

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 10 OF 2000

(1) Public Grievance Forum,
a Public Trust, registered
under the Indian Trusts Act,
having office at Vijaya
Building, Pajifond,
Margao-Goa, represented by
its Secretary, Shri Vasantkumar
R. Naik, resident of Pajifond,
Margao-Goa.

(2) Shri Vasantkumar R. Naik,
resident of Pajifond,
Margao-Goa.

... Petitioners

versus

(1) State of Goa, through its
Chief Secretary, having
office at Secretariat,
Panaji-Goa.

(2) Goa Public Service
Commission, represented by
its Member Secretary,
having office at EDC House,
Dr. Atmaram Borkar Road,
Panaji-Goa.

... Respondents

Mr. M. S. Sonak, Advocate for the Petitioners.

Mr. A. N. S. Nadkarni, Advocate General with Mr. P. A.
Kamat, Government Advocate and Mr. N. Takekar, Additional
Government Advocate for the State.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE : 29TH JUNE, 2004.

ORAL JUDGMENT (PER S. A. BOBDE, J.)

By this Petition under Articles 226 and 227

of the Constitution of India, the Petitioner/Public Trust challenges Notifications dated 5th May, 1999 and 15th July, 1999, issued by the Government of Goa in exercise of the powers conferred by the proviso to Clause 3 of Article 320 of the Constitution of India so as to amend the Goa Public Service Commission (Exemption from Consultation) Regulations, 1988. By these Notifications the Government of Goa has removed the requirement of consultation with the Goa Public Service Commission in regard to specified matters of specific classes of employees.

2. In brief, the Petitioners case is that Article 320 of the Constitution of India makes the consultation with the State Public Service Commission mandatory in the matters specified therein. The matters in regard to when consultation is contemplated are matters relating to the recruitment of Civil Service and the principle to be followed in making appointment to Civil Services and disciplinary matters affecting a person serving under the Government of India or the Government of State and other matters in which it is obligatory to consult the Public Service Commission. According to the Petitioners the Respondent-Government of Goa has acted arbitrarily in exercise of its powers under the proviso to Clause 3 of Article 320 in specifying the matters in which,

generally or in any particular class of case or circumstances, it may not be necessary for the Public Service Commission to be consulted. The Petitioners have challenged, in particular the Notifications aforesaid. Before the issue of these Notifications, the Government of Goa had in exercise of its powers under Sub Proviso of Clause 3 excluded the requirements of consulting the Commission in regard to any of the matters mentioned in Sub-Clause (a) and (b) of Clause 3 of Article 320 of the Constitution in relation to the posts specified in the schedule to the Regulations. The post specified inter alia included all classes Group 'C' and Group 'D' services and posts. By the impugned Notifications, the Government brought Group 'C' within the purview of the Commission by providing that consultation shall not be necessary only to relation to the posts Group 'D'. By a subsequent Notification, also impugned dated 15th July, 1999, again, both Group 'C' and Group 'D' posts were excluded from the purview of the Commission. As a result, it is not necessary for the Government to consult the Commission in regard to matters specified in Sub-Clause (a) and (b) of Clause 3 of Article 320 of the Constitution in relation to both Group 'C' and Group 'D' posts.

3. We have indicated the broad challenge in

order to consider the objection as to the tenability of the Petition at the instance of the Petitioners. The Respondent has challenged the tenability of the Petition by the Petitioners as a Public Interest Litigation.

4. The Petitioner No.1 is a Public Trust registered under the Indian Trusts Act. It is said to have been established to ventilate the grievances of the public, particularly in matters of public administration, good governance and transparency in administration. This according to the Petitioner No.1 constitutes sufficient interest which entitles to maintain the present Petition. According to Petitioner No.1, the impugned Notification effectively excludes about 80.40% of the public posts from the purview of the Goa Public Service Commission, thereby rendering the constitution and existence of the Goa Public Service Commission otiose. The question that needs to be decided is whether the present Petition involves service matters which according to the recent Judgments of the Supreme Court ought not to be allowed to be agitated in public interest.

5. Before we come to the decisions of the Supreme Court, we find from the Petition that the Petition levels a challenge to a Notification which

excludes the requirement of consultation with the Commission in regard to all posts in Group 'C' and Group 'D'. The challenge is based on alleged violation of Articles 14 and 16. The subject matter of this Petition is thus, on the pleadings made therein, classifiable as a service matter. It is important to note that the subject matter is also the extent to which consultation with the Commission can be excluded in exercise of the proviso to Sub-Clause 3 of Article 320 of the Constitution, which Article occurs in para 14 of the Constitution of India which bears the title Services under the Union and the Constitution.

6. Mr. A. N. S. Nadkarni, learned Advocate General relied mainly on the observations of the Supreme Court in **Ashok Kumar Pandey v. State of West Bengal and others** reported in AIR 2004 SC 280 in which Their Lordships after considering the earlier Judgments as to the tenability of public interest litigation including the Judgments in **Janata Dal v. H. S. Chaudhary** reported in AIR 1993 SC 892, **S. P. Gupta v. Union of India** reported in AIR 1982 SC 149 and the **Fertilizer Corporation Kamgar Union, Sundri v. Union of India** reported in AIR 1981 SC 344 considered the issue regarding the public interest aspect of litigation. Their Lordships reiterated the earlier position that "only 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 the tears of the poor and the needy suffering from the violation of the fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration". After taking note of the above and after observing that public interest litigation is causing waste of innumerable days of Court, which time otherwise could be spent for the disposal of cases of the litigants who have to wait for long years for having their cases decided even in matters involving high pecuniary stakes and cases in which persons sentenced to death are facing gallows observed as follows:-

"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 v. Jitendra Kumar Mishra and others (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 petitioners 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".

