in (2001) 2 SCC 365, the Hon'ble Supreme Court, at Paragraph 10, held as follows:

"10. The profession of law is called a noble profession. It does not remain noble merely by calling it as such, unless there is a continued, corresponding and expected performance of a noble profession. Its nobility has to be preserved, protected and promoted. An institution cannot survive on its name or on its past glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and an honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich traditions consistent with its grace, dignity, utility and prestige. Hence the provisions of the Act and the Rules made thereunder inter alia aimed to achieve the same ought to be given effect to in their true letter and spirit to maintain clean and efficient Bar in the country to serve the cause of justice which again is a noble one."

(viii) The Hon'ble Apex Court in *Sudha v. President, Advocates' Association, Chennai* reported in (2010) 14 SCC 114, at Paragraph 40, held as follows:

"40. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification prescribed by different universities, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The different Associations of the members of the Bar are being formed to show the strength of lawyers in case of necessity. The lawyer while exercising vote in an election of office bearers of the Association must conduct himself in an exemplary manner. Those who are concerned about the high standard of the profession are supposed to take appropriate action to see that the election takes place peacefully and in an organised

manner."

(ix) The Hon'ble Supreme Court in O.P.Sharma v. High Court of Punjab and Haryana reported in (2011) 6 SCC 86: (2011) 2 SCC (Cri) 821, at Paragraph 17, held as follows:

"17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of a galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice."

(x) In Dhanraj Singh Choudahry v. Nathulal Vishwakarma reported in 2012 (1) SCC 741, the Hon'ble Supreme Court held that the legal profession is a noble profession and it is not a business or a trade. A person practising law has to practise in the spirit of honesty and not in the spirit of mischief-making or money-getting. An advocate's attitude towards and dealings with his client has to be scrupulously honest and fair.

13. Petitioner-Advocate has made allegations that Mr.N.Jayaraman, the Executive Engineer (XEN) is corrupt and Mr.S.Jaisankar, Deputy Chief Engineer, is a chronic alcoholic. As rightly pointed out by the learned counsel for Railways, Petitioner-Advocate, has made allegations, which are nothing but character assassination and without any basis.

14. When attention of the abovesaid allegations were brought to the notice of Mr.Karthik, learned counsel for the petitioner, submitted that the petitioner would file an affidavit withdrawing the said averments.

15. Having regard to the repeated pronouncements of the Hon'ble Supreme Court, on the role of an advocate and nobility of the profession, we are not inclined to permit filing of any fresh affidavit. There are no materials to substantiate that Mr.S.Jaishankar was the Engineer, in charge of the construction of the wall in the year 2000.

16. Before making such wild allegations, petitioner being a

practicing lawyer should have read the decisions on public interest litigations and as to how Public Interest Litigations, to be filed. We deem it fit to consider few decisions:-

(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 *Narmada Bachao Andolan Vs. Union of India and Others*, reported in 2000 (10) SCC - 664, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala

fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

(iii) The above mentioned observations have been quoted with approval by the Hon'ble Supreme Court in BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

(iv) 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."

.....

92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some

vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

.....

97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case.

(v) In *Guruvayoor Devaswom Managing Committee and another vs. C.K.Rajan and others*, reported in 2003 (7) SCC 546, the Hon'ble Supreme Court observed as follows:

41. The courts exercising their power of judicial review found to their dismay that the poorest of the poor, the deprived (sic), the illiterate, the urban and rural unorganized labour sector, women, children, those handicapped by "ignorance, indigence and illiteracy" and other downtrodden persons have either no access to justice or had been denied justice. A new branch of proceedings known as "social action litigation" or "public interest litigation" was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The courts in pro bono publico granted relief to inmates of prisons, provided legal aid, directed speedy trials, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass real issues on merits by suspect reliance on peripheral procedural shortcomings. (See *Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai* (1976) 3 SCC 832)

46. But with the passage of time, things

started taking different shapes. The process was sometimes abused. Proceedings were initiated in the name of public interest litigation for ventilating private disputes. Some petitions were publicity-oriented.

50. The principles evolved by this Court in this behalf may be suitably summarized as under:

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises. (See *S.P. Gupta v. Union of India* [1981 Supp SCC 87] , *People's Union for Democratic Rights v. Union of India* [(1982) 2 SCC 494 : 1982 SCC (L&S) 262] , *Bandhua Mukti Morcha v. Union of India* [AIR 1963 SC 1638 : (1964) 1 SCR 561] and *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] .)

(ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-à-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See *Charles Sobraj v. Supdt., Central Jail* [(1978) 4 SCC 104 : 1978 SCC (Cri) 542] and *Hussainara Khatoon (I) v. Home Secy., State of Bihar* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] .)

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

In *Maneka Sanjay Gandhi v. Rani Jethmalani* [(1979) 4 SCC 167 : 1979 SCC (Cri) 934 : AIR 1979 SC 468] it was held: (SCC p. 169, para 2)

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or

like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

(See also Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230 : (2003) 5 Scale 138] .)

