

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
PIL Nos.241 AND 242 of 2015 AND W.P.No.31897 of 2015

COMMON ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

1. Regard being had to the similitude in the controversy involved in the present cases, these cases were analogously heard and by this common order, they are being disposed of.

2. The facts of PIL No.241 of 2015 are being dealt with for deciding the controversy which is common in all these cases. It has been filed by one Vattsala Vidyasagar, who is claiming himself to be a social worker. It has been stated in the PIL that a Fashion Show took place in 'The Park' hotel in Hyderabad on 18.06.2015 and the respondent No.2, Smt Smita Sabharwal, IAS., along with her husband made appearance on the ramp. The Fashion Show was conducted by Designer Abhishek Dutta. It has been further stated that the Outlook English Weekly Magazine in its 6th Edition July, 2015 published an article under the name and style 'NO BORING BABU' and certain comments were made in respect

of an IAS Officer and also the Chief Minister of the State of Telangana.

3. The respondent No.2 issued a notice to the Outlook Magazine for publishing the article and finally a letter was submitted to the State Government on 29.07.2015 stating that she intends to file a suit for defamation claiming Rs.10 crores against the management of Outlook Magazine for publishing the article and therefore, she needs an amount of Rs.9,75,000/- (Rupees nine lakh and seventy five thousand only) for payment of court fee. A request was made to sanction Rs.15.00 lakhs. The State Government by G.O.Rt.No.2296, dated 20.08.2015, sanctioned Rs.15.00 lakhs towards legal expenses and other expenses for filing a suit against the Outlook Magazine.

4. The petitioner's contention is that the article was published by the Outlook Weekly Magazine in respect of a private function and it was not an official function and in case, the respondent No.2 was aggrieved in the matter, it was her private affair and by no stretch of imagination, the State Government could not have sanctioned Rs.15.00

lakhs for filing a suit in respect of defamation. The petitioner has also stated that the husband of the respondent No.2 is an IPS Officer, they are having sufficient funds to pay the court fees and the State exchequer cannot be burdened in the manner and method it has been done by issuing the G.O., dated 20.08.2015. The petitioner has prayed for the following relief:-

“It is therefore prayed that this Hon’ble Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring that the G.O.Rt.No.2296, General Administration (SC.A) Department, dated 20.08.2015 issued by the 1st respondent sanctioning an amount of Rs.15.00 lakhs to the 2nd respondent towards legal expenses to fight out her private litigation is highly arbitrary, bad and illegal and pass such other order or orders as deem fit and proper”.

5. In the other connected matters, i.e., PIL No.242 of 2015, the same G.O., is under challenge and it has been filed by one K.Eshwar Rao and W.P.No.31897 of 2015 has been filed by Outlook Publishing (India) Private Limited through its Chief Editorial Manager challenging the very same G.O.Rt.No.2296, dated 20.08.2015. In the said writ

petition, they have given reference to the other two PILs filed on the subject.

6. The State Government has filed a counter affidavit in the matter, which is duly supported by an affidavit by the Principal Secretary to the Government, General Administration Department and the fact that the respondent No.2 is an IAS Officer working as an Additional Secretary to Hon'ble Chief Minister, Government of Telangana has been admitted. It has been stated in the counter affidavit that Outlook English Weekly Magazine has published a news item of caricature of respondent No.2, which also contains another caricature of the Hon'ble Chief Minister of the State of Telangana along with certain photographs. The respondent No.1 has reproduced the extract of the article in the counter affidavit. It has been stated that the article published in the Outlook Magazine is defamatory and it was published to ruin the reputation of the respondent No.2, a woman IAS Officer as well as the Chief Minister of the State of Telangana. It was published to create a misleading impression against the Government's

functioning and therefore, the IAS Officer made a representation on 03.07.2015 to the Government for grant of financial assistance to the respondent No.2 and accordingly, the G.O., dated 20.08.2015 was issued granting financial assistance to the respondent No.2. The respondent No.1 has further stated that earlier also, several IAS Officers were granted financial assistance by issuing G.O.Rt.No.719, dated 19.02.2014 and the G.O., under challenge is neither arbitrary nor illegal or *mala fide* in nature or has been issued by abusing the power. In fact, it has been issued in public interest as well as in protecting and safeguarding the IAS Officer, who is working with the Government. A prayer has been made for dismissal of the PILs as well as the writ petition.

