suitable for appointment to a post should be appointed unless certain reasons germane to the suitability for appointment are shown by the authority to justify its action in not appointing the person concerned. In the present case, no reason whatsoever has been disclosed in the written statement on account of which the offer of appointment was not made to the selected candidates. In my view, the authority does not have an absolute or arbitrary right to deny appointment at its whim and caprice. A candidate who has competed for the post and is found suitable is entitled to a reasonable hope that he will be appointed. This hope can be scuttled only for a valid reason. No valid reason having been shown in the present case, I find no merit in the objection raised on behalf of the respondents.

(8) Accordingly, the writ petition is allowed in the above terms. The respondents are directed to consider the claims of the petitioners for appointment within one month from the receipt of a copy of this order. The petitioners will also be entitled to their costs which are assessed at Rs. 2,000.

R.N.R.

Hon'ble R. P. Sethi & S. S. Sudhalkar, JJ.

LAWYERS' INITIATIVE THROUGH SHRI R. S. BAINS, ADVOCATE & ANOTHERS.—*Petitioners.*

versus

STATE OF PUNJAB & OTHERS,—*Respondents.*

Civil Writ Petition No. 17983 *of* 1994.

25th March. 1995.

Constitution of India—Art. 226—Locus standi *to file petition—Under normal circumstances only such person who has suffered a legal injury by reason of violation of his legal right can approach the Court invoking its jurisdiction for issuance of any writ contemplated under article* 226 *of the Constitution—However this rule is not narrow & rigid—There are now few exceptions that have evolved over the years—Public Interest Litigation.*

Held, that under the normal circumstances and on the basis of traditional rule in regard to *locus standi*, it is only a person who has suffered a legal injury by reason of violation of his legal right by the impugned action or who is likely to suffer an injury by the reasoning of threatened violation of his legal right, can alone approach the Court invoking its jurisdiction for the issuance of any of the

writs contemplated under Article 226 of the Constitution of India. The basis of entitlement of judicial redress being personal injury to property, body, mind or reputation arising from violation, actual or threatened of the legal right or legally protected interest of the person seeking such redress, only such aggrieved person could approach the Court for the redressal of his grievance. The Supreme Court in *S. P. Gupta and others* v. *Union of India and others*, A.I.R. 1982 S.C. 149 held such a rule to be 'a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born.

(Para 12)

Further held, that the Supreme Court in S. P. Gupta's case held :—

> *"We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seem enforcement of such public duty and observance of such Constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective."*

(Para 14)

Further held, that in specified cases, the Court would not insist more on *locus standi* where it is satisfied that the matter brought to its notice was of great public importance for its impact on the social system and values which if not prevented or remedied may result in the breach of faith of a common man in the institution of judiciary or the democratic edifice adopted and prevalent in our polity.

(Para 20)

Constitution of India—Art. 226—Public Interest Litigation—Courts to be careful of such persons who approach the Court in Public Interest Litigation—That such persons are acting bonafidely and without ulterior motives.

Held, that the Supreme Court, however, warned the Courts to be careful of such persons who approach the Court in Public Interest that they were acting *bonafidely* and not for person gains or private profit or political motivation or other oblique considerations. The Court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. It was further pointed out that the distinction between *locus standi* and justiciability must be kept in mind and that every default on the part of a State or public authority was not justiciable. The Court must take care to see that it does not over-step the limits of its judicial function and trespass into areas which are reserved to

the Executive and the Legislature by the Constitution. The public interest litigation being a new jurisprudence evolved by the Courts demand judicial statesmanship and high creative ability.

(Para 15)

Constitution of India—Art. 226—Public Interest Litigation to be invoked for vindication or enforcement of fundamental rights of a group of persons or community, who are unable to do so on account of ignorance or poverty—Consideration.

Held, that Public Interest Litigation cannot be permitted to be invoked by a person or a body of persons to satisfy his or its personal grudge and enemity. Public interest litigation contemplates legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.

The question of locus standi *would not be material and the Court would allow litigation in public interest if it is found* :—

(*i*) *That the impugned action is violative of any of the rights enshrined in part III of the Constitution of India and relief is sought for its enforcement.*

(*ii*) That the action complained of is palpably illegal or mala fide *and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.*

(*iii*) *That the person or a group of persons were approaching the Court in Public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law.*

(*iv*) *That such person or group of persons is not a busy body of meddlesome inter-loper and have not approached with* mala fide *intention of vindicating their personal vengenance or grievance.*

(*v*) *That the process of Public Interest Litigation was not being abused by politicians other busy bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justiciable in public in such litigation.*

(*vi*) That the litigation initiated in public interest was such *that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country.*

(*vii*) *That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities.*

(*viii*) *Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfication that the information received but upon satisfication that the information laid before the Court was of a such a nature which required examination.*

(ix) *That the person approaching the Court has come with clean hands, clear heart and clean objectives.*

(*x*) *That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscruplous litigant, politicians, busy body or persons or groups with* mala fide *objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.*

(Paras 23 & 24)

Constitution of India, 1950—Art. 226—Admission on basis of nomination quashed—Whether such students to be allowed to continue studies despite quashing of nominations—Held that unconstitutional and viod admissions cannot be allowed to be continued any further.

Held, that the submission of the learned counsel for the respondents of allowing their clients to continue studies despite the quashing of nominations cannot be accepted particularly when the aforesaid seats have been carved out and illegally filled up by way of nominations. After going through the prospectus issued by the Institution, it transpires that no seat was reserved to be filled up by nomination except in the case of nominations being made outside the State or in the case of respondent No. 2 institution. When no seats were reserved to be filled up by nomination their is no question of allowing the illegal, unconstitutional and void admissions to be continued any further.