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India [(1981) 1 SCC 568 : AIR 1981 SC 344] , S.P. Gupta [1981 Supp SCC 87] , People's Union for Democratic Rights [(1982) 2 SCC 494 : 1982 SCC (L&S) 262] , D.C. Wadhwa (Dr) v. State of Bihar [(1987) 1 SCC 378] and BALCO Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] .]

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition. (See Bandhua Mukti Morcha [(1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67] .)

(vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. [See Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504] and Forward Construction Co. v. Prabhat Mandal (Regd.) [(1986) 1 SCC 100]

(vii) The dispute between two warring groups purely in the realm of private law would not be

allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi v. Union of India [1989 Supp (1) SCC 251] .)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil v. Dr Mahesh Madhav Gosavi [(1987) 1 SCC 227] .)

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See Bandhua Mukti Morcha [(1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67] , Rakesh Chandra Narayan v. State of Bihar [1989 Supp (1) SCC 644] and A.P. Pollution Control Board v. Prof. M.V. Nayudu [(1999) 2 SCC 718]) In Sachidanand Pandey v. State of W.B. [(1987) 2 SCC 295] this Court held: (SCC pp. 334-35, para 61)

"61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. 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."

In Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] this Court opined: (SCC p. 348, para 109) "109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a 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." The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

(vi) 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 trumpery 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 grievance 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.

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".

(vii) In Dr.B.Singh vs. Union of India, reported in 2004 (3) SCC 363, the Hon'ble Supreme Court held as follows:

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 armoury 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, courts 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 busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

(viii) 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."

(ix) In R & M.Trust Vs. 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."

(x) 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 trumpety 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 grievance 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."

(xi) In Rohit Pandey v. Union of India reported in 2005 (13) SCC 702, Hon'ble Apex Court held as follows:

"1. This petition purporting to be in public interest has been filed by a member of the legal fraternity seeking directions against the respondents to hand over the investigation of the case pertaining to recovery of light machine gun, which is said to have been stolen from the army according to reports published in two newspapers, to the Central Bureau of Investigation for fair investigation to ensure that the real culprits who are behind such theft of army arms and ammunition endangering the integrity and sovereignty of the country may be brought to book and action may be taken against them in accordance with law. The only basis for the petitioner coming to this Court are two newspaper reports dated 25-1-2004, and the other dated 12-2-2004. This petition was immediately filed on 16-2-2004 after the aforesaid second newspaper report appeared. On enquiry from the learned counsel, we have learnt that the petitioner is a young advocate having been in practice for a year or two. The Union of India, the State of Uttar Pradesh and the Chief Minister of the State of Uttar Pradesh, have been arrayed as party respondents. In the newspaper reports, there is no allegation either against the Union of India or against the Chief Minister.

2. We expect that when such a petition is filed in public interest and particularly by a member of the legal profession, it would be filed with all seriousness and after doing the necessary homework and enquiry. If the petitioner is so public-spirited at such a young age as is so professed, the least one would expect is that an enquiry would be made from the authorities concerned as to the nature of investigation which may be going on before filing a petition that the investigation be conducted by the Central Bureau of Investigation. Admittedly, no such measures were taken by the petitioner. There is nothing in

the petition as to what, in fact, prompted the petitioner to approach this Court within two-three days of the second publication dated 12-2-2004, in the newspaper Amar Ujala. Further, the State of Uttar Pradesh had filed its affidavit a year earlier i.e. on 7-10-2004, placing on record the steps taken against the accused persons, including the submission of the charge-sheet before the appropriate court. Despite one year having elapsed after the filing of the affidavit by the Special Secretary to the Home Department of the Government of Uttar Pradesh, nothing seems to have been done by the petitioner. The petitioner has not even controverted what is stated in the affidavit. Ordinarily, we would have dismissed such a misconceived petition with exemplary costs but considering that the petitioner is a young advocate, we feel that the ends of justice would be met and the necessary message conveyed if a token cost of rupees one thousand is imposed on the petitioner."

(xii) In *DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER* 2008 (1) SCC 683, in paragraphs Nos.17, 19, 20 and 22, the Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the other and must not

encroach into each other's domains.

22. In *Tata Cellular Vs. Union of India* (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the words of Neely VJ (SCC p.681, para 82).

"82.... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation."

It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

(xiii) 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:

40. "The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegation is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the

judiciary in taking over the functions of the other organs."

.....

"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 'paise 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."

(xiv) *Villianur Iyarkkai Padukappu Maiyam v. Union of India*, reported in (2009) 7 SCC 561, the Hon'ble Supreme Court held thus:

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the

shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

170. Normally, there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action.

(xv) In State of Uttranchal Vs. Balwant Singh Chauhal, reported in (2010) 3 SCC 402, the Hon'ble Supreme court has held as follows:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique

motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

(xvi) 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)

(xvii) The Hon'ble Supreme Court in *Kishore Samrite v. State of Uttar Pradesh* reported in (2013) 2 SCC 398, once again laid down the principles governing obligations of the litigants while approaching the Court and the consequences for abuse of process of law while filing the Public Interest Litigation.

