

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/3/2019

C O R A M:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition (MD) No.6357 of 2019

Tamil Nadu Health Employees
Welfare Association
rep. By its Secretary
Mr.R.Karthick
Madurai 20.

... Petitioner

Vs

1. The Chief Election Commissioner
Election Commission of India
Ashoka Road
New Delhi.
2. The Chief Election Commissioner
The Tamil Nadu State Election Commission
Jawaharlal Nehru Salai
Jai Nagar
Chennai.
3. The State of Tamil Nadu
rep. By its Principal Secretary
Health & Family Welfare Department
Secretariat
Fort St. George
Chennai 600 009.
4. The Director of Medical Education
Directorate of Medical Education
State of Tamil Nadu
162 EVR Periyar Salai, Keelpakkam
Chennai.
5. The Director of Medical and
Rural Health Services
Directorate of Rural and Health Services
State of Tamil Nadu
258 Second Floor, DMS Complex
Anna Salai, Teynampet
Chennai.

6. Tmt.Beela Rajesh

7. Dr. Edwin Joe

8. Dr.N.Rukmani.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the respondent Nos.1 to 5 to conduct detail enquiry into the illegal transfers, relieving, joining and posting of Nurses across the State of Tamil Nadu, after November 2018 and after coming into force the election code of conduct, and take necessary legal action, against all the erred officials, who had their hands in the illegal transfers, in accordance with law.

For petitioner ... Mr.S.Malaikani

For respondents ... Mr.Niranjana Rajagopal
for R.R.1 and 2.

Mr.S.R.Rajagopal, AAG
assisted by Mr.E.Manoharan
Additional Government Pleader
for R.R.3 and 6.

O R D E R

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

Tamil Nadu Health Employees Welfare Association, represented by its Secretary Mr.R.Karthick, has filed the instant writ petition, for a mandamus, directing the Chief Election Commissioner, New Delhi; Chief Election Commissioner, Chennai; Principal Secretary, Health and Family Welfare Department, Chennai; Director of Medical Education, Chennai; and the Director of Medical and Rural Health services, Directorate of Rural and Health Services, Chennai, respondents 1 to 5 respectively, to conduct an enquiry, into the illegal transfers, relieving, joining and posting of Nurses, across the State of Tamil Nadu, after November 2018, after coming into force of the code of Conduct and take necessary legal action, against all the erred officials, who had their hands in illegal transfers.

2. Petitioner, has impleaded Ms.Beela Rajesh, I.A.S., Principal Secretary, Health and Family Welfare Department, Chennai; Dr.Edwin Jose, Director of Medical Education, Chennai and Dr.N.Rukmani, Director of Medical and Rural Health Services, Chennai, in their personal capacity, as party respondents.

3. Supporting the prayer sought for, petitioner has pleaded that he is working as a staff Nurse (Male), in Government Medical College Hospital, Karur. He is the Secretary of Tamil Nadu Health Employees Welfare Association. Giving effect to transfers (regular time scale), to Nurses, working under the respondents, across the State, the Principal Secretary, Health and Family Welfare Department, Chennai, issued proceeding, on 7/1/2019, for counseling, scheduled on 11/1/2019. Counseling was not done, in accordance with G.O.(2D) No.131, dated 20/11/2007. Therefore, the petitioner filed the instant writ petition, for the relief stated supra.

4. Petitioner has submitted that before scheduling the date for counseling for transfer, sufficient time should be given to the candidates. Whereas, in the present impugned proceeding, respondents did not provide sufficient time to get the service certificate, which is very much essential for the candidates, to participate in the counseling.

5. Petitioner has further submitted that the place of vacancies, not stated in the impugned proceeding, which is against the well established law, against G.O.(2D) No.131, dated 20/11/2017 and also against the proceeding of the Principal Secretary, Health and Family Welfare Department, Chennai, third respondent, dated 19/5/2014, in Letter No.16275/AA1/2014-1.

6. Petitioner has further submitted that according to Clause 4.1 of the abovesaid G.O., transfer counseling shall be conducted, for the vacancies arising due to retirement, including voluntary retirement, death, promotion of incumbents, newly created posts and for administrative transfers.

