

(2017) 08 J&K CK 0001

Jammu & Kashmir High Court

Case No: 14 of 2016; 1 of 2016

SUMIT NAYYAR

APPELLANT

Vs

MATA VAISHNO DEVI SHRINE
BOARD AND ORS

RESPONDENT

Date of Decision: Aug. 14, 2017

Acts Referred:

- Constitution of India, Article 14, Article 226, Article 12, Article 25 - Appointment of Commission to inquire into and report on the administration of au

Citation: 2017 0 AIR(J&K) 178

Hon'ble Judges: Alok Aradhe, Sanjeev Kumar

Bench: SINGLE BENCH

Advocate: D C Raina, Anuj Dewan Raina, Anil Verma

Final Decision: Dismissed

Judgement

1. In this petition which has been filed by a practicing lawyer of this court, pro bono publico, the petitioner seeks quashment of order dated

11.03.2008 as well as 31.05.2008 by which, in 43rd Board Meeting of Shri Mata Vaishno Devi Shrine Board (for short "the Shrine Board"),

decision has been taken to charge a sum of Rs.16,000/- for Aarti for one adult and on certain auspicious occasions which have been mentioned

therein, a sum of Rs.21,000/- is sought to be charged for performing Shradha Suman Vishesh Pooja darshan, as well as a sum of Rs.1,000/- for

participating in the Attaka Arti performed at the temple of Shri Mata Vaishno Devi, respectively.

2. Petitioner, who appears in person before us submitted that the rules of locus have to be relaxed in public interest litigation and where

constitutional rights of public in general are infringed, the public interest litigation should be entertained. It is further submitted that the impugned orders dated 11.03.2008 and 31.05.2008 constitute infraction of Articles 14 and 25 of the Constitution of India and there appears to be no justification for passing the aforesaid orders. It is also submitted that Section 18 of the Shri Mata Vaishno Devi Shrine Act, 1988 (for short" the Act") does not empower the respondents to pass the impugned orders. It is also argued that Shrine Board has sufficient funds and there is absolutely no justification for passing the impugned orders. In support of his submissions, the petitioner has referred to the decisions of this Court in the case of SOS International and ors. v. State of J&K and ors, 2016 2 JKJ 729 and has also referred to the decisions of the Supreme Court in the cases of Guruvayur Devaswom Managing Committee v. C K Rajan, 2003 7 SCC 546, Chain Singh v. Mata Vaishno Devi Shrine Board, 2004 12 SCC 634, Zee Telefilms Ltd v. Union of India, 2005 4 SCC 649, and in the case of State of Uttaranchal v. Balwant Singh Chaufal and others, 2010 3 SCC 402, Balwant Singh v. Commissioner of Police and ors, 2015 4 SCC 801.

3. On the other hand, learned Sr. Counsel, Mr. D C Raina for the respondents has submitted that instant writ petition in fact is a publicity interest litigation and a well informed decision has been taken by the members of the Shrine Board who come from distinguished background and the aforesaid decision has been taken after due deliberation and the Shrine Board is empowered to pass such orders in exercise of powers under Section 18(1) as well as Section 18(9) of the Act. It is submitted that in the writ petition, no averment has been made in respect of the locus of the petitioner and the same does not fall within the purview of the Public Interest Litigation. It is also submitted that a well considered policy decision has been taken by the Board for the convenience of the pilgrims and this court in exercise of powers of judicial review would not transgress on the policy decision which is taken by the Shrine Board. It is also urged that the writ petition suffers from delay and laches. It is also pointed out that the Shrine Board is not amenable to Article 12 of the Constitution of India and therefore, the plea of infraction of fundamental rights under Articles 14

and 25 of the Constitution of India is misconceived. It is also urged that the affidavit as well as averments made in the writ petition do not conform

to the requirements of the rules framed by this court governing the filing of the public interest litigations. In support of the submissions, learned

senior counsel for the respondents has referred to the decisions of the Supreme Court in the cases of Ashok Kumar Pandey v. State of West

Bengal, 2004 3 SCC 349, Omkar Sharma and ors. v. Shri Mata Vaishno Devi Shrine Board, 2005 1 SriLJ 260, Dattaraj Nathuji Thaware v.

State of Maharashtra & Ors, 2005 1 SCC 590 and Bhuri Nath and Ors. v. State of J&K and Ors, 2010 5 JKJ 611[SC].

