

Sunanda Das and Others Vs. State of Maharashtra and Others

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Court : Mumbai

Decided On : Apr-13-1999

Reported in : 1999(4)BomCR82; 2000(2)MhLj481

Judge : Y.K. Sabharwal C.J. and; S. Radhakrishnan, J.

Acts : [Constitution of India](#) - Articles 14, 16 and 226

Appeal No. : Writ Petition No. 1395, 1397, 1398 and 1416 of 1999

Appellant : Sunanda Das and Others

Respondent : State of Maharashtra and Others

Advocate for Def. : C.J. Sawant, Advocate General, ;R.D. Rane and ;V.V. da Gama, A.G.P.;R.A. Kapadia and ;P. Palkhiwala, Advs., i/by ;Thakore Jariwala & ;Associates,; D.Y Chandrachud, A.S.G., ;S. Venkiteswaran, ;S.A.

Advocate for Pet/Ap. : A.V. Anturkar, ;V.P. Sawant, ;I.M. Chagla and ;J. Dwarkadas, ;S. Rustomjee, ;V. Joglekar, ;G. Patel, ;V. Diwan, ;A.V. Vazirani, ;K. Kharade and ;L. Pereira, Advs., i/by ;Hariani & Co.

Judgement :

ORDER

Y.K. Sabharwal, C.J.

1. Rule, returned forthwith.

2. Some members of legal fraternity, some residents of Pune including some retired I.A.S. officers, one Corporator of Pune Municipal Corporation and a Citizens' forum have filed these petitions in public interest. The prayer in all the petitions is similar. It is to quash the Transfer Order dated 13th March, 1999, in respect of Arun Bhatia from the Post of Municipal Commissioner, Pune. The transfer order was made barely 6 days after Bhatia had been appointed to the said post. According to the petitioners, transfer of Bhatia is arbitrary, capricious and manifestly against public interest. It has been pointed out in the petitions that the City of Pune is in the need of precisely such stringent action as has been taken by Bhatia to prevent encroachments and rampant unauthorised developments, which had hitherto been largely ignored, resulting in widespread damage to the city and prejudice to the residents and citizens. The claim of the petitioners is that the transfer of an effective, honest and conscientious officers, if allowed, will lead to a resurgence of illegality and will strengthen the influence of violators of law. Besides, it has the effect of destroying and undermining the confidence of the public in public officials, the Government and the bureaucracy. Bhatia is stated to be an upright officer belonging to 1967 batch of Indian Administrative Service and stated to have served in various capacities as the Collector of Satara, Dhule, Raigarh and Mumbai, besides the Commissioner of Food and Drugs. Some instances have been given in these petitions, where, while working as officer, he unearthed corruption and other illegal practices. He is also alleged to have been transferred from the post of Divisional Commissioner, because of his sustained action against corruption amongst Village Talathis regarding manipulation of land records. We are, however, not concerned with the reasons of Bhatia's transfer from the post of Divisional Commissioner and his posting on 6th March, 1999, as Municipal Commissioner, Pune. What we are concerned in these petitions is whether the transfer of Bhatia within a span of 6 days is vindictive on account of mass demolition which had taken place on 10th March, 1999, despite his reputation of an upright and honest officer. Whether the transfer in question is by way of punishment for doing his duty or it is for some other reason is the point in issue.

3. According to the Government, there is no nexus between any act or omission of Bhatia in rendering his services as Pune Municipal Commissioner or Divisional

Commissioner of Pune. Affidavits-in-reply to these petitions have been filed by the Chief Minister of the State, Chief Secretary as also Principal Secretary (Personnel), General Administrative Department, Government of Maharashtra. The sum and substance of all these affidavits is that the reason for transfer of Bhatia from the post of Pune Municipal Commissioner was an enquiry ordered/contemplated against him for leakage to press of correspondence between Bhatia and Chief Secretary. It is claimed that the prima facie view that Bhatia was responsible for such leakage and had thus violated service discipline and Conduct Rules had alone nexus with his transfer. In short, it is claimed that demolition drive had no correlation with Bhatia's transfer. It may be noticed that the Government has not disputed that the officer is honest and upright. It is correct that an officer being honest and upright does not give him any licence to violate the service discipline and conduct Rules. Bhatia is stated to be guilty of serious misconduct by leakage of confidential correspondence to press. There is also a suggestion of use of intemperate and unbecoming language by Bhatia, as also of criticism by him of the policies of the Government while in service. It is claimed that, though each officer has a right to express opinion on the file or through correspondence, but making available such correspondence to the media is against the norms of administrative disciplinary rules.

