P.G. Narayanan Vs. the Union of India (Uoi), Rep. by the Secretary, Ministry of Information and Broadcasting and ors.

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Court : Chennai

Decided On : May-30-2005

Reported in : 2005(3)CTC582; (2005)3MLJ210; [2005]62SCL586(Mad)

Judge : Prabha Sridevan and ;C. Nagappan, JJ.

Acts : Competition Act, 2002 - Sections 3; West Bengal Animal Slaughter Control Act, 1950; Wild Life (Protection) Act, 1972; Constitution of India - Articles 14, 21, 32, 38, 39C, 142 and 226

Appeal No. : Writ Petition No. 17034 of 2005

Appellant : P.G. Narayanan

Respondent : The Union of India (Uoi), Rep. by the Secretary, Ministry of Information and Broadcasting and ors.

Advocate for Def. : V.T. Gopalan, Additional Solicitor General for ;J. Ravindran, A.C.G.S.C. for R-1 to R-5, ;G. Masilamani, Sr. Counsel and ;R. Viduthalai, Sr. Counsel for ;A.V. Bharathi, Adv. (For R-6)

Advocate for Pet/Ap. : N. Jothi, Adv. for ;A. Kandasamy, Adv.

Disposition : Petition dismissed

Judgement :

Prabha Sridevan, J.

1. A license is applied for and is under the process of being considered. The writ petitioner files what is said to be a 'Public Interest Litigation' and prays for a mandamus to reject the application. The question boils down to whether such a prayer can be granted.

2. Mr. N. Jothi, learned counsel appearing for the petitioner would submit that the application of the sixth respondent for the grant of Direct To Home (DTH) License should be rejected since it would violate Articles 38 and 39-C of the Constitution of India, and since the rule of law is not being followed in the processing of the said application, and in view of the presence of the Union Minister for Communications and Information Technology, who is the brother of Mr. Kalanidhi Maran, who is at the helm of the SUN TV Network of Companies, there is every chance of there being undue influence in the processing of the application, the entire process is vitiated by mala fides and bias and since there is imminent danger of the application being considered favourably violating the provisions of the Competition Act, 2002, the petitioner is entitled to maintain a quia timet action. Learned counsel further submitted that though specific allegations have been made naming the Union Minister and his brother Mr. Kalanidhi Maran in the affidavit filed in support of the writ petition, neither of them has chosen to deny the allegations and therefore, the allegations stand unrebutted. The learned counsel also submitted that the petitioner, being a Member of Parliament who has already filed a Public Interest Litigation, which is pending, has the locus standi to bring to the notice of the Court when glaring violations of law are being perpetrated and he is also entitled to maintain this Public Interest Litigation. The learned counsel further submitted that though a letter has been given to the respondents to produce the relevant files, they had not produced them, which itself shows that not all is well. The learned counsel also submitted that even if the prayer in the writ petition is framed properly that can not prevent this Court from granting the relief sought for, since the majesty of law must be upheld.

Learned counsel relied on the following decisions in support of his submissions :-

Nomenclature under which writ petition is filed is not relevant - (19 88) 5 S.C.C. 749 [Pepsi Foods Ltd. v. Special Judicial Magistrate]. Neither the Supreme Court nor the High Court should dismiss a writ petition on a mere technicality or just because the proper relief is not asked for; the Courts have the power to mould the relief so as to meet the requirement of the case - [Prabodh Verma v. State of Uttar Pradesh].

Locus standi - [Chairman, Railway Board v. Mrs. Chandrima Das].

Scope and ambit of Public Interest Litigation - [Guruvayoor Devaswom Managing Committee v. C.K. Rajan] [State of West Bengal v. Ashutosh Lahiri] [Indian Banks' Association v. Devkala Consultancy Service] and [Nandkishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan & Dombivali].

Bias - (1968) 3 All E.R. 304 [Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon] [Ranjit Thakur v. Union of India] 1994 WL.R. 59 [Dr. Subramanian Swamy v. J. Jayalalitha] 19 93 W L.R. 34 [J. Jayalalitha v. T.N. Seshan, Chief Election Commissioner] [J. Mohaparta & Co. v. State of Orissa] A.I.R. 1973 MAD 122 [K. Chelliah v. Chairman, Industrial Financial Corporation of India] [A.K. Kraipak v. Union of India] and [Dr. G. Sarana v. Lucknow University].

Mala fides -[Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi].

Effect of non-denial - [C.S. Rowjee v. State of Andhra Pradesh].

Non-production of records - (1993) 4 S.C.C. 119 [R.K. Jain v. Union of India] and [State of Kerala v. V. Narayana Pillai].

3. When the writ petition was moved, learned Additional Solicitor General of India was present in Court and took notice on behalf of respondents 1 to 5, and the learned counsel appearing for the sixth respondent took notice and they objected to the maintainability of the writ petition and sought for time to file their counter affidavits and argue the matter. Therefore, the matter was adjourned and heard on 26 .5.2005.