7. Heard the learned counsel for the parties and perused the record. These cases are being disposed of with the consent of the parties.

8. The undisputed facts of the cases reveal that the respondent No.2 is an IAS Officer of Telangana cadre and a Fashion show took place on 18.06.2015 in 'The Park' hotel

at Hyderabad. It was organised by Fashion Designer Abhishek Dutta. It is true that an article was published in the Outlook English Weekly Magazine in 6th Edition, July, 2015, under the title 'NO BORING BABU' and the extract of the article, as reflected in the counter affidavit' reads as under:-

“TELANGANA – NO BORING BABU

“The portfolio of a junior bureaucrat, who is posted in the Telangana CM’s office, is a mystery. She used to be posted in a district earlier. But things changed all of a sudden after the elections. The lady is present at every meeting and seen in almost every official photograph sent out by the CMO. But what she does exactly is a puzzle. She makes a fashion statement, with her lovely saris and serves as “eye candy” at meetings, admit leading party politicians. In fact, it’s this bureaucrat who calls up other officials in the CMO and asks them to come for meetings. She knows exactly what time the CM will arrive and leave the office. The lovely lady, known for her ethnic style, recently stunned all by appearing in a trendy trouser and frilly top at a fashion show. And for once, she wasn’t sitting in an official meeting. But this appearance too made for a great photo op.”

9. The documents on record reveals that there was protest in the matter by the Officers serving under the Indian Administrative Service and the State Government

has issued G.O.Rt.No.2296, dated 20.08.2015 sanctioning a sum of Rs.15.00 lakhs in favour of the respondent No.2 to file a suit against Outlook English Weekly Magazine. The G.O.Rt.No.2296, dated 20.08.2015 is reproduced as under:-

GOVERNMENT OF TELANGANA

ABSTRACT

I.A.S – Legal Expenses – Sanction of an amount of Rs.15.00 lakhs to Smt.Smita Sabharwal, IAS, Additional Secretary to Chief Minister towards legal expenses – Orders – Issued.

GENERAL ADMINISTRATION (SC.A) DEPARTMENT

G.O.Rt. No.2296

Date:20.08.2015

Read:-

From Smt. Smita Sabharwal, IAS, Additional Secretary to Chief Minister letter dt. 29.07.2015.

ORDER:

In the letter first read, Smt. Smita Sabharwal, IAS, Additional Secretary to Chief Minister has informed that she is intending to file a Civil Suit worth Rs.10.00 crore against the management of the Outlook Magazine for posting an article and a cartoon in July 6th edition of Outlook Magazine. The Member of Service has further informed that as per the norms an amount of Rs.9.75 lakhs has to be deposited in the court towards Court Fee while filing the Civil Suit and requested to sanction an amount of Rs.15.00 lakhs, so as to enable her to go ahead with the above case. The approximate details of Court Fee to be deposited and other legal expenses are as follows:-

S.No.	Particulars	Amount (Approximatey)
1	Court fee for the civil suit for damages	Rs.9,75,426/-
2	Litigation expenses including Legal	Rs.5,00,000/-

	representation for criminal complaint, civil suit, possible quashment proceedings in the Hon'ble High Court	
	TOTAL:	Rs.14,75,426/-

2. Sanction is hereby accorded for an amount of Rs.15.00 lakhs (Rupees fifteen lakhs only) to Smt. Smita Sabharwal, IAS, Additional Secretary to Chief Minister towards legal expenses in connection with filing of Civil Suit against the management of Outlook Magazine in the above matter, subject to condition that in case of compensation being awarded by Court, this amount should be refunded. She should give utilization certification along with detailed bills/receipts towards its use.

3. The expenditure sanctioned in Para-2 above shall be debited to the relevant head of account.

4. The General Administration (Claims.C) Department is requested to draw and credit the amount in favour of "Smt.Smita Sabharwal, IAS, Additional Secretary to Chief Minister".