7. According to Clause 6.1 of the said G.O., the respondents must publish the vacancy position and the cause of each vacancy every month end, in the departmental's official website and a report in this regard should be sent to the Government by the fifth of the succeeding month. According to Clause 7.1, total vacancies should be consolidated and published in the official website before counselling.

8. Earlier, the petitioner has filed a writ petition in W.P.(MD) No.697 of 2019, to quash the proceeding in Ref.No.109/N2/2/19 dated 7/1/2019, of the fifth respondent and consequently, to direct the respondents therein, to conduct counselling for transfers of nurses strictly in accordance with the provisions of G.O.(2D) No.131 dated 20/11/2007, issued by the third respondent. Vide, order, dated 10/1/2019, this Court granted interim stay of the proceeding in Ref.No.1093/N2/2/19, dated 7/1/2019, on the file of the fifth respondent. The petitioner has contended that a document, dated 07.01.2019 has been created on the file of the 5th respondent. Ms.Sylisa,

joined Karur Medical College Hospital, on 11/2/2019. To his shock and surprise, a document has been created as though a transfer order has been passed on 7/1/2019 itself. This is a clear case of wilful disobedience to the order of this Court and contemnors are liable for contempt.

9. Ms.R.Vijayakumari has been transferred to Government Rajaji Hospital, without any counselling. Similarly, N.Panchavarnam, has been transferred to Multi Speciality Block attached to Government Rajaji Hospital, Madurai, despite of the fact that there is an order by this Court, to the effect that respondents 3 to 6 should follow the guidelines of G.O.(2D) 131, dated 20/11/2017 in W.P.(MD) No.23169 of 2018, dated 22/11/2018. Since the acts of the respondents are liable to be punished, under the Contempt of Courts Act, the petitioner has issued a contempt notice on 18/2/2019 and the same has been received by the contemnors. One Ms.Kurshith Begam has also been issued with transfer order, dated 31/1/2019, the petitioner has filed Contempt Petition also.

10. When W.P.(MD) No.697 of 2019, came up for hearing on 8/3/2019, Dr.N.Rukmani, eighth respondent filed a counter affidavit, stating that they dropped the entire counselling for the transfer and respondents 3 to 5 submitted that the transfers and posting of nurses would be done only by following the conditions stipulated in G.O., passed in this regard. Recording the submissions made by the respondents 3 to 5, this Court, vide order, dated 8/3/2019, closed the main writ petition.

11. On 20/3/2019, when the matter came up for hearing, this Court passed the following order:-

"No appearance for the petitioner.

2. Petitioner has sought for a writ of mandamus, directing respondents 1 to 4 to conduct a detailed enquiry into the illegal transfers, relieving, joining and posting of Nurses across the State of Tamilnadu after November 2018 and after coming into force the election code of conduct, and take necessary legal action, against all the erred officials who had their hands in the illegal transfers in accordance with law.

3. Mr.S.R.Rajagopal, learned Additional Advocate General and Mr.Niranjana Rajagopal, learned counsel for Election Commission of India submitted that in the matter of transfer, as per Clause 19.2.1 of Model Code of Conduct, issued by Election Commission of India, there are certain posts which are not covered.

4. Both the learned counsel also invited the attention of this Court to Clause 19.2.3 of Model Code of Conduct, issued by the Election Commission of

India, which deals about Relaxation / Exemption and submitted that Nurses are also included. Submission is placed on record.

5. Clause 19.2.1 & 19.2.3 of Model Code of Conduct, issued by Election Commission of India, are extracted hereunder.

19.2.1 Conditions of transfer: (i) No officer connected directly with elections shall be allowed to continue in the present district of posting:-

(a) if she/he is posted in her/his home district.

(b) if she/he has completed three years in that district during last four (4) years or would be completing 3 years (on or before the last day of the month in which the term of the House is going to expire).

(ii) While calculating the period of three years, promotion to a post within the district is to be counted.

(iii) While implementing the above said instructions/transferring officers, the concerned departments of the State Govt. should take care that they are not posted to their home districts. During January, 2019, the Commission with regard to the General Election to the House of People, 2019 and certain State Assemblies has further directed that it shall also be ensured that no District Election Officer/Returning Officer/Assistant Returning Officer/Police inspector/Sub-inspector or above is posted back or allowed to continue in the Assembly Constituency/district where he/she was posted in last Assembly election/any bye election held prior to 31st May, 2017 (i.e. the period of two years from the date of expiry of the House/Assembly).