4. Mr. V.T. Gopalan, Learned Additional Solicitor General of India submitted that the writ petition is not a genuine Public Interest Litigation. The purpose of filing of the writ petition is not bonafide and it is clear that other reasons have prevailed upon the writ petitioner to file this writ petition and not public interest. The writ petition is bereft of details as to the role played by various respondents who have been arrayed as parties. The grant of license is an exercise of sovereign function and the Competition Act specifically excludes activities of the Government which are related to the sovereign functions of the Government. It was further submitted that if the petitioner was relying on the provisions of the Competition Act, then a reading of the Act would show that the Act cannot be invoked until an agreement is entered into pursuant to the grant of a license and that stage has not yet been reached. According to the learned Additional Solicitor General, the grant of license is still under consideration and at this stage, the Court cannot substitute itself in the place of the authority who is empowered to grant the licence. The right to apply for the DTH License is available to anybody who satisfies the conditions, and in fact, two applicants have already been granted the said license and some more applicants, including the sixth respondent herein, are awaiting consideration of their applications. Therefore, it is not as if the sixth respondent is being exclusively considered for any favour.

Learned Additional Solicitor General relied on the following judgments :-

Locus standi - [Ashok Kumar Pandey v. State of West Bengal]. Scope of Public Interest Litigation - [Guruvayoor Devaswom Managing Committee v. C.K. Rajan].

Question whether such a prayer can be granted - 1952 (I) M.L.J. 806 [G. Veerappa Pillai v. Raman & Raman Limited] [State of Uttar Pradesh v. Raja Ram Jaiswal] and [Uttar Pradesh State Road Transport Corporation v. Mohammed Ismail].

When the persons against whom mala fides are alleged are not named as parties, then the question of non-traverse would not arise - [Hem Lall Bhandari v. State of Sikkim] and [Indian Railway Construction Co. Ltd. v. Ajay Kumar].

The probability of bias, how to be decided - [Union of India v. Ashutosh Kumar Srivastava].

According to the learned Additional Solicitor General, the writ petition is not maintainable, devoid of merits and is clearly mala fide.

5. Mr. G. Masilamani and Mr. R. Viduthalai, learned senior counsel appeared on behalf of the sixth respondent. They submitted that the writ petition is premature, since if after the grant of the license it can be shown that it was in violation of law, then perhaps action can be initiated to attack the grant of the license, but there cannot be a prayer for rejection of the application for the grant of the license and there is no imminent danger nor is it pleaded. According to the learned senior counsel, the doctrine of non-traverse will not apply to the facts of the present case since the persons against whom mala fides are alleged are not made as parties; wild and vague allegations have been made without indicating the source of the information on which they are based and hence, they cannot be relied on; there is nothing in the conditions for the grant of license to bar family members of Union Ministers from applying; if any applicant fully satisfies the conditions, then he is entitled to the grant of the license, otherwise his application will be rejected. Therefore, the question is, does the sixth respondent have a right to apply and if the sixth respondent has the right to apply, then the acceptance or rejection of the sixth respondent's application can be done only by the authorities. According to the learned senior counsel, the Competition Act will not come into play. The only reason why the writ petition has been filed is so that the grant of the license to the sixth respondent can be delayed.

Learned senior counsel referred to two judgments in support of their submissions - (2005) 1 S.C.C. 590 [Dattaraj Nathuji Thaware v. State of Maharashtra] and 2005 (1) C.T.C. 721 [The Perundurai Citizens Welfare Society v. Tamil Nadu Pollution Control Board].

6. Since the question of maintainability was put in issue, we will have to see whether the petitioner has made out a case for maintaining the writ petition as Public Interest Litigation. For this purpose, the averments in the affidavit filed in support of the writ petition must be looked into. Paragraph 2 of the affidavit reads,

'I got the locus standi to plead for the cause of the public and this petition is filed with all bona fides and this Public Interest Litigation is filed for upholding the majesty of law which is sought to be violated by the sixth respondent with the active connivance of respondents 1 to 5'. Paragraph 3 of the reply affidavit filed in respect of the first respondent's counter, it is stated, 'But at the same time, the Supreme Court has stated that any member of the public is entitled to maintain a writ petition of this nature where the respondents are deliberately committing a mistake in favour of one particular person/ family.' Paragraph 1 of the reply affidavit filed in respect of the sixth respondent's counter, it is stated, 'This is a genuine writ petition filed by me in the larger interest of the public apart from the fact that the misuse and abuse of political po wer shall not be utilized to promote the personal gains of any individual family.' 'It is in furtherance of public interest that the enquiry into the state of affairs of Public Departments becomes necessary and the private interest becomes public interest and such enquiry cannot be avoided if it is necessary and essential for public good and for the administration of justice.' Therefore these are the reasons for filing this Public Interest Litigation.