5. This order issues with the concurrence of Finance (EBS.I) Department vide their U.O. No.363/EBS.IA1/15, dated 01.08.2015.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF
TELANGANA)

VIKAS RAJ,
SECRETARY TO GOVERNMENT (POLL)

To
Smt.Smita Sabharwal, IAS, Additional Secretary to Chief Minister.
The General Administration (Claims.C) Department.
The Pay and Accounts Officer, Hyderabad.
The Director of Treasuries and Accounts, Telangana, Hyderabad.
The Accountant General, Telangana, Hyderabad.
Copy to:
The Finance (EBS.I) Department.
SF/SC

// FORWARDED :: BY ORDER//

SECTION OFFICER (SC)

10. While the matter was being argued before this Court, it was brought to the notice of this Court by the petitioners that a civil suit was preferred, i.e., O.S.No.179 of 2016 before the learned XXV Additional Chief Judge, City Civil Courts, Hyderabad and the same was dismissed in default on 27.12.2021. After that, no steps have been taken for restoration of the same and the fact is that the suit was dismissed on 27.12.2021 and there is no denial to the aforesaid statement made in open court.

11. The basic question, which is arising in the present cases, is whether the State Government can sponsor a person to file a suit which is in respect of defamation for an event which is not arising out of discharge of his/her official duties.

12. The undisputed facts of the case reveal that the Fashion Show was organised by Designer Abhishek Datta and it took place in 'The Park' hotel in Hyderabad on 18.06.2015. It has been contended by the petitioner that the respondent No.2, IAS Officer along with her husband made

an appearance on the ramp and it is an admitted fact that the Outlook English Weekly Magazine in its 6th Edition July, 2015 published an article in the name and style 'NO BORING BABU' and certain comments were made in the matter. The Fashion Show was not official show/official programme of the State of Telangana. No document has been brought on record that it was an official function by the State of Telangana and therefore, it has to be presumed that it was a private event, in which the respondent No.2 has participated.

13. The learned counsel for the petitioner has drawn the attention of this Court towards Article 282 of the Constitution of India and the same reads as under:-

“282. Expenditure defrayable by the Union or a State out of its revenues:- The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.”

14. The aforesaid constitutional provision certainly empowers the Union of India to make any grants for any public purpose and in the considered opinion of this Court,

the grant made in the peculiar facts and circumstances of the case to file a suit for defamation made is certainly not a grant made in public purpose.

15. Learned counsel for the petitioner has drawn the attention of this Court to the Judgment delivered by the Hon'ble Supreme Court in the case of **Bhim Singh v. Union of India**¹. In the aforesaid case, a prayer was made for a direction for scrapping of the Members of Parliament Local Area Development Scheme (MPLAD Scheme) and for impartial investigation for the misuse of the funds allocated in the Scheme. The validity of the Scheme was upheld by the Hon'ble Supreme Court and the petition was dismissed.

16. The learned counsel has drawn the attention of this Court towards the conclusion drawn in the aforesaid case in paragraph 97 of the aforesaid Judgment, which is reproduced as under:-

“97. In the light of the above discussion, we summarise our conclusions as follows:

(1) Owing to the quasi-federal nature of the Constitution and the specific wording of Article 282, both

¹ (2010) 5 SCC 538

the Union and the State have the power to make grants for a purpose irrespective of whether the subject-matter of the purpose falls in the Seventh Schedule provided that the purpose is “public purpose” within the meaning of the Constitution.

(2) The Scheme falls within the meaning of “public purpose” aiming for the fulfilment of the development and welfare of the State as reflected in the directive principles of State policy.

(3) Both Articles 275 and 282 are sources of spending funds/monies under the Constitution. Article 282 is normally meant for special, temporary or ad hoc schemes. However, the matter of expenditure for a “public purpose” is subject to fulfilment of the constitutional requirements. The power under Article 282 to sanction grant is not restricted.

(4) “Laws” mentioned in Article 282 would also include Appropriation Acts. A specific or special law need not be enacted by Parliament to resort to the provision. Thus, the MPLAD Scheme is valid as Appropriation Acts have been duly passed year after year.

(5) Indian Constitution does not recognise strict separation of powers. The constitutional principle of separation of powers will only be violated if an essential function of one branch is taken over by another branch, leading to a removal of checks and balances.

(6) Even though MPs have been given a seemingly executive function, their role is limited to “recommending” works and actual implementation is done by the local authorities. There is no removal of checks and balances since these are duly provided and have to be strictly adhered to by the Guidelines of the

Scheme and Parliament. Therefore, the Scheme does not violate separation of powers.