(iv) If any small state/UT with a few number of districts, face any difficulty in compliance of the above instruction, then it may refer the specific case with reasons, to the Election Commission through Chief Electoral Officer for exemption and the Election Commission would issue directions, if considered necessary.

19.2.3 Relaxation/Exemption:- The following government officials are not covered under the transfer policy mentioned above-

(i) The police officials who are posted in functional departments like computers, special branch, training, etc. are not covered under these instructions.

(ii) During an election a large number of employees

are drafted for different types of election duty and the Election Commission has no intention of massive dislocation of state machinery by large scale transfers. Hence, the aforesaid transfer policy is normally not applicable to officers/officials who are not directly connected with elections like doctors, engineers, teachers/principals etc. However, if there are specific complaints of political bias or prejudice against any such govt. officer, which on enquiry, are found to be substantiated, then Chief Election Officer/Election Commission of India may order not only for transfer of such official but also for appropriate departmental action against him/her.

(iii) The officers appointed as Sector Officer/Zonal Magistrate involved in election duties are not covered under these instructions. However, the observers, Chief Electoral Officer/District Election Officers and Returning Officers should keep a close watch on their conduct to ensure that they are fair and non-partisan in performance of their duties.

(iv) These instructions do not apply to the officers posted in the State headquarters of the department concerned.

(v) It is further directed that the officers/officials against whom the Election Commission had recommended disciplinary action in past and which is pending or which has culminated with a penalty or the officers who have been charged for any lapse in any election or election related work in the past, shall not be assigned any election related duty. However, an officer who was transferred during any past election under the Election Commission's order without any recommendation of disciplinary actions will not be, just on this ground, considered for transfer, unless specifically so directed by the Election Commission. The Chief Electoral Officer must ensure compliance of the Election Commission's instructions contained in letter no. 464/INST/2008-EPS dated 23 December 2008. (Annexure XIX)

(vi) The Election Commission further desires that no officer/official, against whom a criminal case is pending in any court of law, be associated with/deployed on election related duty.

(vii) Any officer, who is due to retire within the coming six months will be exempted from the purview of the Election Commission's above-mentioned directions. Further, officers falling in the category (home district/3+ criteria, if they are due to retire

within 6 months) shall not be engaged for performing election duties without permission of the Election Commission.

(viii) It is further clarified that all the officials of the State (except those posted in the office of the Chief Electoral Officer), who are on extension of service or re-employed in different capacities, will not be associated with any election related work. All election related Officers will be required to give a declaration in the format specified to the District Election Officer concerned, who shall inform to Chief Electoral Officer, accordingly. (Annexure XX)

6. Petitioner has made serious allegations in paragraph Nos.14 and 15 of the supporting affidavit. He has also impleaded Tmt.Beela Rajesh, I.A.S., Principal Secretary, Health and Family Welfare Department, Chennai and Dr.Edwin Joe, Director Medical Education, Chennai, in their personal capacity. Allegations are serious without any basic material.

7. As there is no representation for the writ petitioner, we wish to give him one more opportunity.

8. Post the writ petition for dismissal on 21.03.2019."

12. Today, Mr.S.R.Rajagopal, learned Additional Advocate General, Government of Tamil Nadu, submitted that Ms.Beela Rajesh, I.A.S, assumed as Secretary to Health and Family Welfare Department, only recently.

13. From the material on record, we find that the present writ petition has been filed on 15/3/2019. Serious allegations have been made against the respondents 6 to 8, that they have conspired and violated the Code of Conduct. Respondents 6 to 8 have been impleaded in their personal capacity. Though the petitioner has sought for a Mandamus, he has virtually challenged the transfers, raising several grounds. Mandamus is not a substitute for certiorari. At the risk of repetition, allegations made by the petitioner, are reproduced,

"After the parliamentary elections were declared, respondents 6 to 8 have conspired and issued antedated transfer orders, but the nurses who purchased the transfer orders are joining in the transferred hospitals in complete violation of the election code of conduct. For those illegal transfers, crores and crores of rupees had been collected from the poor, vulnerable nurses."

14. When attention of Mr.S.Malaikani, learned counsel for the petitioner was invited to the scurrilous allegations made against officers, arrayed in their personal capacity, learned counsel for the petitioner sought permission to withdraw the writ petition.