7. In (2000) 2 S.C.C. 465 [CHAIRMAN, RAILWAY BOARD v. Mrs. CHANDRIMA DAS], a Public Interest Litigation filed by an advocate was entertained because the Supreme Court was satisfied that what was violated was the right of a woman to live with human dignity and it was held that the primacy of the interest of the nation and security of the State will have to be read into the Universal Declaration as also Article 21 of the Constitution. Similarly, in (1995) 1 S.C.C. 189 [STATE OF WEST BENGAL v. ASHUTOSH LAHIRI], the Supreme Court held that no fault could be found with the decision of the High Court recognizing the locus standi of the writ petitioners as representing the Hindu segment of the society which felt aggrieved by the impugned exemption granted by the State exempting the operation of the West Bengal Animal Slaughter Control Act, 1950 on Bakrid Day. Similarly, in (2004) 11 S.C.C. 1 [INDIAN BANKS' ASSOCIATION v. DEVKALA CONSULTANCY SERVICE], the Supreme Court held that the rule of locus standi has been relaxed by the courts to vindicate a legal injury or a legal wrong caused to a section of the people by grave violation of any statutory and constitutional provisions. At the same time, the Supreme Court has also taken note of the fact that Public Interest Litigations have been misused. The following extracts from

(2004) 3 S.C.C. 349 [ASHOK KUMAR PANDEY v. STATE OF WEST BENGAL] are relevant :

'Court has to strike balance between two conflicting interests - (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature.

It is depressing to note that on account of trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of genuine litigants. Though the Supreme Court spares no efforts in fostering and developing the laudable concept of PIL and extending its long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet it could not avoid but express its opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death and facing the gallows under untold agony, persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the 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 the glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation and get into courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court

never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly, they lose faith in the administration of our judicial system.

A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate case, with exemplary costs.

As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a miniscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra [(1998) 7 S.C.C. 273] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could to is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain

possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.'

8. In (2003) 7 S.C.C. 546 [GURUVAYOOR DEVASWOM MANAGING COMMITTEE v. C.K. RAJAN], broad guidelines have been given, which are the principles evolved by the Supreme Court in relation to Public Interest Litigations and they read as follows :

'i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court. The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfil its constitutional promises.

ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-s-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. On the administrative side of this Court, certain guidelines have been issued to be followed for entertaining letters/petitions received by this Court as public interest litigation.

iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived, the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.

v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

vi) Although procedural laws apply to PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case.

vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation.

viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.

ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee.

x) The Court would ordinarily not step out of the known areas of judicial review. The High Court although may pass an order for doing complete justice to the parties, it does not have a power akin to Article 142 of the Constitution of India.

The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

xi) Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule.

It is not intended to lay down any strict rule as to the scope and extent of a public interest litigation, as each case has to be judged on its own merits. Furthermore, different problems may have to be dealt with differently.'

In [DATTARAJ NATHUJI THAWARE v. STATE OF MAHARASHTRA], the Supreme Court held as follows :

'Public Interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoreity or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

The Council for Public Interest Law set up by the Ford Foundation in USA defined 'public interest litigation' in its Report of Public Interest Law, USA, 1976 as follows :'Public interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others'.'

In [THE PERUNDURAI CITIZENS WELFARE SOCIETY v. TAMIL NADU POLLUTION CONTROL BOARD], the First Bench of this Court held as follows :

'As already stated above, these days 'public interest litigation' has become largely 'private interest litigation' for ulterior motives, or is misused by business rivals, or persons who sponsor such litigation from behind with mala fide intentions. We cannot appreciate these tactics. The docket of the Court is already overful with arrears. The Court should discourage this kind of motivated litigation, which only adds to its burden.'

9. It is not clear how public interest will suffer or public injury will be caused if the application of the sixth respondent is considered. From the pleadings made before this Court, it is clear that the sixth respondent is only one among the many applicants seeking DTH License. In fact, some other persons have already been granted DTH License even before the sixth respondent.

10. The guidelines for the grant of license have been enclosed in the typed set of papers and the opening portion of the guidelines is extracted :

'The Union Government has decided to permit Direct-to-Home (DTH) TV service in Ku Band in India. The prohibition on the reception and distribution of television signal in Ku Band has been withdrawn by the Government vide Notification No. GSR 18(E) dated 9th January, 2001 of the Department of Telecommunications.

The salient features of eligibility criteria, basic conditions/ obligations and procedure for obtaining the license to set up and operate DTH service are briefly described below. For further details, reference should be made to the Ministry of Information & Broadcasting.'

The eligibility criteria are also given in the said guidelines. It could be seen therefrom that there will be no restrictions on the total number of DTH Licenses and these will be issued to any person who fulfils the necessary terms and conditions and would be subject to the security and technical clearance by the appropriate authorities of the Government. It is also seen that the period of the license is ten years, but at any point of time, the license can be cancelled or suspended in the interest of the Union of India.

