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PUBLIC INTEREST LITIGATION

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I INTRODUCTION

THIS SURVEY has culled out several cases and summarised the principles of public interest litigation (PIL) from the initial PIL actions decided by the Supreme Court. The cases under survey do emphasise the original intent of the jurisprudence of PIL as an instrument to deliver relief to the marginalised and vulnerable section of society, who, on account of poverty, disability or helplessness, lack access to the judicial process. However, it also reveals that almost all the cases this year yet again pertained to the protection of diffuse, collective and meta-individual rights of the public at large, and sought redressal of the breach of public duties owed to them. This remains a matter of concern, as examined in the conclusion. The survey includes notable cases on the remedial nature of PIL, the reservation policy, cases relating to freedom of expression as also the right to strike.

II NATURE OF PIL

In *Narendra Mishra* v. *State of Bihar,*[1] the full bench of the High Court of Patna explained that PIL is not to be an adversarial litigation; but inquisitorial in character. It is meant to deal with larger public interest litigation at the behest of public-spirited person(s) espousing cause(s) of people, who are voiceless and who may not be in a position to move courts to vindicate their rights. It is a litigation claiming no personal right and claiming no personal relief. The moment an individual claims to enforce a personal right and claims a personal relief, it ceases to be a subject matter of PIL and is not maintainable as such; more particularly, if the subject matter relates to service dispute. Enforcement of personal right and asking for a personal relief are clearly beyond the object with which PIL was conceived.

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1 AIR 2015 Pat 69.

In *Vijay Kumar Gupta* v. *State of Himachal Pradesh*,[2] the High Court of Himachal Pradesh referred to the decisions of the Supreme Court on the scope and nature of PIL to conclude that PILs would be allowed only if it is found:[3]

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or malafide and affects the group of persons who are not in a position to protect their own interest or on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body or a meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective.Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judicial and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons of groups with mala fide objective or either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

2 ILR 2015 (I) HP 329.

3 *Id.*, para 29 .

In *Rudal Singh* v. *State of U.P.*,[4] a retired deputy commandant general in the home guards department filed the PIL before the Lucknow Bench of the High Court of Allahabad. It is a writ of *certiorari* quashing an order for the selection process for recruitment of home guards and a writ in the nature of *mandamus* for framing rules under section 15 of the Uttar Pradesh Home Guards Adhiniyam, 1963. The PIL essentially sought transparency in the recruitment process for home guards. The high court referred to the decisions of the Supreme Court for the proposition that a PIL with regard to service matters or service conditions should not have been entertained. Moreover, the Supreme Court, through various decisions, has consistently cautioned the courts against entertaining PIL filed by unscrupulous persons, as meddlers do not hesitate to abuse the process of court. The right of effective access to justice, which has emerged with the new social rights regime, must have been used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a visa". Regarding the prayer of the writ of *mandamus*, the high court held that the power to frame rules is of a legislative nature and following the well settled principle of law, the writ jurisdiction under article 226 of the Constitution could not extend to a *mandamus* for undertaking a legislative or quasi legislative activity including in the nature of subordinate legislation. The high court dismissed the PIL holding that the petitioner was not a person aggrieved and that in a matter relating to recruitment and selection, the rule of restraint laid down by the Supreme Court must apply.

In *R. Krishnamurthy* v. *State of Tamil Nadu*,[5] the PIL was filed by an advocate before the Madurai Bench of the Madras High Court seeking a writ of *mandamus* against the superintendent of police to hand over and entrust the suicide case of an agricultural engineer to the Central Bureau of Investigation (CBI) for an effective, fair and free investigation. The petition, based on a newspaper report, stated that as a former minister and sitting member of the legislative assembly was involved, there was an external influence in the investigation, which would be, not be free and fair. The high court took the view that the petitioner neither could put forth any material to substantiate his case apart from the newspaper report nor was able to furnish details regarding the external influence. The court observed that when it posed a specific question to the petitioner as to who and what is the external influence, there was no answer. Holding that that a party-in-person was bound to answer to the queries made by the court, the high court opined that the submission of the petitioner was in the air. On the issue of whether a newspaper report could be the basis of a PIL in the absence of any other authenticating material, the high court held that a news item published in

4 2015(3) ALJ 401.

5 3(2015) LW637; (2016) III LLJ 668 Mad.

the newspaper is only hearsay and no judicial notice could be taken unless supported by further authentic evidence. The high court ruled that before maintaining a cause before the court one should prove that there is concrete and credible basis, notwithstanding the credentials claimed of the person moving the courts, and that the petitioner, without verifying the authenticity or otherwise of the news items, could not be allowed to resort to its extra-ordinary jurisdiction. The high court reasoned that PIL was intended to ameliorate the grievance of the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated, should not be misused. In matters relating to PIL, the Supreme Court has time and again cautioned that the court has to be satisfied about (i) the credentials of the applicant; (ii) the *prima facie* correctness or nature of information given by him; (iii) the information being not vague and indefinite. The information should show gravity and seriousness involved. The 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. The high court observed that in such case, the court could not afford to be liberal, and that it had to be extremely careful to see that under the guise of redressing a public grievance, it did not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The high court dismissed the PIL with the observation that the conduct of the petitioner was not appreciable as he, on being posed with questions, instead of answering the same, went to the extent of submitting that the court was threatening him.

III PIL AND LOCUS STANDI

In *Prashant Bhushan* v. *Union of India*,[6] the PIL before the Supreme Court sought a direction to the Special Investication Team/Central Bureau of Invisgation to register a regular case or FIR against a former judge, respondent no. 4, on the basis of the complaint made by the petitioner and to thoroughly investigate the matter; a direction to remove or initiate steps for the removal of respondent no. 4 as the chairperson of the Press Council of India; and a direction to the Central Vigilance Commission to conduct a thorough inquiry/investigation.The Supreme Court held that the petitioner could not file the PIL, taking the view that it is for a person who is aggrieved by any kind of order passed by respondent no. 4 in the discharge of his judicial duty while functioning as a judge of the Supreme Court in dealing with a matter on the judicial side, to file an application for review or take recourse to the curative petition or any other remedy available to him in law.

In *Delhi Gram Vikas Panchayat* v. *Govt. of NCT of Delhi*,[7] the grievance in the PIL before the High Court of Delhi related to the delay by the government in processing the applications under the scheme to provide alternative land to those whose land had

6 2015(2) RCR (Cri.)576.

7 2015(151) 167.

been acquired under the Land Acquisition Act, 1894, as well as the delay by the Delhi Development Authority (DDA) in allotting the lands. The PIL sought a direction against government to process the applications within a time bound period of three to four months and a direction to the DDA to allot the alternative land within a time bound period of three to four months upon recommendation being made by the government. It transpired that the affected persons had moved the single judge of the high court on the same issue. The high court disposed off the PIL holding the purpose of a PIL is to provide access to justice to those who are unable to approach the court themselves, and in case those people have already approached the court with the same issues, the filing of PIL was unjustified.

In *Bar Association, Pudukottai* v. *Chief Electoral Officer Secretary to Government Public (Elections) Department Secretariat*,[8] the PIL was filed by the Bar Association, Pudukottai Town and District before the Madras High Court seeking the quashing of the notification issued jointly by the Chief Electoral Officer and the Secretary to Government, Public (Elections) Department and the Secretary, Delimitation Commission of India with respect to the abolition of the Parliamentary Constituency of Pudukottai. The PIL also sought a direction to the Delimitation Commission of India to restore the said constituency as one of the parliamentary constituencies. The respondents challenged the *locus standi* of the petitioner to file the PIL inasmuch as the bar association was not an aggrieved person, it was not a voter and even otherwise, the voters could not claim a right to vote in a particular constituency. Hence, no person could be stated to be legally aggrieved against the delimitation. The high court held that the petitioner lacked the *locus standi* to bring the petition.

In *Tanaji Haribhau Jagdale* v. *State Government of Maharashtra*,[9] the PIL before the High Court of Bombay challenged the order of the Collector directing the petitioners to deliver land which were reserved for grazing for industrial purposes. The PIL contended that considering the number of cattle in the village, the land remaining was inadequate for grazing and therefore the purported action in allotting the land to respondent no.5 was *mala fide*. The PIL further argued that majority of the villagers had their earnings from cattle and in absence of adequate grazing land the villagers will be affected as they will be deprived of their livelihood. The respondents made allegations against personal interest of the petitioners in the PIL. During the pendency of the PIL, two of the petitioners withdrew from the case after which the PIL was treated as *suo motu* PIL and an *amicus* was appointed to assist the court. The high court quashing the order of allotment of land, holding that prior to changing its use, the authorities did not follow any transparent steps in allotting the land meant for grazing land. No permission was obtained from the state government prior to the said allotment. The court further observed that, "it is evident that in cases of disposal of public land as is the case at hand, the common thread is that the State can dispose of

8 (2015)7 MLJ 385.

9 2015(5) Bom (Cri) 471.

public property only by adopting a fair and transparent method. The disposal of the property is to be founded on a well defined policy which should be made known to the public by publication in the official gazette, to be adopted by official methods and by entertaining applications of individual applicants. The State cannot exclude others who are otherwise eligible to seek allotment."