4. Before we consider the reason of transfer of Bhatia, it is necessary to examine the preliminary objection as to locus standi raised on behalf of Government of Maharashtra by its learned Advocate-General, Shri Sawant. Learned Advocate-General strenuously contends that the writ petitioners have no locus standi to challenge the order of transfer by filing these writ petitions in public interest and Bhatia alone can challenge it if he is so aggrieved and if it is permissible in law. That challenge, Shri Sawant contends, has to be before an appropriate forum, viz., Administrative Tribunal. In support, strong reliance has been placed by learned Advocate-General on the decision of a Division Bench of this Court dated 18th January, 1999, in *Re: Premnath Hoon v. Union of India & others*, Writ Petition No. 76 of 1999. It was a petition filed by a retired Defence Personnel seeking directions to the Government to disclose the reasons that led to the dismissal of Naval Chief Admiral Vishnu Bhagwat. We may reproduce the first and the last paragraphs of the said decision, on which strong reliance has been placed in

support of the contention that the petitioners have no locus standi. The said paragraphs read as under:-

'1. Ex-Navy Chief, Admiral Vishnu Bhagwat, who is the affected party, has not approached this Court for any reliefs. The petitioner, who is a retired defence personnel and who has no personal interest in the subject-matter of this petition, in our view, does not have a locus standi to file the present petition. By the present petition petitioner seeks directions to the respondents to disclose reasons that have led to the dismissal of the Naval Chief. He has not challenged the dismissal itself, he has not attributed lack of bona fides or mala fides to the order of dismissal, he merely claims disclosure of the reasons. It is not his case that the Naval Chief is disabled for good reasons such as lack of basic knowledge in regard to his legal rights or incapacity to approach the Court of law due to compelling circumstances. Question is whether petitioner can be permitted to espouse the cause of another who has himself, out of his free volition, chosen not to seek legal redress. We should think not.

6. If one has regard to the aforesaid decisions of the Apex Court, a conclusion is irresistible that petitioner has no locus standi. Moreover, present petition does not merit consideration as a public interest litigation as it is not shown that the person aggrieved and directly affected is disabled from seeking relief for good reason. Order of dismissal cannot be justiciable at least at the instance of the petitioner. Present petition in the facts and circumstances, we find, is devoid of merit. The same is accordingly summarily rejected.'

It is important to bear in mind the allegations in the aforesaid case in which only directions sought were to disclose reasons for the dismissal of the Naval Chief. As is evident from the above, dismissal had not been challenged. Further, the petitioner had not attributed lack of bona fides, nor had he alleged mala fides in making the order of dismissal. He had merely claimed disclosure of the reasons. It was in the aforesaid context the Bench had made observations which are now sought to be relied upon. Unlike Bhagwat's case, there are serious allegations of lack of bona fides in the present case. The entire case set up by the petitioners rests on bona fides or otherwise of the impugned action. In the present case, the

thrust of the petitioners is that Bhatia is sought to be transferred, as he is likely to take, and has taken, action of the demolition of unauthorised constructions and structures belonging to powerful lobbies.