(Para 42)

Further, held that the studies were continued by the private respondents despite the pendency of the writ petitions and specific orders of the Court to continue their studies at their risk and responsibility.

(Para 46)

Further, held that the conduct adopted by the respondents in prolonging the litigation does not entitle them any discretionary relief particularly when their admissions have been held to be not only illegal but unconstitutional and against the non-existent seats. The respondents who are proved to have secured admissions by nominations by having shelter under the void declared reservation

policy, persued their studies despite their being consistant view of this court regarding unconstitutionality of admissions under the impugned policy/guidelines, manipulated to prolong their stay by adopting delaying tactics and despite being fully aware that the Court had no option but to quash their nominations as and when the petition is disposed of. If the respondents with eyes open but closed doors of knowledge had manipulated admission by nominations, they cannot be rewarded for their mis-deeds by allowing them to continue with their studies despite quashing of nomination, as has been argued on their behalf.

(Para 46)

H. S. Mattewal, Sr. Advocate with Gurminder Singh, Advocate, *for the Petitioners.*

Hemant Sarin, Advocate, for Respondent No. 1.

D. S. Nehra, Sr. Advocate with Promila, Advocate, for Respondent No. 2.

J. S. Khehar, Advocate for respondents 3, 6, 30 and 33.

J. K. Sibal, Sr. Advocate with A. S. Grewal, Advocate for respondents, 5, 7, 10, 13, 14, 16. 18 to 27 and 39.

P. S. Patwalia, Advocate, for Respondents No. 30 and 32.

Vikas Suri, Advocate, for Respondent No. 12 and 35.

G. C. Jain, Advocate for Respondent No. 8 and 17.

H. S. Mann, Advocate, for Respondent 11.

A. C. Sharma, Advocate for Respondent 4 and 9.

H. S. Dhindsa, Advocate, for Respondent 38.

Harpreet Kaur, Advocate, for Respondent 15.

JUDGMENT

R. P. Sethi, J.

(1) The nomination of private respondents made by the State Government to various Engineering Colleges in the State of Punjab is sought to be quashed by means of this writ petition by declaring the criterion for nomination laid down by the State Government,—*vide* order dated 22nd August, 1992 (Annexure P/3) as illegal, arbitrary and violative of Article 14 of the Constitution of India. The case of the petitioners is stated to be covered by earlier judgments of this Court in *Puneet Kaur* v. *State of Punjab* (1) *and Anter Preet Singh and others* v. *State of Punjab,* C.W.P. 3763 of 1994 decided on 26th September, 1994.

(1) 1995 (1) A.C.D. 69.

(2) Despite their being two judgments of the Division Benches of this Court, the writ petition has been contested mainly on the ground of technicalities of its non maintainability in public interest. It is submitted that the petitioners under the guise of public interest are seeking indulgence of discretionary constitutional jurisdiction of this Court in order to subverse the private interest/vested interests. The writ petition is also stated to be belated and suffering from un-explained delay and latches.

(3) In order to appreciate the controversy, it is necessary to give resume of the facts leading to the filing of the present petition in public interest.

(4) The petitioner-association claims to be an association of Advocates practising in the Punjab and Haryana High Court at Chandigarh and its objects are to ensure rule of law, safeguard public interest and render free legal aid in deserving cases. Petitioner No. 2 is an Advocate practising in the High Court who has claimed to be having vital interests in the lawful functioning of public authorities. The filing of the writ petition in public interest is stated to have been necessitated on account of the fact that an earlier writ petition being C.W.P. No. 12168 of 1994 filed by Ms. Kamalpreet Grewal praying for the same relief was dismissed as withdrawn. It is submitted that as gross injustice has been done to the deserving students on account of nominations which have been made without following any criterion the action of the respondent-State has been termed to be blatant mis-use of authority which speaks volume of nepotism, favourtism and arbitrariness. It is contended that the controversy involved in the writ petition has assumed significance in view of the fact that similar nominations made by the State Government in various Medical Colleges have already been struck down and the criterion/guidelines quashed.

(5) The State Government is stated to have authorised the Guru Nanak Dev University, Amritsar as the competent authority to hold common entrance test for admissions to various Engineering Colleges in the State of Punjab and to make admission on the basis of this test. The said University issued Information Brochure-cum-Application Form for admission on C.E.T. 1994 basis in the institutions specified in Annexure P/1. In the Admission Brochure, the competent authority gave the details of total number of seats in Engineering Colleges/Institutions of the Universities and their break-up for each Engineering/Architecture Trades, the names of the reserved categories in each college and the number of seats reserved

in those categories. No reservation for the nominations was made in the Brochure to the Engineering Colleges/Institutions except the Thapar Institute of Engineering and Technology, Patiala. The total sanctioned strength of the seats was 210. As no provision was made in application form (Annexure P/2) for nominations, no candidate could apply for nomination of the State/Central Government. No fresh advertisement inviting applications for nomination was published by the respondent-State. So far as Thapar Institute of Engineering and Technology, Patiala, is concerned. It was mentioned that 5 per cent seats were reserved for children of employees of Thapar Group of companies to be sponsored by the Patiala Technical Education Trust 2 per cent seats were reserved for the candidates sponsored by Punjab Government passing from Schools and Colleges located in Punjab alongwith children/wards of Punjab Government employees passing from school/colleges located at Chandigarh provided they satisfy the prescribed qualifications. Those candidates were required to have secured 60 per cent marks in physics, Chemistry and Mathematics and had passed English as a compulsory/optional subject in the qualifying examination. The candidates sponsored by the Patiala Technical Education Trust and the Punjab Government were not required to appear in the common Entrance Test. It is submitted that the aforesaid reservations were against the law laid down by the Supreme Court in *Unnikrishnan* v. *State of Andhra Pradesh* (2). The guidelines for admission by way of nomination are stated to have been formulated by the State Government,—*vide* its order dated 22nd August, 1992, a copy of which is appended with the petition as Annexure P/3. The aforesaid criterion/guidelines is stated to have conferred unfettered powers on the State Government to nominate persons without there being any reasonable guidelines. It is contended that the children of M.L.As., Ministers and Senior bureaucrats have been adjusted against the aforesaid seats filled by nomination. Some of the respondents now nominated are alleged to have even not appeared in the C.E.T. Respondent No. 3 is stated to be infact the nominee of the State Government to the Thapar Institute of Engineering and Technology, Patiala, but wrongly is shown to have been adjusted against the sports quota. It is alleged that the said respondent has secured only 24 per cent marks and as the management quota has already been struck down by this Court in *Thapar Institute of Engineering and Technology* v. *State of Punjab* C.W.P. No. 1745 of