(xviii) In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others* reported in (2013) 4 SCC 465, the Hon'ble Supreme Court held that in a public interest litigation, the Court must ensure that there is an element of genuine public interest is involved.

(xix) In *State of Jaipur Shahar Hindu Vikas Samiti vs State of Rajasthan and Others*, reported in 2014 (5) SCC 530, the

Hon'ble Supreme Court has held as follows:

47. The scope of public interest litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of public interest litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and the management thereof. It is not proper for the court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation.

48. We feel that it is apt to quote the views expressed by this Court in Guruvayoor Devaswom Managing Committee [(2003) 7 SCC 546] wherein this Court observed: (SCC pp. 574-75 & 578, paras 60, 64 & 76)

"60. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained code. Duties and functions are prescribed in the Act and the Rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties.

64. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regards the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the

courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step.

76. When the administration of the temple is within its control and it exercises the said power in terms of a statute, the State, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field are inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the courts would ask the State to perform its statutory functions, if necessary within a time-frame and undoubtedly, as and when an order is passed by the State in exercise of its power under the statute, it will examine the correctness or legality thereof by way of judicial review."

49. The concept of public interest litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other downtrodden people. Through the public interest litigation, the cause of several people who are not able to approach the court is espoused. In the guise of public interest litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while entertaining public interest litigation. The judiciary should deal with the misuse of public interest litigation with iron hand. If the public interest litigation is permitted to be misused the very purpose for which it is conceived, namely, to come to the rescue of the poor and downtrodden will be defeated. The courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of public

interest litigation, the courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people whose rights are adversely affected or are at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as public interest litigation.

(xx) In *D.N.Jeevaraj vs. Chief Secretary, Government of Karnataka and Others* reported in 2016 2 SCC 653, the Hon'ble Supreme Court observed as follows:

"35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* to this effect as follows:

"The writ petitions before us are not inter-partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court."

36. A considerable amount has been said about public interest litigation in *R & M Trust* and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organization or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra*[6] that:

"Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted."

38. A salutary principle or a well recognized rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India*[7] in the following words:

"The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd Edn.), Vol. 13, p. 106): "As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that

demand was met by a refusal." In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution."

39. It is not necessary for us to definitively pronounce on the contention of learned counsel for Sadananda Gowda and Jeevaraj that the litigation initiated by Nagalaxmi Bai was not a public interest litigation or that no mandamus ought to have been issued by the High Court since no demand was made nor was there any refusal to meet that demand. But we do find it necessary to reaffirm the law should a litigant be asked to avail of remedies that are not within the purview of public interest litigation. Exercise of discretion

40. Learned counsel for Sadananda Gowda and Jeevaraj also addressed us on the issue that the High Court had exceeded its jurisdiction in questioning the sanctioning of the building plans by the BBMP and further mandating the BDA to take action against Sadananda Gowda and Jeevaraj in terms of condition No. 4 of the lease-cum-sale agreement and the affidavit undertaking given by them, thereby effectively requiring the BDA to forfeit the lease.

41. This Court has repeatedly held that where discretion is required to be exercised by a statutory authority, it must be permitted to do so. It is not for the courts to take over the discretion available to a statutory authority and render a decision. In the present case, the High Court has virtually taken over the function of the BDA by requiring it to take action against Sadananda Gowda and Jeevaraj. Clause 10 of the lease-cum-sale agreement gives discretion to the BDA to take action against the lessee in the event of a default in payment of rent or committing breach of the conditions of the lease-cum-sale agreement or the provisions of law. This will, of course, require a notice being given to the alleged defaulter followed by a hearing and then a decision in the matter. By taking over the functions of the BDA in this regard, the High Court has given a complete go-bye to the procedural requirements and has mandated a particular course of action to be taken by the BDA. It is quite possible that if the BDA is allowed to exercise its discretion it may not

necessarily direct forfeiture of the lease but that was sought to be pre-empted by the direction given by the High Court which, in our opinion, acted beyond its jurisdiction in this regard.

42. In *Mansukhlal Vithaldas Chauhan v. State of Gujarat* this Court held that it is primarily the responsibility and duty of a statutory authority to take a decision and it should be enabled to exercise its discretion independently. If the authority does not exercise its mind independently, the decision taken by the statutory authority can be quashed and a direction given to take an independent decision. It was said: "Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have, sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the "duty" has been set out. Even if the "duty" is not set out clearly and specifically in the statute, it may be implied as correlative to a "right".

In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion."

43. To this we may add that if a court is of the opinion that a statutory authority cannot take an independent or impartial decision due to some external or internal pressure, it must give its reasons for coming to that conclusion. The reasons given by the court for disabling the statutory authority from taking a decision can always be tested and if the reasons are found to be inadequate, the decision of the court to by-pass the statutory authority can always be set aside. If the reasons are cogent, then in an exceptional case, the court may take a decision without leaving it to the statutory authority to do so.