15. On the aspect of drafting an affidavit, without any supporting document, learned counsel for the petitioner prayed mercy on the petitioner. Considering the nature of allegations made against the officers, on oath by solemn affirmation, the manner in which affidavit is drafted, and the decisions of the Hon'ble Supreme Court, on public interest litigations, we decline the request of the learned counsel for the petitioner and proceed to pass the following order.

16. Instant writ petition has been filed as a Public Interest Litigation and therefore, deem it fit to consider few decisions relating to public interest writ petitions,

(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 expressssion, 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 depraved (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 aforestated 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 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 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 allegations 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. Added further, in consonance with the judgments of the Hon'ble Supreme Court of India, a Circular has been issued by the High Court, Madras, setting out the procedure for filing public interest writ petitions, and the same is reproduced 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"

18. Material on record discloses that the petitioner has reproduced the averments made in W.P.(MD) No.23169 of 2018, dated 22/11/2018. Orders passed in the said writ petition and that the contempt Petition, has been closed.

19. Whether bald averments in the form of an affidavit on mere affirmation can be made or the affidavit to be supported by relevant materials, which the Court is enjoined with a duty to consider. The other aspects to be considered, are whether absorption of the nurses and orders of posting, violate Model of Code of Conduct, and whether the conduct of the petitioner in making serious allegations against the Officers/respondents 6 to 8, sued in their personal capacity, should be left without examination or not? The third aspect to be considered by this Court, is the manner, in which, a supporting affidavit is drafted.

20. One the first issue, let us consider, as to how, the posting orders have been issued,

Ref.No.12532/N2/2/2019-52 Office of the Director of Medical

and Rural Health Services,
Chennai-6.

Dated: 09.03.2019

POSTING ORDER

Sub: Nursing Establishment - Tamil Nadu
Medical Subordinate Services - Staff Nurses appointed
on Contract Basis - Absorbing them into regular
time scale of pay - Posting order issued -
Regarding.

Ref: This office Proc.
Ref.No.15885/N1/2/2018, dated
05.03.2019.

Under Section 17(1) of Tamil Nadu Government Servants (Conditions of Service) Rules, 2016 the following Nurse on Contract Basis who has been absorbed into regular time scale of pay in the reference cited is posted as Regular Nurse in the Revised scale of pay of Rs.36000-114000 (Level 14) in

the institutions noted against his/her name.

Sl.No.	Seniority Number in the Contract post	Name and Present of the Individual Thiru./Tmt./Selvi.	Place of posting
52	627	SATHYA C Govt. Medical College Hospital, Karur District	Government Kaur Medical College Hospital, Karur
47	622	LALITHA S Government Head Quarters Hospital, Erode District	Government Headquarters Hospital, Erode

He/she is directed to join duty in the new station to which posted immediately on relief from the old station.

He/she should produce the following documents at the time of joining duty to the Heads of institutions concerned to which posted.

- * Certificate of Registration of Nurse.
- * Certificate of Registration of Midwifery/Psychiatry
- * Diploma or Degree Certificate in General Nursing and Midwifery/Psychiatry
- * Psychiatry
- * +2 Mark Sheet
- * S.S.L.C. Mark Sheet
- * School Transfer Certificate
- * Permanent Community Certificate

The individual should also produce physical fitness certificate obtained from a Registered Medical Practitioner not below the rank of Civil Surgeon at the time of joining duty in the new station.

Note: 1. The date of relief and joining should be informed immediately.

2. He/She is not eligible for TTA.

N.RUKMANI
DIRECTOR OF MEDICAL AND RURAL
HEALTH SERVICES (I/C.)

21. Section 17(1) of the Tamil Nadu Government Servants (Conditions of Service) Rules, 2016, is extracted hereunder:

"17. (1) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with the provisions of this Act and the special rules, the appointing authority may temporarily appoint a person, who possesses the

qualifications prescribed for the post otherwise than in accordance with this Act and the said rules:

Provided that no appointment by direct recruitment under this section shall be made of any person other than the one sponsored by the Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Commission:

Provided further that appointment by direct recruitment under this section in respect of posts within the purview of the Commission shall be made, only where new posts with new qualifications are created temporarily and where the Commission does not have a regular or reserve list of successful candidates for sponsoring."