(2) J.T. 1993 (1) S.C. 474.

1992 decided on 2nd September, 1994, the State Government could not have facilitated his admission in the aforesaid quota by converting it into a sports category. Respondent No. 3 is admitted to be the son of Mr. J. S. Maini, who is stated to be Principal Secretary to the Chief Minister of Punjab.

(6) At the time of motion hearing. the learned counsel appearing for the petitioner submitted that the earlier writ petition filed by Kamal Preet Kaur against the nomination for Engineering Courses was not dismissed as withdrawn under the circumstances which were alleged to be not free from doubt. Being *Prima Facie* impressed by the arguments advanced on behalf of the petitioners, while issuing notice of motion we directed that till next date the private respondents be restrained from continuing their studies in the institutions to which they had been admitted on the basis of nominations made by the State Government. The State Government was directed to intimate the all concerned institutions to implement the aforesaid directions. Immediately after their service when the private respondents appeared and applied, we permitted them to continue with their studies at their own risk and responsibility and subject to the decision of the writ petition.

(7) In the reply filed on behalf of respondent No. 1, it is submitted that the writ petition is not maintainable being mis-conceived and mis-directed. It is submitted that the present petition is filed with ulterior and *mala fide* motives against 37 respondents only whereas the number of respondents in the earlier writ petition. being C.W.P. No. 12168 of 1994 was 67. It is contended that on account of imbalance in the growth of technical education in the country. Some states/U.Ts. have surplus facilities for training in engineering and technology whereas other States/U.Ts. either do not have technical colleges/institutions or lack facilities in specific fields. In order to maintain some parity in the development of technical education in the country and for promoting the cause of national integration. the Government of India framed a Policy for allocation of seats for different States/U.T.s having no engineering colleges/polytechnics or lacking facilities in specific fields. A copy of the guidelines dated 4th May. 1992 is appended as Annexure R/1/1 with the reply. In the year 1992-93 it allocated 15 seats in Various Colleges/Institutions in the country to the State of Punjab for selection and nomination of students to these Colleges/Institutions. For the year 1993-94 the Government of India conveyed to the State of Punjab that allocation of seats for 1993-94 shall be the same as

in the previous year. For the year 1994-95, the Government of India,—*vide* their letter dated 1st June, 1994 allocated to the State of Punjab 12 seats for first degree courses and 6 seats for diploma courses in various colleges/institutions in the country. Subsequently,—*vide* telegram dated 8th July, 1994, two more seats were allocated in favour of the State of Punjab. Nomination of respondent Nos. 34 to 38 is claimed to have been made by the State Government under the policy of the Government of India. As no injustice has been done to any deserving student, the writ petition filed is stated to be the result of malicious, vexatious and extraneous considerations. The holding of C.E.T. by the Guru Nanak Dev University, respondent, has not been denied. So is the position with respect to non-mentioning of nomination seats in the brochure-cum-application form. It is submitted that no notice was required to be issued or the applications invited for nomination by the State Government. It is submitted that CET Bhatinda and REC Jalandhar are funded by the Government and the Minister for technical Education and Training, Punjab, is *ex officio* chairperson of the Board of Governors of these institutions, the State of Punjab has an inherent right to make nominations to these institutions. The guidelines prepared by the State Government are stated to have been considered by the council of Ministers in its meeting held on 12th August, 1992 and approved. The guidelines are claimed to be comprehensive laying down sufficient norms enabling the State Government to make nominations. On 6th September, 1993 it was decided that the minimum eligibility for nomination to Engineering College Degree level course should be 50 per cent marks in Maths. Chemistry and Physics at the 10+2 level. On 14th September, 1993 it was further decided that the condition of appearing in the CET Examination may be waived. The provision of four seats in Thapar Institute of Engineering and Technology, Patiala for admission by nomination of Punjab Government is claimed to be historical arrangement which existed since the year 1980. The State Government claimed to have nominated three seats to Thapar Institute of Engineering and Technology, Patiala, against the four seats reserved for this purpose and one seat was released to the TIET management on their request. It is contended that the judgment of the Supreme Court in *Unni Krishanan's case* (supra) was not applicable to the facts and circumstances of this case. The guidelines governing nomination by the State Government are claimed to be comprehensive, legal and constitutionally valid.