5. Reliance has also been placed by Shri Sawant on the decision of the Supreme Court in the case of S.P. Gupta v. Union of India, : [1982]2SCR365 for the proposition of the petitioners having no locus standi to file these petitions. The observations on which Shri Sawant relies have been quoted in aforesaid Bhagwat's case and the same may be reproduced as under:-

'So far as O.N. Vohra is concerned, it is apparent that though he was joined as a party respondent to the writ petition filed by V.M. Tarkunde, he did not choose to appear and take part in the proceedings. He did not even file an appearance, presumably because he was not interested in wresting back the office of an Additional Judge through a judicial writ. He adopted a commendable attitude consistent with the dignity of the high office which he had the privilege to hold for over two years and scorned to be a party to any litigative adventure for getting back the office of a High Court Judge. He took the view that the office of a High Court Judge is no mean office for which one may canvas, lobby or fight but it is a high position which can only be offered and which one should regard as an honour to be invited to fill and if for any reason, justifiable or not, the Government chooses not to offer it to the deserving person, it may result in detriment to public interest for which the Government may have to account to the people, through their election representatives, but the person concerned should not litigate his claim to this high office. That would lower the dignity of the office by making it the subject-matter of litigative controversy. It was presumably for this reason that O.N. Vohra did not appear in the writ petition or seek any relief from the Court in regard to his continuance as an Additional Judge. In fact, we are told, O.N. Vohra has already started practice in the Delhi High Court. Now if O.N. Vohra has not come forward to seek any relief from the Court and is not claiming that he should be deemed to have been appointed a permanent Judge or that he should be reappointed as an Additional Judge for a further term, it is difficult to see how the Court can be called upon to examine his case for the purpose of determining whether he was wrongly discontinued as an Additional Judge.'

Relying upon the aforesaid observations, it was contended that, when Bhatia has not gone to appropriate forum to seek relief against his transfer, how can this Court be called upon by the petitioners to examine his case for the purpose of deciding whether transfer order is legal or not.

6. Learned Advocate-General is unfortunately missing the observations which follow immediately after the aforesaid observations which are to the effect that any public-spirited Advocate acting bona fide and not for private gain or personal profit or political motivation or any other oblique consideration, may file a writ petition in the High Court challenging the unconstitutional or illegal action of the Government or any other constitutional authority prejudicially affecting the administration of justice and in such writ petition he may claim relief not for himself personally but for those who are the direct victims of such unconstitutional or illegal action, because granting such relief to them would repair the injury caused to administration of justice. What is required is that the person for whom the relief is sought must be ready to accept it. It would be useful to reproduce the said later observations as under:-

'We have taken a broad and liberal view in regard to locus standi and held that any public-spirited Advocate acting bona fide and not for private gain or personal profit or political motivation or any other oblique consideration, may file a writ petition in the High Court challenging the unconstitutional or illegal action of the Government or any other constitutional authority prejudicially affecting the administration of justice and in such writ petition he may claim relief not for himself personally but for those who are the direct victims of such unconstitutional or illegal action, because granting such relief to them would repair the injury caused to administration of justice. But the persons for whom the relief is sought must be ready to accept it.....'

7. Mr. Chagla has also placed strong reliance on S.P. Gupta's case to counter the preliminary objection that the petitioners have no locus standi to file the petitions. Learned Counsel contends that, in view, of S.P. Gupta and various subsequent decisions following S.P. Gupta, it is too late in the day for the Government to challenge the focus standi of the petitioners to take up this cause. At this stage, we may also notice that none has questioned the bona fides of the petitioners or has

attributed any personal, political or private motive to them.

