

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.NO.12666 OF 2019
AND
W.M.P.NO.12890 OF 2019

Raman Kodhandapani

.. Petitioner

vs.

1. The District Collector,
Collectorate Building,
State Bank Road,
Gopalapuram,
Coimbatore - 641 018.

2. The Coimbatore City Municipal
Corporation rep by its
Commissioner,
Town Hall, Coimbatore - 641 001.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing respondents 1 and 2 to forthwith implement the order of the first respondent dated 14.08.2018 by taking all necessary steps to stop fishing activity in the Singanallur Lake, carry on necessary improvement to foster and improve the biodiversity of the Singanallur lake.

For Petitioner : Mr.A.Yogeshwaran

For Respondents : Mr.E.Manoharan,
Addl.Govt. Pleader for R1

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

A nature conservationist researcher and claiming himself to be a public interest litigant, petitioner has sought for writ of mandamus directing the District Collector, Coimbatore and the Commissioner, Coimbatore City Municipal Corporation viz.,

respondents 1 and 2 to forthwith implement the order of the first respondent dated 14.08.2018 by taking necessary steps to stop fishing activity in Singanallur lake, Coimbatore, carry on necessary improvements to foster and improve the bio-diversity of Singanallur Lake, Coimbatore.

2. Contention of the petitioner is that despite the proceedings of the District Collector in Na.Ka.No.10417/2018/E4, dated 14.08.2018, deciding not to renew tender/lease and banning Singanallur Lake from commercial fishing, still, fishing continues and despite the representation being sent, no stringent action is taken. Therefore, the instant writ petition, for the prayer as stated supra. Supporting the prayer sought for, the petitioner has relied on newspaper reports. He has relied on News paper reports.

3. On the aspect as to whether news items published in papers can form part of the material to substantiate the averments, we deem it fit to consider few decisions.

(i) A Hon'ble Division Bench of this Court in A.S.M.Kumar v. State of Tamil Nadu reported in 2008 (5) MLJ 399, to which, one of us, is a party, has considered the following judgments:

"8. The question of admissibility of the newspaper reports came up for consideration in Samant N. Balkrishna and another Vs. George Fernandez and other reported in 1969 (3) SCC 238 at paragraph 26, the Apex Court observed that

"A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

9. As regards nature and admissibility of a newspaper report, the Supreme Court in Lakmi Raj Shetty and another Vs. State of Tamil Nadu reported in 1988 (3) SCC 319, opined that

"...We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless

proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."

10. In Quamarul Islam Vs. S.K.Kanta reported in 1994 (1) SCC 452, the question as to whether mere production of the copy of the newspaper be treated as proof of the report of the speech (news item) contained therein came up for consideration. The Apex Court at Paragraph 48 of the judgment held that,

"48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him,

the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent."

11.The Supreme Court dealing with a "pro bono publico" litigation in B.P.Singhal Vs.State of Tamil Nadu and others reported in 2004 (13) SCC 673, wherein the petitioner sought for a transfer of an investigation from Tamil Nadu State Police to the Central Bureau of Investigation, opined that:

"the petition is lacking in material particulars. All the averments made in the petition are based, by and large, on news reports and not on personal knowledge. The petition does not state that the petitioner has taken any care to verify himself the correctness of the averments made."

12.In yet another decision in Dr.B.Singh Vs. Union of India (UOI) and others reported in 2004 (3) SCC 363 dealing with a public interest litigation, challenging the propriety of the third respondent therein for being considered for appointment as a Judge, the Supreme Court while expressing its anguish found that:

"the petitioner has nowhere stated that he has personal knowledge of the allegations made against R3. He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some other paper cuttings of news items. It is too much to attribute

authenticity or creditability to any information or fact merely because, it found publication in a newspaper or journal or magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence."

13. In matters relating to public interest litigation, the Supreme Court has time and again cautioned that 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. Reference can be made to the recent decision of the Apex Court in Holicow Pictures Pvt., Ltd., Vs. Prem Chandra Mishra and others reported in 2008 (1) CTC 711 (Para 20)."

(ii) After considering the decisions of the Hon'ble Apex Court, at Paragraph 16, the Hon'ble Division Bench has observed as follows:

"It is now well settled that a news item published in the newspaper are only hearsay and no judicial notice can be taken unless supported by further authentic evidence. Though the parameters of public interest litigation have been indicated by the Supreme Court in large number of cases, yet unmindful of the real intentions and objectives, the petitioner, without verifying the authenticity or otherwise of the news

items, has chosen to resort to the extra ordinary jurisdiction. The Public Interest Litigation intended to ameliorate the grievance of the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated, should not be misused. Before maintaining a cause before the Court one should prove that there is concrete and credible basis, not withstanding the credentials claimed of the person moving the courts."

4. Heard Mr.P.Yogeshwaran, learned counsel for the petitioner and perused the materials available on record.

5. During the course of arguments, it is the contention of the learned counsel for the petitioner that the extent of Singanallur lake is 288 acres. Considering its vastness, there could be some isolated incidents of fishing, and it cannot be said that the respondents have not taken any action to prevent fishing on commercial basis, i.e., the lake is not leased out. However, we only observe that the respondents should take necessary action to see that fishing is not done, on commercial basis. The respondents are further directed to implement the proceedings dated 14.08.2018 of the District Collector, Coimbatore in letter and spirit. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mmi/ssm
To

1. The District Collector,
Collectorate Building,
State Bank Road, Gopalapuram,
Coimbatore - 641 018.
2. The Commissioner,
Coimbatore City Municipal Corporation,
Town Hall, Coimbatore - 641 001.

+1cc to Mr.A.Yogeshwaran, Advocate, S.R.No.42446

W.P.No.12666 of 2019

PPA(CO)
CS/14/6/2019