However, we must caution that if the court were to take over the decision taking power of the statutory authority it must only be in exceptional circumstances and not as a routine. Insofar as the present case is concerned, the High Court has not given any reason why it virtually took over the decision taking function of the authorities and for this reason alone the mandamus issued by the High Court deserves to be set aside, apart from the merits of the case which we have already adverted to.

(xxi) In Joint Secretary, Political Department, State of Meghalaya, Main Secretariat, Shillong vs. High Court of Meghalaya, reported in 2016 (11) SCC 245, the Hon'ble Supreme Court observed as follows:

11. There can be no doubt, the court can initiate suo motu proceedings in respect of certain issues which come within the domain of public interest. In Budhadev Karmaskar (1) v. State of W.B.[5] the Court, while dismissing an appeal, observed thus:-

"14. Although we have dismissed this appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as the 'prostitutes' as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

15. As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.

16. Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made

for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself."

13. Suo motu public interest litigation can be initiated to ameliorate the conditions of a class of persons whose constitutional or otherwise lawful rights are affected or not adequately looked into. The Court has adopted the said tool so that persons in disadvantaged situation because of certain reasons - social, economic or socio-economic - are in a position to have access to the Court. The Court appoints Amicus Curiae to assist the Court and also expects the executive to respond keeping in view the laudable exercise.

14. In Ramlila Maidan Incident, In Re[6], suo motu probe of incident was ordered by the Court against imposition of prohibitory order at night and hasty and forcible evacuation of public on the basis of media reports and CCTV camera footage. In Nirmal Singh Kahlon v. State of Punjab & others [7], the Court has held:-

"33. The High Court while entertaining the writ petition formed a prima facie opinion as regards the systematic commission of fraud. While dismissing the writ petition filed by the selected candidates, it initiated a suo motu public interest litigation. It was entitled to do so. The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is adversarial. In a public interest litigation, the court need not strictly follow the ordinary procedure. It may not only appoint committees but also issue directions upon the State from time to time. (See Indian Bank v. Godhara Nagrik Coop. Credit Society Ltd.& another[8] and Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar.)"

16. Be it noted, the constitutional courts can entertain letter petitions and deal with them as writ petitions. But it will depend upon the nature of the issue sought to be advanced. There cannot be uncontrolled or unguided exercise of epistolary jurisdiction.

(xxii) In Re-Inhuman conditions in 1382 Prisons, reported in 2018 SCC Online SC 1662, the Hon'ble Supreme Court in paragraphs, 2 to 4, held as follows:

2. During the last several decades, public interest litigation has compelled this Court to consider issues relating to the environment, social justice, violation of human rights and disregard for Article 21 of the Constitution; either because of an absence of governance due to the failure of the State to faithfully and sincerely implement laws enacted by Parliament or due to mis-governance by the State, that is, the Central Government, the State Governments and Union Territory Administrations leading to rampant illegalities. The failure of the State to take remedial steps to fill in the gap when there is no operative law, except that enshrined in the Constitution, more particularly Article 21 has resulted in public interest litigation and at least two cases where a treaty obligation ought to be fulfilled.

3. In recent times, usually and regrettably, the State has chosen to challenge the idea of public interest litigation or denigrate it by chanting the mantra of 'judicial activism' or 'separation of powers'. In most cases, these mantras are nothing but a fig leaf to cover the failure of the State to recognise the existence of the rule of law and the need for providing social justice to the people of the country, as stated in the Preamble to our Constitution. There must be a realization that public interest litigation has given a voice to millions of marginalized sections of society, women and children. Public interest litigation is one of the more important contributions of India to jurisprudence. In fact, the Indian experience has encouraged some other countries to introduce public interest litigation in their jurisprudence.

4. This is not to suggest that public interest litigation has not been misused or that occasionally this Court has not exceeded its jurisdiction, but it must be emphasised that wherever this Court might have exceeded its jurisdiction, it has always been in the interest of the people of the country prompted by administrative mis-governance or absence of governance. There are, therefore, occasional transgressions on both sides, but that cannot take away from the significance of public interest litigation as a non-adversarial source of righting some wrongs and encouraging social change through

accountability and, in cases, transparency.

(xxiii) In *Tehseen Poonawalla v. Union of India* reported in 2018 (6) SCC 72, the Hon'ble Supreme Court, at Paragraphs 96 to 98, held as follows:

"96. Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in *Bandhua Mukti Morcha v. Union of India* [*Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 : 1984 SCC (L&S) 389]. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and undertrials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.

97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the

other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this Court in *State of Uttaranchal v. Balwant Singh Chaufal* [*State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807] . Underlining these concerns, this Court held thus: (SCC p. 453, para 143)

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts."

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and

resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

17. In one of the decisions made in WP No.3666 of 2019 between Kongu Nadu Saandror Kula Nadar Munnetra Sangam, rep. by its President Vs. State, rep. by the Chief Secretary, Fort St. George, Chennai and 3 others, dated 07.02.2019, this Court has summarised the pronouncements of the Hon'ble Supreme Court, which we deem it fit to reproduce.