8. In S.P. Gupta's case, the Apex Court considered various petitions filed by members of legal profession in public interest, including a petition, inter alia, challenging the non-continuance of the tenure of O.N. Vohra and S.N. Kumar as Additional Judges of Delhi High Court after the expiry of their tenure of Additional Judges. O.N. Vohra and Kumar were also impleaded as respondents. Vohra did not appear at the hearing but Kumar appeared and, in the counter affidavit, claimed that the decision of Central Government not to appoint him for a further term as a Judge was vitiated and was based on irrelevant considerations. Dealing with the question of locus standi, it was held by the Supreme Court that the petitioners had a vital interest in the independence of the Judiciary and, if an unconstitutional or illegal action is taken by the State or by any Public Authority, which has the effect of impairing the independence of Judiciary, they would certainly be interested in challenging the constitutionality or legality of such action. It was also observed that the profession of lawyers is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice. While holding that grievance in respect of O.N. Vohra could not be examined, since he had neither filed any counter affidavit nor had he appeared to claim that he should be re-appointed as an Additional Judge for a further term, the case of S.N. Kumar was examined and the preliminary objection that the petitioners had no locus to file the writ petition was rejected. While dealing with the case of Kumar, it was observed at page 569 that since Kumar had appeared and had filed affidavit questioning the action of the Government in not extending his term and thus 'In view of these new circumstances, much of the sting in the objection to the locus standi of the original petitioners to file the petitions is lost'. In the present petitions, too, Bhatia has appeared and has filed his affidavit questioning the legality of Order of Transfer.

9. Reliance has also been placed by Shri Sawant on the decision of the Supreme Court in Krishna Swami v. Union of India and others, : AIR 1993 SC1407 , particularly on paragraph 15, which was also quoted in Hoon's case. It reads as under:-

'15. We have already indicated the impropriety of considering and deciding the question of grant of reliefs claimed in the petitions for the benefit of Mr. Justice V. Ramaswami in his absence even as a party. Ordinarily, it is the person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf. In that situation also the claim is made in substance by the person affected even though the form be different and it is so stated expressly. The only reason given for the learned Judge not doing so, by Shri Sibal, has been considered by us earlier and not found sufficient to support his submission. We may also mention that in a similar situation Mr. Justice Murphy of the High Court of Australia, the Apex Court of that country, while facing proceedings for his removal from office, had brought an action for injunction to restrain the proceedings against him in his own name. The judgment of the High Court of Australia in that matter is *Murphy v. Lush*, 1986(2) S.C.C. 602. That case is referred only to indicate that the grievance in a similar situation was made by the concerned Judge of the Apex Court himself and not by someone else even without impleading him. We may also add that subsequently in Writ Petition No. 514 of 1992, the petition was filed by the wife of the learned Judge wherein the learned Judge gave a writing to the effect that the writ petition was in substance for and on his behalf with the decision in which he would be bound. There is nothing on record in these petitions to indicate a similar stand by the learned Judge. Moreover, if the subsequent writ petition for his benefit is filed by his wife in this manner, there is no reason why the learned Judge would not adopt the same method to raise the points involved in these petitions, if he was so advised.'

The aforesaid observations have also to be seen in view of law laid down in *S.P. Gupta's* case. On the facts of the present case, borrowing the language in *S.P. Gupta's* case, it deserves to be noticed that the objection of focus standi has lost its sting, in view of *Bhatia's* affidavit. It would be useful to notice that in *Krishna Swamy's* case, the decision in *S.P. Gupta's* case has been relied and cited with approval, in particular the opinion of Justice Bhagwati taking a broad and liberal view in regard to locus standi with the rider that the persons for whom the relief is sought must be ready to accept it. They must appear and make it known that they are claiming such reliefs and it cannot be thrust upon them unless they wish it.

Reference may be made to paragraphs 22 and 24 of the decision relied upon by Shri Sawant.

10. The decisions of the Supreme Court in the case of *Simranjit Singh Mann v. Union of India* and another, : 1993 CriLJ37 and *Karamjeet Singh v. Union of India*, : 1993 CriLJ46 relied upon on behalf of the Government have no applicability. In these cases, the conviction of others who had been held guilty of murder of General Vaidya was sought to be challenged.

11. Shri Sawant has also placed reliance on a Division Bench decision of this Court in *Dilip Karambelkar v. Rear Admiral Vishnu Bhagwat & others*, : AIR1997 Bom131 for the proposition that the petitioners have no locusstandi. We fail to see the applicability of the said decision to the present case, in view of the fact that the motive of the present petitioners is not under challenge. In the cited decision, it was observed that the purpose of filing the petition was oblique and that the petitioners had misused the public interest litigation for some extraneous purposes. That is not even claimed to be so in the present case. There cannot be any doubt that in public interest litigation the Court has to see that provisions of the Constitution or the law is enforced for advancing the cause of community, without any private motive or gain.