IV PIL AND PROCEDURAL LAW

In *Satya Narain Shukla* v. *State of U.P.*,[10] the PIL before the Lucknow Bench of the Allahabad High Court sought a writ of *mandamus* to the respondents to come out with a comprehensive, concrete, and time- bound action plan for fulfilling by 2030 the promises made in the Preamble of Constitution and the mandate formulated in the directive principles for eradication of poverty along with some ancillary reliefs. The petitioner claimed that he had sought information from the planning department of the state government with respect to various schemes for the persons living below poverty line, but the department concerned had refused/failed to provide the information. The respondents pointed out that the petitioner had earlier instituted a PIL under article 32 of the Constitution before the Supreme Court seeking the same relief based on the same pleadings. That PIL had been dismissed by the Supreme Court. The respondents argued that such dismissal constituted res judicata upon the issue determined by the court between the parties. The high court held that that the principle of *res judicata* was not applicable as the Supreme Court dismissed the petition without making any discussion on merit.

In *Gajubha (Gajendrasinh) Bhimaji Jadeja* v. *Union of India*,[11] the PIL before the High Court of Gujarat complained that the respondents, without obtaining a mandatory clearance from the Ministry of Environment and Forests (MoEF) as required under the Environmental Impact Assessment Notification 2006, were developing lands to set up their industrial units in the Mudra Port and Special Economic Zone territory (MPSEZ). It was argued that the said respondents were running their units since 2008 in the absence of the environmental clearances and in flagrant violation of the order of the court in a PIL filed in 2011which prevented such activities. The respondents pleaded that the benefit of 'deemed environmental clearance' post 2011, wherein clearance was deemed to be granted in case the Mo EF does not respond within 45 days of receipt of the recommendation. The respondents contended that the petitioner had come to the court after a considerable delay, and that no allegation of illegality was made against the decision making process. The high court held that *firstly*, this was not a matter which deserved to be rejected on a technical plea of delay as it was an important issue of environment and the rights of the people who are likely to be affected. *Secondly*, it was not a case of constructive *res judicata* as the petitioners had no idea

10 2015(4) ALJ 578.

11 2015 GLH (1)183.

or knowledge of any deemed environmental clearance obtained by MPSEZ and it was only when a reply was filed taking up this contention that they got to know it. *Thirdly*, the strict technical rules of pleading may not apply to a PIL if there is sufficient material on record based on which the court may proceed. The high court accordingly upheld the maintainability of the PIL.

The high court referred to the decision of Supreme Court in *Malthesh Gudda Pooja* v. *State of Karnataka*,[12] which had held that "in the interests of justice, in the interests of consistency in judicial pronouncements and maintaining the good judicial traditions, an effort should always be made for the review application to be heard by the same judges, if they are in the same court. Any attempt to readily provide for review applications to be heard by any available judge or judges should be discouraged. With the technological innovations available now, we do not see why the review petitions should not be heard by using the medium of video conferencing. Or an appropriate rule can be made, if such a rule is not already available, for consideration of the application written submissions alone." Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered and thus, would be in a better position to appreciate the point in issue when the grounds of review are raised. On the other hand, when the matter is placed before a freshly constituted bench, it would take time for that bench to familiarize itself with the matter. The high court ordered the review petition to be decided by any of the two benches of that court. The high court also directed the state government to make necessary arrangements and complete the process within a period of three months for video conferencing facilities for hearing of review applications, when required, in the larger interest of the litigating public.

V PIL AND ARBITRARY STATE ACTION

In *Subhas Datta* v. *Union of India*,[13] the PIL before the Supreme Court sought the protection of historical objects preserved at different places in the country particularly in various museums and prayed for a direction for adequate security arrangements and for proper investigation into the incidents of theft and damage to several historical objects and also for making an inventory of available articles for future. The petitioner pleaded that the material at various centres like Asiatic Society, National Library, Viswabharati University, Victoria Memorial and other Indian Museums were national assets which needed safety, security, preservation and maintenance. Under article 49 of the Constitution, the state was under obligation to protect every monument, place or object of artistic or historic interest declared to be of national importance from spoilation, disfigurement, destruction, removal, disposal or export, as the case may be. Under article 51A(f) of the Constitution, there was

12 2012 (3) CTC 59.

13 2015(2) SCALE.

fundamental duty to value and preserve the rich heritage of the composite culture. Ancient Monuments Preservation Act, 1904 required proper preservation of objects of archaeological, historical, or artistic interest. Reference was also made to Prevention of Damage of Public Property Act, 1984 to plead that any damage to public property was national loss. The respondents argued that the CBI had already been entrusted with the task of investigation, and that the union of India was taking every possible step for safety of artefacts in the custody of museums/organizations controlled by them. The Government of India had entrusted the security to the CISF wherever it was felt necessary. The respondents filed detailed affidavits of the proposed guidelines for safety and security of the said institutions, prepared on the basis of recommendation of the security committee. The petitioner pointed out that inspite of various directions of this court during pendency of the PIL for the last more than ten years, the situation was still not satisfactory. Neither the stolen articles had been recovered nor adequate security measures fully adopted. The respondents, while assuring the court that appropriate actions will be taken, contended that the security and maintenance of historic artefacts required serious and continuous efforts by technically trained persons, and cited the constraints of space, manpower and resources as challenges in tackling the issue. The court refrained from giving any specific directions, holding that it found no reason to doubt the stand of the Central Government and the other respondents that all necessary steps will be taken and reviewed from time to time. The court observed that it expected that the Secretary, Ministry of Culture to review the matter and take such necessary steps as might be identified within one month from the date of receipt of a copy of the order. Thereafter, review meetings may be held at least once in every six months to consider further course of action. Finally, it held that it would be open to any aggrieved person to take legal remedies in accordance with law if any grievance survived.

In *Vishak Bhattacharya* v. *State of West Bengal*,[14] two PILs before the High Court of Calcutta sought the quashing of the West Bengal Parliamentary Secretaries (Appointment, Salaries, Allowance and Miscellaneous Provision) Act of 2012 as *ultra vires* to the Constitution, and the consequent cancellation of appointments of respondents 8-20 to the post of parliamentary secretary. The PIL contended that judicial intervention was imminent to safeguard the legislative assembly, a democratic institution, as the Act only contained provisions to elevate MLAs to the position of minister of state under the guise of parliamentary secretaries violating the constitutional mandate and causing financial burden on the state exchequer. Moreover, it would result in the said respondents discharging the functions of a minister of state when there was express ceiling on the number of ministers in a state as per article 164(1A) of the Constitution. The respondents argued that the "various functions and duties of Parliamentary Secretaries are enumerated with the sole purpose of maintaining closest possible liaison with the department which they are attached to. In order to ensure

14 AIR 2015 Cal 187.

better co-ordination between the executive and legislature since specific duties and responsibilities are assigned to them, they are entitled to enjoy the status of a Minister of State. They are appointed by Chief Minister and are deemed to be Ministers only for the purpose of ensuring better co-ordination between the actual Ministers and the Legislature." The high court, after analysing the relevant Constitutional provisions and the case laws, held "that the Statute deserves to be struck down as it is nothing but an enactment to overcome the limitation or restriction imposed under articles 164(1A) of the Constitution of India." The court, while observing that it was not permissible for the authorities to circumvent the constitutional mandate, held that it would exercise the power of judicial review where a policy decision or legislation suffers from infirmities on account of violation of constitutional provisions or colourable exercise of power.

In *Ashok Kumar* v. *State of Bihar*,[15] the PIL filed before the High Court of Patna by a Post Doctoral Fellow (Ph.D.) in the Department of History, Patna University sought to restrain the Government from constructing the world quality museum at Patna entailing huge financial allocation. The PIL reasoned that the state itself cited paucity of funds for its failure to provide even the basic amenities; that there were already well established and famous museums in the state at various places; the state, while denying such existing museums of funds, was proposing to spend hundreds of crores on construction of an international museum; and that the existing museum at Patna could be upgraded to world class with little expenditure. The high court referred to the poor state, or even absence, of basic amenities, blocking of drainages, existence of stinking garbage, illegal constructions, frequent traffic jam due to state inaction, and held that the construction of yet another museum by spending such huge amount could not be said to be a matter of immediate necessity or public concern or in public interest. The court observed that the sum of rupees 500 crores for the new museum could be utilised properly to provide permanent shelters for lakhs of people or medical and educational services. The court, while noting the lack of transparency in awarding the contract to the international company, took the view that the project was almost nearing construction and hence could not be stopped at that late stage. The court directed that in case the museum became unviable, the building and other infrastructure of the museum shall not be alienated to private firms, but shall be utilised for public institutions or purposes.

In *Godwiin Samraj D.P.* v. *M. Abdul Salam*,[16] the PIL before the High Court of Kerala sought a direction to Calicut University and its officials to close down their offshore campuses, highlighting the mismanagement and misconduct of the affairs of the university, the grave financial irregularities and the ways in which the university was being run in violation of the university act and the statute. The PIL pointed out that off shore centres had been established by the university and its officers in blatant disregard of directions issued by the University Grants Commission (UGC) and that

15 2015(3)PLJR 265.

16 ILR 2015(2)Ker 39.

there was mismanagement and corruption in sanctioning study centres outside territorial jurisdiction of the university. The respondents argued that these study centres were not affiliated to the university and were purely "private parallel institution, helping and guiding the student community in their effort to become a Graduate/Post graduate". The UGC contended that the university could not conduct courses outside its territorial jurisdiction.

The high court held that the university functioning under a state could not have extra-territorial jurisdiction and hence, the Calicut University did not have authority to conduct study centre beyond its territorial jurisdiction. Further, the UGC, in the exercise of its power under the UGC Act, 1956 which was binding on all the Universities, had issued clear directions that the universities could not run any study centre beyond its territorial jurisdiction. It was clear that the Calicut University was running its off-campus centres overseas against the statutory provisions of the Act as well as against the express directions issued by the distance education council and the UGC. The court issued the writ of mandamus against the respondents to close all the offshore centres of the Calicut University situated overseas, upon failure of which the UGC was directed to initiate proceedings for withdrawal of recognition of the university.

