



22

PUBLIC INTEREST LITIGATION

*Jyoti Dogra Sood**

I INTRODUCTION

ENTERTAINMENT OF PIL by the judiciary is one of the bone of contention between the judiciary and the executive in India. Indeed, it is unconventional for a court to entertain litigation initiated by persons having no immediate cause of action. Traditionally speaking, persons who have *locus standi* alone are allowed to invoke the jurisdiction of the courts to enforce their claims. This rule has been evolved by the courts for insulating themselves from being approached with claims of others. It saved a lot of time and energy of the court. But the inequalities prevalent in the society to the extent of even denying right to access to courts and the inaction of the authorities authorized to activate or implement certain provisions enacted/evolved by the legislation have made some public-spirited judges to act on the petitions submitted to them to protect public interest. In entertaining such petitions in fact there is judicial activism. The court has to be proactive in enforcing these provisions. This impinges on the powers of the executive. Such decisions used to be approbated on the ground that they should be welcomed inasmuch as they have made laws which remained dormant because of the inactivity of the executive. Sometimes the executive becomes an ally of the court because the act of the judiciary is independent, neutral and without any political motive. The executive being influenced by political considerations might not be interested or even afraid of implementing certain laws can heave a sigh of relief when the court activates the legislation. Still, usually the executive expresses its displeasure and disagreement inasmuch as all the precautions which it takes before implementation of a legislation are not taken by the judiciary as it entertains PILs mainly under the writ jurisdiction.

The nature of public governance we have evolved gives ample opportunity for the judiciary to intervene and consequently the executive have many occasions to complain about encroachments that are being made by the judiciary. In fact our system of administration makes it imperative for the judiciary to intervene and in a sense it is desirable in a vibrant democracy inasmuch as it gives an opportunity for continuous debate and discussions – the very essence of democratic process.

* LLM; Ph.D., Assistant Research Professor, Indian Law Institute, New Delhi.



II AREAS OF PUBLIC INTEREST SPELTOUT

During the year under survey also there have been some important public interest litigation and the response of the judiciary was mixed. In certain cases the court gave relief whereas in others it went against the misuse of this instrument and awarded costs. In *Kushum Lata v. Union of India*¹ wherein the petitioner complained of discrimination in the matter of bidding for mining rights, the Supreme Court did a survey of the case law and essayed extensively on the misuse of PIL. It was observed by the court:²

Public interest litigation which has now come to occupy an important field in the administration of law should not become “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paaise income litigation”. The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bonafide 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 violation of fundamental rights and genuine infraction of statutory provisions but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this court in *Janata Dal v. H.S. Choudhary*, (1992) 4 SCC 305 and *Kazi Lhendup Dorji v. CBI*, 1994 SCC (Cr.) 873. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. UOI*, 1993 supp (2) SCC 20 and *K.R. Srinivas v. R.M. Premchand*, (1994) 6 SCC 620.

About its misuse the court continued:³

Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and or publicity seeking is not lurking. It is to

1 (2006) 6 SCC 180.

2 *Id.* at 182.

3 *Id.* at 184-85.



be used as an effective weapon in the armoury of law for delivering social justice to the citizens.

III TOWN PLANNING: PUBLIC INTEREST LITIGATION JUSTIFIED

The aspects that go into the allowing of public interest litigation were listed by the Supreme Court in *Bombay Dyeing & Manufacturing Co. v. Bombay Environment Action Group*⁴ wherein the respondent filed a petition before the High Court of Bombay questioning the validity of Development Control Regulation 58 (DCR 58) (as amended in 2001). It was framed in terms of Maharashtra Regional and Town Planning Act, 1966. The writ petition questioning the validity of DCR 58 was filed to protect the residents of Mumbai. The thrust of the writ petition was to ensure “open spaces” for the city and to provide for the crying need of space for public housing. While holding that this PIL was maintainable the court spelt out the parameters of public interests involved in such cases thus:⁵

While entertaining a PIL of this nature several aspects of public interest being involved, the court should find out as to how greater public interest should be subserved and for the said purpose a balance should be struck and harmony should be maintained between several interests such as (a) consideration of ecology; (b) interest of workers; (c) interest of public sector institutions, other financial institutions, priority claimed due to workers; (d) advancement of public interest in general and not only a particular aspect of public interest; (e) interest and rights of owners; (f) the interest of a sick and closed industry; and (g) schemes framed by BIFR for revival of the company.