12. On the aspect of locus, we may reproduce the opinion of Justice R.M.Sahai in the case of *Bangalore Medical Trust v. S. Muddappa & others*, : [1991]3SCR102 . It is as under:-

'36. Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fallout the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in

exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers (see S.P. Gupta's case). Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations.'

13. Dealing with a case of transfer, though in a different context, in the case of Arvind Dattatraya Dhande v. State of Maharashtra and others, : AIR 1997 SC3067 , it was observed that it is most unfortunate that the Government demoralises the officers who discharge their duties honestly and diligently and bring to book the persons indulging in black marketing and contra banding liquor and that it was one of the eloquent cases where such a sorry state of affairs has come to tight. The Court observed that, in view of the unimpeachable and eloquent testimony of the performance of the duties, it was obvious that the transfer was not in public interest, but it was a case of victimisation of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. The order of transfer, it was held, was mala fide and in exercise of power to demoralise the officers who would efficiently discharge the duties of public office. We are

conscious of the fact that in the said case the Supreme Court was dealing with the case of an officer who had challenged the transfer unsuccessfully before the Maharashtra Administrative Tribunal and the observations were made by the Supreme Court while allowing his appeal.

14. While examining the focus standi of the petitioners in public interest litigations, it may also be useful to bear in mind the observations of the Supreme Court in the case of Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi & others, : [1987]1SCR458 , on which reliance was placed by Shri Iqbal Chagla appearing for one of the petitioners. The said observations are as under:-

'51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out the courts should not and cannot remain mute and dumb.'

15. Unfortunately, though, the position has not improved since the time the aforesaid observations were made, but has rather deteriorated. It is too late in the day to accept the objection as to the locus standi of the petitioners. The acceptance of the preliminary objection will amount to putting back the clock of advancement and development of law relating to locus standi and public interest litigations. Thus, we are unable to accept the preliminary objection that residents of Pune, including members of legal fraternity, I.A.S. Officers etc. have no locus standi to file these petitions. We are of the view that they have legitimate right to expect an honest, efficient and meaningful administration. In case the Municipal Commissioner has been transferred for extraneous considerations, it would not be possible to throw out the petitions on the ground that he, and he alone, has locus standi to challenge it and none else, particularly when he, as a respondent, has filed affidavits also questioning the impugned order of transfer. Whether to interfere or not in such matters would depend on the facts and circumstances of each case.

16. We may clarify, before dealing with the merits, that the public outcry or public demand of an officer being transferred or not is not a relevant consideration. We are concerned with the merits of the case which are to be adjudicated in accordance with law and not with the public demand or expectation and, to that extent, learned Advocate-General is right in relying upon the observations made by the Supreme Court in *State of Maharashtra & others v. Sheela Ramesh Kini & others*, : (1998)9SCC346 , expressing disagreement with the observations of the High Court regarding the public outcry and public demand. The Court held that the decisions cannot be made on the verdict of numbers and courts have to maintain their cool and watch the events with a fair amount of objectivity, since it is not difficult for interested parties sometimes to manipulate mass outcry. Another aspect, which needs to be clarified, is regarding the two simultaneous trials, one in Court and other in public. When we expressed that we cannot countenance such two trials, it was not only submitted on behalf of the petitioners that they were only for agitating their rights in these petitions in accordance with law and were against trial in public by bandh etc., but a writing to that effect was also placed on record.

17. Reverting now to the merits, it is necessary to bear in mind few dates in respect whereof there is not much of dispute.