22. Reading of the above rule and the order, dated 09.03.2019, shows that nurses mentioned in the order, dated 09.03.2019, have been absorbed into regular time scale of pay in the reference cited and posted as Regular Nurse in the revised scale of pay of Rs.36000-114000 (Level 14) in the institutions noted against his/her name. As stated supra, in our order, dated 20.03.2019, we have observed that doctors and nurses are outside the modal code of conduct and therefore, the contention of the petitioner that they fall within the model code of conduct, is not substantiated, by any material.

23. On the 2nd issue of making serious allegations on the respondents 6 to 9, the petitioner has not given any material to substantiate the same. Tmt.Beela Rajesh, 6th respondent herein, is stated to have joined only recently, and within a week's time, writ petition has been filed, contending that conspiring together, crores of crores of rupees were collected by the respondents 6 to 8 from the vulnerable nurses. Except producing two orders of absorption, no order of transfer is produced before us. Material on record disclose that no effort has been taken by the petitioner, to ascertain, as to whether, mass transfers have been effected, after the model code of conduct, has come into effect. Vague, bald and wild allegations have been made against respondents 6 to 8, in the supporting affidavit.

24. By virtue of Article 225 of the Constitution of India and all other powers hereunto enabling, the High Court has made the following rules to regulate proceedings under Article 226 of the Constitution.

R. 1. An application for a direction, order or writ, including a writ of habeas corpus, mandamus, certiorari, quo warranto or Prohibition [shall be by an affidavit containing the facts and grounds and a petition containing the prayer] petition to be

entitled "Writ Petition No..... of....." and shall be filed in the office of the Registrar by the petitioner or his duly authorised advocate or attorney.

R. 2. Every such petition shall set out the provision of law under which it is made, the name and description of the petitioner and the respondent, the nature of the relief sought and shall be accompanied by an affidavit setting forth [the facts and] the grounds of the relief sought, the other remedy, if any, available to the petitioner and if not availed of, the reasons therefor. The petition shall be signed by the petitioner or his advocate or attorney.

Rule 2 (a).— All the Affidavits filed in support of the petition, counter affidavits, affidavits in reply to the counter affidavit and any other supplementary affidavits filed by any person in a writ petition or miscellaneous petition shall clearly state at the concluding portion of such affidavit whether the statements made in the affidavit are based on knowledge, information and belief or on records. Where statements are based on information, the source of such information should be disclosed. Where statements are based on records, sufficient particulars of records as far as practicable should be given to enable proper identification of records. Contentions in the affidavit should be verified as based on legal advice.

Rule 2 (b).—Every document referred to in the affidavits of the petitioner and filed as Annexure to the Affidavit shall be marked as documents as P series e.g., P1, P2, P3 and the marking shall be continued in respect of all additional annexures produced subsequently along with replies, interlocutory application/s, etc.

Rule 2 (c).—Every document referred to in the affidavit of the respondents shall be marked as R-Series e.g. R1, R2, R3..... If there are more respondents than one then the documents filed by the First Respondent along with the Affidavit shall be marked as Exhibits R1(a), R1(b) R1(aa), R1(bb), etc. The documents referred to and filed by other respondents shall be marked as R-2 series, R-3 series and so on and the marking shall be continued in respect of all additional annexures produced subsequently along with the interlocutory applications or additional affidavits, etc.

Rule 2 (d).—The Office of the High Court shall give continuous page numbers to all the papers filed subsequent to the filing of the writ petition as and

when they are filed and arrange them in the order in which they are filed and shall prepare a consolidated index of all the papers before posting the case for hearing. The Paper Book filed by the Petitioner, the counter Affidavit and Paper Book of the Respondents, the rejoinders, if any, and all the Affidavits, Miscellaneous petitions, and Orders including Orders regarding services shall be kept in the same file so as to enable the court to have immediate access to the same.

Rule 2 (e).—No documents can be admitted in any writ proceedings unless and otherwise it is referred to in an affidavit."

25. In *All India Lawyers' Union, Tamil Nadu v. Union of India* reported in (1992) 2 LW 577, this Court held that provisions of the Code of Civil Procedure are made applicable to writs. At this juncture, we deem it 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, the Hon'ble Supreme Court, has explained the difference in pleadings and evidence, between a proceeding under the Code of Civil Procedure and a Writ Petition, under Article 226 of the Constitution of India.