In *L.K. Khurana* v. *State of U.P.*,[17] the PIL before the High Court of Allahabad challenged the legality of the re-development plan of the town hall in Meerut which proposed to construct a multi-level parking facility with a park on the roof top. The area in question was an open space and was being used by the general public as a recreation space. The Meerut Development Authority argued that the re-development plan was proposed due to acute shortage of parking space for vehicles and the present location was chosen as it was situated in the centre of the city and was of great interest to the public at large. The high court referred to various decisions of the Supreme Court on the issue of violation of urban planning norms resulting in diversion of public parks and open spaces for alien purposes. The high court observed that protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities have been held to be matters of great public concern and of vital interest to be taken care of in a development scheme. Hence, the effort on part of the Meerut Development Authority as well as the Nagar Nigam to convert an open space which was used for recreation by the public, including morning walkers, into a multi level car parking facility, could not be justified. The court held that the commissioner of the Nagar Nigam had clearly ignored the duty to ensure that the right to life of the citizens of the city, which was protected by article 21 of the Constitution, was not violated by depriving the citizens of the use of open spaces. Constructing a multi level car parking facility and expecting citizens to use the terrace of a concrete structure as a playground and as a park would be travesty of urban planning. The court expressed its concern over the manner in which public authorities were eying the few remaining open spaces in urban areas for

17 2015(5) ALJ 214.

commercial development, and emphasised that the need of citizens to a holistic pattern of life in the urban areas could not be sacrificed at the altar of human avarice and greed. The court held that the proposal for the re-development of the area of town hall and its appurtenant park into a multi level car parking facility was against the intent of the statutory provisions, and directed the Meerut Development Authority to pursue any alternative proposal for constructing a multi level car parking facility while maintaining the area of the park as a park.

In *Avinash Ramkrishna Kashiwar* v. *State of Maharashtra*,[18] the PIL filed before the Nagpur Bench of High Court of Bombay by the residents of Sadak-Arjuni sought the quashing of a government notification vide which the location of the headquarter of the sub-division of the Taluka Sadak-Arjuni was notified at Morgaon-Arjuni and not Sadak-Arjuni. The PIL contended the draft notification provided that the headquarter of the sub-division would be at Sadak-Arjuni, and that it was in violation of the principles of natural justice for the state government to change the same. Moreover, the Collector, Gondia had recommended the establishment of the headquarter of the sub-division at Sadak-Arjuni. The PIL alleged that it was with *mala fide* intentions and under the influence of politicians from Morgaon-Arjuni area that the state government established the headquarter at Morgaon-Arjuni. The state contended that it exercised legislative powers to which the principles of natural justice would not apply, and that it had followed the prescribed statutory procedure. The high court quashed the notification, holding that the state government failed to take into account section 4(4) of the Maharashtra Land Revenue Code as per which the principles of natural justice were to be applicable to such decisions. The court held that the government had reduced the rights of the citizens to an empty formality as the objections and suggestions that were invited were for establishing the headquarter of the sub-division at Sadak-Arjuni and not at Morgaon-Arjuni and the final notification was for Morgaon-Arjuni, in absolute violation of the principles of natural justice.

In *New Bombay Advocates Welfare Association* v. *State of Maharashtra*,[19] the grievance in the PILs before the High Court of Bombay related to the gross delay on the part of the state government in commencing and completing the construction of court buildings at different locations in Bombay. The PIL contended that the state government was under an obligation to constitute sufficient number of courts, tribunals or forums so that the litigants were able to realise their fundamental right to speedy justice as recognised in *Hussainara Khatoon* v. *State of Bihar*.[20] The high court observed that it was the constitutional duty of the government to provide to the citizens of the country with such judicial infrastructure and means of access to justice so that every citizen was able to receive an expeditious, inexpensive and fair trial and that the

18 2015(3) ALL MR 772.

19 2015(5)Bom (Cri.) 517.

20 (1980) 1 SCC 98.

plea of financial limitations or constraints cannot be a valid excuse to avoid the performance of this constitutional duty of the government. The court referred to the inordinate delay on part of the state government at each and every stage of the construction right from the sanction of the initial proposal for construction of the court buildings, and disposed off the PILs with a direction that all the construction works be completed within a fixed reasonable time period.

In *Shiv Shanker Sharma* v. *State of J&K*,[21] the PIL before the High Court of Jammu and Kashmir was filed by a retired assistant engineer of the state complaining about 7893 backdoor appointments made in about ten departments which had led to the issuance of a government circular calling upon the authorities to strictly observe the restrictions as contained in section 14 of the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010.The PIL sought a writ of *certiorari* holding the Jammu and Kashmir Civil Services (Special Provisions) Act, 2010 as *ultra vires* to the Constitution of India and to cancel the appointments made illegally through backdoor methods; a writ of *mandamus* directing the respondents to implement and follow in letter and spirit the government circular and to take appropriate action against the authorities/officers who made various illegal appointments/engagements all over the state; a writ of *mandamus* directing the respondents not to make any such temporary engagements henceforth; and directions to the respondents to spell out a transparent and clear policy in terms of ratio of strength at the minimum as per requirement to make appointments on regular basis and on *ad hoc*, consolidated, casual or daily rated workers so as to justify the utilisation of money from public exchequer. The high court held that it is a settled legal proposition that no person could be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. It would not meet the requirement of articles 14 and 16 of the Constitution to merely invite names from the employment exchange or put a note on the notice board since such a course deprives eligible candidates from being considered. Any appointment, casual, *ad hoc*, temporary/part time/regular must be in compliance with article 14 and 16 of the Constitution of India, which was equally applicable as per section 10 of the Jammu and Kashmir Constitution. If any officer deviates from the said principle and gives appointment to any person/persons, the same was illegal and the person so appointed would not get any benefit arising out of such illegal appointment/engagement.

In *Amit Bhagat* v. *Govt of NCT of Delhi*,[22] the PIL before the High Court of Delhi challenged the notification of *Government of National Capital Territory of Delhi* (GNCTD) (transport department), on August 28, 2014 amending Rule 115(2) of the Delhi Motor Vehicles Rules, 1993 which made it optional for the Sikh women to wear helmets when riding on pillion or driving a motor cycle. The petitioner contended that the state government had, in exercise of powers under the second proviso

21 2015 (2) JKJ 765.

22 2015(147) DRJ 82.

to section 129, sought to overturn the substantive effect of the section; that the classification made between women professing Sikh religion and other women was arbitrary and violative of article 14 and article 15 (1) of the Constitution; that the amended rule caused undue hardship to the enforcement agencies, and that the decision disregarded the safety of the women belonging to the Sikh community.

The high court, on construing the statutory provisions, took the view that no limitation could be read into the power of the state government under the second proviso to section 129 to grant exemptions from the mandate of section 129 and that the exercise of power, in this case, did not do any violence to the substantive part of the section. On the ground of arbitrary discrimination between Sikh and non-Sikh women, the court held that the discrimination was not on the ground of religion. The amended provision did not show any hostility towards Sikh women, as it made it optional for them to wear helmets. The court rejected the further contention of difficulty in implementation of law stating that 'it is no ground to apply the provisions of law in a manner different from what the law means and once a rule has come into force, no one can be permitted to challenge the same on the ground of inconvenience and difficulty in its implementation'. The court dismissed the PIL, while expressing the hope that 'all the concerned agencies will make efforts to build public opinion to ensure protection from head injuries also to Sikh women driving or riding pillion on motorcycle.

In *C.M. Dinesh Mani* v. *State of Kerala*,[23] the PIL before the High Court of Kerala was filed by different individuals and organisations seeking for appropriate directions to declare certain provisions of Kerala Municipality Building (Amendment) Rules, 2013 as *ultra vires* under article 14 and 21 of the Constitution of India and also seeking for directions to the government to amend the provisions of Kerala Municipality Building Rules, 1999. The PIL argued that the rules were amended by the government without considering the report of the technical committee and various other parameters involved in the matter. The respondents contended that the rules were amended by the government in exercise of powers conferred under section 381, 382, 387, 398 and 406 read with section 565 of the Kerala Municipality Act, 1994, after consultation with the sub-committee of ministers constituted to discuss and give suggestions on matter pertaining to the amendment to the rules. The high court dismissed the PIL, holding that mere non-consultation with certain agency did not give the petitioners the cause of action against the respondents, that there was no illegality and arbitrariness in the whole process and the petitioners failed to show any cause of action in the absence of violation of any fundamental right.

In *Bar Association, Pudukottai* v. *Chief Electoral Officer Secretary to Government Public (Elections) Department Secretariat*,[24] the PIL was filed by the Bar Association, Pudukottai Town district before the High Court of Madras seeking

23 2015 (3) KHC 957.

24 (2015) 7 MLJ 385.

the quashing of the notification issued jointly by the Chief Electoral Officer and the Secretary to Government, Public (Elections) Department and the Secretary, Delimitation Commission of India with respect to the abolition of the Parliamentary Constituency of Pudukottai. The PIL also sought a direction to the Delimitation Commission of India to restore the said constituency as one of the parliamentary constituencies. The respondents raised the objection of maintainability of the petition in view of the specific bar under article 329 (a) of the Constitution and section 10(2) of the Delimitation Act, 2002. The respondents pleaded that the delimitation was done as per the demands of the public and that with the formation of new parliamentary constituencies, some assembly segments from the nearby districts had to be added to the parliamentary constituencies in the southern districts. The high court held that the PIL was not maintainable inasmuch as the objections to the delimitation of constituencies could only be entertained by the commission before the date specified and once orders passed by the commission were published in the Gazette of India and in the official gazettes of the states concerned, these matters could no longer be re-agitated in a court of law. The high court further found that the delimitation commission had the power to rearrange the constituencies and the exercise of such power must be assumed to be for good reasons, more so when the petitioners failed to raise any specific plea of *mala fide* intent.