(7) Panchayati Raj institutions, municipal as well as local bodies have also not been denuded of their role or jurisdiction by the Scheme as due place has been accorded to them by the Guidelines, in the implementation of the Scheme.

(8) The court can strike down a law or scheme only on the basis of its vires or unconstitutionality but not on the basis of its viability. When a regime of accountability is available within the Scheme, it is not proper for the Court to strike it down, unless it violates any constitutional principle.

(9) In the present Scheme, an accountability regime has been provided. Efforts must be made to make the regime more robust, but in its current form, cannot be struck down as unconstitutional.

(10) The Scheme does not result in an unfair advantage to the sitting Members of Parliament and does not amount to a corrupt practice.”

17. The learned counsel for the petitioner has placed heavy reliance upon the sub-paragraph (1) of paragraph 97 and it has been argued with great force that the Union and the State have the power to make grants for a purpose irrespective of whether the subject matter of the purpose falls in the Seventh Schedule provided that the purpose is “public purpose” within the meaning of the Constitution.

18. Filing of a case by an individual in his private capacity against another private entity can never said to be for the 'public purpose'. In the present case, it is not the case where the State of Telangana has taken action against the Outlook Magazine or the respondent No.1, nor any comment was made by the Outlook Magazine against the respondent No.2 in respect of an event relating to discharge of official duties and therefore, in the considered opinion of this Court, the sanction by the State of Telangana can never said to be the sanction made in respect of any 'public purpose'.

19. The learned counsel for the petitioner has also placed reliance upon the Judgment delivered in the case of **Common Cause v. Union of India**², the Supreme Court was dealing with publicly funded advertising campaigns through print/electronic media by Central Government, State Governments, their Departments and instrumentalities for furthering political motives of the political party in power. Learned counsel has drawn the attention of this Court in

² (2014) 6 SCC 552

paragraphs 18 and 19 of the aforesaid Judgment and the same are reproduced as under:-

“18. In ***Shrilekha Vidyarthi v. State of U.P.*** [(1991) 1 SCC 212;1991 SCC (L&S) 742], this Court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed: (SCC p. 239, para 29)

“29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.”

Similar reasoning was rendered in ***Ramana Dayaram Shetty v. International Airport Authority of India*** [(1979) 3 SCC 489;(1979) 3 SCR 1014] and in ***Col. A.S. Sangwan v. Union of India*** [1980 Supp SCC 559 : 1981 SCC (L&S) 378] . Hence, it was submitted that judicial review of government policies is permissible if it does not satisfy the test of reasonableness and against the public interest.

19. Although, as asserted by the respondents herein that it is not the prima facie jurisdiction of this Court to examine what constitutes as “public purpose” or not, however, as per judicial precedents in ***Kasturi Lal Lakshmi Reddy v. State of J&K***, (1980) 4 SCC 1 and other case laws as stated above, this Court is duty-bound to interfere whenever the Government acts in a manner, which is unreasonable and contrary to public interest. In succinct, the Government cannot act in a manner, which would benefit a private party at the cost of the State;

such an action would be both unreasonable and contrary to public interest. The present writ petitions challenge the government advertisements of political nature at the cost of the public exchequer on the ground that they are in violation of Articles 14 and 21 of the Constitution. We shall examine and scrutinise the situation as portrayed by the petitioners as to whether there is need for specific guidelines to be issued by this Court to regulate the same.”

20. In the light of the aforesaid Judgment, it can be safely gathered that the action of the State can be subjected to judicial review in respect of Government policy also if it does not satisfy the test of reasonableness and is against the public interest.

21. In the present case, the State exchequer has been subjected to financial burden for the benefit of a private party and in the considered opinion of this Court, the action of the State is unreasonable and contrary to the public interest.

