IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION (ST) NO.2185 OF 2024

Shivangi Agarwal & Ors. ...Petitioners

Versus

The Union of India & Ors. ...Respondents

Ms. Shivangi Agarwal, NLU Mumbai, Mr. Satyajeet Salve, GLC, Mumbai, Mr.Vedant Agrawal, Nirma University, Ms.Khushi Bangra, NLU, Mumbai, Petitioners in Person present.

Mr.Devang Vyas, Additional Solicitor General a/w Mr. D.P.Singh a/w Mr. Pratik Irpatgire a/w Mr. Sheelang Shah a/w Mr. Jenish Jain for Respondent No.1/ Union of India.

Dr. Birendra Saraf, Advocate General a/w Mr. P.P. Kakade, Government Pleader a/w Mr O.A. Chandurkar Additional Government Pleader a/w Mr. Jay Sanklecha for State.

Mr. R.S. Apte, Senior Advocate a/w Mr. Sudhanva S. Bedekar a/w Mr. Akash Kotecha a/w Mr. Shahank Dubey a/w Mr. Amey Mahadik a/w Mr. Anand Varadkar i/b Law Supremus for Intervenor.

Mr. Sanjeev M. Gorwadkar, Senior Advocate a/w Ms. Anjali Helekar a/w Mr Prakash Salsingikar a/w Mr. Santosh R.Dubey a/w Mr. Shriram Redij a/w Kanaad Aphale a/w Mr. Anand Nayak a/w Mr. Gauri Helekar i/b Rithvik Joshi for Intervenor.

Mr. Subhash Jha i/b Law Global for Intervenor.

Mr. Ghanshyam Upadhyay a/w Mr. Vijay Jha a/w Mr Anikt Upadhyay i/b Law Juris for Intervenor.

Dr. Jaishri Patil a/w Mr Rajaashok Ghate for Intervenor.

Mr. Prathamesh Gaikwad a/w Mr. Aniruddh Yadav a/w Mr. Ganesh Nagargoje

a/w Mr. Vishal Khetre a/w Mr. Nitin Hajare for Intervenor.

Mr. Praful A. Patil a/w Mr. Rohit Patil for Intervenor.

Dr. Gunratan Sadavarte, Intervenor in Person.

CORAM : G. S. KULKARNI &
Dr. NEELA GOKHALE, JJ.

DATE : JANUARY 21, 2024.
(SUNDAY)

ORAL JUDGMENT: (Per G. S. Kulkarni, J.)

1. The petitioners claim to be law students of colleges in Maharashtra and Gujarat. The challenge raised by the petitioners under the garb of this Public Interest Litigation, primarily is to the notification dated 19 January 2024 issued by the Government of Maharashtra declaring 22 January 2024 as a public holiday on the occasion of the celebrations of the "Shri Ram-Lalla Pran-Pratishtha Din". The impugned notification is issued by the State Government under Section 25 of the Negotiable Instruments Act,1881 and in exercise of the powers entrusted to it by the Central Government under the notification by the Government of India, Ministry of Home Affairs dated 8 May 1968.

2. At the outset, we may observe that although the notification dated 8 May 1968 issued by the Government of India, is challenged in prayer clause (a), however, the same is not placed on record, nor are there any averments in the memo of the petition specifically assailing the said

notification, in regard to the powers which the notification would confer on the State Government.

3. The petitioner No.1 has argued the petition. From the tenor of her arguments, she appears to be quite convinced in regard to the case, as sought to be made out by the petitioners in the memo of the petition, in assailing the notification declaring 22 January 2024 to be a public holiday. The petitioners in support of the prayers as made in the petition have made the following submissions:-