In *Aryagoundampatti, Oduvankurichi and Kadiranallur Ayacut Pasana Vivasayigal Nala Sangam* v. *State of Tamil Nadu*,[25] the PIL before the High Court of Madras was filed by a society of Ayacutdars sought the quashing of the government order by which the government had directed that the water for irrigation be shared by the Ayacutdars in the ratio of 70:30 between the Ayacutdars of Aryagoundampatti and Oduvankurichi in Rasipuram Taluk and Kadiranallur in Namakkal taluk. The PIL contended that the government order failed to take into account the descriptive memoir of 1898 that had been prepared after survey of the whole area and contained a detailed description of the water problem of the said region. The respondent pleaded that the government order was issued after considering all the aspects and after conducting repeated discussion with all the stakeholders and taking note of the total extent of the tank area, area of irrigation (Ayacut), the total number of wells situated in Ayacut area, source of water supply, village record, the total catchment area, water spread area and the storage capacity. The high court held that it could not, in PIL proceedings, act as an appellate authority over the factual findings recorded by the government. The scope of enquiry and consideration could at best be restricted to the decision making process and not the decision itself. The high court found the order to be valid and constitutional since the petitioner failed to establish any allegations of violations of principles of natural justice, and in light of the evidence presented by the respondent it seemed that all the concerned stakeholders had been dealt with fairly and were given ample opportunity to raise their grievances.

25 (2015) 5 MLJ513.

In *S. Joel* v. *Union Government of India*,[26] the PIL before the High Court of Madras sought a direction against the National Highways Authority of India (NHAI) not to grant approval for collection of toll from vehicles by the concessionaire prior to proper completion of the project highway as per the standards specified by the India Road Congress and till the replacement of toll plaza constructed at 254+940 KM on the project highway as per Rule 8 of the Highways Fee (Determination of Rates and Collection) Rules, 2008. The prayer was further amended to seek a direction to the concessionaire not to collect toll from the toll plaza constructed at 254.940 kms. till its replacement at 25.300 KMS as per the provisions of the concessionaire agreement between NHAI and the concessioner. The PIL contended that the construction of toll plaza was carried out without approval of the government and in contravention of rule 8 of the Highways Fee Rules, 2008. It was also argued that the reasons assigned for shifting second toll plaza from the original location to the present location is wholly unjustified and arbitrary and amounted to penalising the public of tuticorin, who were compelled to pay huge amount as toll for using less than 2 kms. of the highway. The respondents pleaded that the court did not have jurisdiction under article 226 of the Constitution to sit in appeal over the decision of the experts unless *mala fides* was alleged and there was no plea of *mala fides* alleged by the petitioner.

The high court found no merits in the contention of the petitioner that the relocation of the second toll plaza contravened rule 8 of the rules. The court found that the rule 8 had no application to the facts of the present case. In the absence of any allegation of *mala fide*, no malice in law could be inferred. The court found that the location of the toll plaza was pursuant to an exercise done by experts in the field. The court held that it was not competent, under article 226 of the Constitution, to examine the decision as an appellate forum and that the decision was best to be left to the experts. The court dismissed the PIL holding that no public interest was found to have been affected on account of the location of the second toll plaza.

In *Digvijay Singh* v. *State of Madhya Pradesh*,[27] the PIL before the Jabalpur Bench of High Court of Madhya Pradesh sought a direction to withdraw the investigation of criminal cases commonly known as PMT VYAPAM examination scam cases from the special task force (STF) and to instead entrust the same to the CBI. The division bench of the high court had earlier taken the view that the case was handed to the STF keeping in mind the sensitivity and gravity of the cases to be considered by experienced and well qualified independent persons. The high court examined whether the credibility of the STF had shaken or had become doubtful because of the subsequent acts of commission and omission of its officials in any manner. The petitioner alleged that the investigation conducted by STF was not independent and was being controlled by the superiors in the home department/police department of the state. Further, it was argued that inspite of the seriousness of the case, neither the

26 (2015) 4 MLJ 257.

27 2015 (2) MPL J 51.

local police nor the STF or, for that matter, nor the state government was keen to take initiative to register FIR. Instead, the authorities were content by resorting to inquest proceeding enquiry under section 174 of Cr PC which reinforced the apprehension about the lack of sincerity and commitment of the respondents and STF. The respondent highlighted the progress in each of the cases being handled by STF, and contended that the STF had investigated the concerned crimes with utmost dispatch leaving no stone unturned. The high court held that "the investigation of the criminal cases arising out of the examination scam were proceeding in right direction and was being conducted properly by STF" and that it would be against public interest to transfer the cases from STF to CBI at this advanced stage of investigation. The court could discern no infirmity or laxity in the investigation conducted by STF. The court opined, however, that it was appropriate to provide dispensation, by creating one more effective level for filtering of information, by a team consisting of experienced judicial mind, IPS officer having in-depth knowledge of the nuances of the investigation and an experienced information technology professional, concerning quantitative and qualitative progress of investigation by STF before the same is brought to the notice of the court, which would further the cause of free, fair, independent and impartial investigation by STF.

In *Common Cause* v. *Subhash Jain, Ex-Councillor*,[28] the PILs before the High Court of Delhi impugned the orders of the respondent, acting as competent authority under the Delhi Lokayukta and Upalokayukta Act, 1995, rejecting the recommendations contained in the reports of the Lokayukta, Delhi with respect to the respondents no. 1-8, all ex- Municipal Councillors of Delhi; and seeking a direction for forwarding the said reports of the lokayukta to the commissioner of police for consideration, evaluation and further action in accordance with law.The PIL contended that the lokayukta took *suo motu* cognisance of the newspaper report of the findings of a sting operation bringing to light the involvement of some of the Municipal Councillors of Delhi in negotiations for facilitating illegal and unauthorised constructions for illegal gratifications; and that as per the inquiry reports of the Lokayukta, the Municipal Councillors had been eager and willing participant in contemplating blatant violation of the law and in accepting illegal gratification for circumventing and violating legal provisions.The Lieutenant Governor of Delhi (LG) and the GNCTD asserted that the functions discharged by the Lokayukta were investigative in nature and that the special report was only recommendatory and no civil consequences followed; that the LG has done whatever was required to be done with respect to the report of the lokayukta; and that the LG gave an opportunity of hearing to the municipal councillors, in compliance with the principles of natural justice. The respondents submitted that that the issues sought to be urged in the PILs had already been settled by the decision of division bench in the case of *Sunita Bhardwaj* v. *Shiela Dixit*.[29] The court disposed off the PIL, observing that the petitioner failed to establish that the presentpetition was

28 219 (2015) DLT 298.

29 203 (2013) DLT 743.

distinguishable from that of Sunita Bhardwaj, and hence, the findings made in that case were applicable to the present petition.

VI PIL AND POLICY DECISIONS

In *Common Cause* v. *Union of India*,[30] the grievance before the Supreme Court related to the regulation of use of public funds on government advertisements, which were primarily intended to project individual functionaries of the government or a political party. The PIL sought that the Supreme Court should approve the guidelines formulated by a Supreme Court constituted committee, and to issue directions under article 142 of the Constitution for enforcement of the said guidelines.

The court held that "in the absence of any government policy to guide and control everyday government action, the courts can exercise their powers under article 142. This exercise would be time bound, *i.e.,* till the Legislature or the Executive steps in to fulfil its constitutional role and authority by framing an appropriate policy." The court allowed the publication of advertisements which were in public interest, such as advertisements announcing projects, policies and benefits for public. Advertisements issued on birth/death anniversaries of great personalities were to be regulated; the court suggested one single advertisement to be issued by a central agency to mark such occasions. The advertisements glorifying institutions were not to be published. The court broadly accepted the recommendations that had been made by the committee, except those with respect to the publication of photographs; appointment of ombudsman; carrying out independent audit and embargo on advertisements during election time. The court allowed the publication of the photographs of the president, prime minister and chief justice along with the advertisements. With regard to the appointment of ombudsman, the court suggested constitution of a three member body for this purpose, which should comprise persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields. The court took the view that the provision of special audit as also the embargo on advertisements during elections was unnecessary.

In *Vivek Sharma* v. *Union of India*,[31] the PIL before the Jodhpur Bench of the High Court of Rajasthan, the PIL sought directions to the respondents to undertake work of gauge conversion from meter gauge to broad gauge between specified junctions and to start rail traffic between Jodhpur and Udaipur. The PIL argued that the railway connectivity between Jodhpur and Udaipur had been brokenfor the last 17 years, and that, despite repeated representations and surveys made, no concrete plan had come forward nor any satisfactory reply had been given by the respondent as to the period of time within which a direct railway link would be provided. There was also a request from the Ministry of Defence to the respondents for the gauge conversion for strategic importance. The respondents, while questioning the maintainability of the petition,

30 AIR 2015 SC 2286.

31 2015 (2) RLW 1614 (Raj).

argued that the matter exclusively fell within the domain of the legislature-policy framers and, therefore, the court had no jurisdiction to pass such directions. Further, the Railways had already conducted the requisite technical surveys and had placed the reports before the railway board for approval of the project, upon which the matterwould finally go to Parliament for budgetary allocation. The high court, taking the view that the respondents were vigilant of their duties, declinedto issue any time bound directions since the matter was already under active consideration of the railways.