(8) Respondent No. 2 has also resisted the petition on similar grounds regarding the maintainability of the writ petition in public interest and on account of mis-joinder and non-joinder of necessary parties. Inexplained delay and laches are also attributed to the petitioner. It is submitted that respondent No. 2 being a Deemed University cannot be held to be covered by the judgment of the Supreme Court in *Unni Krishanan's case* (supra) and in C.W.P. No. 11372 of 1994. It is contended that for a sponsored seat the candidate is not required to appear in the C.E.T. In the prospectus for the year 1994-95, two seats are reserved for outstanding sports person. The secretary, Sports Department, Punjab Government is stated to have requested the respondent-Institute in January, 1994 to give recognition to up-coming sports disciplines like Golf and Polo for the purposes of admission in technical Institutions as the aforesaid games were not recognised games under the sports quota. It is submitted that since by that time the Information Brochure had already been issued, it was not possible during the year 1994 to allocate any seat out of the existing seats. However, it was pointed out that the institute could select a person proficient in these sports, provided the Government surrendered a seat out of the four seats made available to it. By the time, the government surrendered the seat, the selection as per the existing sports quota had been made. It is submitted that under these circumstances, the Institution approached the Punjab Government to release one seat out of its four discretionary quota/sponsored seats and after its release, respondent No. 3 was selected and admitted on the basis of his merit in 10+2 and his proficiency in game of Golf. Respondent No. 3 is stated to have secured 92 per cent marks in Physics, Chemistry and Maths and obtained 1st Division in the School Board in 10+2 examination, in the Non Medical Group. It is further submitted :—

> "It is also relevant to mention that the Director of the Institute has taken up the matter with the Government for inclusion of Golf/Polo in the list of approved games in future."

Detailed history regarding the emergence of respondent-Institute has been stated in the reply to impress upon that the said Institute was a prestigious institute. No favour is stated to have been shown to respondent No. 3 by the Institute. It is contended that respondent No. 3 is not the nominee of the State Government. The secretary to Government of Punjab, Department of Sports, is stated to have written to the Institute Management on 7th June, 1994 suggesting the inclusion of game of Golf and Polo for the purposes of

admission in the technical education institute in the State of Punjab against the seats reserved for sports. As a follow up action the institute suggested the Government to release one seat for this purpose against which respondent No. 3 was ultimately selected.

(9) On behalf of respondent No. 3, Mrs. Gurpreet Kaur Maini, has filed the affidavit submitting therein that her son, respondent No. 3, never applied for admission by way of nomination against the seats reserved for State nomination and was not admitted to the Institute on the basis of the said nomination. No application was ever made by and on behalf of her son to the respondent-State for admission by way of nomination. His name was never sponsored by the State Government for admission to any Course. He was admitted by the Institute on the basis of an application made by him claiming admission as a sportsman. Respondent State passed no orders, whatsoever, at any stage making recommendation in any manner to the Institute for admission of respondent No. 3 to the Engineering Course being conducted at the said Institute. For sportsman, the qualification of entrance test is not a pre-requisite. Respondent No. 3 has been admitted to the Institute on the basis of his application seeking admission as a Sportsman. The writ petition is alleged to have been filed by a busy body having no interest in public.

(10) Similar replies have been filed by some private respondents. It may not be out of place to mention that despite service by substituted means no one has appeared on behalf of respondent Nos. 28, 29, 34, 36 and 37. Respondent No. 39 was ordered to be deleted,—*vide* order of this Court dated 10th January, 1995 as his name stood impleaded as party respondent No. 23.

(11) We have heard the lengthy arguments of the learned counsel for the parties and perused the record.

(12) Under the normal circumstances and on the basis of traditional rule in regard to *locus-standi*, it is only a person who has suffered a legal injury by reason of violation of his legal right by the impugned action or who is likely to suffer an injury by the impugned action or who is likely to suffer an injury by the reasoning of threatened violation of his legal right, can alone approach the court invoking its jurisdiction for the issuance of any of the writ contemplated under Article 226 of the Constitution of India. The basis of entitlement of judicial redress being personal injury to

property, body, mind or reputation arising from violation, actual or threatened of the legal right or legally protected interest of the person seeking such redress, only such aggrieved person could approach the Court for the redressal of his grievance. The Supreme Court in *S. P. Gupta and others* v. *Union of India and others* (3), held such the rule to be "a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born". After referring to the case in *Sidebotham's case* (1980) 12 Ch D 458 and *Reed Bowen & Co.'s case* (4), of the English Courts, it was held, "but narrow and rigid though this rule may be, there are few exceptions to it which have been evolved by the Courts over the years."

(13) In *K. R. Shenoy* v. *Udhipi Municipality* (5), it was held that against an illegal action of the local authority, a rate payer could question the action of the Municipality in granting a cinema licence to a person.

(14) After referring to various other judgments of the Supreme Court of United States of America, English Courts and of its own, the Supreme Court in *S. P. Gupta's case* (Supra) held :—

> "We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such Constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective. "Law", as pointed out by Justice Krishna Lyer in Fertilizer Corporation Kamgar Union *v.* Union of India, A.I.R. 1981 S.C. 344 is a social auditor and this audit funcition can be put in to action when some one with real public interest ignites the jurisdiction. A fear is sometimes expressed that if we keep the door wide open for any member of the public to enter the portals of the Court to enforce

(3) A.I.R. 1982 S.C. 149.

(4) (1887) 19 Q.B.D. 174.

(5) A.I.R. 1974 S.C. 2177.

public duty or to vindicate public interest, the Court will be flooded with litigation. But this fear is totally unfounded and the argument based upon it is answered completely by the Australian Law Reforms Commission in the following words. "The idle and whimsical plaintiff, a diletcante who litigates for a lark, is a spectre which haunts the legal literature, not the court room (Prof K. E. Scott; 'Standing in the Supreme Court : A Functional Analysis' (1973) 86.

A major expressed reason for limiting standing rights is fear or a spate of actions brought by busybodies which will unduly extend the resources of the courts, No argument is easier put, none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be Considered. Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented : (OpCit, 673).

When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissentors feared.

Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter."