4. The impugned notification is arbitrary and is not only against public interest but also against the economic interest of the country. It is submitted that the decision to declare 22 January 2024 as a holiday is also an arbitrary decision, hit by the *Wednesbury* principles of reasonableness. It is also against the public policy for the reason that it is contrary to the secular principles which the Constitution would enshrine which the Government needs to adhere. It is next submitted that the impugned notification is *ultra vires* the Negotiable Instruments Act, 1881, as Section 25 of the Negotiable Instruments Act does not confer power on the State Government to issue such notification. In such context, it is submitted that Section 25 of the Negotiable Instruments Act would not confer any unfettered powers or discretion on the State Government to issue such notification. On such count the notification is not only illegal when tested

on the provisions of Section 25, but is also violative of the principles of secularism being violative of Articles, 14, 21, 25, 26 and 27 of the Constitution of India. It is hence her submission that the impugned notification needs to be quashed and set aside as also at the interim stage of the proceedings the Court needs to stay the notification. In support of her submission, petitioner No.1 has placed reliance on the decisions of the Supreme Court in **Harshit Agarwal Vs. Union of India**[1]; **A.K.Roy Vs. State of Punjab**[2], **S. R. Bommai Vs. Union of India**[3] and **State of A.P. Vs. Potta Sanyasi Rao**[4].

5. On the other hand Dr. Saraf, learned Advocate General opposing the petition, at the outset would submit, that the case of the petitioners to challenge the impugned notification issued by the State Government in the manner as sought to be made out in the petition, needs to be outrightly rejected, for the reason that the Central Government notification dated 8 May 1968 itself is not on record, as also there are no pleadings as to how the power conferred on the State Government is illegal. Dr. Saraf would submit that for such reason any inquiry on such prayer is completely beyond the scope of the petition. It is also his submission that such notification issued by the Central Government is in operation for almost 55 years and since then it has been resorted to by the

1 (2021)2 SCC 710
2 (1986) 4 SCC 326
3 (1994)3 SCC 1
4 (1975)2 SCC 480

State Government, to issue notifications under Section 25 of the Negotiable Instruments Act. It is submitted that thus, the challenge of the petitioners to the impugned notification dated 19 January 2024 itself is not in a manner, the law would recognize. According to Dr. Saraf, the petition needs to fail on this count alone.

6. Dr. Saraf would next submit that in any event the State Government declaring the holiday, is completely within the realm of the executive policy of the Government. Once it is a policy decision it is not open for judicial intervention for the Courts in exercising powers of judicial review, when as to on what grounds it is arbitrary itself is not set out in the petition. Dr. Saraf would submit that in fact the State Government has issued the impugned notification considering the secular principles the Constitution envisages. He would submit that in paragraph 25 of the petition, the petitioners have clearly accepted that the consecration of a temple, itself is an essential religious practice. It is hence his submission that recognition of such religious practices is recognition of the secular principles the Constitution ordains. It is his submission that once the essential religious practices are recognized by the State Government as contended by the petitioners in light of the secular principles, such notification as issued by the State Government cannot be said to be arbitrary, and in fact it promotes the principles of secularism.

Thus, according to Dr. Saraf, the case of the petitioners that the notification is in any manner arbitrary or against public policy or against the constitutional provisions, is not well founded.

7. Apart from the above submissions, Dr. Saraf has some serious submissions on the tenor of the petition when he submits that the petition clearly has political overtones. This he submitted, drawing our attention to the averments / statements as made in paragraphs 18, 20, 21, 30, 32, 33 and 38 of the petition. It is his submission that apart from this, the petitioners are casual and quite reckless, in regard to the other contentions as raised in the petition, when in paragraph 43 the petitioners state that this is a fit case for the President to invoke powers under Article 356 of the Constitution of India. He submits that on a cumulative consideration of such statements made in the petition, it is clear that the present PIL is far from bonafide and more so the petition is motivated to cause a dent to the secular fabric of the country which is not as fragile as the petitioners intend to make out in the petition. He submits that it is a thinking of a small portion of the people and far from the Constitutional principles which the citizens would imbibe. It is on such submission, Dr. Saraf would submit that the petition does not warrant any consideration whatsoever and it ought to be dismissed in limine.

8. Mr. Devang Vyas, learned Additional Solicitor General has

supported the submissions made by Dr. Saraf. He submits that this petition is far from a bonafide Public Interest Litigation. Hence it needs to be dismissed.

9. We have also heard the interveners. The interveners were represented by Mr. R. S. Apte, Mr. S. M. Gorwardkar, learned Senior Advocates, and by learned Advocates Mr. Subhash Jha, Mr. Ghanshyam Upadhyay, Dr. Jaishri Patil, Mr. Prathamesh Gaikwad, Mr. Praful Patil and Dr. Sadavarte.

