

**AFR****Chief Justice's Court****Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 532 of 2020****Petitioner :-** In-Re Banners Placed On Road Side In The City Of Lucknow**Respondent :-** State of U.P.**Counsel for Petitioner :-** Suo Moto**Counsel for Respondent :-** C.S.C.**Hon'ble Govind Mathur,Chief Justice****Hon'ble Ramesh Sinha,J.**

Heard Sri Raghvendra Singh, learned Advocate General assisted by Sri Neeraj Tripathi, learned Additional Advocate General, Sri Shashank Shekhar Singh, Additional Chief Standing Counsel and Smt. Archana Singh, learned Additional Chief Standing Counsel for the State-respondents.

Privacy is a fundamental human right recognized in the United Nations Declaration of Human Rights, the international covenant on civil and political rights and many other international and regional treaties. The privacy underpins human dignity and key values of a democracy. Nearly every country in the world recognizes a right of privacy explicitly in their constitution. In our country, where privacy is not explicitly recognized as fundamental right in the constitution, the Courts have found such right protected as an intrinsic part of life and personal liberty under Article 21 of the Constitution of India. This fundamental right provides lungs to the edifice of our entire constitutional system. A slightest injury to it is impermissible as that may be fatal for our values designed and depicted in the preamble of the constitution.

In this public interest writ proceedings, undertaken by the Court at its own, the simple question is the legitimacy of the display of photographs, name and address of certain persons by the district administration and police administration of the city of Lucknow through

banners. The banners came up at a major road side with personal details of more than 50 persons those accused of vandalism during protest in the month of December, 2019. The poster is seeking compensation from the accused persons and further to confiscate their property, if they failed to pay compensation.

The installation of banners was reported in several newspapers, television and internet channels on 6th and 7th of March, 2020. Noticing injury to the right of privacy, the Chief Justice of this Court directed the Registry to register a petition for writ in public interest and list that before the Bench nominated. By an advance notice, the Commissioner of Police, Lucknow and District Magistrate, Lucknow were called upon to explain the provisions under which the banners were placed on road side. An explanation was also sought about the provisions relating to placement of any banner on road side that causes interference in movement of traffic in crowded areas. Accordingly, the Commissioner of Police and District Magistrate, Lucknow are before us through the Advocate General of the State.

Learned Advocate General while accepting absence of any statute permitting executive authorities to put such banners, opposed the petition with all vehemence with following submissions:-

(i) The Court erred in invoking public interest jurisdiction in the instant matter, that being available to under privileged section of the society only. The persons whose personal details are given in the banners are capable enough to agitate their grievance, if any, at their own.

(ii) The cause in the instant matter, if any, that arose at Lucknow, therefore, the petition at Allahabad lacks territorial jurisdiction.

(iii) The cognizance of any issue that is to be adjudicated in public interest litigation jurisdiction could have been taken by a Division Bench and not by a single Bench as taken in the instant matter.

(iv) The object of displaying personal details of the individuals is to deter the mischief mongers from causing damage to public and private

property. Such bonafide action taken by the State must not be interfered by the Court in its public interest litigation jurisdiction.

To substantiate the first submission, learned Advocate General heavily relied upon the judgment of Hon'ble Supreme Court in ***State of Uttaranchal Vs. Balwant Singh Chauhal and others, 2010 (3) SCC 402*** laying down guidelines for Courts to streamline PIL jurisdiction. The Apex Court while doing so issued following directions:-

“(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure

that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. (8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

Learned Advocate General while referring para 32, 34, 35 and 36 of the judgment aforesaid emphasized that the public interest litigation jurisdiction is evolved by the Courts to get access to justice to a large section of society that is otherwise not getting any benefit from judicial system.