We wholly endorse these remarks of the Australian Law Reforms Commission. We may add, with Justice Krishna Iyer : "In a society where freedoms suffer from atrophy, and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding *locus Standi*." It is also interesting to note that in India, as in other Commonwealth countries, the

strict rule of standing does not apply to a writ of *quo warranto* or a rate payer's action against a municipality, but there is no evidence that this has let loose the flood gates of litigation in these areas. The time, money and other inconveniences involving in litigating a case act as sufficient deterrents for most of us to take recourse to legal action,—*vide* article of Dr. S. N. Jain on "Standing and Public Interest Litigation."

(15) The Supreme Court, however, warned the Courts to be careful of such persons who approach the Court in public interest that they were acting *bona fidely* and not for personal gains or private profit or political motivation or other oblique considerations. The Court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. It was further pointed out that the distinction between *locus standi* and justiciability must be kept in mind and that every default on the part of a State or public authority was not justiciable. The Court must take care to see that it does not over-step the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. The public interest litigation being a new jurisprudence evolved by the Courts demand judicial statemanship and high creative ability. It was further observed, "the frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complextion of the law and which were so far as embedded in the womb of the future, are beginning to be born".

(16) In that case, the Supreme Court noted that the circular letter, the subject matter of litigation, had not caused any specific legal injury to an individual or to a determinate class or group of individuals, but it caused public injury by prejudicially affecting the independence of the judiciary. The Court held that the petitioners therein being lawyers had sufficient cause to challenge the constitutionality of the circular letter and were entitled to file the writ petition as a public interest litigation. They were found to have a concern deeper than that of busy body. In a developing democratic country like ours no attempt should or allowed to be made to hide the State action under the carpet of technical pleas but permitted to be judicially scrutinised to allay the apprehension of the common man with the object of inspiring confidence in the democratic funcitioning of the system under the Constitution. The judiciary cannot remain a mere by stander or spectator when any violation is

brought to its notice by a person of the public provided the initiator does not approach the Court *mala-fidely* or with ulterior purposes. The power of judicial review vested in the courts is to be exercised without any fear or favour and keeping in view the established glory of our Constitutional system which is held to be of envisaging social revolution which casts an obligation on every instrumentality including the judiciary, which is a separate but equal branch of the State, to transform the Status *quo ante* unto a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. The judiciary has, therefore, a socio economic destination and a creative function. It has to use the words of 'Glanville Austin' to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socio economic justice

(17) Earlier in *Fertilizer Corporation Kamagar Union* v. *Union of India* (6), it was held that the law was a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. In a society like ours activism was considered essential for participative public justice for which some risks were considered to be taken by affording more opportunities for the public minded citizens to rely on the legal process and not be repelled from it by narrow pendantry now surrounding *locus standi*. To sum up the Court held :—

> "If a citizen is no more than a way farer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the Court will not be ajar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busy body, he cannot be told off at the gates, although whether the issues raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226."

(6) A.I.R. 1981 S.C. 344.

(19) The Supreme Court entertained a petition on the basis of a letter in *Sheela* v. *State of Maharashtra* (7), *Veera* v. *State of Bihar* (7-A), and in various other cases. The practice of encouraging public interest litigation by the High Courts was approved by the Supreme Court in *Chaitanya* v. *State of Karnataka* (8), wherein it was held that where the public interest was threatened to be undermined by arbitrary and perverse executive action, it was the duty of the High Court to issue a writ. The Court before issuing the process or exercising the powers in public interest should be *prima-facie* satisfied that the information laid before the court was of such a nature which required examination. *Prima-Facie* satisfaction can be derived from ascertaining the credentials of the person approaching the Court or the nature of the information given or the gravity and seriousness of the complaint set out in the information or the other circumstances brought to the notice of the Court which require interference for the purposes of instilling confidence of the common man in the democratic set up in the country in general and in the institution of Judiciary in particular. The Court has to take note of the fact that the person approaching the Court is not permitted to indulge in wild and reckless allegations besmirching the character of others and avoidance of public mis-chief is predominated, the Court is required to act promptly by giving appropriate directions.

(20) In specified cases, the Court would not insist more on *locus standi* where it is satisfied that the matter brought to its notice was of great public importance for its impact on the social system and values which if not prevented or remedied may result in the breach of faith of a common man in the institution of judiciary or the democratic edifice adopted and prevalent in our polity. In *Bandhua Mukti Morcha* v. *Union of India* (9), the Supreme Court held that while dealing with the fundamental rights the Court's approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which the powers have been conferred for protection of the fundamental rights, the interpretation of which is required to receive illumination from the

(7) A.I.R. 1983 S.C. 378.

(7-A). A.I.R. 1983 S.C. 339.

(8) A.I.R. 1986 S.C. 825.

(9) A.I.R. 1984 S.C. 802.

trinity of provisions which permeate and energise the entire constitution namely, the Preamble, the Fundamental Rights and the Directive Principles of State Policy. Normally, the Court would not intervene at the instance of meddlesome inter-loper or busy body and would ordinarily insist that only a person whose fundamental rights have been violated should be allowed to activise the Court but where the fundamental rights of a person or a class of persons are found to have been violated but who are shown to be not in a position to have resort to the Court on account of their poverty, disability or socially and economically disadvanctaged position, the Court must act and allow any member of the public acting *bona fide* to espouse the cause of such a person or a class of persons.

(21) In *Janta Dal* v. *H. S. Chowdhary* (10), the expression 'public interest litigation' was defined to mean :—

> "The expression 'litigation' meas a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expressoin 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining the expression 'PIL' in its wider connotation in the present day context in modern society, a few of which we will refer to in the appropriate part of this judgment."

