NOTES AND COMMENTS

ILLEGALITY OF SUPREME COURT PENALIZING PIL PETITIONERS

SUPREME COURT judgment allowing the appeal *Shivamoorthy* v *University of Madras & Others*[1] by judgment dated August 18, 1996 but penalizing the petitioner who initiated the case as a class action in the Madras High Court and who was respondent in the appeal before the Supreme Court is a regrettable decision since it is like shooting the post-man for bringing junk mail It is an erroneous decision also for the reason that it failed to recognize that public interest litigation also takes in class action taken up by individuals belonging to a group or class

The court imposed a fine of Rs 5,000/- on T A Chidambaram, the petitioner on a view that his filing the case against Shivamoorthy in the high court by way of public interest litigation is an abuse of court's process The case reported after 5 years of delivery of judgment[2] is of immense importance since it will dampen *pro bono publico* enthusiasts and social activists in the field of public interest litigation

The facts are that T A Chidambaram, a student who desired to do M A in Criminology in the University of Madras filed a writ petition in the high court that Shivamoorthy who was selected as a Reader in Criminology in the University of Madras by the Selection Board did not possess the qualifications prescribed For purpose of this paper it is enough to note that the high court upheld the case of the student petitioner and quashed Shivamoorthy's selection made by the university

Thereupon, Shivamoorthy and University of Madras filed appeals respectively in the Supreme Court against the high court judgment A bench of 3 judges A M Ahmadi CJ , Sujata Manohar and K Venkataswami JJ heard the appeals The Supreme Court[3] allowed the appeals setting aside the high court judgment holding that appellant Shivamoorthy meets the qualification required and that the high court, in holding to the contrary, is in error but the Supreme Court did not make a finding that the high court was in error in entertaining the case as a PIL Yet, Supreme Court imposed a fine of Rs 5,000/- on petitioner Chidambaram observing that the case filed is an abuse of process of court [4]

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1 2000 (10) SCC at 483

2 *Ibid*

3 By judgment dated 18 April 1996

4 *Supra* note 1 (para 6)

> For the above reasons we allow these appeals, set-aside the order of the High Court and restore the decision that was taken by the University Selection Committee and his appointment as Reader in Criminology. In the facts and circumstances of the case we think that this is in the nature of an abuse in the name of public interest litigation. It is obvious that his main interest was to question the appointment of the appellant perhaps at the behest of someone. We, therefore, direct that the original petitioner, i.e., respondent T.A. Chidambaram shall pay the cost of the appeal which we quantify at Rs.5000.

It follows that the apex court is of the view that Chidambaram, a student has no *locus* to have filed his writ petition in the high court, as he is not party affected by the selection of Shivamoorthy and he shall be punished for filing a case to unseat Shivamoorthy.

It shall be held as an illegal and anti-people decision because the high court had found Chidambaram's writ petition not only maintainable in public interest but also upheld his grievances and hence the issue of Chidambaram's writ petition being in abuse of court's process does not arise in the appellate stage in Supreme Court.

If Supreme Court's order on fine is valid, the fine ought to have been imposed on the high court judges for entertaining Chidambaram's writ petition in as much as the petitioner is made to pay the fine only because the judges of the high court entertained it as a valid case.

There can be yet another objection to penalizing the petitioner, *viz.*, that the petitioner is acting on legal advice received and not on his own, therefore, if the court finds that writ petition is not maintainable or petitioner has no *locus*, it is the counsel who argued the case in the court who is liable for penalty. This will certainly open out more litigation in the consumer forum against lawyers giving advice which court finds wrong; extension of the same logic would also take in erroneous judgments given by lower courts to justify claiming compensation against the judges concerned to have forced litigants to appellate proceedings. Certain judicial orders, which are not in accordance with principle of justice, create flip-side consequences.

If the Supreme Court had concurred with the high court's finding, it is obvious that Chidambaram would have been made a student hero but he was saddled with a fine because he lost his case in the appellate court. The legal situation created by the order is win-case-no fine and lose-case-fine; the illegality of this situation is too obvious to require explanatory statements. It is common knowledge that a petitioner's contribution to public law does not depend on his success or failure in the case both being relevant for the public and authorities since every judgment clarifies a legal position in a contested matter for future guidance.

There is, however, one aspect of public interest litigation that needs to be noted, *viz.*, that law allows any one in any identified segment of public to approach the court for relief in a representative capacity as a matter of class action.

In the instant case the student who moved the high court certainly has an interest to see that teachers who have the qualifications prescribed by the university teach him and as such has an interest in the selection and appointment of his teachers. Therefore, it is Chidambaram's right to have brought the non-compliances of rules by the University Selection Committee to the court's notice for relief – it is a class-action and it is illegal for any court whether high court or Supreme Court to have penalized the petitioner for exercising a right.

Sequitur is that in public law the issue before the court is not *locus* of the petitioner but whether or not court has jurisdiction in the matter, if the court has jurisdiction it does not matter who moves the court. This is the law because in situations where courts fail to take *suo moto* action, and if people also are not allowed to move the court in cases of high-handed illegalities, high court would be rendered a mute and important spectator that has disabled itself from exercising jurisdiction to control administrative actions.

What is relevant for the people, however, is that in matters in which judges who have bias or motivation can dismiss valid proceedings under the guise of no *locus* in the petitioner and force litigants to appellate proceedings which is a harassment, litigation being time-consuming and expensive.

This would result in derailment of our justice delivery system defeating the constitutional scheme, which has vested the courts with the power of writ jurisdiction. Courts in exercise of writ jurisdiction ensure integrity and transparency in administrative decisions in order to disable cunning officials and political leaders from abuse and misuse of official machinery to their personal advantage to the detriment of the people, therefore, judicial control of administrative actions in writ jurisdiction is made a basic scheme of the Constitution of India *sequitur* being who is the informant of the court is of no relevance whatever, in public law. It is for this reason courts are allowed to be moved for relief by any one even by a post card; such being the law penalty orders are *in terrorem* proceedings defeating people's right of free and unconditional access to courts.

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