18. Bhatia took charge as Pune Municipal Commissioner on 6th March, 1999. He was relieved on 13th March, 1999, vide the impugned Order of Transfer. It is nobody's case that, for some administrative reasons, Bhatia was urgently required to man some other assignment. The new assignment to Bhatia was given on 17th March, 1999. It was the post of Director, Archives, Mumbai, renaming and upgrading that post in super-time scale of I.A.S., as Commissioner, Archives, Mumbai. Bhatia, on notice being issued by this Court, has filed affidavit. His affidavit, inter alia, states that, after appointment as Municipal Commissioner of Pune on 6th March, 1999, he made enquiry as to the illegal structures and outstanding taxes in the City of Pune and was informed by the City Engineer that there was available a list of illegal structures on several arterial roads, which had caused and continue to cause nuisance to the flow of traffic. Notices had been issued to owners. Some notices had been issued months and even years ago and, due to pressure being exerted upon the Corporation and City Engineer, such

structures could not be demolished despite the procedure required for demolitions thereof under law had been completed. Bhatia states that he gave specific directions to City Engineer on 8th March, 1999 to go ahead and demolish all structures, which were illegally constructed and were a public hindrance, without fear or favour and in accordance with law, with specific directions to City Engineer not to be influenced by the status or connections of owners or occupiers and carry out such demolitions in areas in which the structures stood, and make the same available for public purposes. The process of actual demolitions started on the morning of 10th March, 1999.

19. It appears that, on 8th and 9th March, 1999, news items appeared in several Marathi and English newspapers in relation to letters written by Bhatia as Divisional Commissioner to the Chief Secretary and criticizing the latter for delay in rehabilitation of project-affected persons and action against Talathis. According to the affidavit of the Chief Secretary, the news items reproduced letters addressed by Bhatia to him. We are not concerned in these petitions with the correctness or otherwise of the allegations which may have been made in the said letters. According to the Government, Bhatia was responsible for leakage of the said correspondence to the media and this is the reason for his transfer from the post of Municipal Commissioner, Pune. It seems that the case, as made out from the affidavit of the Chief Minister and Chief Secretary, is that, when newspaper reports were brought to the notice of the learned Chief Minister, he addressed a confidential note to the Chief Secretary, attaching thereto cuttings of news-reports. The said note states that the news reports leaked by Shri Bhatia to the reporters are prima facie, violative of Service Rules and, after conducting appropriate enquiry, action should be taken against him forthwith. It may also be useful to notice here that, before his appointment as Municipal Commissioner, there was nothing against Bhatia, which would go against his being appointed as Municipal Commissioner. The learned Chief Minister has stated that the order posting Bhatia as Pune Municipal Commissioner was passed by him, notwithstanding the fact that the Chief Secretary had recommended his posting as Managing Director. Maharashtra State Warehousing Corporation and, over-ruling him, Bhatia was appointed as Commissioner, Pune Municipal Corporation, under the orders of the learned Chief Minister.

20. On 10th March, 1999, or, for that matter, on the next date, viz., 11th March, another confidential note was sent by the learned Chief Minister to the Chief Secretary. It is stated to have been sent late in the evening of 10th March, 1999. The endorsement of Chief Secretary is dated 11th March, 1999. The first part of this note substantially deals with the subject-matter dealt with in the note dated 9th March, 1999, except that it also states that Shri Bhatia did not get in touch with the learned Chief Minister. The note goes on to say that-

'Each officer has a right to express his opinion on the file through correspondence but making available such correspondence to the media is not correct as it is against the norms of administrative discipline and rules. Hence, it is necessary to proceed against such an officer according to the rules. To avoid adverse effect on the working of the Pune Municipal Corporation during the said enquiry Shri Bhatia should be transferred elsewhere immediately.'

After the endorsement of the Chief Secretary dated 11th March, 1999, it seems, it was decided to post Girish Pradhan as Commissioner in place of Bhatia and decision regarding new posting of Bhatia was to be taken up separately. Further note dated 12th March, 1999, required that, in view of order that Bhatia was to be transferred immediately, orders may be issued by fax and delivered through the Commissioner of Police. These orders were ultimately served on Bhatia on 13th March, 1999, through Speed Post, Fax and Police Authorities.

21. According to the petitioners, the transfer was the result of demolition action taken by Bhatia. According to the Government, demolition action had no nexus with the transfer and leak to press led to the order of transfer being made. Which of the two versions is correct, is required to be examined keeping in view all surrounding circumstances, including the intervening events after 13th March, 1999.