4. Of late, we can notice a growing trend in the abuse of public interest litigation. Public Interest Litigation was intended to secure the justice for poor and the weaker section of the community, who were not in a position to protect their own interests.

5. The Hon'ble Supreme Court, has time and again, observed that there is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. {Refer BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

6. The present writ petition cannot be said to be in public interest. This petition seems to be purely motivated by a desire to seek publicity. In fact, the Hon'ble Supreme Court, has held that by filing

vexatious and frivolous petitions, 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 lose faith in the administration of judicial system.

7. A reading of instant writ petition would show that there is nothing in this petition which can be said in public interest. It does not advance any cause of the poor and down trodden. ..."

18. At this juncture, we also wish to state that in exercise of powers under Article 225 of the Constitution of India, High Court has framed rules for filing writ petitions under Article 226 of the Constitution of India, and the same are 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"

19. Secondly, from the array of parties, it could be seen that the petitioner though made scathing and scurrilous allegations, Mr.N.Jayaraman, the Executive Engineer (XEN) and Mr.S.Jaisankar, Deputy Chief Engineer, against whom allegations have been made, are not made party respondents, in this writ petition. Repeatedly the Hon'ble Supreme Court has held that whenever allegations are made, in the supporting affidavit, they should be arrayed as respondents. Few decisions on this aspect, are reproduced:-

(i) In Ranbir Singh, HFS-II v. State of Haryana and Anr. reported in 1996(1) SCR 157, the dismissal of a writ petition, challenging the inter se seniority, without impleading the other persons was confirmed by the Hon'ble Apex Court.

(ii) In Baskaran v. The Commissioner of College Education and 2 Ors. reported in 1996 (I) MLJ 32, a Hon'ble Division Bench of this Court following the judgment of Prabodh Verma's case [1985(1) SCR 216], held that the remedy under Article 226 of Constitution of India is equitable and discretionary and the persons who would be vitally affected by the decision are

necessary parties. The Court should dismiss the writ petition, if necessary parties are not impleaded in the writ petition.

(iii) In yet another decision in Ramarao and Ors. v. All India Backward Class Bank Employees Welfare Association and Ors. reported in 2004 (I) LLJ 1061SC, the Hon'ble Apex Court reiterated the legal position and held that

".... An order against the person without impleading him as a party and without giving an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view of the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably, were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon. In the absence of the 'promotees' as parties, therefore, it was not permissible for the High Court to issue the directions by reason of the impugned judgment."

(iv) In Prabodh Verma v. State of U.P. reported in 1984 4 SCC 251 the Hon'ble Supreme Court has held as follows:

50. To summarize our conclusions:

(1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

(2) The Allahabad High Court ought not to have proceeded to hear and dispose of Civil Miscellaneous Writ No. 9174 of 1978 — Uttar Pradesh Madhyamik Shikshak Sangh v. State of Uttar Pradesh [1979 All LJ 178] — without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so,

to dismiss that writ petition for non-joinder of necessary parties."

(v) In *Ramrao v. All India Backward Class Bank Employees Welfare Assn.*, reported in 2004 2 SCC 76 the Hon'ble Apex Court held as follows:

"27. It is true that the order of promotion was in question in Writ Petition No. 1551 of 1990 at the instance of one Ashok but even in the said writ petition the promotees were not impleaded as parties. As in the case of the Association, even in the writ petition filed by Ashok, the order of dereservation passed by the Union of India or NABARD or the sponsor Bank had not been questioned. Admittedly, the Union of India or NABARD were not parties in the said writ petitions. An order issued against a person without impleading him as a party and, thus, without giving him an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably, were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon. In absence of the "promotees" as parties, therefore, it was not permissible for the High Court to issue the directions by reason of the impugned judgment.

(vi) In *Dattatreya v. Mahaveer* reported in 2004 2 SCC 796, the Hon'ble Supreme Court has held as follows:

"10.The appellants cannot be allowed to claim any bona fides in not impleading the respondents as parties in that writ petition or about non-disclosure of the earlier order dated 3-7-1979 in respect of the same land and within their knowledge on the ground that it was not necessary to disclose it. As observed earlier, they knew well that if any order is passed in their favour the respondents would be the affected persons. The respondents were deprived from raising this point before the learned Single Judge regarding a pre-existing order relating to the same land and non-disclosure of the same. The conduct of the appellants had been far from being fair if not fraudulent. It was a deliberate suppression of material fact

which caused prejudice to the respondents. Fair play is the basic rule to seek relief under Article 226 of the Constitution.

(vii) In Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee reported in 2006 8 SCC 487, the Hon'ble Apex Court held as follows:

"31. In our view no relief could have been granted to the writ petitioners on account of the fact that the newly elected office-bearers of the Executive Board, who would have been affected by the decision of the writ petitions, were not impleaded as party to the writ petitions. In Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue [1963 Supp (1) SCR 676 : AIR 1963 SC 786] it was observed that where in a petition for a writ of certiorari made to the High Court, only the tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower tribunal and in whose favour the impugned order was passed were not joined as parties; the writ petition was incompetent and had been rightly rejected by the High Court. In Prabodh Verma v. State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] it was held: (SCC p. 256)

"A High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

32. In Ishwar Singh v. Kuldeep Singh [1995 Supp (1) SCC 179 : 1995 SCC (L&S) 373 : (1995) 29 ATC 144] it was held that a writ petition challenging selection and appointment to some posts without impleading the selected candidates was not maintainable. This view has been reiterated in Arun Tewari v. Zila Mansavi Shikshak Sangh [(1998) 2 SCC 332 : 1998 SCC (L&S) 541 : AIR 1998 SC 331].