(22) In '*K. R. Srinivas* v. *R. M. Prem Chand and others*' (11), it was held that the petitioner who comes to the Court for relief of public interest must come not only with clean hands, but also with clean heart, clean mind and clean objective. The Court in that case did not allow action to be taken in public interest on the ground that the petitioner had approached at the belated point of time particularly when he was aware that the answer books had been destroyed which were relevant to disapprove his allegations.

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(10) A.I.R. 1993 S.C. 893.

(11) 1994 (6) S.C.C. 620.

(23) Public interest litigation cannot be permitted to be invoked by a person or a body of persons to satisfy his or its personal grudge and enemity. Public interest litigation contemplates legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.

(24) The question of *locus-standi* would not be material and the Court would allow litigation in public interest if it is found :—

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement ;

(ii) That the action complained of is palpably illegal or *mala fide* and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law ;

(iv) That such person or group of persons is not a busy body of meddlesome inter-loper and have not approached with *mala-fide* intention of vindicating their personal vengenance or grievance ;

(v) That the process of Public interest litigation was not being abused by politicians or other busy bodies for political or un-related objectives. Every default on the part of the State or Public Authority being not justiciable in public in such litigation ;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country ;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities ;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination ;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives ;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being mis-used by any unscruplous litigant, politicians, busy body or persons or groups with *mala fide* objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

(25) In the instant case, petitioner No. 1 is claimed to be an association of Advocates practising in the High Court of Punjab and Haryana, the objectives of which are to ensure rule of law, safeguard public interests and render free legal aid in deserving cases. Petitioner No. 2 is claimed to be an Advocate having vital interest in the lawful functioning of public authorities. They have submitted the circumstances under which they filed the petition with the object of instilling confidence of common man in the authority and the rule of law. It is submitted that the earlier petition No. C.W.P. 12168 of 1994 was got withdrawn by the successful nominated candidates who did not possess even the minimum eligibility criterion as provided in the prospectus. It is submitted that gross injustice has been done to deserving students as the action of the respondent-State was contrary to the interests of the citizens of the State amounting to blatant misuse of authority which speaks volumes of nepotism, favourtism and arbitrariness, the present petition in public interest was being filed particularly when in similar circumstances earlier the nominations made by the State of Punjab in various Medical Colleges in the State have been struck down by this Court.

(26) In the reply filed on behalf of respondent No. 1, the factum of petitioner No. 1 being an Association interested to ensure rule of law and safeguard public interest has not been denied. Similarly, the claim of petitioner No. 2 so far as having public interest in the litigation is concerned has also not been denied. Similar are the replies of the other respondents who have however, stated that as no right of the petitioners have been violated and no injustice has been done to the public in general, the present petition is not maintainable.

(27) In the given circumstances of the case, we are satisfied that the petitioners are not the busy body or meddlesome *inter loper* and have not filed this petition with any *mala fide* intention. The petitioners cannot be held to have come to the Court not with clean hands, clean heart and clean objectives. The points raised by them, as projected in the writ petition, are admittedly of great public importance and the action of the respondents is required to be tested on the touch-stone of earlier judgments delivered by this Court with respect to the rights of the State to make nominations and to ascertain the legality and constitutionality of the guidelines/instructions issued for making the nominations. The action is intended to get appropriate directions issued uniformally so far as the nominations in the professional courses are concerned. The factum of the earlier writ petition having been filed challenging the nomination of the private respondents and its dismissal as wthdrawn has not been denied. It is only the circumstances under which that petition was dismissed as withdrawn which are disputed. Be as it may, the admitted position is that the matter brought to our notice being admittedly of public importance requires to be adjudicated and decided in accordance with the settled provisions of law and the pronouncements made by the Apex Court and of this Court with respect to the rights of the respondent-State and its extent so far as the nomination to professional courses are concerned.

(28) The writ petition has also been resisted allegedly on the ground of *mala fides*. It is submitted that in the writ petition filed by Kamal Preet Kaur there were 67 private respondents but the petitioners have *mala fidely* left out 30 of such respondents and impleaded 37 respondents only in the present petition with an ulterior and *mala fide* motive. We do not agree with this submission as well. It is not disputed that all the candidates who were nominated for the session 1994-95 have been impleaded as party respondents and only those students who had earlier been nominated for the year 1993-94 or 1992-93 have been left out. Instead of showing *mala fides* of the petitioner, if reflects their *bona fide*. The petitioners have not tried to unnecessary drag those respondents in litigation who have sought admission though under suspicious circumstances, in the previous years and have completed major portion of their professional education. None of the petitioners is shown to have personal interest. In the matter or any enmity with any of the respondents. No motive is attributed to them for filing the present petition against the respondents.

(29) The preliminary objection regarding the non-maintainability of public interest litigation at the instance of the petitioners is, therefore, without any basis and rejected.

(30) It is not disputed that respondent Nos. 4 to 38 have been nominated by the State Government to various Engineering Colleges under the guidelines for the nomination on the discretionary quota seats (Annexure P/3). The concept, object and constitutionality of the guidelines for the nomination in the discretionary quota was considered and adjudicated by this Court in *Puneet Kaur's case* (supra) and in *Anter Preet Singh and others' case* (supra). We reiterate that what we had earlier held in the aforesaid cases. The reasoning for setting aside of the aforesaid guidelines as detailed in *Puneet Kaur's case* (supra) shall be deemed to be part of this judgement. Consequently, the nomination of respondents namely Rohit, Khera', Lalit Singla, Sanjay Verma, Jaswinder Singh Bhathal, Mukul Goel, Deepinder Singh, Arshi Jindal, Amit Sharma, Harpreet Singh, Jasdeep Singh, Karanjit Udasi, Reet Mohinder Singh, Tejinderpal, Sachin Choudhry, Gurpreet Singh, Hitender Kapoor, Vikas Mahajan, Munish Kumar, Satinderpal Singh, Dilpreet Singh, Maninder Singh, Triman Singh, Rajiv Verma, Sanjay Kumar, Harpreet, Sandeep Kaur, Geetika Sandhu, Navdeep Singh, Nitin Vats, Amit Keshav, Munish Khurana, Aditya Sayal, Anupam Pande, Amitot Singh Hanspal and Sachin Vaid to the Engineering Course are liable to be set aside.