In *Kheti Vikas Seva Trust* v. *State of Gujarat*,[32] the PIL before the High Court of Gujarat challenged the decision of the respondent authorities to grant permission to respondent no. 4 and 5 to construct a power generation station as well as a port and SEZ in the area. The petitioner alleged profiteering by the private respondent who, after purchasing the land from government authorities at a throw away price, arbitrarily sold the land to various industries, thereby earning a huge profit amounting to unjust enrichment. The PIL claimed that the private respondents were carrying out excavation on a large scale, which had caused serious hazard not only to the environment but also to the human habitation, adversely affecting the livelihood of the villagers, as there was a sharp decline in the production from fruit bearing trees and agricultural fields. The PIL complained that the villagers have made certain representations before the respondent authorities, which went unheeded. The respondents denied all the allegations and placed the record before the high court to the effect that it had taken all the requisite permissions from the authorities and had taken steps to comply with all the regulations, orders and laws. The respondents pointed out that they were running the port at Mundra since 1998 and had invested a huge sum of upto Rs. 23,586/- crores in the port and SEZ. The port serviced a diverse group of industries and offered significant economical advantage to its user by way of transportation distance. It was estimated that 2.91 lakhs people would get employment and at present almost 15,921 persons were employed directly or indirectly. The high court declined to intervene in the PIL, holding that the respondents were taking effective and adequate measures to address all the concerns raised before it.

In *Satya Narain Shukla* v. *State of U.P.*,[33] the PIL before the Lucknow Bench of the High Court of Allahabad sought a writ of *mandamus* to the respondents to come out with a comprehensive, concrete, and time-bound action plan for fulfilling by 2030 the promises made in the Preamble of Constitution and the mandate formulated in the directive principles for eradication of poverty along with some ancillary reliefs. The petitioner claimed that he had sought information from the planning department of the state government with respect to various schemes for the persons living below poverty line, but the department concerned had refused/failed to provide the information. The high court declined to entertain the PIL, holding that it "would be acting in excess of its jurisdiction in directing the Respondents to come out with a comprehensive

32 2015 (5) FLT 604.

33 2015(4) ALJ 578.

concrete time bound action plan for fulfilling the promises made in the Preamble of the Constitution,"and that it was "not the domain of the judicial courts to step in the domain of the legislatures or the executives to take up the policy matter or for issuing direction for implementation of directive principles enshrined in Part IV of the Constitution".

In *Institute of Public Health* v. *Union of India*,[34] the PIL before the High Court of Delhi sought directions to prohibit the government ministries participating or giving any financial or technical assistance in the 12th Annual Asia-Pacific Tax Forum organised by International Tax and Investment Centre (ITIC) at New Delhi. The PIL argued that the ITIC was an organization sponsored and controlled by the International Tobacco Industry having vested interest in promoting tax policies and reforms beneficial to the tobacco industry, and that the Government of India, by participation, was granting recognition to the event being held by the tobacco industry and contrary to public interest. The respondents argued that agenda for the proposed event indicated that the same was unrelatable to tobacco. Further, there was no such prohibition to governmental participation under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act (COTPA), 2003. The high court held that "the proposed conference was not concerned with the use of tobacco and tobacco products and even otherwise, that the participation of the government and government functionaries was in the inaugural function only and hardly any in the technical sessions of the conference". Moreover, the court should not be called upon or undertake governmental duties or functions; the courts cannot run the government;and that in matters of policy, the court will not interfere. The high court dismissed the PIL, holding that the court cannot tell the government how to go about its conduct and business on a day to day basis.

In *Harish Chander* v. *Hindustan Petroleum Corporation Ltd.*,[35] the PIL before the High Court of Delhi sought a direction to restrain the HPCL (Hindustan Petroleum and Chemicals Limited) from constructing and operating its Petroleum Storage Depot at Tikri Kalan, and a direction to shift it to a safe distance of 10-15 kms from the village so as to protect the villagers from being in the high risk zone in case of fire, explosion or any other accident.The PIL pleaded that the said storage installation was at a dangerously close distance from the residential area and violated the right of the villagers to live in a safe environment. The HPCL argued that the decision to install the storage depot was taken after due compliance with procedure of land acquisition and after taking the requisite environment clearances and other approvals. Further, the probability of leakage due to tank failure and mechanical seal failure or other causes was very low in view of the stringent precautions taken in the design and construction of the said installation, and that the shifting of the said installation would impose very heavy financial burden upon HPCL. In this matter, the District Disaster

34 220 (2015) DLT 262.

35 218 (2015) DLT 588.

Management Authority (DDMA) conducted a survey and observed thatthe HPCL's plant was located at a distance of approximately 500 mtrs. from the residential area of village Tikri Kalan and that distance was not enough in case of any major disaster spreading out of the plant; that HPCL has an elaborate internal disaster management plan but there was no external disaster management plan till then; that the location of LPG bottling plan nearby also posed some threat to the nearby localities but the PVC bazar is located quite far away from the HPCL's plant and did not pose any imminent danger in case of any major incident; that there was a need of comprehensive external disaster plan for handling the major disasters in the vicinity of HPCL plant in case of any accident or disaster inside the plant; and that there was also a need to have an expert opinion on explosions, fire and other eventualities like projectiles.In view of this report, the HPCL was restrained, in the interim, from commencing the operation of the project without seeking specific permission from the court. Thereafter, the HPCL carried out a number of surveys and mock drills to further ensure the safety of the installation. HPCL pleaded that the oil depot was equipped with latest inbuilt technology to contain any incident. The high court found "no reason to doubt the said pleas", holding that "ignoring such scientific advancements and new technology, even when made available, would tantamount to not availing benefit thereof inspite of the energy, time, effort and resources including monetary and human expended in research, innovation, development and installation thereof and would not be wise." Further, as per the MPD-2001 as well as MPD-2021, the prescribed user of the subject land was for the purpose of oil installations and the petitioner or any other villager had raised no objections to the proposed use when they had the opportunity to do so at the stage of such allocation; and hence they were now estopped from raising this plea.The high court disposed off the PIL, while directing the respondents to strictly follow and review the comprehensive emergency response and disaster management plan.

In *Rajeev Kumar* v. *Union of India*,[36] the PIL before the High Court of Delhi sought certain directions for reform in the joint entrance examination (JEE) conducted every year for admission to the various Indian institutes of technology and national institutes of technology. The PIL sought that answer key of the JEE (advanced), which was released 15 days after the examination, should be released within 24-72 hours of the examination. The high court declined such relief on the ground that the answer key was circulated among all the seven IITs which took time, and if this was done before the examination it would make the question paper known to many more persons, thereby affecting its secrecy/ confidentiality. The PIL further sought that seven days, instead of three days, should be given to raise an objection to the answer key and that an independent body of experts should review the objections to the answer keys. The high court held that no justifiable reason had been given by the petitioner for the provision of seven days, and in this situation it would not be appropriate for the court to tinker with the rules and regulations of examination drawn up by the experts in the

36 2015 IV AD (Delhi) 385.

field of education. As far as the relief that the objections to the answer key be reviewed by an independent body of experts, the court found that the answer key prepared by the question setter was examined by the experts from all the seven IITs, and that the final answer key wasprepared only thereafter. Hence, there was no need for the objections to the answer key being considered / reviewed by an independent body of experts. The high court again did not find any ground to interfere with the third relief of reductionof the fee for correction of errors while scanning the optical response sheets from Rs 500/- as the experts had found the fee to be reasonable and that it acted as a deterrent against frivolous complaints. Moreover, the amount was refunded in case the error pointed out was found to be correct. The last relief sought in the PIL was for setting up of a task force/expert committee of independent experts to formulate a common examination for admission to IITs / NITs and all other engineering colleges. The court declined to interfere with the present system of examination conducted by the CBSE. The PIL was thus disposed off.

VII PIL AND RESERVATIONS

In *Sanjeet Shukla* v. *State of Maharashtra*,[37] the PILs challenged two separate ordinances promulgated by the governor of Maharashtra providing for reservation of seats for admissions in aided and unaided educational institutions in the state and reservation of appointments/posts in public services under the state. The ordinances provided for (i) separate 16% reservation for the educationally and socially backward category (ESBC) in which the Maratha community is included; and (ii) separate 5% reservation for a newly created special backward category-A (SBC-A) consisting of 50 sub-castes amongst Muslim community specified in the schedule to the ordinance, other than the categories of Muslims to whom reservation has already been given under other categories of backward classes and other backward classes. The petitioners also challenged the state government resolution specifying Maratha community as the only community under educationally and socially backward category for 16% reservations. The PILs contended that promulgation of the impugned ordinances was a fraud on the Constitution as article 213(b) permitted the governor to promulgate an ordinance only to deal with an emergent situation and there was no such emergency. Rather, the ordinances were politically motivated as they were promulgated at the time of elections of the legislative assembly in Maharashtra. Moreover, the ordinances, to the extent they increase the percentage of reservations from existing 52% to 73%, were ultra vires the Constitution as reservations under article 15(4) and article 16(4) of the Constitution of India could not exceed the ceiling of 50%, whether for admission to educational institutions or in matters of public employment. The respondents asserted that the promulgation of the ordinances was legally justified in terms of article 213 of the Constitution, and that the satisfaction of the governor under this article for exercise of this power to promulgate ordinances was subjective and was not a justiciable matter

37 2015(2) Bom CR 267.

in light of the decisions of the Supreme Court in *M/s. S.K.G. Sugar Ltd*. v. *State of Bihar*[38] and *T. Venkata Reddy* v. *State of Andhra Pradesh*.[39]