10. The common contention as urged on behalf of the Intervenors is also to the effect that the petition is an abuse of the process of law and is not maintainable. It is submitted that this PIL is a frivolous, vexatious, malicious petition, and in fact a publicity oriented petition. It is submitted that with such intention it is engineered to be filed at the last minute and moved before the Court on a holiday. It is submitted that no fundamental rights or any legal rights of the petitioners, in any manner are affected nor this is a case of any public right being affected. It is submitted that the impugned decision of the Central Government as also the State Government is purely a policy decision. It is next submitted that this petition is filed on a complete misunderstanding of the secular principles which the Constitution enshrines. It is submitted that the Government as matter of policy has been taking decisions to declare a particular day as a

holiday also as and when religious events or celebrations associated with any religion would warrant. It is submitted that there cannot be any arbitrariness and/or any constitutional provision being breached by taking any such decision, more particularly as portrayed by the petitioners. It is also submitted that as many as 17 States have declared a holiday. It is within the confines of the powers vested with the Government to consider the nature of the celebrations and take an appropriate decision. It is next submitted that the petitioners do not have any grievance in regard to the notification issued by the Central Government, thus it is surprising that this petition is filed only against the notification issued by the State Government. It is their submission that this is clearly a politically motivated petition sought to be moved overnight, and is an abuse of the process of law. It is submitted that such practices, more particularly by law students abusing the process of law, ought to be deprecated. The learned intervenors would thus submit that the petition be dismissed.

11. As submitted by Dr. Saraf whenever such issues have reached the Courts in assailing, either declaration of holidays or for prayer that a particular day be declared as holiday, a consistent view has been taken by the Supreme Court and by various High Courts that a decision to declare or not to declare a holiday falls within the realm of the executive policy. Our attention was drawn to the orders passed by the Supreme Court in the

case of **K. K. Ranesh Vs. Union of India & Ors.**[5] wherein the petitioner had approached the Supreme Court with a prayer that the birthday of Netaji Subhash Chandra Bose be declared as a national holiday. The Court observed that such a decision clearly fell within the realm of an executive policy.

12. In **Ashish Kumar Mishra vs. State of Utter Pradesh through Chief Secretary**, the Division Bench of the Allahabad High Court by its order dated 29 August 2023 rejected a petition seeking holiday for Karwa Chauth contending that festival of 'Karwa Chauth' is largely celebrated by women and that there was a gender discrimination in the matter of declaration of holiday on the festivals. The Court observed that declaration of holidays falls in the realm of policy matters of the State. It was observed that the Courts cannot entertain such disputes unless guided by statute and even otherwise the festivals are commonly celebrated by all.

13. The Division Bench of this Court in **Kishnabhai Nathubhai Ghutia & Anr. Vs. The Hon'ble Administrator Union Territory & Ors.**[6] considering the prayer of the petitioners that a writ be issued, declaring that the notification impugned therein declaring public holidays for the year 2022 as bad and illegal, to the limited extent of not declaring a public holiday on 2 August 2022 being the Liberation / Independence Day of Dadra & Nagar Haveli, dismissed the petition, *inter alia* observing that

5 Writ Petition(Civil)No.806 of 2022 dt.14/11/22022
6 Writ Petition no.9602/21 dt. 5/1/2022

whether or not to declare a particular day as a public holiday or an optional holiday or no holiday at all, is a matter of Government policy. It was observed that there is no legally enforceable right that can be said to have been infringed. A Special Leave Petition filed before the Supreme Court against this order also was dismissed.

14. In another decision of the Division Bench of the Madras High Court in **A. Annandurai Vs. The Chief Secretary to the Govt. of Tamil Nadu.**[7], the Court was considering a prayer for issuance of a writ of mandamus to direct the respondents to declare a public holiday for 'Thai Pusam' celebrated in the State of Tamil Nadu on 10 February 2017 and every year thereafter, as it was declared as a public national holiday in the countries of Malaysia, Srilanka, Mauritius and Singapore. The Court rejecting the petition observed that the petition was an endeavour purely of gaining a political mileage, through a public interest litigation seeking declaration of a public holiday, for the said festival, knowing fully well that such decisions as to which days should be a holiday or not, are within the executive domain of the Government.