7. The same observations by the Supreme Court

echoed in a Judgment rendered soon thereafter in **Dr. B. Singh v. Union of India and others** reported in 2004 AIR SCW 1494.

8. Mr. M. S. Sonak, learned Counsel for the Petitioners however, strongly urged that the present Petitioner has sufficient interest in maintaining the present Petition although none of the Petitioners' rights are directly and substantially affected. According to the learned Counsel, the Petitioner Trust is settled for ensuring inter alia good governance. It is its right to challenge an arbitrary provision whereby a large number of posts are removed from the purview of the Public Service Commission.

9. In Strouds Judicial Dictionary, Volume 4, the term "Public Interest Litigation" cited with approval by the Supreme Court in **Dr. B. Singh v. Union of India and others**(supra) is defined thus:-

"Public Interest Litigation
(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".

10. We are of the view that the Petitioners do not have any interest by which their legal rights or liabilities can be said to be affected. None have been demonstrated. Indeed, none of the Petitioners is in Government employment or even aspires to be in such employment.

11. The next submission of the learned Counsel for the Petitioners is that the observations in the case of **Ashok Kumar Pandey v. State of West Bengal** (supra) are not applicable to the present case since they are based on the observations of the Supreme Court in **Dr. Duryodhan Sahu v. Jitendra Kumar Mishra** reported in AIR 1999 SC 114. Since, the present case is very different from the case of **Dr. Duryodhan Sahu v. Jitendra Kumar Mishra** (supra) the ratio in **Ashok Kumar Pandey's** case is not applicable at all.

12. The learned Counsel for the Petitioners submitted that **Dr. Duryodhan Sahu's** case is clearly distinguishable from the present case. In that case, the prayers were for (i) quashing the order of the Government dated 25-8-93 creating one more post of Junior Teacher, (ii) debarring the petitioner from being appointed as Junior Teacher and (iii) preventing the Government from appointing any candidate as Lecturer without requisite qualification and training

in the super speciality. The averments in all the three applications were almost identical. The learned Counsel contends that the prayers in Dr. Duryodhan Sahu's case were for reliefs in regard to a specific matter pertaining to an individual and not generally as sought in the present case. According to the learned Counsel, therefore, the observations of the Supreme Court in Ashok Kumar Pandey's case must be considered only with reference to individual service matters such as in Dr. Duryodhan Sahu's case.

In other words, the Supreme Court must be taken to have discouraged Public Interest Litigation only where a specific matter pertaining to service of the individual is concerned and not where general directions are sought. We are unable to accept this contention, having regard to the fact, the Supreme Court has observed as follows:-

"The least the High Courts could do is to throw them out on the basis of the said decision". (Duryodhan Sahu's)

13. Moreover, though Dr. Duryodhan Sahu's case related to the power of the Administrative Tribunal to entertain a Public Interest Litigation, it is clear that the Supreme Court has rendered the decision in Dr. Duryodhan Sahu's case in the context of the

entertainments of Public Interest Litigation by the High Courts. Obviously, the Supreme Court intended to apply this observation to exercise of the jurisdiction by this Court in such matters.

14. The learned Advocate General has brought to our notice a decision of the Supreme Court which clearly goes against in entertaining this Petition. In that case, the Supreme Court after considering the entire gamut of cases relating to locus standi in Public Interest Litigations inter alia referred to the observations in **Balco Employees' Union (Regd.) v. Union of India** (2002) 2 SCC 333 where the Court observed as follows:-

"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. There have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner

and entertained by the court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same".

15. We are clearly of the view that the present Petition is not intended to protect the basic right of the disadvantage and is not liable, weak and disadvantaged who on account of the poverty, helplessness or disabilities could not approach the Court for relief. The Petition is on behalf of a largely and literate class who are quite capable of approaching this Court in case they are aggrieved.

16. The Supreme Court has reiterated the principles laid down in Balco Employees' Union case as a principle laid down in **Guruvayoor Devaswom Managing Committee and another v. C. K. Rajan and others** reported in (2003) 7 SCC 546 as follows:-

"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 depraved(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".

17. Moreover, the Supreme Court as in **Guruvayoor**

Devaswom Managing Committee and another v. C. K. Rajan and others (supra) laid down as one of the principles governing Public Interest Litigations which reads thus:-

"Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule".

18. It is clear that the present Petition questions the constitutionality or the validity of a regulation made under a power conferred on the Government by the Constitution. Nothing extraordinary is shown in the present case to warrant departure from the rule laid down by the Supreme Court. On this ground also we are not inclined to entertain the present Petition.

19. Having regard to the above position, without expressing any opinion as to the constitutionality or validity or otherwise of the impugned Notifications, we are of the view that this Petition ought not to be entertained at the instance of the Petitioners in public interest, the Petitioners having been found not to have sufficient interest to activate the jurisdiction of this Court. The Petition is,

therefore, dismissed on this ground alone. There shall be no order as to costs.

S. A. BOBDE, J.

N. A. BRITTO, J.

RD.