33. This being the settled legal position, the non-impleadment of the newly elected office-bearers of the Executive Board was fatal and no relief could have been granted to the writ petitioners. The result of granting any relief in the writ petitions, as was done by the learned Single Judge, was that the members of the newly elected Executive Board lost the office which they were holding without affording them an opportunity to present their case which is clearly impermissible in law. The writ petitions were liable to be dismissed on this count as well."

(viii) In *Sadhu Bhagwandas Durlabhram v. Udaykumar H. Dave* reported in 2006 9 SCC 599, the Hon'ble Supreme Court held as follows:

"6. The learned counsel appearing on behalf of the appellants has submitted that the entire issue was decided without the appellants being made a party to the proceedings. This is not disputed. Various other questions as to the maintainability of the proceedings before the High Court were also raised by the appellants. It was also argued that the High Court was entirely wrong in passing the order it did. We do not wish to go into the merits of the High Court's decision. We set aside the decision of the High Court solely on the ground that the appellants were not party thereto. The matter is remanded back to the High Court for rehearing of the matter after notice to the parties hereto including the Gujarat Maritime Board and the Joint Charity Commissioner. All issues raised are left open."

(ix) In *Public Service Commission v. Mamta Bisht* reported in 2010 12 SCC 204 the Hon'ble Apex Court held as follows:

"9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in *Udit Narain Singh Malpaharia v. Board of Revenue* [AIR 1963 SC 786], wherein the Court has

explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat [AIR 1965 SC 1153], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706 : AIR 1974 SC 2105] and Sarguja Transport Service v. STAT[(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88].)

(x) In Vijay Kumar Kaul v. Union of India reported in 2012 7 SCC 610 the Hon'ble Supreme Court held as follows:

"36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.

37. In his context we may refer with profit to the decision in Indu Shekhar Singh v. State of U.P. [(2006) 8 SCC 129 : 2006 SCC (L&S) 1916 : AIR 2006 SC 2432] wherein it has been held thus: (SCC p. 151, para 56)

"56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

38. In Public Service Commission v. Mamta Bisht [(2010) 12 SCC 204 : (2011) 1 SCC (L&S)

208 : AIR 2010 SC 2613] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

"9. ... in Udit Narain Singh Malpaharia v. Board of Revenue [AIR 1963 SC 786] , wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat [AIR 1965 SC 1153], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706 : AIR 1974 SC 2105] and Sarguja Transport Service v. STAT [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] .)

10. In Prabodh Verma v. State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119 : AIR 2008 SC Supp 824] , it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

39. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard."

(xi) In *Ranjan Kumar v. State of Bihar* reported in 2014 16 SCC 187, the Hon'ble Supreme Court held as follows:

"4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in *Prabodh Verma v. State of U.P.* [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. The learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non-joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned and those who were vitally concerned, namely, the reserve pool teachers, were not made parties – not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: (*Prabodh Verma* case [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] , SCC pp. 273-74, para 28)

"28. ... The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ

petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

5. In the case at hand neither was any rule nor any regulation challenged. In fact, we have been apprised that at the time of selection and appointment there was no rule or regulation. A procedure used to be adopted by the administrative instructions. That apart, it was not a large body of appointees but only 182 appointees. Quite apart from that the persons who were impleaded, were not treated to be in the representative capacity. In this regard, it is profitable to refer to some authorities.

6. In *Indu Shekhar Singh v. State of U.P.* [*Indu Shekhar Singh v. State of U.P.*, (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] it has been held thus: (SCC p. 151, para 56)

"56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

7. In *Rashmi Mishra v. M.P. Public Service Commission* [*Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] , after referring to *Prabodh Verma* [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] and *Indu Shekhar Singh* [*Indu Shekhar Singh v. State of U.P.*, (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] , the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the

selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

8. In *Tridip Kumar Dingal v. State of W.B.* [*Tridip Kumar Dingal v. State of W.B.*, (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , this Court approved the view expressed by the tribunal which had opined that for absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.

9. In *Public Service Commission v. Mamta Bisht* [*Public Service Commission v. Mamta Bisht*, (2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208] this Court, while dealing with the concept of necessary parties and the effect of non-implementation of such a party in the matter when the selection process is assailed, observed thus: (SCC pp. 207-08, para 9)

"9. ... in *Udit Narain Singh Malpaharia v. Board of Revenue* [*Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1963 SC 786] , wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'Code of Civil Procedure') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of the Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 of the Code of Civil Procedure but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh v. State of Gujarat* [*Gulabchand Chhotalal Parikh v. State of Gujarat*, AIR 1965 SC 1153], *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Sarguja Transport Service v. STAT* [*Sarguja Transport Service v. STAT*, (1987) 1 SCC 5 : 1987 SCC (Cri) 19] .)"