4. We have considered the submissions made by learned counsel for the parties and have perused the record. The following issues arise for

determination in this public interest litigation:

(i) Whether the Shrine Board is an instrumentality of the State amenable to Article 12 of the Constitution of India and consequently, whether a plea

with regard to violation of fundamental rights can be raised against it?

(ii) Whether the petitioner has locus to maintain the writ petition?

(iii) Whether there is any element of public interest involved in this writ petition which has been filed pro bono publico?

(iv) Whether the writ petition suffers from delay and laches?

(v) Whether the writ petition conforms to the requirements of the rules framed by this Court pertaining to filing of the public interest litigations?

We shall now proceed to deal with the aforesaid issues ad seriatum.

(i) Whether Shrine Board-Instrumentality of State: A Division Bench of this Court in the case of Omkar Sharma and ors, , held that even though

the Shrine Board has been constituted under a statute and has a statutory status, in the absence of any kind even an iota of control of the

Government- financial, functional or administrative, it cannot be said to be a State or an Authority within the meaning of Article 12 of the

Constitution of India and, therefore, the writ petition seeking enforcement of fundamental rights against the Shrine Board is not maintainable. It is

pertinent to mention that similar view has been taken by the Supreme Court in the case of Bhuri Nath and Ors. In view of the aforesaid enunciation

of law by the Supreme Court, it is evident that the writ petition filed against the Shrine Board seeking enforcement of fundamental rights is not maintainable. Therefore, no relief can be granted in this petition. Accordingly, the first issue is answered. (II) LOCUS:

Ordinarily, we would not have proceeded further, however, we find that there is an increasing tendency of the Advocates filing the public interest litigation.

Therefore, we thought it apposite to deal with the aforesaid issue. The Supreme Court in the case of S P Gupta v. Union of India, 1981 Supp1

SCC 87 has held that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any

constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such

legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or

disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an

application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such

person or determinate class of persons. In People s Union for Democratic Rights v. Union of India, 1982 3 SCC 235, it was held that public

interest litigation is brought before this Court to promote and vindicate public interest which demands that violations of constitutional or legal rights

of large numbers of people who are poor, ignorant or in socially and economically disadvantaged position should not go unnoticed and un-

redressed.

5. In Janata Dal V. H S Chowdhary, 1991 3 SCC 756, it was held that by the Supreme Court 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.

6. In *Krishnaswamy v. Union of India*, 1992 4 SCC 605, it was held that ordinarily, it is the person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf. In that situation also the claim is made in substance by the person affected even though the form be different and it is so stated expressly. In *Simranjeet Singh Mann v. Union of India and ors*, 1992 4 SCC 653, similar view was taken by the Supreme Court. In the case of *Balco Employees Union (regd.) v. Union of India*, 2002 2 SCC 333, the Supreme Court held that public interest litigation must satisfy the following parameters, namely, where the affected persons belong to the disadvantaged sections of the society (women, children, bonded labour, unorganized labour, etc), where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes), where the concerns underlying a petition are not individualistic but are shared widely by large number of people (bonded labour, undertrial prisoners, prison inmates), where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of judiciary, existence of grievance redressal forums), and where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water.

7. In the case of *Devaswom Managing Committee*, 2003 7 SCC 546, while summarizing the principles relating to entertaining the public interest litigation, the Supreme Court held that public interest litigation should be entertained at the instance of any interested person in the welfare of people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court. In *Ashok Kumar Panday v. State of West Bengal*, 2004 3 SCC 349, it has been held that there is to be real and genuine public interest involved in the litigation and not merely an adventure of knight errant and poke ones nose into for a probe. The public interest litigation jurisdiction cannot be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge or enmity. The course of justice should not be allowed to be polluted

by unscrupulous litigants by resorting to extraordinary jurisdiction. Only a person acting bona fide and having sufficient interest in the proceeding of

public interest litigation will alone have a locus standi. The court is also required to be satisfied about the credential of the applicant, the information

given by him should appear to be prima facie correct and should not be vague and indefinite. The Supreme Court sounded a word of caution in the

aforesaid decision and held that the time has come to weed out the petitions which though titled as public interest litigation are in essence nothing

else but publicity interest litigation. In Vishavnath Chaturvedi (3) v. Union of India, 2007 4 SCC 380, the Supreme Court held that while deciding

the issue of maintainability of the public interest litigation, sufficiently all petitioners interest must be examined.