So far as this argument is concerned, suffice to state that the most of the directions issued under para 181 of the judgment aforesaid would have no application in the instant matter being arising out of a *suo motu* action taken by the Court. However, it would be appropriate to state that the Court while calling upon the respondents duly applied its mind to ensure that the PIL is aimed at redressal of genuine public harm or public injury. In our constitutional scheme executive, legislature and judiciary are given distinct and separate powers and generally each branch is not allowed to encroach the powers of other. All the three wings of governance being face of the State, check and balance each other. The judiciary usually takes action once a case or cause is brought before it by a party and that is mostly in adverse litigation. But, where there is gross negligence on part of public authorities and government, where the law is disobeyed and the public is put to suffering and where the precious values of the constitution are subjected to injuries, a constitutional court can very well take notice of that at its own. The Court in such matters is not required to wait necessarily for a person to come before it to ring the bell of justice. The Courts are meant to impart justice and no court can shut its eyes if a public unjust is happening just before it. The concept of “standing” has

acquired a new shape in our justice delivery system. A well meaning citizen or body certainly possess a locus to stand before the Court of law for a well meaning cause. In the case in hand, a valid apprehension of causing serious injury to the rights protected under Article 21 of the Constitution of India exists which demands adequate treatment by the Court at its own. The economic status of the persons directly affected in such matters is not material. The prime consideration before the Court is to prevent the assault on fundamental rights, especially the rights protected under Article 21 of the Constitution of India. As already stated, in the instant matter the act of the district and police administration of Lucknow is alleged to be in conflict with the right of life and liberty. Hence, the *suo motu* action by the Court is justified.

The second objection raised by learned Advocate General is that the entire cause of action in the instant matter arose at Lucknow, hence, this Court at Allahabad lacks territorial jurisdiction. Cause of action means the whole of the material facts that is necessary for a plaintiff to allege and prove. The cause of action consists of a bundle of facts that gives cause to enforce the legal injury for redress in a Court of law.

In the present case, the cause is not about personal injury caused to the persons whose personal details are given in the banner but the injury caused to the precious constitutional value and its shameless depiction by the administration. The cause as such is undemocratic functioning of government agencies which are supposed to treat all members of public with respect and courtesy and at all time should behave in manner that upholds constitutional and democratic values. It would also be appropriate to state that the United Nations also under its Resolution No.58/4 dated 31st October, 2003 desired such conduct from public officials. Pertinent to note that the government agencies in the State of Uttar Pradesh have proposed to install the banners of accused persons in other cities also where the protest took place and compensation is claimed against alleged damage to public property. The proposed installation of banners in the

city of Meerut is reported in newspapers of today only. Looking to the state wide nature of impugned action, it cannot be said that this Court at Allahabad is not having territorial jurisdiction to adjudicate the cause involved.

It is also stated by learned Advocate General that no cognizance of an issue could have been taken in public interest litigation jurisdiction by a single Bench may that be by the Chief Justice of this Court, as the jurisdiction to do so is available to a Division Bench. According to learned Advocate General, the reference of the issue for adjudication as a public interest litigation is incompetent. We do not find any merit in this argument. The Chief Justice has only noticed a wrong and directed the Registry to place before a nominated Division Bench for its adjudication. It is in accordance with settled norms to entertain a PIL *suo motu*.

The next submission of learned Advocate General is that the persons whose photographs have been placed in the banners with their identity have already challenged the notice issued to them for payment of compensation for causing damage to public property. Hence, no useful purpose shall be served by this public interest litigation, which essentially pertains to recovery of compensation from such persons.

In our considered opinion, this limb of objection too is bereft of merit. In the instant matter, the issue is not the compensation that is to be recovered from any body but depiction of personal data of persons on a road side, which may amount unwarranted interference in privacy of a person.

In last, it is submitted by learned Advocate General that the object of installing the banners with identity of certain persons is only to deter citizens from participation in illegal activities. The placement of banners with details of the accused persons at conspicuous place is in a larger public interest and, therefore, the Court must not interfere with the same.

No doubt the state can always take necessary steps to ensure

maintenance of law and order but that cannot be by violating fundamental rights of people.

Now coming to the main issue about the unwarranted interference in privacy of people, it would be appropriate to state that admittedly no statutory provisions in this regard are available with the State. The State has initiated the proceedings to charge compensation from the accused of vandalism during protest in the month of December, 2019, on the basis of a government order that is said to be in tune of the directions given by Supreme Court in ***“Re:-Destruction of Public and Private Properties” reported in 2009 (5) SCC 212***. The government order referred by learned Advocate General certainly provides a procedure to charge compensation from the persons causing damage to the public property but that does not permit the State to encroach privacy of a person. As already stated, we are not concerned with validity of the compensation fastened but to the act about disclosure of personal details of the accused persons.