15. We may also refer to the decision of the Andhra Pradesh High Court in the case **Srimad Paramahamsa Parivrajakacharya Jagadguru Shankaracharya Revenka Peethadhishwara vs. State of A.P. and ors.**[8] in which the Court clearly observed that the Government always has the

7 2017 SCC OnLine Mad 6749
8 2000 SCC OnLine AP 205

power to decide about the holidays on account of religious festivals. This case was in the context of the Government deciding to declare a holiday on account of the decision taken by the Priests of Bhadrachalam temple. The Court observed that the decision cannot be faulted.

16. The Division Bench of Kerala High Court in **Parent-Teachers' Association, Govt. Lower Primary School Vs. Chalil Kunhimmu Haji & Ors.**[9] was examining the issue as to whether the concession granted by the State of Kerala to avail of the 'Ramzan' holidays by the schools where Muslim students were in the majority and allowing them to work during the midsummer holidays would calculate to sabotage secularism affecting the secular nature of the State and as to whether such a concession would violate Articles 15, 16, 25, 26, 27, 28, 30 and 51-A of the Constitution of India. The Division Bench has made pertinent observations. The Division Bench held that the case of the petitioner was fallacious. The Court observed that the impugned order was neither arbitrary nor unreasonable, and if such arguments as canvassed by the petitioners were to be accepted, then the Government cannot declare any public holiday for Janmashtami, Ramzan or Christmas. It was observed that ours is a State where different people follow different religions and faith. The State does not impose any particular religion or faith on any people. If the State allows its citizens to discharge their religious functions, it cannot be said to be against the

9 AIR 1997 Ker 97

secular interest of the State. The Court also observed that India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation a golden thread of a basic innate unity. It is a mosaic of different religious, languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. With such observations the petition was dismissed by the Court. We find ourselves in complete agreement with the observations of the Kerala High Court in recognizing such clear tenets of Articles 25 and 26 of the Constitution.

17. A consistent view has been taken by the Courts that the declaration of holidays is a matter of executive policy including those which are declared considering the requirements of the different religions. Once these are the considerations on broader public interest, such decisions cannot be in any manner labelled as arbitrary decisions. Moreover such decision is taken by the executive in fostering the sentiments as enshrined in the Constitution and in recognition of the secular principles when a holiday is being declared on any religious occasion. We are therefore, of the considered view that the petitioners have miserably failed to make out a case of any arbitrariness, in the impugned decision of the State Government. As also the petitioners contention that the State

Government neither has any authority nor a power to issue such notification, and more so, when the notification of the Central Government dated 8 May 1968 on its purport although assailed is not part of the petition. We may also observe that merely including a prayer in the petition, without establishing the basic framework and laying the foundation to support the prayer, in fact amounts to a defective petition being pursued, incapable of adjudication, that too when filed as a Public Interest Litigation.

18. We are also not inclined to accept the contention as urged on behalf of the petitioners referring to the decisions as cited by the petitioners. The principles of law as laid down in these decisions are well settled. The principles of judicial review in considering the legality of the decisions when tested on arbitrariness and procedural impropriety are well settled. Thus, referring to these decisions we are not satisfied that the petitioners have made out any case to suggest that the State Government has not acted in accordance with law while issuing the impugned notification. This, more particularly, when we find that the State Government has exercised power as entrusted to it under notification dated 8 May 1968 of the Central Government.

19. This apart, what would worry us more is the approach of these

young students who are described to be law students in the second, third and fourth year of the Law course, who have espoused the extraordinary jurisdiction of this Court purportedly in public interest. This more particularly, without applying their mind to the principles on the doctrine of *locus standi* and without appreciating that the Public Interest Litigation is a weapon required to be used with great care and circumspect. The Supreme Court time and again has held that the Courts are required to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking.

20. Applying such principles, in our opinion, the petitioners appear to be completely unmindful of such elementary requirements when the canvass of their petition is likely to have wider ramifications. Thus such petition could not have been moved making unwarranted and untenable statements and raising contentions in such a casual manner, this more particularly despite we pointing out to the petitioners as to whether they would be serious on their contentions in the petition. On such suggestion as made by the Court a bonafide litigant at the outset would make deletion of any insinuations which are either untenable, irrelevant and contrary to law which ought not to remain on record.