(31) The admission of respondent No. 3 at the Thapar Institute of Engineering and Technology, Patiala, has been tried to be justified on the ground of being an admission in the sports category and not a nomination against the seats reserved for State nomination. It has, however, been argued by the learned counsel for the petitioner that nomination of respondent No. 3 has unsuccessfully been tried to be cloaked in sports category whereas infact he was neither admitted nor could have been admitted in the aforesaid category. It may not be out of place to mention that respondent No. 3 is the son of Principal Secretary to the Chief Minister of Punjab and his admission/nomination has been procured under the circumstances which cannot be termed anything else than tainted, manoeuvred, manipulated and for considerations not free from doubt. Respondent No. 2 in the reply has termed the admission of respondent No. 3 to be of a 'selected candidate' as per the prescribed criterion for admission adopted by the respondent institute and not a nominated candidate. It is submitted that in the prospectus for the year 1994-95, 2 per cent seats were reserved for outstanding sports person. The Secretary, Sports Department, Punjab Government, is alleged to have requested the respondent-Institute in June, 1994 to give due consideration to the up-coming sports disciplines like Golf and Polo

for the purposes of admission in educational institutions. It is conceded that the games of Golf and Polo have not been recognised games for the purposes of sports quota. It is contended that as at that time or information brouchure had already been issued, it was not possible to make any allocation of seat in this category. The Punjab Government is stated to have informed the institute about the selection of person, proficient in the aforesaid two games, could be made provided the government surrendered a set out of the four seats available to it. It is submitted that by the time the government surrendered a seat, the selection as per the existing sports quota had already been made. After the seat was released by the State Government from the sponsored seat, respondent No. 3 was selected and admitted against the aforesaid seat on his alleged merit in 10+2 examination and as proficient in the game of Golf. It is, however, stated in the reply filed on behalf of respondent No. 2 that, "It is also relevant to mention that the Director of Institute has taken up the matter with the Government for inclusion of Golf/Polo in the list of approved games in future." It is, therefore, conceded that neither the Government approved nor the respondent-institute advertised the inclusion of Golf/Polo games in the list of approved games before admission of respondent No. 3. The said game has not been approved even till the date of arguments. The discretionary quota in favour of the promoters has already been held by this Court to be unconstitutional in *Thapar Engineering College's case* (supra). It is admitted that the seat against which respondent No. 3 was adjusted had neither been converted nor allocated to sports category and released from the discretionary/nomination quota of the State Government in order to facilitate the inclusion of the name of respondent No. 3 in the College allegedly on the basis of selection made under the category which was and is non existent. Assuming that the said seat was converted into a sports category, it was obligatory for the respondent-State to advertise the said seat and allow all eligible persons to apply against the seat before making the selection on the basis of their *inter-se* merit. An unsuccessful effort appears to have been made by the respondents to camouflage the nomination of respondent No. 3 to be a selection in the sports category on the basis of his alleged merit. The record produced by respondent No. 2 shows that in his application form, the respondent No. 3 had applied in category 01, which is a general category. Subsequently the figure 01 has been over-written as 06 which refers to sports person. The over-writting has neither been initialled nor signed by the applicant or any other person. The date of application has also been changed from 6th June, 1994 to 6th July, 1994. The figure 7 in the application apparently appears to have been over-written without

any initials. The father of the respondent has, however, given the date of his signatures as 6th July, 1994. In the column of educational qualifications there are certain over-writings which have not been initialled or signed by any person. Apparently there appears to be some over-writing at the head of the application form against the entry the name of the course. The application does not appear to have been diarised by the Institute or by any other authority. It does not disclose as to whether any supporting document is attached with it or not. The medical certificate pertaining to respondent No. 3 finding place in the record of respondent No. 2 is dated 12th July, 1994 and the certificate issued by the Executive Secretary of Chandigarh Golf Club is dated 20th July, 1994. This cetrificate mentions, "certified that Pratesh Maini son of Shri J. S. Maini is a dependent member of this Club. He has participated in various tournaments. Chandigarh Golf Club is the only Golf Club in the City. His Handicap is 9." This certificate does not specify the nature of the tournaments in which Pratesh Maini is stated to have participated. It also appears that Secretary to Government of Punjab, Department of Sports,—*vide* his letter dated 7th June, 1994 requested the Chairman, Board of Governors, Thapar Institute of Engineering and Technology, Patiala to give due recognition of the sports discipline of Golf and Polo for the purposes of admission in his Institute because the technical graduates being turned out by the Institute were finding an easy accessibility into the major multinationals and into various American Universities for purposes of higher education. Shri Anand, Chairman of the Institute,—*vide* his letter dated 23rd July, 1994 requested the Chief Minister of Punjab to release one seat in the State's discretionary quota and the same be assigned to a candidate after fully complying with the guidelines of the Government as applicable to allocate the seat in professional institutes. The Chief Minister of Punjab,—*vide* his letter dated 27th July, 1994 accepted the suggestion and accordingly a seat of Electronic and Communication in the Institute falling under the Punjab Government nomination quota was released for admission as desired by the Chairman in his letter dated 23rd July, 1994. It cannot be deemed to be a co-indidence that in the application of respondent No. 3 the name of the course was changed as Electronic-Communication for some other course which originally existed in the application form. Respondent No. 3 is shown to have addressed a letter dated 15th July, 1994, requesting the Director, Thapar Institute of Engineering and Technology, Patiala praying therein to consider him against one of the sports quota seat, by recognising Golf as an eligible sport. The application appears to have been