22. The learned Advocate General appearing on behalf of the State of Telangana has argued before this Court that the respondent No.2 is an All India Service Officer and the Department of Personnel and Training has issued executive

instructions, dated 15.09.1993 for providing assistance to All India Service Officers in connection with litigation action taken by them in case of discharge of their official duties. The executive instruction on which heavy reliance has been placed is reproduced as under:-

“IX. LEGAL ASSISTANCE TO ALL INDIA SERVICE OFFICERS IN CONNECTION WITH LITIGATION ACTION TAKEN BY THEM IN THE CASE OF THEIR OFFICIAL DUTIES”-

1. Government can provide assistance to a MoS in public interest, with litigation action taken by them in the cases of their official duties:- I am directed to refer this Department's letter No.45/5/53 – Estt.(A) dated 8.1.59 on the above subject and to say that on increasing tendency has been observed among certain sections to lodge legal complaints against members of the All India Service in their personal name for official acts done by these officials in the cases of their official duties.

2. While State Governments and the Central Government vide DP&AR letter No.45/5/53 – Estt(A) dated 8.1.59 do have provisions to undertake the defence of such government servants in case it is in the public interest, whereupon all arrangements are made by the Government, there is often a tendency for the State Governments to ask the officer to undertake the defence on his own and consider reimbursement of the legal expenses only in case such officer is successful in the legal proceedings. In other cases, the State Governments may agree to provide legal expenses but subject to the condition that in case is lost, the officer has to bear the

entire cost of litigation. The practice of asking officers to defend themselves in such legal proceedings is bound to cause harassment for such officers in addition to expense, the reimbursement of which by the State Government and the extent thereof being uncertain.

3. In the performance of the official acts, the officer usually is only implementing the decision of the Government and it is not unjust to expect that the Government would undertake the defence of all government servants who have been impleaded in such legal action. For this purpose, there appears no need to make a distinction as to whether the complaint has been filed against the officers in their official designation or in their individual name.

4. While the State Governments are themselves the best judge of the public interest in respect of acts done by officers working for them the above may please be kept in mind while examining the case in which officers are subjected to harassment through such legal action.

[Letter No.11017/17/93 – AIS(II) dated 15/9/93]”

23. This Court has carefully gone through the aforesaid executive instruction and it is not a case where the officer has been subjected to harassment through legal action in respect of an act done by the officer nor the case has been filed by the officer in respect of discharge of official duties and therefore, the aforesaid executive instruction does not help the State Government in any manner.

24. The learned Advocate General has also placed reliance upon the Judgment delivered in the case of **R.Rajagopal v. State of Tamil Nadu**³. In the aforesaid case, one Shankar @ Gauri Shankar @ Auto Shankar was charged and tried for as many as six murders. While he was in jail, he wrote his autobiography and it was alleged that it was handed over to his advocate to ensure that his autobiography is published in magazine '*Nakkheeran*'. The Inspector General of Prisons wrote a letter dated 15.06.1994 to the magazine requesting it to stop publishing the serial forthwith and in those circumstances, the Hon'ble Supreme Court in the aforesaid case, in paragraph 26 has held as under:-

“26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating

³ (1994) 6 SCC 632

the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is

true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.”

25. The Hon’ble Supreme Court in the aforesaid case has finally held that the petitioners therein have right to publish the life story/autobiography of Shankar @ Gauri Shankar @ Auto Shankar and the State or its officials cannot prevent or restrain the said publication. It was also held that the

remedy of the affected public officials/public figures, if any, is after the publication only.

26. This Court is of the considered opinion that the facts and circumstances of the aforesaid case and the facts and circumstances of the present case are altogether different. In the present case, it is a case where respondent No.2 has participated in a private event, some article has been published by the Outlook English Weekly Magazine and some comments have been against the IAS Officer and against the Chief Minister. Respondent No.2 wanted to file a suit claiming damages and it is certainly not at all the action of the State Government against the Outlook Magazine and therefore, exercise of power by the State Government in sanctioning the amount to the respondent No.2 can never be included under the term 'grant for any public purpose' keeping in view the Article 282 of the Constitution of India.

27. Resultantly, the PIL Nos.241 and 242 of 2015 and W.P.No.31897 of 2015 are allowed directing the respondent No.2 to refund the amount of Rs.15,00,000/- (Rupees

fifteen lakhs only) sanctioned by the Government of Telangana within a period of ninety (90) days from today. In case, the said amount is not refunded by the respondent No.2 within ninety (90) days from today, the State shall recover the same from the Officer in question within a period of thirty (30) days thereafter, under intimation to the Registrar General of this Court.

Miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

26.04.2022
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