"13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. 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 evidence 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. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

26. Affidavit filed by the petitioner has been solemnly affirmed. An affidavit is a statement, on solemn affirmation by the person making the statement, based on knowledge, information and belief, or on record and when such statement is made, the source of information should be disclosed. At this juncture, we deem it fit to consider, what is an affidavit, as per the General Clauses Act, 1897. Section 3(3) of the Act defines, "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. The word "swear" as per Section 3(62) with its grammatical variations and cognate expressions shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.

27. Let us also consider few decisions, as to how, a litigant is mandated to file an affidavit,

(i) The Hon'ble Apex Court in the case of A.K.K. Nambiar vs. Union of India, reported in AIR 1970 SC 652: (1970) Lab IC 566) emphasising the importance of verification, has observed as under:-

"8.....The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

(ii) In the case of Shivaji Rao vs. Dr. Mahesh Madhav reported in AIR 1987 SC 294, in para 38, the Court observed as under:-

"38. Our attention was drawn by learned counsel Dr

Singhvi on the observations of this Court in Barium Chemicals Ltd. v. Company Law Board [AIR 1967 SC 295 : 1966 Supp SCR 311 : (1966) 36 Com Cas 639] where at p. 352 of the Report the court observed that where evidence was adduced by affidavits, such affidavits might be properly verified either on knowledge or from sources. But the basis of such knowledge or source of information must be clearly stated. This was laid down as early as 1909 by Jenkins, CJ. and Woodroffe, J. in Padmabati Dasi v. Rasik Lal Dhar [ILR 37 Cal 259] where the Division Bench of the Calcutta High Court observed that the provisions of Order XIX Rule 3 of the Code of Civil Procedure, must be strictly observed: every affidavit should clearly express how much is a statement of the deponent's knowledge and how much of the statement was in his belief, and the grounds of belief must be stated with sufficient particularity. This has been followed more or less universally by courts in matters where reliance is placed on affidavits. This view has been reiterated by this Court in State of Bombay v. Purushottam Jog Naik [AIR 1952 SC 317 : 1952 SCR 674 : 1952 Cri LJ 1269] . It is on this principle that Dr Singhvi urged that the original petition should not have been entertained because of the defective affidavit in this case. Undoubtedly the affidavit and the petition were defective as mentioned herein before."

- (iii) In V.H.Mehta vs. DAV New High School reported in 1998 (3) Gujarat Law Reporter 1849, it was observed as under:

"When a petition is presented before the Court, it must separately and specifically state facts (i) based on personal knowledge, (ii) based on information and (iii) based on belief, then grounds of belief. There must be separate paragraphs for each submission which can be dealt with. Such Submissions may be based on facts or law"

- (iv) After considering the above said decisions the Delhi High Court in Ranjit Construction Ltd., v. National Highways Authority of India reported in AIR 2004 Delhi 64, at paragraphs 12 and 13 held as follows:

"12. In the proceedings before the Court, ordinarily the Court accepts the sworn statement made in the petition. The Court accepting such statements passes even interim orders. Therefore, it is the duty of the party filing petitions before the Court to make true, correct and accurate statements, stating as to what portion of the petition is true to his personal knowledge and what portion of the petition is true to

his information or belief stating the reasons thereof.

13. The affidavit should not be vague or general. It must comply with the requirement of a valid affidavit as laid down in Civil Procedure Code (for short "Code"). The affidavit should be confined to such facts as the deponent is able to take from his own knowledge to prove, except on interlocutory application on which statements of his belief may be admitted, provided that the grounds thereof are stated. The statement based on personal knowledge must be distinguished from the statement based on information and belief. In the case of statements based on information, the deponent shall disclose the source of his information. The affidavit is a mode of placing evidence before the Court. A party may prove a fact or facts by means of affidavit before the Court but such affidavit must be in accordance with rules and norms laid down and in accordance with the provisions contained in the Code. This is with a purpose to find out whether it would be safe to act on such evidence and to enable the Court to know as to what facts are based in the affidavit on the basis of personal knowledge, information and belief, as this is relevant for the purpose of appreciating the evidence placed before the Court in the form of affidavit. It is only on the basis of verification, it is possible to decide the genuineness and authenticity of the allegations and the deponent can be held responsible for the allegations made in the affidavit. If the statement of facts is based on information, the source of information must be disclosed in the affidavit. In a matter where allegations of mala fide are made against a person or party, it is all the more necessary that the person filing affidavit in this regard must take care to verify the facts stated in the affidavit strictly in accordance with what is mentioned hereinabove."