21. We therefore find much substance in the contention as urged by Dr. Saraf as also vehemently supported by all the interveners that the petition

has political overtones. It appears to be a petition politically motivated and, in our opinion, also a publicity interest petition. It appears to be clearly trumpery of the proceedings initiated before the Court, on extraneous consideration and clearly for publicity, which is clear not only from the tenor of the averments made in the petition but also from the arguments canvassed in the open Court. This more particularly, as the petitioners have not left a single stone unturned, when in paragraph 21 of the petition statements are made, even questioning the wisdom of the Supreme Court in deciding the case in respect of which the petitioners raise concern. Our judicial conscience is in fact shocked at such approach of the petitioners. If this is the understanding of law of these petitioners, in making such statements on the decision of the Supreme Court, as described in paragraph 21 of the petition, to be "startling" and more particularly, with a further overtone of a motive being attributed to the decision of the Supreme Court, such approach of the petitioners can be said to be far from being bonafide. In fact, no prudent litigant would make such statement which is against the basic tenets of what Article 141 of the Constitution would mandate.

22. This apart, there are other serious allegations made in the petition. It is difficult for us to believe that these law students would inculcate imagination at such stage of their life and even before entering this noble

profession, make such serious statements which are against the Constitutional ethos. Considering such statements as made by the petitioners in the paragraphs as pointed out to us by Dr. Saraf, we have no manner of doubt that this petition is utterly motivated and is filed on extraneous considerations. As rightly contended on behalf of the respondents, the petition is patently frivolous which is undeserving of any attention of the Court, considering the settled principles of law as laid down in catena of decisions of the Supreme Court, on the Court entertaining public interest petitions.

23. In such context, we may refer to the decision of the Supreme Court in **Dattaraj Nathuji Thaware Vs. State of Maharashtra & Ors.**[10] wherein on a petition which was filed by a member of the legal profession, the Court at the outset observed that the case was a sad reflection on members of the legal profession and was almost a black spot on the noble profession. The Court taking a review of the well settled principle of law referring to several decisions observed that although the public interest litigation has now come to occupy an important field in the administration of law, it should not be 'publicity interest litigation' or 'private interest litigation' or 'politics interest litigation' or the latest trend 'paise income litigation'. The Supreme Court observed that the Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary

10 (2005)1 SCC 590

jurisdiction. Referring to the decision in **Janata Dal Vs. H. S. Chowdhary**[11] and Kazi **Lhendup Dorji Vs. CBI**[12] the Court observed that a writ petitioner who comes to the Court for relief in public interest must come to the Court not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. Highlighting the entire concept of Public Interest Litigation, the Court highlighted the effect of abuse of process of law and the solemn duty of the Court to be discharged. It was observed that busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions. The Court referring to several decisions observed that the Court has to "act ruthlessly" while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. It was observed that they masquerade as crusaders of justice. Referring to the decision in **S. P. Gupta Vs. Union of India**[13] (on principle of *locus standi*) the Court observed that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome

11 (1992)4 SCC 305
12 1994 Supp (2) SCC 116
13 1981 Supp SCC 87

interloper to approach the Court under the guise of a public interest litigant. In conclusion the Court observed that it was a disturbing feature which needs immediate remedial measure by the Bar Councils and the Bar Associations to see that the process of law is not abused and polluted by its members.

24. In our opinion, these settled principles of law and such decision of the Supreme Court ought to have been considered by the petitioners and with all solemnity, more particularly, when the petitioners claim to be the students of law and who may have an intention to enter this noble profession.

25. The petitioners are myopic in their approach on several paramount considerations in pursuing this PIL perhaps being blindfolded by the object with which they intended to pursue this petition. As a Constitutional Court and that too while exercising jurisdiction under Article 226 of the Constitution, we cannot be unmindful and overlook the lack of such basic bonafides the litigant needs to wield, on a case being made out, on such pleadings and which was being argued with impunity. We intend to caution the petitioners to be more careful and circumspect when they take upon themselves espousing such causes.

26. For the aforesaid reasons, we have no manner of doubt that the present proceeding is a patent abuse of process of law. The proceedings

cannot be kept pending and are required to be dismissed in limine with exemplary cost. However, considering that the petitioners are students and the caution we have sounded to the petitioners, we refrain from imposing cost with a hope that the petitioners shall be more careful in future.

27. Dismissed. No costs.

[Dr. Neela Gokhale, J.] [G. S. KULKARNI, J.]