11. According to the petitioner, if the license is granted to the sixth respondent, there will be concentration of wealth in one family and in these circumstances, a Public Interest Litigation can be maintained in order to prevent the respondents from committing a mistake which would be advantageous to one member or a family. No public interest appears to be involved in the grievance of the petitioner.

12. Recently, in 2005 A.I.R. S.C.W. 736 [R & M TRUST v. KORAMANGALA RESIDENTS VIGILANCE GROUP], the Supreme Court has clearly set out in paragraph 24 the caution that has to be exercised by Courts while entertaining such petitions and even there, it should be done where the public at large stand to suffer. In the said decision, the Supreme Court has referred to the judgment of the Supreme Court in BALCO EMPLOYEES UNION v. UNION OF INDIA [(2002) 2 S.C.C. 333], where parameters have been laid down for entertaining such petitions. It is relevant to note that in Balco Employees' case, the Supreme Court had observed that Public Interest Litigation means litigation in the interest of the public to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interest. Paragraph 80 of the judgment in Balco Employees' case is relevant and is extracted below :

'PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the Court for relief. There has been in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by petitioner and entertained by the Court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same.'

13. We are satisfied that none of the tests laid down by the Supreme Court for entertaining a Public Interest Litigation has been satisfied in the present case. In fact, it is clear from the counter filed by the first respondent that the application of the sixth respondent is still under consideration and it is not as if the license has already been granted to the sixth respondent. The petitioner is not speaking on

behalf of the downtrodden people or people who cannot speak for themselves. No case of Public injury has been made out and we do not see how the petitioner has the locus standi to raise this issue. Therefore, on the ground of maintainability alone, this writ petition deserves to be dismissed.

14. We now come to the question whether this Court can grant the prayer sought for by the writ petitioner, which is to reject the application of the sixth respondent, in view of the provisions of the Competition Act. Though the Sections relating to abuse of dominant position, Combination and Regulation of Combinations were referred to under the Act, we are not certain if the entire Act had come into force. In our opinion, the Competition Act is not relevant for deciding this case. If the Competition Act has not come into force or at least the relevant portion, as for instance Section 3 which deals with anticompetitive agreements has not come into force, then the licensing authority need not refer to the provisions of the Competition Act before considering the issue of grant of license. If the Competition Act has come into force, then the duties, powers and functions of the Competition Commission as laid down in Chapter IV of the Act would show that for the contravention of the provisions of the Act, enquiry will be made by the Competitive Commission on receipt of a complaint or on a reference made to it by the Central Government or the State Government or a statutory authority with regard to an agreement. Therefore, the provisions of the Competition Act come into play only after an agreement has been entered into, and this agreement is entered into, as seen from the guidelines for the grant of license, only after the clearances are obtained and the applicant pays the entire fee and furnishes the Bank Guarantee. Therefore, it is only after the licensing agreement is entered into, that the provisions of the Competition Act will come into play and that stage has not been reached in this case. Therefore, in either case, the Competition Act has no application.

15. Now we have to see whether de hors the Competition Act the petitioner is entitled to the relief, since the petitioner has relied on various judgments of the Supreme Court in which it has been held that in appropriate cases, the relief can be moulded even though the pleading may be faulty. The DTH License is granted to persons who apply for it on fulfillment of certain conditions. Really speaking, it is

open to any one and there are no restrictions in that sense. If an applicant satisfies the condition, the license will be granted. According to the writ petitioner, the application of the sixth respondent should not be considered - (a) because it is in violation of the Competition Act and (b) because one family will monopolize the electronic world for ever. Only these two grounds are cited in the affidavit filed in support of the writ petition. We have already dealt with the objection relating to the Competition Act. If the concentration of wealth in one family is a relevant condition to be considered by the authority which is granting the license, then it will be considered, if not, that ground is irrelevant. Though no other ground is raised in the pleadings, the learned counsel for the petitioner submitted that the shareholding details, income tax returns and annual audit report of each company listed in paragraph 3 found at page 3 of the affidavit are required and essential, and it is not indicated in the counter that respondents 1 to 4 have called for those details, especially that of the Sumangali Cable Vision (SCV) and to ascertain about the eligibility of the 5th respondent with these details. We presume that when the petitioner refers to the eligibility of the fifth respondent, what he means is the eligibility of the sixth respondent, because the fifth respondent is the Secretary.