Under the Code of Criminal Procedure, 1973, the power is available to a Court to publish a written proclamation requiring appearance of a persons against whom a warrant has been issued and such person is concealing himself to avoid execution of warrant. No other power is available in the Code to police or the Executive to display personal records of a person to public at large. There are certain provisions empowering the investigating agencies or other Executives to take picture of accused for the purpose of their identification and record but that too is not open for publication. The only time these photographs be published is to have assistance in the apprehension of a fugitive from justice.

The Supreme Court in ***Malak Singh and others Vs. State of Punjab and Haryana and others*** reported in ***AIR 1981 SC 760*** held that even for history sheeters who have the necessary criminal history the information about the history sheet and the surveillance has to be kept discreet and confidential that cannot be shared with public and there is no question of posting the photographs of history sheeters even at police

stations.

The Supreme Court in People's Union for Civil Liberties (PUCL) Vs. Union of India and another reported in 1997 (1) SCC 301 examined the issue with regard to availability of a fundamental right of privacy. The Apex Court discussed the concept and held as under:-

“12.Both sides have relied upon the seven-Judge Bench judgment of this Court in Kharak Singh Vs. State of U.P. The question for consideration before this Court was whether "surveillance" under Chapter XX of the U.P. Police Regulations constituted an infringement of any of the fundamental rights guaranteed by Part III of the Constitution. Regulation 236(b) which permitted surveillance by "domiciliary visits at night" was held to be violative of Article 21 on the ground that there was no "law" under which the said regulation could be justified.

13. The word "life" and the expression "personal liberty" in Article 21 were elaborately considered by this Court in Kharak Singh's case. The majority read "right to privacy" as part of the right to life under Article 21 of the Constitution on the following reasoning:

“We have already extracted a passage from the judgment of Field, J. in Munn v. Illinois (1877) 94 U.S. 113, 142, where the learned Judge Pointed out that "life" in the 5th and 14th Amendments of the U.S. Constitution corresponding to Article 21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs-his arms and legs etc. We do not entertain any doubt that the word "life" in Article 21 bears the same signification. Is then the word "personal liberty" to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep

*which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to "assure the dignity of the individual" and therefore of those cherished human value as the means of ensuring his full development and evolution. We are referring to these objectives of the trainers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as "personal liberty" having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories. Frankfurter, J. observed in *Wolfs. Colorado*:*

'The security of one's privacy against arbitrary intrusion by the police is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples We have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the fourteenth Amendment.'

Murphy, J. considered that such invasion was against "the very essence of a scheme of ordered liberty.

It is true that in the decision of the U.S. Supreme Court from which we have made these extracts, the Court had to consider also the impact of a violation of the Fourth Amendment which reads :

'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

and that our Constitution does not in terms confer any like constitutional guarantee. Nevertheless, these extracts would show that an unauthorised intrusion into a person's home and the disturbance caused to him thereby, is as it were the violation of a common law right of a man-an ultimate essential of ordered liberty, if not of the very concept of civilisation. An English Common Law maxim asserts that "every man's house is his castle" and in Semayne's case (1604) 5 Coke 91, where this was applied, it was stated that "the house of everyone is to him as his castle and fortress as well as for his defence against injury and violence as for his repose". We are not unmindful of the fact that Semayne's case was concerned with the law relating to executions in England, but the passage extracted has a validity quite apart from the context of the particular decision. It embodies an abiding principle which transcends mere protection of property rights and expounds a concept of "personal liberty" which does not rest on any element of feudalism or on any theory of freedom which has ceased to be of value.

In our view Clause (b) of Regulation 236 is plainly violative of Article 21 and as there is no "law" on which the same could be justified it must be struck down as unconstitutional."

14. Subba Rao J. (as the learned Judge then was) in his minority opinion also came to the conclusion that right to privacy was a part of Article 21 of the Constitution but went a step further and struck down Regulation 236 as a whole on the

following reasoning:

*“Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle": it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter J., in *Wolfv. Colorado*, (1949) 338 US 25, pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. If physical restraints on a person's movements affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restriction or encroachments on his person, whether those restriction or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution.”*

15. Article 21 of the Constitution has, therefore, been interpreted by all the seven learned Judges in *Kharak Singh's* case (majority and the minority opinions) to include that "right to privacy" is a part of the right to "protection of life and personal liberty" guaranteed under the said Article.