IV ABUSING PROCESS OF PIL

The Supreme Court was very vehement in its deprecation of the practice of utilizing the venue of court to settle political scores. Holding that the allegation of misuse of powers by respondents 4 and 5 (former Chief Ministers of Bihar) the court though did not impose any cost in *Rajiv Ranjan Singh Lalan v. Union of India*.⁶ The court categorically declared thus:⁷

In our opinion, PIL is meant for the benefit of the lost and lonely and it is meant for the benefit of those whose social backwardness is the reason for no access to the court. We also say that PILs are not meant to advance the political gain and also settle their scores under the

4 (2006) 3 SCC 434.

5 *Id.* at 480.

6 2006 (8) SCALE 161.

7 *Id.* at 185.



guise of a PIL litigation and to fight a legal battle. In our opinion, the liberty of an accused cannot be taken away except in accordance with the established procedure of law under the Constitution, Cr. PC. and other cognate statutes. We are also of the opinion that PIL is totally foreign to pending criminal proceedings.

V SOCIAL SECURITY

In *Confederation of Ex-servicemen Association v. Union of India*,⁸ the Supreme Court recognized the right of full and free medical care of ex-servicemen, their families and dependants treating such rights as fundamental rights. The court also upheld the central government contributing scheme of 2002, which provides for medical services by charging 'one time contribution' on the basis of pension received by an employee.

VI NEED FOR RESTRAINTS AND CONSTRAINTS

The facts in *Mohan Tripathy v. State of Maharashtra*,⁹ stand proof to the fact that the judiciary is very cautious in dealing with PIL. In this case the High Court of Bombay not only went to the extent of insisting on the petitioner to remit Rs.1 lakh for entertaining the PIL seeking an enquiry into the affairs in the episode of mustering support for the trust motion concluded in the Maharashtra Assembly in favour of the then CM, but also insisting for the disclosure of the source of Rs.1 lakh from the petitioner. Ultimately, the petitioner had to seek the intervention of the Supreme Court to retrieve the money. The high court went on seeking information on the source of the petitioner inviting the comment from the Supreme Court that it entered into an unwarranted discussion with regard to the deposit of money.

VII PIL SHOULD NOT BE USED IN DEROGATION OF AN EXISTING LAW

The decision of the Supreme Court in *Orix Auto Finance (India) Ltd. v. Jagminder Singh*¹⁰ again points out how the misuse of PIL came to be looked down upon by the Supreme Court. Against the practice of some litigants and high court utilizing this jurisdiction in derogation of the law or to avoid the consequence of hire-purchase law the court declared:¹¹

Essentially these are matters of contract and unless the party succeeds in showing that the contract is unconscionable or opposed to public policy the scope of interference in writ petitions in such contractual matters is practically non-existent...

8 AIR 2006 SC 2945.

9 AIR 2006 SC 2301.

10 (2006) 2 SCC 598.

11 *Id.* at 603.



It would not be, therefore, proper for the high courts to lay down any guideline which would in essence amount to variation of the agreed terms of the agreement.

VIII OVERRELIANCE ON PIL – IMPACT ON SOCIETY

Concerned with the use of PIL for making government officials to function properly the court in *M.C. Mehta v. Union of India*¹² expressed its anguish:¹³

In the nature of the matters, we find that the efficacy and ethics of the government authorities are progressively coming under challenge before the court by way of PIL for failure to perform their statutory duties. If this continues, a day might come when the rule of law will stand reduced to “a rope of sand”.

It was a case wherein the issue arose whether it was proper for the CBI not to file the investigation report on the infamous *Taj Corridor* case with the special judge. The court rightly ordered the filing of the report.