16. The learned counsel for the petitioner would submit across the bar that if the license is granted to the sixth respondent, it would violate the condition which provides that the applicant company shall not have more than 20% equity share in a broadcasting and or cable network company and no broadcasting and or cable network company shall be eligible to collectively own more than 20% of the total equity of the applicant company at any time during the license period. Learned counsel pointed out to the Proforma attached to the license application to show that this is very relevant. It is clear from the counter filed by the first respondent that this aspect of the matter has not escaped the attention of the license granting authority, which is the first respondent. Paragraph 13 of the counter affidavit filed by the first respondent is relevant and is extracted hereunder :

'The allegations contained in para 6 that the application of the sixth respondent is being processed out of political pressure is strongly denied. The application has been examined in consultation with the 2nd respondent (Ministry of Company Affairs). As per the eligibility conditions for DTH license, Broadcasting and or

Cable Network Companies are not eligible to collectively own more than 20% or total equity of the Applicant Company at any time during license period. Similarly, Applicant Company is not to have more than 20% equity share in a Broadcasting and or Cable Network Company. As a step in the process, the Ministry of Company Affairs who were consulted have stated that there is no cross-holdings between the 6th respondent and M/s. Sun TV Private Limited and this would not appear to be hit by the existing DTH guidelines. The application is under further processing and a final decision is yet to be taken.'

It is stated in the counter and was repeated by the learned Additional Solicitor General that the processing of the application of the sixth respondent has not reached finality.

17. The learned counsel for the petitioner relied on the following paragraph of the judgment in Guruvayoor Devaswom's case supra, where the Supreme Court indicated in what instances writs of mandamus could be issued :

'The court steps in by mandamus when the State fails to perform its duty. It shall also step in when the discretion is exercised but the same has not been done legally and validly. It steps in by way of a judicial review over the orders passed. Existence of an alternative remedy albeit is no bar to exercise jurisdiction under Article 226 of the Constitution of India but ordinarily, it will not do so unless it is found that an order has been passed wholly without jurisdiction or contradictory to the constitutional or statutory provisions or where an order has been passed without complying with the principles of natural justice - [WHIRLPOOL CORPORATION v. REGISTRAR OF TRADE MARKS].'

18. The decisions relied on by the learned Additional Solicitor General that the High Court cannot perform the duty of an executive in these matters are very clear. In 1952 (I) M.L.J. 806 [G. VEERAPPA PILLAI v. RAMAN & RAMAN LIMITED], the matter related to the grant of a Stage Carriage Permit. The writ petitioner therein was aggrieved by the proceedings of the Regional Transport authority. The High Court, after quashing the proceedings, directed the Authority to grant to the petitioner, the Permits. The Supreme Court observed that 'issue or refusal of Permits is solely within the discretion of the Transport Authorities' and it

is not a matter of right and held that the direction given by the High Court to grant Permits to the petitioner was clearly in excess of its power and jurisdiction. In [STATE OF UTTAR PRADESH v. RAJA RAM JAISWAL], the High Court issued a mandamus to the statutory licensing authority to grant the license. The Supreme Court observed that where a s tatute confers a power and casts a duty upon a statutory authority to perform any function, the Court cannot, in exercise of writ jurisdiction, supplant the licensing authority and take upon itself its functions before the power is exercised or the function is performed. In that case, the prayer was for a writ of certiorari. The Supreme Court also observed that if the order of remand was erroneous, the High Court could have quashed the order of remand, but the jurisdiction of the High Court came to an end with that and it could not proceed to take over the functions of the licensing authority by issuing a writ of mandamus.

19. Similarly, in [UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION v. MOHAMMED ISMAIL], the Supreme Court held that the High Court cannot dictate the decision of the statutory authority. It cannot direct the statutory authority to exercise its discretion in a particular manner not expressly required by law. It 'could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law'. In Guruvayoor Devaswom's case supra, the Supreme Court observed, 'We have also not come across any case so far where the functions required to be performed by statutory functionaries had been rendered redundant by a Court by issuing directions upon usurpation of statutory power'. ..... 'A person may also have a cause of action by reason of action or inaction on the part of the State or a statutory authority. An appropriate order is required to be passed or a direction is required to be issued by the High Court. In some cases, a person may feel aggrieved in his individual capacity, but the public at large may not. It is trite where a segment of the public is not interested in a case, a Public Interest Litigation would not ordinarily be entertained'. In [CHIEF FOREST CONSERVATOR (WILD LIFE) v. NISAR KHAN], the question related to the grant of license under the Wild Life (Protection) Act, 1972. The Supreme Court spelt out the scope of writ jurisdiction in matters such as these. It was held therein that when the licensing authority arrives at a finding of fact having regard to the past transactions of a

licensee that it cannot carry on any business by reason of breeding of captive birds but necessarily therefor he is to hunt, he would be justified in refusing to grant a license in terms of the provisions of the Act. Unless the provisions of the Act and the Rules are construed strictly and in the manner stipulated, the very purpose for which the Act has been enacted would be lost. The Supreme Court held, 'The High Court, in our opinion, committed a manifest error in directing the appellants herein to grant license in favour of the respondent..... It was not within the domain of the High Court to issue the impugned direction'. Equally, the High Court cannot issue direction to refuse license. Therefore, when the licensing authority is still seized of the matter relating to the grant of license to the sixth respondent, this Court cannot outreach its jurisdiction and decide the manner in which the application for the grant of license should be considered by the licensing authority. The prayer, as framed in the writ petition, cannot be granted and in view of the stand taken by us with regard to the maintainability of the writ petition, we do not think it necessary to mould the relief.