10. In J.S. Yadav v. State of U.P. [J.S. Yadav v. State of U.P., (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140] , it has been held that: (SCC p. 583, para 31)

"31. No order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice."

It was further held that: (SCC p. 583, para 31)

"31. ... The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity."

11. In Vijay Kumar Kaul v. Union of India [Vijay Kumar Kaul v. Union of India, (2012) 7 SCC 610 : (2012) 2 SCC (L&S) 491] it has been ruled thus: (SCC p. 619, para 36)

"36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant."

12. Recently in State of Rajasthan v. Ucchab Lal Chhanwal [State of Rajasthan v. Ucchab Lal Chhanwal, (2014) 1 SCC 144 : (2014) 1 SCC (L&S) 34] , it has been opined that: (SCC p. 149, para 14)

"14. ... Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponent, for once the respondents are promoted, the juniors who

have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice."

13. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.

(xii) In Census Commr. v. R. Krishnamurthy reported in 2015 2 SCC 796, the Hon'ble Apex Court held as follows:

"21. As we evince from the sequence of events, the High Court in the earlier judgment had issued the direction relating to carrying of Census in a particular manner by adding certain facets though the lis was absolutely different. The appellant, the real aggrieved party, was not arrayed as a party respondent. The issue was squarely raised in the subsequent writ petition where the Census Commissioner was a party and the earlier order was repeated. There can be no shadow of doubt that the earlier order is not binding on the appellant as he was not a party to the said lis. This view of ours gets fortified by the decision in H.C. Kulwant Singh v. H.C. Daya Ram[(2015) 3 SCC 177] wherein this Court, after referring to the judgments in Khetrabasi Biswal v. Ajaya Kumar Baral [(2004) 1 SCC 317 : 2004 SCC (L&S) 182], Udit Narain Singh Malpaharia v. Board of Revenue [AIR 1963 SC 786], Prabodh Verma v. State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] has ruled thus:

"... if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice."

20. Contention of the writ petitioner that M/s.Mars Engineering, 9th respondent has not been empowered to execute blanketing the banks, from Tambaram to Chengalpet BG, but done,

is not substantiated by any materials. He has not produced any document to substantiate that respondent No.9 is doing blanketing work. Contention of the petitioner that M/s.Mars Engineering, 9th respondent is continuing earth work for the formation of the banks beyond the period of the contract, is again not supported by any materials. He has not ascertained from the competent authorities, as to the nature of contract, tenure of the same.

21. Petitioner has made a representation on 14.02.2019 to the Director and Joint Director, Central Bureau of Investigation, New Delhi, respondents 2 and 5 respectively, Central Vigilance Commissioner, Central Vigilance Commission, New Delhi, 3rd respondent and others. Petitioner has chosen to file the instant writ petition on 25.02.2019, just after 10 days.

22. When Mr.Karthik, learned counsel for the petitioner was posed with a question as to whether the petitioner has made an application under the Right to Information Act, 2005 to secure any document, to substantiate the averments relating to the allotment of work order, purpose, period of contract, etc., learned counsel submitted that when attention of the authorities was invited by a representation dated 14.02.2019, they are bound to take action.

23. We are not inclined to accept the said answer for the reason that it is not obligatory on the part of respondents, moreso, the investigating agencies, to act on mere representations, without any supporting documents. If that is permissible, then every Tom, Dick and Harry would make representations to the country's highest investigating agencies and seek for an enquiry, on the basis of a mere representation.

24. Averments made in the supporting affidavit are not supported with basic materials, required to be obtained and filed in a public interest writ petition, so as to arrive at a prima facie satisfaction that there are violations. At this juncture, we also wish to state that there is a difference in the pleading, between writ petitions and civil proceedings and it is also worthwhile to consider a decision of the Hon'ble Supreme Court in Bharat Singh and Others Vs. State of Haryana and Others, reported in 1988 (4) SCC 534, wherein while distinguishing the difference between the pleading under the Code of Civil Procedure and a writ petition, under Article 226 of the Constitution of India, in Paragraph No.'13', held as follows:

".... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove

such facts by evident which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

25. Instant Public Interest Litigation has been filed by Mr.G.Vijayakumar, a practicing lawyer. Considering the nobility of the legal profession, what is expected, when a Public Interest Litigation is filed by a lawyer is explained, in a short judgment of the Hon'ble Supreme Court in Rohit Pandey Vs. Union of India and others, reported in 2005 (13) SCC 702. Paragraph No.2 of the same judgment is extracted hereunder.