22. It deserves to be emphasised that, if the transfer was made on account of an officer doing his duty in taking strict action and ensuring demolition of unauthorised structures, then, it deserves to be severely condemned and quashed. An officer doing his duty cannot be asked to pack and go elsewhere, particularly when it is known that, in cities like Pune, there are rampant, unauthorised constructions. On

the other hand, if the transfer is for administrative reasons, pending the enquiry, this Court would not interfere with such an order of transfer in these petitions even assuming there was violation of any guidelines. It cannot be doubted that it is not a routine transfer. If required in exigencies of service, an officer can be transferred within hours of posting as well. Transfer and posting is the right of an employer. Every violation of illegality cannot be made subject-matter of a public interest litigation. In public interest litigation, the Court would interfere when impugned action shakes the confidence of the community.

23. Let us, now, examine as to what transpired before the note dated 10th March, 1999 and after the note dated 9th March, 1999, referred to above, were written. From the material on record it appears that various properties were demolished on 10th March, 1999. Many such properties were hotels. In the affidavit of Bhatia, details of about 14 hotels which were demolished on 10th March, 1999, have been set out. Some other structures were also demolished. One such structure, as per the affidavit, is a petrol pump. Further, notice to some whose properties were demolished had been issued in 1996, in 1997 and to others in 1998.

24. In the note dated 9th March 1999, nothing is stated about the proposal of transfer of Bhatia. We, therefore, assume that there was no such proposal. None has claimed it. The question to be considered is what has happened between 9th March, 1999 and evening of 10th March, 1999, so as to order his transfer. The order dated 10th March, 1999 does not state that he is to be transferred since he had failed to get in touch with the learned Chief Minister, though being asked to do so. On the other hand, it states that he is to be transferred with a view to avoid adverse effect on the working of the Pune Municipal Corporation during the said enquiry. It is not at all clear as to what had been done by Bhatia in relation to the working of the Pune Municipal Corporation that his adverse effect on the Corporation had to be avoided by his transfer. It seems from the various news items published in English and Marathi news papers of 15th March, 1999 that, on the eve of the Assembly Session, there was customary press briefing by the Chief Minister. It was widely published by almost entire press of State of Maharashtra. As per those reports, according to the learned Chief Minister, the transfer of Bhatia had been effected, as Bhatia had exceeded his brief as Head of Pune Municipal

Corporation for having carried out the demolitions, despite order of stay of the Government. According to the 'Indian Express', the learned Chief Minister told media persons:

'I have high regards for Bhatia, in view of his clean image and straight forward approach, but the manner in which he functioned as the Pune Municipal Commissioner was highly objectionable and unacceptable to be as the Chief Minister.'

The report further states:

'Rane stated that the State Government is in favour of demolition of illegal and unauthorised structures, but in case of Bhatia, it was observed (that) he demolished such structures which were protected by Court orders or Urban Development Department.'

To the similar effect are the reports in 'Maharashtra Herald', 'Sakal' and 'Kesri'. Thus, it seems that every newspaper reported the reason of transfer of Bhatia to be the demolitions and not the enquiry against him regarding leak of correspondence to press. It is difficult to accept that in a press briefing by the learned Chief Minister on the eve of the Assembly where the journalists were present, they would black out the real reason of transfer and report a reason not given by the Chief Minister. It is not a case where one newspaper has come out with its own version as to what was stated in the press briefing. It deserves to be noticed that, though, in some cases, the press reports may not be very accurate, but it would be uncharitable to assume, in the given circumstances, that the reporting was not substantially correct. It was not the suggestion of anyone that the press is against the learned Chief Minister. It goes without saying that the newspapers and other media have been doing commendable service to the nation and are the main source of providing information and arousing awareness. Despite all this, while relying upon the newspaper reports, courts have to be very cautious and careful and have to examine the controversy bearing in mind the entire set of circumstances. The Chief Minister in his affidavit has not claimed, that newspaper reports were incorrect. It was in fact submission of learned Counsel appearing for him. It would also be too much for the respondents to expect the petitioners to