In the case of State of Uttaranchal v. Balwant Singh Chauhan, 2010 3 SCC 402, the Supreme Court once again summarized the principles relating

to entertaining public interest litigation and it was held that the Court should prima facie be satisfied that substantially public interest litigation is

involved before entertaining the petition and the same involves larger public interest as well as the credential of the petitioner. The Supreme Court

in the case of Kishore Samrite v. State of Uttar Pradesh and others, 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. In

Ayazubkhan Noorkhan Pathan v. State of Maharashtra and others, 2013 4 SCC 465, the Supreme Court held that in a public interest litigation,

the Court must ensure that there is an element of genuine public interest is involved.

8. The Supreme Court in the case of Rohit Pandey v. Union of India, 2005 13 SCC 702, while dealing with the public interest litigation filed by an

advocate, held that when a member of legal profession files public interest litigation, it is expected that it is filed with seriousness and after doing

necessary home work and enquiry and, if such a writ petition is found to be misconceived, it should be dismissed with exemplary costs.

9. In the backdrop of the aforesaid well settled legal position, the facts of the case may be seen. In the instant case, from the perusal of the writ

petition, we find that the same is conspicuously silent with regard to locus of the petitioner. The petitioner in his writ petition has neither stated that he ever visited the Shrine of Shri Mata Vaishno Devi nor has averred that he found that the public in genuine who had visited the Shrine of Shri Mata Vaishno Devi suffered any inconvenience while paying obeisance. It is also pertinent to mention here that the petitioner nowhere discloses that any member of the public who belongs to the disadvantaged section of the society has ever approached the petitioner with regard to grievances raised in the writ petition. Thus, the petition lacks essential particulars and has not been filed on behalf of any disadvantaged section of the society who on account of his poverty or illiteracy is unable to approach this Court. Therefore, we have no hesitation in holding that the petitioner has no locus to file this petition, pro bono publico.

III. Element of Public Interest Involved:

From close scrutiny of the writ petition, we find that the writ petition does not disclose any element of public interest or does it even raises an issue where the public in general is involved. It is pertinent to note that the darshan is open to every visitor who visits the temple of Shri Mata Vaishno Devi. Only provision for payment has been made at the time of Arti in Sanctum Sanctorum only to the extent of 30 per cent in respect of Attaka Arti. The Shrine Board in its 43rd Board Meeting noticed that there were many people who wanted to attend the Arti and noticed that in several instances, they even tried to influence the staff of the Shrine Board in an undue manner to ensure their entry in the Sanctum Sanctorum at the time of entry. Therefore, it was decided that the hurdle price marginally in routine for A, B, C and D categories be prescribed. The aforesaid decision, in our considered opinion, is a well informed decision and in larger public interest in the benefit of the pilgrims, taken by the Shrine Board with which we do not find any ground to interfere. Therefore, there is no element of public interest involved in the writ petition.

IV. DELAY AND LACHES:

It is pertinent to mention that the impugned order were passed in the year 2008 and the writ petition has been filed after eight years and therefore,

the same clearly suffers from delay and laches. It is no longer *res integra* that the principle of delay and laches applies to the public interest litigation

as well. (See. *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environment Action Group*, 2006 3 SCC 434].

Thus, the writ petition suffers from delay and laches for which no explanation has been offered by the petitioner.

IV. Whether writ petition conforms to the rules framed by this Court:

The rules framed by this Court require that the petitioner shall file an affidavit and in the said affidavit, he shall clearly set out all the necessary facts

to establish that the petition is filed in public interest and commonly understood and shall be accompanied by all necessary and material documents

to support the factual assertions made therein so as to establish *prima facie* the correctness of the contents thereof. The pro forma of the affidavit

has also been prescribed. From the affidavit, we find that the affidavit sworn in by the petitioner, *prima facie* appears to be as per the pro forma

prescribed and prior to filing of the writ petition, the petitioner has also sent a representation to the respondents.

Therefore, the writ petition appears to have been filed in conformity with the requirement of rules.

10. In view of the preceding analysis, we do not find any merit in this public interest litigation. Ordinarily, we would have dismissed this public

interest litigation with costs. However in the peculiar facts of the case, looking to the standing of the advocate and taking into account the fact that

he is a young advocate, we refrain ourselves from doing so. In the result, the writ petition fails and is hereby dismissed.