16. In *Gobind Vs. State of U.P.*, a three-Judge Bench of this Court considered the constitutional validity of Regulations 855 and 856 of the Madhya Pradesh Police Regulations which provided surveillance by way of several measures indicated in the said regulations. This Court upheld the validity of the regulations by holding that Article 21 was not violated because the impugned regulations were "procedure established by law" in terms of the said Article.

17. In *R. Rajagopal alias R.R. Gopal and another v. State of Tamil Nadu*, Jeevan Reddy, J. speaking for the Court observed that in recent times right to privacy has acquired constitutional status. The learned Judge referred to Kharak's case, Govind's case and considered a large number of American and English cases and finally came to the conclusion that "the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters".

18. We have, therefore, no hesitation in holding that right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law".

The issue again came up before a three Judges Bench of Hon'ble Supreme Court in Justice **K.S. Puttaswamy (Retd.) and another Vs. Union of India and others, 2015 (8) SCC 735**, the Bench referred the issue for its crystallization by a larger Bench. Accordingly, a Bench of nine Judges examined the entire issue.

The Supreme Court in its historical judgment in Justice **K.P.**

Puttaswamy and others Vs. Union of India and others reported in ***AIR 2017 SC 4161*** affirmed the constitutional right to privacy. It declared privacy an intrinsic component of Part III of Constitution of India that lays down our fundamental rights relating to equality, freedom of speech and expression, freedom of movement and protection of life and personal liberty. These fundamental rights cannot be given or taken away by law and laws. All the executive actions must abide by them. The Supreme Court has however, clarified that like most other fundamental rights the right to privacy is not “absolute right”. A persons privacy interests can be overridden by compounding state and individual interests subject to satisfaction to certain tests and bench marks. The nine Judges Bench noticed certain tests and bench marks, which are liability, legitimate goal, proportionately and procedural guarantees.

We have examined the action of the State under consideration in the instant matter by the touch stones aforesaid. So far as legality part is concerned, suffice to state that no law is in existence permitting the State to place the banners with personal data of the accused from whom compensation is to be charged. The legitimate goal as held by the Supreme Court in the case of ***K.S. Puttaswamy (supra)*** the proposed action must be necessary for a democratic society for a legitimate aim. On scaling, the act of the State in the instant matter, we do not find any necessity for a democratic society for a legitimate aim to have publication of personal data and identity. The accused persons are the accused from whom some compensation is to be recovered and in no manner they are fugitive. Learned Advocate General also failed to satisfy us as to why placement of the banners is necessary for a democratic society for a legitimate aim.

The third test is that there should be rational nexus between the object and means adopted to achieve them and further that how the extent of interference is proportionate to its need. The object as disclosed to us is only to deter the people from participating in illegal activities. On asking,

learned Advocate General failed to satisfy us as to why the personal data of few persons have been placed on banners though in the State of Uttar Pradesh there are lakhs of accused persons who are facing serious allegations pertaining to commission of crimes whose personal details have not been subjected to publicity. As a matter of fact, the placement of personal data of selected persons reflects colorable exercise of powers by the Executive.

In entirety, we are having no doubt that the action of the State which is subject matter of this public interest litigation is nothing but an unwarranted interference in privacy of people. The same hence, is in violation of Article 21 of the Constitution of India.

Accordingly, the District Magistrate, Lucknow and the Commissioner of Police, Lucknow Commissionerate, Lucknow are directed to remove the banners from the road side forthwith. The State of Uttar Pradesh is directed not to place such banners on road side containing personal data of individuals without having authority of law.

A report of satisfactory compliance is required to be submitted by the District Magistrate, Lucknow to the Registrar General of this Court on or before 16th March, 2020. On receiving such compliance report, the proceedings of this petition shall stand closed.

Order Date :- 9.3.2020
Bhaskar

(Ramesh Sinha, J.)

(Govind Mathur, C.J.)