28. Courts have held that in a writ petition, the petitioner is required to file an affidavit, specifically indicating as to which part of the petition is true, according to his knowledge or according to his information, more particularly, disclosing the source of information and according to his belief and he is enjoined with a duty to the Court and the respondents, indicating the reasons for his belief. Mere averments in the form of an affidavit, in a writ petition, does not stand the test of proof, without material documents. In a writ petition, if the Court has to accept the affidavit, as gospel truth, that too in a public interest litigation, then the

Court would be flooded with public interest litigations. Such exercise would be against the various pronouncements by the Hon'ble Supreme Court, on the law of public interest litigation.

29. Sufficient particulars should be averred in the affidavit with supporting documents. At this juncture, we deem it fit to extract the summary of public interest litigations, from a decision of this Bench, authored by one of us (Mr. Justice Subramonium Prasad),

"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."

30. Though in a decision in Chandra Shashi vs Anil Kumar Verma reported in 1995 (1) SCC 421, the respondent therein produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case, which act was held to be an act, amounting to interference with the administration of Justice, it is worthwhile to consider the observation of the Hon'ble Supreme Court, for the purpose of the instant writ petition, as to the conduct of the writ petitioner, in making scurrilous and scathing allegations against the Officers/respondents 6 to 8, sued in their personal capacity that they have conspired together, nurses have purchased the

transfer orders and for those orders, several crores of rupees been collected from poor vulnerable nurses. Observation of the Hon'ble Supreme Court is extracted hereunder:

"the stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

31. On the aspect of drafting an affidavit, the Hon'ble Supreme Court, in In Re: Sanjiv Datta And Ors. reported in 1995 (3) SCC 619, issued contempt notice to a lawyer and Government officials, who made derogatory statements against the Court. Later, the alleged contemnors filed unconditional apology. On the facts and circumstances of the case, the Hon'ble Supreme Court of India, on the conduct of the alleged contemnors and indifferent attitude of the lawyers, observed thus:-

"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 of technical competence, the honour as a professional has to be maintained by the 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 intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. 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. The regard for the legal and judicial systems in this country is in no small measure due to

the tiredness role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

32. Mr.S.Malaikani, learned counsel for the petitioner again requested this Court to show mercy on the petitioner. Petitioner has made serious allegations. Affidavit has been drafted by a lawyer. Aspect to be considered is whether the lawyer can simply draft an affidavit, making serious allegations against the respondents, without verifying as to whether, there is any material to support those allegations and lateron, blame the party? In the light of the decisions on the nobility of the legal profession and the observation of the Hon'ble Supreme Court in Re Sanju Datta's case (cited supra), we are not inclined to accept the plea that the petitioner be shown mercy. We do not appreciate either the conduct of the petitioner or the lawyer, who drafted the affidavit.

33. Mr.S.Malaikani, learned counsel for the petitioner has not made any submission, as to how, a litigant should aver, when a public interest litigation is filed, and whether, whatever stated by a litigant, who claims to be a public interest litigant, without any evidence, can be stated in the affidavit and whether such affidavit satisfies the requirement of a public interest litigation.

34. Affidavit in the case on hand, has been drafted in a casual cavalier manner, with contents, making wild allegations against officers/respondents 6 to 8. An advocate, as officer of the Court, is expected to know his responsibility, when a litigant intends to sue officers, in their personal capacity. Observations of the Hon'ble Supreme Court in Re Sanjiv Datta's case, though made in a case, relating to disparaging statements

made against the Hon'ble Supreme Court, on the facts and circumstances of the case, we are of the view that the same is applicable to the case on hand also.

35. Considering the fact that very serious allegations have been made, without any basic material, we are not inclined to accept the plea of mercy. At this juncture, it is to be recorded that at paragraph 15 of the affidavit to this writ petition, the petitioner himself has stated that "I am ready to pay the cost, if any, imposed by this Hon'ble Court".