In The *Bihar State SC/ST Advocates Union* v. *State of Bihar*,[40] the PIL before the High Court of Patna asserted that the post of additional public prosecutor fell within the meaning of 'posts and services under the State of Bihar' in Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991. The PIL sought a writ of mandamus directing the respondents to make provisions for 16% reservation for scheduled castes and 1% for scheduled tribes in the process of appointment as additional public prosecutor, and accordingly prayed for the quashing of the notice that had been issued by the Advocate General, Patna for empanelment of additional public prosecutor for the high court without such provision as being violative of article 16 (4) of the Constitution. The question that arose was whether the engagement as additional public prosecutor, for conducting criminal cases in a high court, can be said to be an appointment against 'vacancies in posts and services', within the meaning of the Act. The respondents contended the said post was not covered under the Act since the post holders are neither government servants nor are they in government service. The state government engages an advocate, including additional public prosecutors, to act as an advocate on behalf of the state and, hence, the persons, so appointed, retain their status as advocates under the Advocates Act, 1961, and carry out their professional work as additional public prosecutor on fee basis. The high court held that the said post did not fall within the meaning of 'services and posts in an establishment' in terms of section 4 of the Act, and, therefore, was not subject to reservation under the Act. The appointment as a public prosecutor or was not an appointment to a civil post and the principle of master- servant did not apply. The high court dismissed the petition holding that the petitioners failed to make out any case of infringement of legal or constitutional rights.

In *Sambhavana* v. *Union of India*,[41] the PIL by a registered society working for the persons with disabilities was filed before the High Court of Delhi, contending that the reservation provided under the notice for civil services examination 2014 for visually impaired candidates was not in conformity with the provisions of section 33 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The PIL asserted that the number of vacancies reserved for visually impaired category in the examination conducted by the Union Public Service Commission (UPSC) for appointment to civil services/posts for various departments/ministries was not in conformity with the mandatory requirement of reservation of 1% vacancies available for persons suffering from blindness or low vision as provided by section 33 of the Act. The PIL also sought compliance with the Executive Order/O.M. No. 16-

38 (1974) 4 SCC 827.
39 (1985) 3 SCC 198.
40 2015(4) PLJR 306.
41 2015 (148) DRJ 497.

110/2003-DD.III on February 26, 2013 issued by Union of India, in terms of which the compensatory time for persons who were making use of scribe/reader/lab assistant should not be less than 20 minutes per hour of examination. It was contended that there is no equal distribution among the three categories of persons with disability - (i) blindness or low vision, (ii) hearing impairment and (iii) locomotor disability or cerebral palsy- and only 13 vacancies were reserved for blind/low vision, whereas 21 and 19 were reserved for LDCP and hearing impaired respectively. The high court held that by the date of examination, the expert committee constituted by the Ministry of Social Justice and Empowerment had already submitted report identifying the suitable posts as per section 32 of the Act. The court declined to grant the relief with respect to the equal distribution among the three categories, holding that the petitioner had put nothing on record from which the unequal distribution allocation of vacancies in excess of 3% amongst the three categories could be ascertained. The court also considered the possibility that the excess vacancies sought to be filled up with the persons belonging to the other two categories were the carried forward vacancies of the previous recruitment year within the meaning of section 36. However, the court directed the UPSC to find out from the respective cadre controlling authorities the reason for allocating the vacancies in excess of 3% unequally between the three categories aforesaid. The court held that the vacancies in excess of 3% shall also be equally distributed between the persons with disability of all three categories in case the Authorities are unable to give any valid reason. As far as the other relief sought in the PIL in respect of compliance by the respondents with the office order dated February 26, 2013 the Court held that the guidelines contained therein were issued as per the directions of the chief commissioner for persons with disabilities who was an authority appointed under section 57(1) of the Act, and have statutory force and are required to be implemented by all departments and authorities.

VIII PIL AND FREEDOM OF SPEECH AND EXPRESSION

In *Ajay Gautam* v. *Union of India*,[42] the PIL before the High Court of Delhi sought a restraint on the exhibition of the movie 'PK', whether it be in movie theatres or on the television, on the ground that it hurts the religious sentiments of all the communities, mainly of Hindus, and was thus violative of article 19(2) and 25 of the Constitution. The petitioner argued that the film shows the Hindu Gods and Goddesses in wrong perspective while defaming, maligning and mocking the Hindu culture and religious practices and making a satire on Hindu Gods and Saints. Further, it was argued that after the release of the film, the law and order situation had been affected due to large scale protests and demonstrations seeking ban on the film. The decision of the Film Censor Board of granting U/A certificate to the film was challenged on the grounds of it being biased and wrong. The high court dismissed the PIL on merits. The court held that 'the film is merely illustrating a prevalent social evil and to show the same it has to necessarily show the ways adopted by the religious Saints or the

42 AIR 2015 Delhi 92.

self- styled Godmen'. The court emphasised the test for pre-censorship *vis-a-vis* films to be 'clear and present danger'. 'Free speech cannot be suppressed on the ground either that its audience will form harmful beliefs or may commit harmful acts as a result of such beliefs, unless the commission of harmful acts is a real close and imminent consequence of the speech in question. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression.' The high court recorded that the petitioner had failed to show a basis for an apprehension of law and order situation in the country, which in any way could not be a ground for interfering with the certification of the film.

IX PIL AND ENVIRONMENT

In *All Kerala River Protection Council* v. *State of Kerala*,[43] the grievance in the batch of PILs before the High Court of Kerala related to unauthorised functioning of quarries in contravention of the decision of the Supreme Court in *Deepak Kumar* v. *State of Haryana*,[44] and the notifications issued by the Government of India, Ministry of Environment and Forests under the Environment (Protection) Act, 1986. One PIL complained that state government was issuing mining permits, which led to severe damage to the ecology of the area. Another PIL highlighted the unauthorised functioning of granite quarrying units in disregard of various environmental enactments. The third PIL raised the issue of environmental clearance process in Thiruvananthapuram where environmental clearances were being granted without the production of the mining plan that has been considered mandatory as per the decision of Deepak Kumar. The respondents, on the other hand, pointed out that the judgment of the apex court in *Deepak Kumar*'s case had no applicability as the directions in that case were only with regard to mining leases to be granted/renewed after the judgment. It was further submitted that the decision had directed the state government to frame requisite rules as per the directions and the rules having been framed in 2015, and further steps regarding grant of mining lease/mining permit were to be undertaken in accordance with the 2015 Rules. the high court accepted the contentions of the respondent, while noting that the decision of apex court in *Deepak Kumar*'s case did not contemplate environmental clearance for an area of less than five hectares with regard to existing mining lease/mining permits on the date of judgment.' The high court, while disposing off the PILs, directed the respondents to follow the regulations and the decision in *Deepak Kumar*'s case in all the projects after the prescribed dates.

X PIL AND RIGHT TO STRIKE

In *B. Ravi Kiran Swamy* v. *State of Telangana*,[45] the PIL filed by a practising advocate before the High Court of Andhra Pradesh sought a declaration that the

43 2015 (2) KHC 359.
44 (2012) 4 SCC 629.
45 2015 (2) ALD 674.

action of the Junior Doctors Association, Osmania Medical College, Hyderabad in not attending duties in the name of a strike and depriving medical assistance to the poor and needy was arbitrary and illegal. The PIL asserted that it had become a regular feature of the junior doctors of resorting to strike which, according to the petitioner, led to patients suffering. The junior doctors association accepted the factum of strike but justified their action "on account of failure of the State Government to provide for medical infrastructure in the Government Hospitals, the highhanded imposition of compulsory government/rural service, no payment of stipend or increase in the stipend of the interns and the continued refusal to engage with the post-graduate doctors in amelioration of the health sector in the State". The state took the stand that it had taken all measures with regard to grievances of the association, and that the junior doctors had no right, either legal or otherwise, to resort to strike as they were part of the government and could not complain against the government. The high court took the view that the complaint with regard to infrastructural facilities and recruitment of the doctors in the hospitals were not the concern of the junior doctors, and that it could be a public problem for which a remedy was available at the instance of the public. According to the high court, the doctors were duty bound to work with the infrastructure available, and had no right under any circumstances to resort to strike for getting their demands met. The high court, therefore, directed the striking doctors to resume duties within 48 hours from the date of the order.

In *Re: Zila Adhivakta Sangh Allahabad*,[46] the High Court of Allahabad took *suo motu* action in respect of the strike by lawyers in the district courts across Uttar Pradesh which had resulted in the obstruction and derailment of work. The high court observed that such strike had a direct impact on the functioning of the judiciary and its ability to efficiently discharge its constitutional obligation of rendering justice to litigants. The high court cited the decision of the Supreme Court in Ex-Capt. *Harish Uppal* v. *Union of India*,[47] for the proposition that lawyers had no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any was required, could only be by giving press statements, TV interviews, carrying banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from court premises, going on dharnas or relay fasts and so on so forth. The high court, accordingly, held that a strike by the members of the bar on the call of the office bearers of the Bar Associations was without the authority of law and was illegal.

XI PIL AND ELECTION LAW

In *Prabhu Narayan Tiwari* v. *State of U.P.*,[48] the PIL before the High Court of Allahabad sought a declaration of disqualification of respondent no. 5, a member of the legislative assembly in the light of his convictions under sections 353,504 and

46 2015 SCC online All 297.