20. Next we come to the question of mala fides and bias. According to the writ petitioner, the presence of the Union Minister for Communications and Information Technology is enough to vitiate the entire procedure of processing of the application of the sixth respondent. The petitioner strongly relied on the observation made by the Supreme Court in A.I.R. 1964 S.C. 962 [C.S. ROWJEE v. STATE OF ANDHRA PRADESH], where the Chief Minister against whom allegations were made did not deny the allegations or place his version before the Court. The Supreme Court held that the Court was entitled to hold that the allegation of bias and personal ill-will stands unrebutted. In any given case, when mala fides or bias are alleged are against some persons, those persons should be named as parties. In this case, it has not been done. Further, there are no specific details with regard to the allegations of mala fides in the affidavit filed in support of the writ petition. As seen from paragraph 11 of the writ affidavit, petitioner fears that if DTH License is granted to the sixth respondent, the family of the Union Minister for Communications and Information Technology will monopolize the electronic world for ever, and by sheer political pressure, any difficulty in obtaining the said license is being overcome and due to political reasons, the respondents are intending to violate the mandatory principles envisaged in the Competition Act.

In the reply affidavit, this is what is stated, 'The fifth respondent is playing a definite role in the grant of license to the sixth respondent. The sixth respondent is the outfit of the family concerned of the fifth respondent'. But, it is seen that the fifth respondent is only the Secretary to the Government of India, Ministry of Information Technology. According to the writ petitioner, 'It is beyond belief that the Cabinet colleagues of the very fifth respondent will be impartial in dealing with the application of the sixth respondent'. Then again, it is stated, 'No one will b elieve that the fifth respondent has no personal interest in the affairs of the sixth respondent.' Therefore, it would appear that petitioner is alleging bias and imputing mala fides to the Department as a whole, since the fifth respondent is the Secretary to the Government and not the Union Minister who is alleged to be the reason for bias.

21. In (2005) 1 S.C.C. 590 supra, Headnote 'B' is relevant and it is extracted hereunder :

'Constitution of India - Arts. 32 and 226 - PIL - Meaning, nature and scope of - PILs to be admitted with great care - Considerations and factors involved therein - Duty of courts - For redressal only of genuine public wrongs or injury - Not for redressal of private, publicity-oriented or political disputes or other disputes not genuinely concerned with public interest - Moreover, courts to be watchful that no one's character is besmirched, and that justifiable executive actions are not assailed for oblique motives - Court has to be extremely careful that it does not encroach upon sphere reserved by the Constitution for the executive and legislature - Value to be placed on time of courts - Serpentine queues of genuinely aggrieved litigants being denied access to courts due to admission of so-called PILs - Resultant waste of precious judicial time on admission of undeserving PILs though parameters for admission thereof had been indicated in a large number of cases, deprecated and resultant loss of faith in administration of justice bemoaned - Constitutional law - Separation of powers.'

In (1987) 2 S.C.C. 9 [HEM LALL BHANDARI v. STATE OF SIKKIM], (2003) 4 S.C.C. 579 [INDIAN RAILWAY CONSTRUCTION CO. LTD. v. AJAY KUMAR] and [UNION OF INDIA v. ASHUTOSH KUMAR SRIVASTAVA], the Supreme Court

has explained how allegations of mala fide against persons in power should be dealt with, that failure to controvert wild and vague allegations will not raise an adverse inference of mala fide, that burden of proof is heavy on the person who alleges the same, that the pleadings should be specific and that there is always a presumption in favour of administration that the exercise of power is in good faith.

22. It is also seen from the guidelines that the application has to be made to the Ministry of Information and Broadcasting, which is the first respondent and it is the said Ministry which considers the application for the grant of the license. According to the writ petitioner, the file has to go to the Ministry of Company Affairs, as has been stated in paragraph 11 of the affidavit filed in support of the writ petition and it has also been stated, 'the file has started galloping from one Ministry to another'. As regards the fifth respondent, it is not the case of the petitioner that the license will be granted by the fifth respondent, but only that the fifth respondent has a definite role to play. Nothing more is pleaded by the petitioner.

23. On behalf of the petitioner, much stress was placed on the following paragraph of the judgment in [DELHI TRANSPORT CORPORATION v. D.T.C. MAZDOOR CONGRESS] :

'There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whim and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.'