36. In the light of the decisions on public interest litigations and on the facts and circumstances, we are not inclined to permit the petitioner to withdraw the writ petition, styled as a public interest litigation and rather hold that the instant writ petition is frivolous, abuse of process of law and deserves to be dismissed with exemplary costs of Rs.50,000/- (Rupees Fifty thousand only) to be paid to the Tamil Nadu Juvenile Justice Fund, Ministry of Social Defence, Kellys, Chennai, within a period of three weeks, from the date of receipt of a copy of this order, failing which, the District Collector, Madurai, is directed to take proceeding against the petitioner under the Tamil Nadu Revenue Recovery Act, 1864.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Chief Election Commissioner
Election Commission of India
Ashoka Road, New Delhi.
2. The Chief Election Commissioner
The Tamil Nadu State Election Commission
Jawaharlal Nehru Salai
Jai Nagar, Chennai.
3. The State of Tamil Nadu
rep. By its Principal Secretary
Health & Family Welfare Department
Secretariat, Fort St. George
Chennai 600 009.

4. The Director of Medical Education
Directorate of Medical Education
State of Tamil Nadu,
162, EVR Periyar Salai, Keelpakkam
Chennai.
5. The Director of Medical and
Rural Health Services
Directorate of Rural and Health Services
State of Tamil Nadu
258 Second Floor, DMS Complex
Anna Salai, Teynampet
Chennai.

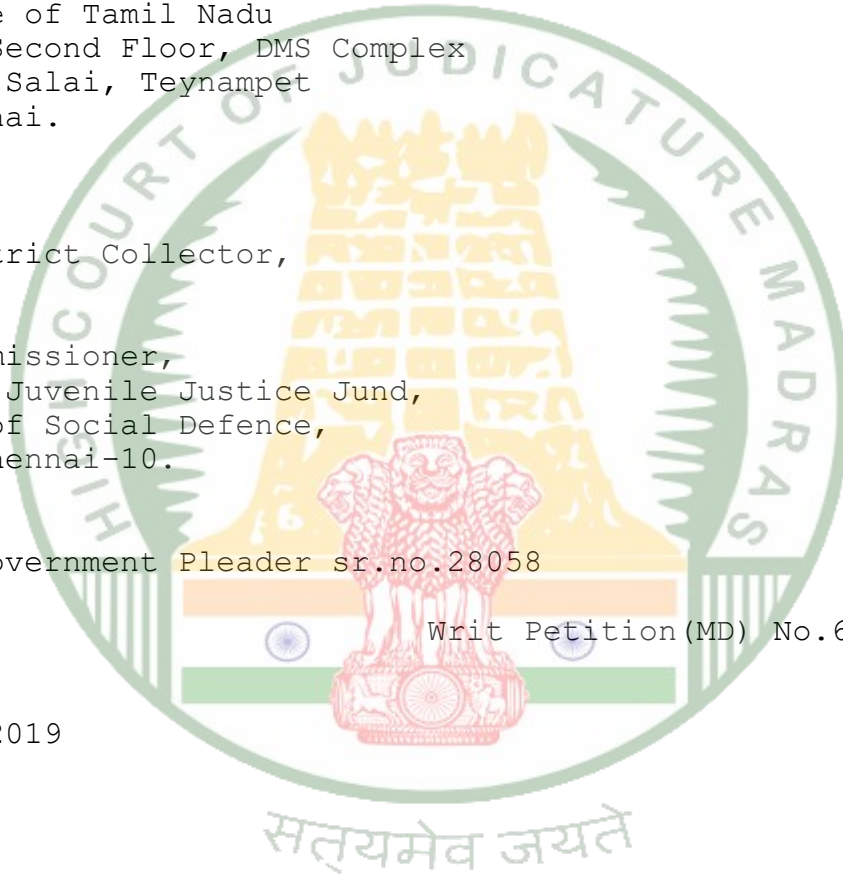
Copy to:

- 1.The District Collector,
Madurai.
- 2.The Commissioner,
Tamilnadu Juvenile Justice Jund,
Ministry of Social Defence,
Kelly's Chennai-10.

+1cc to Government Pleader sr.no.28058

Writ Petition(MD) No.6357 of 2019

mg(co)
nr 02/04/2019



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