

CASE NO.:
Appeal (civil) 5954 of 2007

PETITIONER:
Seema Dhamdhare, Secretary, M.P.S.C.

RESPONDENT:
State of Maharashtra and Ors.

DATE OF JUDGMENT: 14/12/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 12279 of 2006)
[with Crl. Appeal No.1726 of 2007
(Arising out of S.L.P. (Crl.) No.5498 of 2006)]

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. These two appeals are inter-connected in the sense that they have their matrix in connected matters. In the appeal relating to SLP No.12279/2006 challenge is to the order in writ petition 482 of 2003 while in the appeal relating to SLP (Crl.) No.5498/2006 challenge is to the order in Crl. Writ petition No.1048 of 2006. As noted above, the writ petitions are linked in the sense that a writ petition was filed by two practicing advocates alleging on the basis of some newspaper report that there was large scale malpractice in the examination conducted by the Maharashtra Public Service Commission (in short the \021Commission\022). ACB C.R. No.33/2002 was registered and one S.B. Pujari was initially investigating into the allegations. The writ petitioners alleged that said investigating officer had collected material and process of arresting one Smt. Sayalee Joshi and others and to pre-empt such acts he was transferred on 31.1.2003. From time to time 22 accused persons were arrested. An affidavit was filed by the then Director General on 12.5.2006 indicating that investigation in the said crime no.33/2002 had come to an end. Shri Pujari had filed affidavit that the investigation was not yet complete. He had been transferred by a general transfer order dated 6.9.2006. Shri Anil P. Dhere filed an affidavit indicating that the investigation is complete. Shri S.B. Pujari requested that more time was required to be granted to him to respond the affidavit of Shri Anil P. Dhere. But the High Court did not consider that to be necessary. The High Court was of the view that if the Special Court before which the matter was pending issued necessary directions, even after conclusion of the investigation if any, further materials can be collected against any accused persons can be brought on record. The stand of the Commission was that subsequently there was another case registered i.e. ACB 7/2006. Prayer was to quash the said proceedings and to continue investigation in ACB 33/2002. The High Court felt that the same shall be considered on merits uninfluenced by orders passed in Writ Petition no.482/03. The High Court observed that there was different perception of investigation between Shri Anil P. Dhere and Shri S.B. Pujari. The High

Court accordingly disposed of the writ petition. The High Court felt since Shri S.B. Pujari had put in three years in investigating the State Government would be objective and would not take any adverse view of the stand taken by Shri Pujari. It was clarified that affidavit of Shri S.B. Pujari was not to be used in any other proceedings.

3. In the connected matter the prayer was to quash the first information report no.7 of 2006 on the ground that crime no.33/2002 was pending and there was overlapping. The High Court felt that the two were conceptually different. It was directed that the investigation shall be conducted fairly under the supervision of Shri G.D. Virk, the Director General of Police, Bombay and the Commission should cooperate in the investigation. The Director General was directed to submit progress report periodically.

4. Essentially the stand of the learned counsel for the Commission was that the criminal proceeding has resulted in loss of face for the statutory body. Ultimately it appears that in the name of Public Interest Litigation the transfer of police official has been questioned which is impermissible. Because of the difference of perception regarding the nature of functions if any unnecessarily officials of Commission are being entangled. It is the ultimate objective of the Commission to conduct examinations. The examinations are not being held for a long period.

5. In response, Mr. Goolam E. Vahanvati, learned Solicitor General for the State submitted that the writ petitions are not maintainable because in a Public Interest Litigation the transfer of an official could not have been questioned. It is also highlighted that petitions questioning transfer of respondent no.7 Ms. Seema P. Dhamdhere, Secretary, MPSC, on the same plea was mala fide. The said Ms. Seema P. Dhamdhere, has in the capacity as the Secretary of MPSC filed the SLP no.12279/2006 in which leave has been granted. Shri Pujari who had appeared in person submitted that because he has unearthed certain damaging evidence and materials which would have exposed placed officials he was being transferred.

6. The parameters of Public Interest Litigation in matters of service have been highlighted by this Court in many cases. In *Gurpal Singh v. State of Punjab and Ors.* (2005 (5) SCC 136) it was noted as follows:

\023The 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.

As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.\024

7. In both the cases the affected persons have filed writ petition. It is true that if the allegations are found to be substantiated it would affect the image of Commission. But that cannot be a ground to stall investigation which has to be done in a transparent manner. The credibility of any institution depends upon the transparent action of its functionaries. It is pointed out by the learned counsel for the Commission that it would be in the interest of all concerned if the examinations which are said to have been not held for nearly five years are held early. The process of selection of the

Chairman and the members would be initiated forthwith if not already done. It has been stated that the new Secretary of the Commission has taken over.

8. It is pointed out by the learned Solicitor General that the writ petition 7/2003 has already been disposed of.

9. We do not find any scope for interference with the orders passed by the High Court. The appeals are accordingly disposed of.

JUDIS