But, as observed by the Supreme Court in (2003) 4 S.C.C. 579 supra allegations of mala fides are often more easily made then proved and Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. In this case, even the allegations are vague and the facts are incomplete. The petitioner makes reference to the speedy movement of the file, but we have no means of knowing on what basis the petitioner draws this conclusion. Therefore, while there cannot be any gainsaying the position that when allegations of mala fides or impropriety on part of persons in authority are made, the persons in authority should place on record their version or denial, when those persons have not been made parties, there is no occasion or opening for them to place on record their case and it would be violation of the principles of natural justice to come to any conclusion without hearing them, which in this case would be the Union Minister for Communications and Information Technology and his brother. The grounds of mala fides and bias therefore cannot be accepted.

24. According to the learned counsel, it is in somewhat similar circumstances that the allegation of bias was accepted by the single Judge and confirmed by the Division Bench in 1990 (3) L.R. 34 [J. JAYALALITHA v. T.N. SESHAN, CHIEF ELECTION COMMISSIONER] and ~9 [DR. SUBRAMANIAN SWAMY v. J. JAYALALITHA]. That was a case where a memorandum was submitted by a Member of Parliament to the Chief Election Commissioner for disqualification of the Chief Minister of Tamil Nadu and a writ for prohibition was filed prohibiting the Chief Election Commissioner from dealing with the memorandum on the ground that the wife of the Member of Parliament, who submitted the said memorandum, was the counsel for the Chief Election Commissioner and therefore, there was a likelihood of bias. The writ petition was allowed by the learned single Judge prohibiting the Chief Election Commissioner from proceeding with the enquiry. Accepting the possibility of bias on the basis of the advocate-client relationship, the Division Bench modified the order of the learned single Judge by holding that it is open to the Election Commission to allot its business to any one of the other two Members of to both. That judgment does not apply to the instant case. In this case, the application should be made to the Ministry of Information and

Broadcasting and according to the petitioner, the presence of the family member of the sixth respondent in the Cabinet as the Union Minister justifies his apprehension of bias. Where the proximity of the Secretary was considered as sufficient to influence the Chairman of the Selection Committee, in (2002) 1 S.C.C. 188 supra, the Supreme Court held that if this kind of approach is allowed, no administration can be safe. In any event, the license has not yet been granted. The case of possible injury that may arise out of bias, was accepted in the Chief Election Commissioner's case supra, but no such injury exists in this case nor has the petitioner pleaded it.

25. Learned counsel also referred to judgment in A.I.R. 1973 Mad 1 22 [K. CHELLIAH v. CHAIRMAN, INDUSTRIAL FINANCIAL CORPORATION OF INDIA], where the learned Judge has indicated that bias is not easy to prove. The other two judgments referred to where the element of bias had vitiated the action are reported in [J. MOHAPARTA & CO. v. STATE OF ORISSA] wherein the members of the Committee set up for selecting books for educational institutions were themselves authors of the books which were to be considered for selection. In [SHIVAJIRAO NILANGEKAR PATIL v. MAHESH MADHAV GOSAVI], the allegation was that the daughter of a Chief Minister who had failed thrice before was made to pass by tampering of the records and this was done at the behest of the erstwhile Chief Minister. The Supreme Court, in that case, came to the conclusion that though there is no direct evidence, the tampering is established and the relationship is established, and the reluctance to face an enquiry is also apparent. That decision will not apply to the facts of the present case since here, the licensing authority has not yet granted the license in favour of the sixth respondent nor has it rejected the application; it is still at the processing stage.

In the absence of any specific allegation of bias or contravention of law and when the persons against whom such bias and mala fides are alleged are not named as parties, these grounds cannot be sustained.

26. Learned counsel for the petitioner also submitted that the petitioner is entitled to invoke the jurisdiction of this Court for a quia timet action. Quia timet is an extraordinary relief granted by Courts to prevent irreparable harm. It gives relief to

parties who face imminent threat or danger of a tortious harm for which there is no adequate legal relief available later. They are actually writs of prevention which require three conditions - (a) no actual present injury, (b) reasonable fear of future harm, and (c) irreparable harm, if relief is not granted. According to the learned counsel for the petitioner, 'the violation has already occurred'. If so, condition (a) is not satisfied. The petitioner has not made out a case of reasonable future harm. It is not clear how if the license is granted to the sixth respondent, public interest will be injured and hence, condition (b) is not satisfied. Further, it is not as if even if the sixth respondent is granted the license, the harm is irreparable, since it is seen from the guidelines that the license is not a permanent one; it is for a period of ten years and it is terminable at the instance of the licensing authority, which is the Union Government. Quia timet action is defined as 'One a claimant may bring to obtain an injunction to prevent or restrain some threatened act which, if it is done, would or may cause substantial damage and for which money would not be a sufficient or appropriate remedy'. None of these ingredients are satisfied in the present action.