IX PIL AND DEVELOPMENTAL PROJECTS

The question in *T.N. Godavarman Thirumulpad v. Union of India*,¹⁴ for consideration was whether the land measuring about 15 hectares leased by the State of Chattisgarh to M/s Maruti Clean Coal and Power Limited (for short “Maruti”) for setting up coal washeries was part of forest land or not. This question was raised by Deepak Agarwal, claiming to be a public spirited person and a journalist by profession and concerned about the adverse effects on the environment of the area as a result of the grant of lease of forest land for non forest activities in violation of the law. The applicant claimed that undue favour and patronage was extended to “Maruti” for establishment of a coal washing plant in respect of land by wrongly showing in the various revenue records that the land was part of the Village Nawagaon Khurd when actually the land formed a part of the Village Ratija.

The court was not sure about the *bona fide* of the petitioner. In such a case the court could examine the issue having regard to the seriousness of the matter by appointing *amicus curiae*. In this case, the Central Empowered Committee (CEC) was appointed to assist the court in determining the issues relating to the preservation and conservation of forests.

The CEC in its report came to the conclusion that the land allotted to “Maruti” was not forest land. It was also made out that Deepak Agarwal came to the court to serve the business interest of M/s. Aryan Coal Private Limited, which company would be adversely affected after the establishment of coal

12 (2007) 1 SCC (Cri) 264.

13 *Id.* at 276.

14 AIR 2006 SC 1774.



washeries by “Maruti” due to increased competition and consequent decrease in prices. Going by the report of the CEC the court dismissed the application filed by Deepak Agarwal with costs. An amount of Rs.1,00,000/- was to be paid to CEC by the applicant for abusing the process of law and wasting enormous judicial time of the court. Speaking about the nature and scope of the PIL the court reiterated that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private practice, vested interest and or publicity seeking is not lurking. The court further cautioned that the attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

X ABUSE OF PIL BY STATE GOVERNMENT DEPRECATED

The facts presented in *State of Karnataka v. All India Manufacturers Organization*¹⁵ reveal how even the state governments try to misuse PIL. In this case allegations were made that land in excess of the requirement for developmental purposes was allotted to the firm, which undertook the Mysore Infrastructure Corridor Project. The allegations were refuted. In the writ petition filed as PIL before the single bench of the Karnataka High Court, the state government also joined the company in refuting the allegations. But in the writ appeal the state government supported the allegations inviting attention compelling the high court to make the following comments:¹⁶

The court cannot allow its process to be abused by politicians and others to delay the implementation of a public project which is in larger public interest nor can the court allow anyone to gain a political objective. These legislators who have not been successful in achieving their objective on the floor of the assembly have now chosen this forum to achieve their political objective, which cannot be allowed.

The high court found that the writ petition had been sponsored by the state government to put forward its changed stand in the garb of public interest litigation. The Supreme Court approved this finding and awarded heavy costs.

XI PIL AND MISUSE OF SPORTS FACILITY

The Madras High Court had an occasion to deal with a PIL in *K. Senthil*

15 (2006) 4 SCC 683.

16 *Id.* at 707.



*Kumar v. State of T.N.*¹⁷ The petitioner challenged the proposal of the state to give T.N. Stadium in Chennai for the conduct of farmers' conference. The petitioner contended that the stadium was meant for the conduct of sports and he being a person interested in sports wanted the court to prevent the misuse of the stadium for holding a meet for purposes other than sports promotion. The court, however, was not in favour of prohibiting the meet. Still it instructed the organizers that the synthetic athletic surface should not be affected adversely by the conduct of the farmers' meet.

XII CONCLUSION

The cases surveyed above irresistibly lead one to the conclusion that runs counter to the popular impression that our courts have been encouraging public interest litigation and thereby interfering with the affairs of administration. It is strongly felt that our courts have been really successful in exercising restraints on their powers of judicial review by way of public interest litigation. Their frequent exposition of the purpose for which PIL has been permitted by them signify this desirable self-restraint. This is indeed in consonance with the need for comity between the different organs of our public governance system.

17 AIR 2006 Mad 71.