47 AIR 2003 SC 739.

48 AIR 2015 All 157.

506 IPC. The PIL sought a declaration that the seat had become vacant in order to enable a bye-election to be held; and a direction restraining the respondent no. 5 from functioning either as a member of the Legislative Assembly or as a state minister. It transpired that following his conviction and sentence by the chief judicial magistrate, respondent no. 5 had filed appeal before District and Sessions Judge, Mirzapur. That court, exercising its power under section 389 of the Cr PC, 1973 had suspended the execution of the sentence and granted bail. The high court dismissed the PIL, holding that the respondent no. 5 would not incur a disqualification under section 8(4) of the Representation of People Act, 1951 as he had already received a stay on his conviction and sentence from the district and sessions court.

XII PIL AND SERVICE MATTERS

In *Narendra Mishra* v. *State of Bihar*,[49] the matter was referred to the full bench of the High Court of Patna as contradictory orders had been filed in two PILs. The first PIL sought directions against the Municipal Corporation, Patna for dumping solid municipal waste, thereby causing environmental pollution and health hazard. The high court had found that "the statutory authorities established by the State Government under Patna Municipal Corporation Act or the Union of India under Pollution Control Act had failed to discharge their legal duty within a reasonable time". The state suspended the Municipal Commissioner-cum-Chief Executive Officer, Patna Municipal Corporation. The court, however, refrained from making any comments on his suspension "obviously because as far as his suspension was concerned, the same could not be made subject matter of a PIL and he might challenge his suspension order, if he is so advised, by appropriate writ petition". The second PIL against the Patna Municipal Corporation pertained to a particular multi-storied building being constructed in violation of the building bye-laws within the territorial area of the Patna Municipal Corporation. The suspended officer filed an interlocutory application in the second PIL and sought the stay and eventual quashing of the suspension order. Another bench of the high court, in the second PIL, granted interim stay of suspension to continue till final orders were passed in the second PIL. Accordingly, the bench in the first PIL directed both the cases to be placed before larger bench. The larger bench found that an order placing a government servant under suspension, cannot be made a subject of a PIL. The high court held that PIL in service matter was not maintainable except for a writ of *quo warranto*, and that the remedy for the suspended officer was to move the Central Administrative Tribunal (CAT) or in a separate writ petition if he could make out a case for invoking the extra ordinary jurisdiction of the high court under article 226 of the Constitution.

In *Sudhakaran N.* v. *State of Kerala*,[50] the PIL before the High Court of Kerala challenged the appointment of chief secretary of the state on the ground that the

49 AIR 2015 Pat 69.

50 ILR 2015(2)Ker. 468.

appointed person was one of the accused in a vigilance case and vigilance clearance had not been obtained before taking a decision to appoint him as the chief secretary. The high court held that it was for the state government to decide on the suitability of an officer to hold the post of chief secretary, and that unless the consideration of the state government was palpably perverse, against the interest of the state, in violation of constitutional provisions or against public interest in terms of Constitution, the court would not interfere with the selection in a PIL. The court noticed the allegations against the respondent related to acts and omissions as regards transactions for purchase of Palmolein by the Kerala State Civil Supplies Corporation with the involvement of the state government, and took the view that the nature of allegations and the quality of charges levelled against different accused persons in that case were of such nature that they did not spill over to their continued conduct as government servants or public servants.The court dismissed the PIL, holding that PIL in relation to service matters are not to be entertained except in exceptional situations, and that the instant case was not an exceptional situation.

XIII PIL AND ALTERNATE REMEDY

In *Bharathi Kannamma* v. *Government of India*,[51] the PIL before the Madurai Bench of the High Court of Madras was filed by a transgender running a trust working towards empowerment of the transgenders. The PIL sought a direction to the Central Board of Film Certification to revoke the censor certificate for public exhibition issued to the Tamil Feature film 'I'. The PIL alleged that the movie depicts transgenders in a vulgar manner and abuses their human dignity. The high court held that "if something is offending the human rights or existence of the transgenders, the same needs protection, however, this has to be equally balanced with right of freedom of speech and expression, more so in the matters of literary and artistic works". The representation in films includes an aspect of dramatisation and thus different parameters apply. This, of course, does not mean licence to exhibit anything and that is why a specialised statutory body has been constituted. The specialised body consists of persons of the field and other eminent people in different social fields, so that there is an overall check and balance. The objective thus is that while over sensitivity is not to be protected, there is no absolute license, which may amount to derogation of any community or faith. It was only thereafter that certification is issued. The high court held that the petitioner had a remedy under section 6 of the Cinematograph Act, 1952 of filing a revision petition, and accordingly disposed off the PIL, with the hope that the revision proceedings would culminate expeditiously so as to see that these competing rights are decided and, in case there is any offensive material the transgenders do not

In *Ajay Gautam* v. *Union of India*,[52] the PIL before the High Court of Delhi sought a restraint on the exhibition of the movie 'PK', whether it be in movie theatres

51 2015 WLR 719.

52 AIR 2015 Delhi 92.

or on the television, on the ground of hurting the religious sentiments of all the communities, mainly of Hindus, and thereby violating rights of the Hindus under article 19(2) and 25 of the Constitution. The petitioner argued that the film shows the Hindu Gods and Goddesses in wrong perspective while defaming, maligning and mocking the Hindu culture and religious practices and making a satire on Hindu Gods and Saints. Further, it was argued that after the release of the film, the law and order situation had been affected due to large scale protests and demonstrations seeking ban on the film. The PIL also challenged the decision of the Film Censor Board of granting U/A certificate to the film on the grounds of it being biased and wrong. The State argued that the Petition was not maintainable as a previous Writ Petition preferred to the Supreme Court on the same movie was dismissed in limine and that the Petitioner had a remedy of appeal under the Cinematograph Act 1952. The high court, however, found that the earlier the Writ Petition pertained to the posters of the movie, which did not affect the current PIL, and with respect to plea relating the Cinematograph Act, the appeal can be preferred only by a person who had applied for a certificate in respect of a film. The high court accordingly upheld the maintainability of the PIL.

In *Manish Kumar Khanna* v. *Hon'ble Delhi High Court*,[53] the PIL before the High Court of Delhi sought a direction regarding the various issues including a direction to the state and the government to provide for adequate structure in the form of prosecutors, standing counsels, and sufficient manpower in the legal department. The Delhi Prosecutors Welfare Association intervened in the PIL seeking revision/ upgradation of pay scales with effect from the year 2009 and seeking a direction for payment of arrears, which would so become due. The high court took the view that one bench of a high court could not exercise powers under article 226 of the Constitution of India to issue a direction to the other benches of the high court, particularly with regard to the judicial functions, and that pronouncement of judgments is a judicial function. Further, the court asked the additional public prosecutor to enquire into the issue of adequate infrastructure in the legal department, expressed satisfaction as to the infrastructure and facilities available and stated that any difficulty that continued shall be taken up with chief justice or with the appropriate administrative committee. The high court accordingly dismissed the PIL, with liberty to the intervener to raise the grievance as raised in the intervention application in an appropriate proceeding.

XIV MISUSE OF PIL

In *Ram Niwas Jain* v. *Ministry of Home Affairs*,[54] the PIL before th High Court of Delhi pertained to a land scam allegedly carried out by the officials of the Land and Building Department of the Government of NCT of Delhi by tampering and forging documents to procure allotment of government land without any justification. There were specific allegations against the allotment of land in favour of one lady who was

53 2015 III AD (Delhi) 548.

54 217 (2015) DLT 129.

not made a respondent to this PIL. That lady sought impleadement as a party to the PIL, and alleged that the PIL was the outcome of a personal dispute between her and her brother-in-law who, on the basis of forged and fabricated documents, had purported to transfer his land to the wife of the named person at whose behest the PIL was filed. She pleaded that she had already approached the Economic Offences Wing, Crime Branch, Delhi Police. A FIR No. 37/2012 has been registered in this regard. The present PIL was filed at the instance of V.K. Jain. The high court, keeping in view the serious allegations of misuse of PIL and taking note of the fact that a large number of private interest litigation are being filed in the guise of PIL to settle private disputes, the CBI to conduct a preliminary inquiry. As per the status report submitted by the CBI, the petitioner in this PIL was related to accused. The petitioner did not appear in the PIL thereafter, until bailable warrants were issued for his production. The high court, being *prima facie* of the view that the action of the petitioner in filing this PIL by suppressing the true facts, amounted to obstructing administration of justice, called upon the petitioner to show cause as to why proceedings should not be initiated against him under the Contempt of Courts Act, 1971 for criminal contempt.

In *Anurag Sharma* v. *State of H.P.*,[55] the petitioners claiming to hold the district cadre posts of Indian National Congress in District Kangra, sought to litigate as a PIL a petition before the High Court of Himachal Pradesh seeking action against the respondents, who were opponent political leaders, for making certain statements against the sitting MLA/Cabinet Minister and his relatives. The high court held that "the Petitioners have to show a cause that the litigation is in the interest of public at large, they have no interest in the litigation and it is not a publicity interest litigation or private interest litigation or politics interest litigation or paisa making interest or for any other oblique purpose". The high court rejected the petition holding that the same disclosedthat it was not in the public interest and that the petitioners were trying to draw some action against the opponent political leaders or the persons who had allegedly made the false statements against the sitting MLA/Cabinet Minister and his relatives in order to gain political edge.