"2. We expect that when such a petition is filed in Public Interest and particularly by a member of the legal profession, it would be filed with all seriousness and after doing the necessary homework and enquiry. If the petitioner is so public-spirited at such a young age as is so professed, the least one would expect is that an enquiry would be made from the authorities concerned as to the nature of investigation which may be going on before filing a petition that the investigation be conducted by the Central Bureau of Investigation. Admittedly, no such measures were taken by the petitioner. There is nothing in the petition as to what, in fact, prompted the petitioner to approach this Court within two-three days of the second publication dated 12.02.2004 in the newspaper Amar Ujala. Further, the State of Uttar Pradesh had filed its affidavit a year earlier i.e. on 7.10.2004, placing on record the steps taken against the accused persons, including the submission of the charge-sheet before the appropriate court. Despite one year having elapsed after the filing of the affidavit by the Special Secretary to the Home Department of the Government of Uttar Pradesh, nothing seems to have been done by the petitioner. The petitioner was not even controverted what is stated in the affidavit. Ordinarily, we would have

dismissed such a misconceived petition with exemplary costs but considering that the petitioner is a young advocate, we feel that the ends of justice would be met and the necessary message conveyed if a token cost of rupees one thousand is imposed on the petitioner."

In Rohit Pandey's case (cited supra), Hon'ble Apex Court, imposed a cost of Rs.1,000/-.

26. In yet another case of filing a public interest litigation by a lawyer, caught red handed in blackmailing respondents 6 & 7 therein, and dealing with such acts, in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, reported in 2005(1) SCC 590, the Hon'ble Supreme Court, at paragraph Nos.3 and 4, observed as hereunder.

"3. It is, in fact, a black day for the black robed professionals, if the allegation, as found by the High Court to be true and which presently appear to be the subject matter of further proceedings in a criminal case, are true. This will leave the members of the legal profession black faced for the black deed of the petitioner who may be as the High Court found a black sheep in the profession. Though the petition filed by the petitioner carried the attractive brand name of "Public Interest Litigation", the least that can be said is that it smacks of every thing what the Public Interest Litigation should not be.

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". The High Court has found that the case at hand belongs to the last category. 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 borne out of wishful thinking. 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 vs. Union of India*, (AIR 1993 SC 852) and *K.R. Srinivas v. R.M. Premchand*, (1994 (6) SCC 620)."

27. Ultimately at paragraph No.20, the Hon'ble Apex Court reaffirmed the view made in *Ashok Kumar Pandey's* case [*Ashok Kumar Pandey vs. State of W.B.*, reported in (2004) 3 SCC 349, as hereunder.

"20. It is disturbing feature which needs immediate remedial measure by the Bar Councils and the Bar Association to see that the process of law is not abused and polluted by its member. It is high time that the Bar Councils and the Bar Associations ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of "Public Interest Litigation". That will be keeping in line with the high traditions of the Bar. No one should be permitted to bring disgrace to the noble profession. We would have imposed exemplary cost in this regard but taking note of the fact that the High Court had already imposed costs of Rs.25,000/-, we do not propose to impose any further cost."

In *Dattaraj's* case [Cited supra], Hon'ble Apex Court has confirmed costs of Rs.25,000/- imposed by the High Court.

28. Though on the facts and circumstances of this case, instant writ petition, filed without basic materials, as stated supra, and wherein scathing and scurrilous allegations have been made against Mr.N.Jayaraman, the Executive Engineer (XEN) and Mr.S.Jaisankar, Deputy Chief Engineer, not being impleaded as party respondents, deserves to be dismissed with costs, as done by the High Courts, and confirmed by the Hon'ble Supreme Court, hoping that in future the writ petitioner Mr.G.Vijayakumar, a practising lawyer, would not throw wild allegations and file

writ petitions, claiming himself to be a public interest litigant, we refrain from imposing costs.

29. With the above observations, writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar
ars/skm

To

1. The Director General, (Personnel),
Railway Board,
Ministry of Railways,
Government of India, New Delhi.
2. The Central Bureau of Investigation,
Rep. by its Director,
Plot No.5B, 6th Floor, CGO Complex,
Lodhi Road, Jawaharlal Nehru Stadium Marg,
New Delhi - 110 003.
3. The Central Vigilance Commissioner,
Central Vigilance Commission,
Satarkata Bhavan A Block,
GPO Complex, INA,
New Delhi -100 023.
4. The Commissioner of Railway Safety,
(Southern Circle),
No.7, Seshathri Bandi Nagar,
Bangalore.
5. The Joint Director,
Central Bureau of Investigation,
Shastri Nagar, Adyar,
Chennai - 600 020.
6. The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

7. The Chief Administrative Officer (CAO),
Construction, Southern Railway,
Egmore, Chennai - 600 008.

8. The Chief Vigilance Officer,
Vigilance Department, Southern Railway,
CAO/Construction Complex,
EVR Periyar Road, Egmore, Chennai - 600 008.

9.M/s.MARS Engineering,
Tamil Nadu Housing Board/HIG,
Avadi, Chennai 600 054.

+2 cc to Mr.P.T.Ramkumar, Advocate, Sr.No. 18708

WP.No.5805 of 2019
and WMP.Nos.6640 & 6643 of 2019

SSI (CO)
CSL/04.06.2019



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