27. In the Paper presented on behalf of the Energy Probe regarding Nuclear Waste Disposal Facility, the question of community interest or public interest and quia timet injunctions was referred to. It is stated therein, 'Canadian Courts tend to issue (quia timet) injunctions against proposed or ongoing activities if they pose a real and substantial risk or harm, if the harm would be irreparable and if a monetary payment could not adequately compensate for the harm. The plaintiff who sues the defendant (person sued) must demonstrate that his apprehension is well founded and reasonable. Unfounded apprehension does not justify an injunction'. The petitioner herein has not made out any such harm or any such damage that is so imminent that if remedy is delayed, the damage suffered will be irreparable.

28. In [KULDIP SINGH v. SUBHASH CHANDER JAIN], the Supreme Court has explained the nature of quia timet action. The Supreme Court observed as follows :

'A quia timet action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action, the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In Fletcher v. Bealey (1885) 28 Ch.D. 688 Mr. Justice Pearson explained the law as to actions quia timet as follows :

'There are at least two necessary ingredients for a quia timet action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a quia timet action'.Kerr on Injunctions 6th Edn., 1999 states the law on 'threatened injury' as under :'The court will not in general interfere until an actual nuisance has been committed; but it may, by virtue of its jurisdiction to restrain acts which, when completed, will result in a ground of action, interfere before any actual nuisance has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance. The plaintiff, however, must show a strong case of probability that the apprehended mischief will in fact arise in order to induce the court to interfere. If there is no reason for supposing that there is any danger of mischief of a serious character being done before the interference of the court can be invoked, an injunction will not be granted'.'

It is clear, therefore, that the petitioner herein must show equity before he claims that he is entitled to maintain a quia timet action. He has neither done that, nor has he shown that there will be mischief of a serious character if this Court does not interfere or that the damage will be substantial and irreparable. No quia timet action can be maintained to contravene the provisions of law. When the law laid down by the Supreme Court is clear that Court cannot usurp the power of a statutory authority, the prayer sought for by the petitioner cannot be granted. In

Halsbury's Laws of England (4th Edition), while dealing with quia timet action, it is stated as follows :

'However, no one can obtain a quia timet order by merely saying ' timeo'. He must aver and prove that what is going on is calculated to infringe his rights'.

There is no pleading in this case regarding the infringement of the petitioner's private right or even a public injury. The petitioner has not even shown what is the irreparable injury that will be caused if the application of the sixth respondent is considered. In the above decision, the Supreme Court has held that such an action is premature. Therefore, on this ground also, the writ petition has to be dismissed.

29. The other personal allegations made by the petitioner against individual persons in the affidavit filed in support of the writ petition are not dealt with since they are not relevant for deciding the dispute. Similarly, the process by which the license is granted is also not dealt with since it is for the licensing authority to decide whether the applicants before it, including the sixth respondent, satisfy the conditions for the grant of license before it grants the same. The petitioner has also made allegations that the sixth respondent is nothing but the same outfit of Sumangali Cable Vision (SCV) and has made reference to a pending writ petition involving SCV and also other matters relating to other TV Companies which are competitors to the sixth respondent in order to show that the said family is controlling the entire electronic media. We do not propose to deal with matters already decided by this Court or matters which are sub judice as also the allegations made against persons who are not parties to this writ petition.

30. The writ petitioner has also submitted that in spite of a letter given by him, the respondents have not produced the records and this itself would show that something is wrong. According to him, it is necessary that the relevant file is produced to show the date on which the application was made and when it was pending for so many months, how it has started moving with great speed from one Ministry to another. The petitioner does not reveal from whom has he got the necessary information which forms the basis of his averments. In (2003) 4 S.C.C. 579 supra the Supreme Court has held that allegations of mala fides, bad faith,

bias or misuse of power must be established by the person alleging the same either by direct evidence or proved facts and circumstances leading to a reasonable and inescapable inference in that regard. The allegations made by the writ petitioner herein are not specific and apart from saying that as a Member of Parliament, he knows that the files are moving with the actual connivance of the respondents, there is no firm basis laid for such averments. Further, the writ petition is also one for a mandamus and not for a certiorari. The writ petition has not been admitted, rule nisi has not been issued and the records have not been called for. Therefore, we do not propose to draw any adverse inference merely because respondents 1 to 5 have not produced the records on being served with a letter from the petitioner.

31. The petitioner has not shown how the Directive Principles are defeated or that the rule of law is violated if the first respondent considers the application of the sixth respondent.

32. The writ petitioner is a Member of the Rajya Sabha and the leader of his party in the Rajya Sabha. He has also served as a Member in the State Lesiglative Assembly. It is seen from his reply affidavit that he has also practised as an advocate. We can only say that we are surprised that a person with such credentials should have filed this writ petition. We do not want to say anymore.

33. For all the above reasons, the writ petition fails and it is accordingly dismissed. However, there will be no order as to costs. Consequently, W.P.M.P. No. 18499 of 2005 is closed.