place on record whether the Chief Minister had or had no knowledge about extensive demolitions having taken place in Pune on 10th March, 1999. It has not been stated in the affidavit by the Chief Minister that he did not know about the demolitions having taken place on 10th March, 1999. It is difficult to accept, when also seen in the light of what appeared in press on 15th March, 1999, that the reason for transfer of Bhatia was not demolitions and that it was on account of departmental enquiry regarding leak of correspondence to the press. The stand in the affidavit that the transfer had no nexus with any act or omission by Bhatia in rendering his service as Pune Municipal Commissioner is contrary to material on record and contemporaneous events. Whether there was delay, if at all there was one, on 11th and 12th March, 1999, in actually passing the Order of Transfer, is not for the petitioners to explain. That cannot, in our view, be used as a circumstance to contend that, if the demolition action was a reason for transfer, the transfer order would have been made and served immediately on 11th or 12th and not on 13th March, 1999. If the reason for the transfer was the enquiry to be held regarding Krishna Valley Project, certainly, there would have been some whisper about it, at least on the 14th March, 1999, in the press briefing. Further, we fail to understand that, if such was the case, what compelled the authorities to serve the order on 13th March, 1999, on Bhatia in the manner in which it was done, by Speed Post, by Fax and through the Police. It was not that enquiry was starting forthwith. The enquiry has admittedly not started even till date. The presence of Bhatia in Pune had no nexus with the enquiry in regard to the alleged leakage of correspondence by him to the press. No such legitimate nexus could be shown to us, except by contending that an officer facing such an enquiry ordinarily should not be in the Corporation. We fail to comprehend the effect of Bhatia on the working of Pune Municipal Corporation during enquiry, except that the officer is required to take such action against large-scale and unauthorised constructions and other illegalities as is permissible in law. It has not been deposed that unbiased and impartial enquiry in relation to the case would not have been possible, if Bhatia had continued as Municipal Commissioner.

25. From the facts and circumstances as noticed hereinafter, it is evident that no reasonable person could come to the conclusion that transfer, in these eventualities, was necessary. The whole action is irrational. In the present case,

none even came to the conclusion that the impartial and proper enquiry would not be possible or it would be hampered, in case the officer continues as Municipal Commissioner.

26. Regarding the scope of Judicial review reference may only be made to decision of the Supreme Court in the case of *Tata Cellular v. Union of India*, : AIR 1996 SC11 while extensively dealing with the scope of judicial review, the Supreme Court has cited with approval the decision in the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* 1947(2) All.E.R. 680. It states:

'By irrationality, I mean what cannot be succinctly referred to as Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.'

27. The decision to transfer Bhatia, in the facts of present case, is so outrageous that it defies all logic and any moral standard. No reasonable person could have arrived at such a decision. We wish to emphasise that , during the present days when, unfortunately, corruption and dishonesty are at their peak, honesty and action as per law deserve a pat, rather than punishment. The transfer of Bhatia, in our view, is in the nature of punishment. It is one thing to pass orders to remain on paper and it is another thing to take action of demolition of unauthorised structures and implement the said decisions.

28. In view of the aforesaid discussions, we are unable to accept that the transfer was for the reasons stated in the affidavits of the learned Chief Minister, Chief Secretary or Principal Secretary (Personnel). The result is that the Order of Transfer of Arun Bhatia as Municipal Commissioner is quashed. We direct that Bhatia be posted forthwith as Municipal Commissioner, Pune. It would of course, be open to the Government to take such disciplinary action as may be permissible in law in regard to his alleged leakage of correspondence to the press.

29. No case is made out for grant of stay in favour of the Government, particularly in view of the fact that it is nobody's case that Bhatia cannot discharge, honestly

and diligently, the functions as Municipal Commissioner, Pune.

30. Rule on each petition is made absolute in the above terms.

31. Rule made absolute.

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