In *Vijay Kumar Gupta* v. *State of Himachal Pradesh*,[56] the PIL before the High Court of Himachal Pradesh challenged the action of the respondents whereby they had permitted handing over of a godown to the Food Corporation of India (FCI) which, being located on the bank/rivulet. The PIL contended that the FCI already had a godown which was being run at a monthly cost of Rs 600/- whereas the rent for the new premises was more than 1600 times at the rate of 10 lakhs per month, to the undue benefit of the certain respondents. The respondents asserted that the petitioner had not approached the court with clean hands and the PIL had not been filed in public interest as the petitioner has suppressed the fact that he was a business rival and his interest would be affected if the FCI shifts its godown. On merits, it was submitted that FCI

55 ILR 2015 (IV) HP 351.

56 ILR 2015 (I) HP 329.

had made a conscious decision to shift as the previous godown was small, had lesser capacity, lacked parking space or office space. The high court found that the petitioner had filed the PIL for vindicating his personal grievance, and further, no arbitrariness was shown in the decision making process. The high court held that the person approaching the court must come with clean hands, clean heart and clean objectives; and that the court, before taking any action in a PIL, must be satisfied that its forum was not being misused by any unscrupulous litigant with *mala fide* objective or for vindication of his personal grievance or considerations extraneous to public interest. The high court dismissed the PIL with a cost of Rs 50,000/-, holding that the petitioner had grossly misused and abused the process of the court.

In *Mahavir Jain* v. *State of Rajasthan*,[57] the PIL before the High Court of Rajasthan sought directions against the Department of Local Bodies, Jaipur to take immediate action including disciplinary action against certain respondent for various irregularities committed by them in discharge of their duties in the municipality, a direction to the CBI to conduct an enquiry in regard to the various irregularities committed by the said respondents and also the involvement of the named MLA. The respondents pointed out that the petitioner had not come to the court with clean hands and had filed the petition to serve his own interests. A number of criminal cases had been registered against the petitioner for blackmailing and extortion, and the petitioner had repeatedly filed writ petitions mainly concerning the affairs of municipality to settle the scores with the named MLA, who was the former municipal chairman. The high court found that there was a long history of enmity and litigation between the petitioner and the said MLA. There were six PILs filed by the petitioner out of which, in four matters, the allegations were against Municipality and the said MLA. The high court held a PIL may be entertained by the high court if it has been brought in a *bona fide* manner by a person who has genuine concern to espouse a public cause. PILcould not be allowed to be used for ventilating personal grudge and to settle personal scores. The high court dismissed the PIL with cost of Rs 50,000/-, along with a direction that whenever the petitioner files a writ petition in that court, either in public interest or for any other cause, he will give reference of the order passed in the instant PIL in the first paragraph of the writ petition, failing which, the court will draw adverse inference against him.

In *Raghubir Singh* v. *State of U.P*.,[58] the PIL before the High Court of Allahabad sought the quashing/amendment of the 'Scheme 2014-15 (SPORTS CITY) of the New Okhla Industrial Development Authority (NOIDA) on June 7, 2014 for development of a SPORTS CITY in sector 150. The PIL pleaded that the tender notice be quashed or amended for the benefit of small bidders. The high court analysed the scheme to find that the interest of smaller parties had been taken into consideration as the tender permitted them to form a consortium. Moreover, such an issue could have

57 2015(3)RLW 1877 (Raj).

58 2015(4) ADJ 313.

been raised by affected private builders. The high court held that the petitioner, who claimed to be merely a resident of an adjoining district, could possibly have no interest in seeking the quashing of the tender notice or for amending it for the benefit of small bidders. The plea of the petitioner that the tender notice should be modified so that it may generate more money or that it has been designed for the convenience of a particular bidder was without any basis. Sub-rule (3-A) which was introduced in rule 1 of chapter XXII of the Allahabad High Court Rules 1952 with effect from May 1, 2010 provides that a person seeking to file PIL, should precisely and specifically state in the affidavit to be sworn by him giving (i) his credentials; (ii) the public cause he is seeking to his espouse; (iii) that he has no personal or private interest in the matter; (iv) that there is no authoritative pronouncement by the Supreme Court or the high court on the question raised; and (v) that the result of the litigation will not lead to any undue gain to himself or anyone associated with him or the result of litigation will not lead to any undue loss to any person, body of persons or the state. This section was introduced as it was observed that 'while public interest litigation has to be regarded as an instrument of protecting just public causes, it has to be protected equally against an abuse. The abuse of public interest litigation also results in a situation where the high courts, which are faced with a flood of genuine litigation apart from public interest litigation, are deprived of the time and resources for dealing with ordinary civil and criminal cases. When a case, ostensibly in the public interest, is filed with an oblique motive and finally comes up for hearing, the court may ultimately find the process of justice being derailed'. It was also noticed that 'the Supreme Court has emphasised that PIL has to be used with great care and circumspection and the court has to ensure that behind the veil of public interest, an ugly private malice of vested interest does not lurk'. The high court observed that when a public project which complies with all legal norms is held up because of a frivolous petition, or a petition is filed at the behest of a competitor, the loss to the public interest is unwarranted. The court dismissed the PIL, holding that the it was not a bona fide petition and that the petitioner had been set up by certain interested parties for oblique considerations.

In *Tripuresh Tripathi* v. *Rajendra Bihari Lal*,[59] two PILs were filed by an advocate before the High Court of Allahabad. The PIL sought an inquiry by the CBI in the allegedillegal transfer of government land to the Sam Higginbottom Institute of Agriculture Technology and Sciences, a deemed University; and "with respect to forceful conversion into Christianity and other hatred activities" alleged to be going on in the campus of the deemed university. The PIL sought a writ of certiorari to quash the deed of trust executed by the board of directors in favour of an institution by the name of Yeshu Darbar Trust (the Trust) by which, land measuring about 26 Bighas, was alleged to have been utilised for the benefit of the activities of the Trust. The high court found that not only was the relief sought for *certiorari* to set quash a non statutory trust deed misconceived in law, the petitioner had failed to meet the test of a bona fide

59 2015(1) ADJ 682.

recourse to the jurisdiction in public interest which was recognized by the rule 1(3-A) of chapter XXII of the Allahabad High Court Rules, 1952. The object and purpose of this provision was that PIL should not be allowed to be utilized as a remedy for pursuing extraneous purposes or for that matter, for espousing causes motivated by a desire to seek publicity or to pursue other extraneous interests. The high court held that save and except for disclosing that the petitioner was "a public spirited person" and an advocate, he had asserted no case for the court to hold that he had moved this court *bona fide*.

In *Vidhya Sangeeth* v. *District Collector*,[60] the PIL before the High Court of Kerala contended that paddy lands were being converted for construction of villas and flats under the name of Shoba City, and that while the revenue authorities had issued stop memos to some respondent companies, corrupt officials, including the district collector, were colluding with one respondent company to continue the conversion. The respondent authorities denied the allegations and pleaded that stop memos were issued to all the respondents. The respondent authorities stated that petitioner was attempting to get political and personal mileage by projecting herself to be a person responsible for redressal of grievances of the public. The high court, upon consideration of the documents placed on record, found that the respondent authorities had already taken all the necessary steps in the matter, and accordingly dismissed the PIL.

XV CONCLUSION

The survey indicates the sheer variety of issues brought before the courts through PIL. The view taken by the High Court of Madras in *R. Krishnamurthy* v. *State of Tamil Nadu*,[61] needs special mention. The high court held that no judicial notice could be taken of a press report in a PIL unless supported by authentic evidence, and that it would be for the petitioner to prove a concrete and credible basis before maintaining a cause before the court. It is true that within the common law system, press reports, being hearsay, would be of little evidentiary value. However, PIL is a non-common law jurisprudence, where the court entertains a PIL action in the discharge of its own constitutional obligation to protect fundamental rights.[62] The petitioner has just to bring to the notice of the court the violation of fundamental rights, and thereafter it is the court that shoulders the responsibility of inquiring into the factual matrix and of granting relief, should it be found that there was indeed such violation. The fact that a press report could be planted or published for an ulterior motive is quite irrelevant; a frivolous action would invite exemplary costs. It would be patently unfair if, because of such possibility, the PIL petitioner acting pro bono is required to prove the facts or the court absolves itself of its own constitutional duty to inquire into the alleged violation

60 2015 (2) KHC 445.

61 3 (2015) LW 637.

62 See Hingorani, Aman, "Public Interest Litigation*"* XL VIII *ASIL* (2014) for the distinctive features of Indian PIL compared with public interest actions within the common law paradigm.

of a fundamental right. That would defeat the very rationale of relaxing *locus standi* to enable an individual to initiate judicial action to protect the fundamental rights of those who lack access to courts due to poverty, disability or helplessness. Having said that, one can also appreciate the concern of the court when a matter relating to diffuse, collective and meta-individual rights of society is brought before it as a PIL. The court must necessarily have to be cautious as to whether such matter is being litigated as a proxy litigation for ulterior motives, rivalry or personal benefits. The earlier annual surveys have pointed out that it is perhaps time to reconsider the scope and ambit of PIL, and to confine it to actions on behalf of the poor, marginalised and vulnerable sections of society for whom PIL was originally conceived.

The survey further reveals that almost all cases being filed as PIL today continue to pertain to protection of diffuse, collective and meta-individual rights – cases which could have been litigated as class actions or representative actions under Order 1 Rule 8 CPC 1908, complete with the checks and balances of the traditional common law system.

Without getting into the merits of various instances, it may be noticed that the instances relate to diffuse, collective and meta-individual rights of society. By expanding the scope of PIL to entertain such matters, the Supreme Court has exposed itself to public criticism of its functioning, which is bound to damage not only the jurisprudence of PIL as an instrument to deliver justice to the marginalised and vulnerable sections of society but also the institutional legitimacy and cohesion of the apex court. Such criticism only adds to the ongoing debate on judicial accountability. It may perhaps simply be a question of time before the judiciary faces a crisis of credibility.