diarised on 31st August, 1994 and there appears to be a note of the Director mentioning, "Discussed, no further action is necessary." The application for being considered to be admitted in the sports category of Golf appears to have been filed in anticipation obviously with an assurance that such a seat would be made available to respondent No. 3 out of the seat meant to be filled by nomination Formal letter appears to have been issued by the Government on 27th July, 1994 releasing a seat of electronic and Communication to the management for admission during the year 1994-95. How respondent No. 3 came to know about the existence of such a seat on 6th June, 1994 or 6th July, 1994 or 15th July, 1994 when he appears to have applied is a mystery shrouded with doubts. The Judicial caesarean into the record of the respondents has revealed that the seat for respondent No. 3 was in effect and in essence obtained in the nomination category and tried to be camouflaged in the sports category which has been found to be non existent. It is also worthwhile to mention that no opportunity was given to any other person to compete with respondent No. 3 or to seek admission for the aforesaid released seat. It is again not a co-incidence that the process was intiated by the Secretary to Government of Punjab, Department of Sports and concluded by the Department of Technical Education and Industrial Training and conveyed to the Chairman of the Institute by Shri A. K. Goel, Deputy Principal Secretary to the Chief Minister of Punjab where father of respondent No. 3 is Principal Secretary. The seat in the sports category was carved and the conditions tailored to suit respondent No. 3 alone. The seat was filled up by granting admission to respondent No. 3 without compliance of the provisions of law or affording opportunity to all similarly situated persons desirous of seeking admission in the college in the aforesaid category.

(32) Otherwise also the so called admission of respondent No. 3 in sports category is false and apparently concocted with oblique purpose of justifying his nomination. According to the prospectus of respondent No. 2 the admission to the Ist year of B.E. Course are made on the basis of the merit of the students in the C.E.T. conducted by the Guru Nanak Dev University, Amritsar as per the procedure detailed in the information brochure containing application form issued by the aforesaid University. Admittedly, respondent No. 3 had not applied for admission either in open or any reserved category through the Guru Nanak Dev University and had not also appeared in the C.E.T. According to the prospectus of respondent No. 2, two percent seats are reserved for outstanding sportsmen possessing sports gradation certificates A, B, C and D issued by the Director of Sports, Punjab. According to the information brochure

of the Guru Nanak Dev University only the certificates showing the specific gradation pertaining to two categories from the Director of Sports, Punjab, Chandigarh are acceptable. Grade 'A' includes Sportsmen of international standing i.e. those who have represented India in recognised International Tournaments. Meets, Events Competitions, etc. and Grade 'B' includes Sportsmen/Sportswomen of National Standing i.e. having represented their states, combined universities services, states school, etc. in recognised National Tournaments, Contests, competitions, etc. The certificate issued in favour of respondent No. 3 does not specify as to whether he belongs to any of the grades i.e. A, B, C or D as mentioned in the prospectus issued by respondent No. 2. Respondent No. 3, therefore, is proved to be not possessing any sports gradation certificate within the meaning of prospectus of respondent No. 2 and the information brochure of the Guru Nanak Dev University, Amritsar. The suspicious certificate issued and attached with his application form is held to have been not issued by the competent authority. Respondent No. 3, therefore, could not have been granted admission in the sports category.

(33) For the detailed reasons stated herein above, the admission of respondent No. 3, namely Pratesh Maini is also liable to be quashed.

(34) Mr. J. S. Khehar, Advocate, also appearing for respondent Nos. 6, 30 and 33 has submitted that the cases of his clients were distinguishable and even if the nominations were to be quashed there admissions should not be cancelled. It is submitted that all the aforesaid respondents had appeared in the C.E.T. conducted by the Guru Nanak Dev University. Respondent No. 30 claims that in view of her achievement in the C.E.T., she was entitled to admission even on merits and ignoring the nominations. It is stated on her behalf, "it would be pertinent to mention that the deponent has by consciencious efforts procured information in respect of admissions granted in various Engineering Colleges for the academic session

1994-95 on the basis of C.E.T. The data obtained by the deponent is Summarised hereunder for facility of reference :—

"S.No.	Name of the College	Marks obtained in the C.E.T. of last candidate admitted.	CET's merit position.
1	2	3	4
1	Regional Engg. College, Jalandhar	121.00	2715
2	College of Engg. & Technology, Bhatinda	131.25	2180
3	Thapar Institute of Engg. & Tech., Patiala.	120.50	2761
4	Guru Nanak Dev Engg. College, Ludhiana	127.25	2402
5	Baba Banda Singh Engg. College, Fatehgrah Sahib.	123.50	2589

The data compiled here in before relates only to the general category candidates."

It is submitted that admission by way of nomination was granted to the respondents on 17th August, 1994 whereas admission on the basis of C.E.T. was still in the process of finalisation and stated to have been actually finalised in all the Engineering Colleges of the State on 21st August, 1991. It is submitted that had the said respondent not been nominated, she would have surely got admission on the basis of her merit. She has further submitted that students with lower merit than her have been admitted in the general category but she has been denied admission only because she stood already nominated for admission to the Engineering course.

Similarly, respondent No. 6 has claimed that he would have got admission to the Engineering Course on the basis of his merit in the C.E.T. It is submitted on his behalf :

"The deponent has procured information in respect of admissions granted in various Engineering Colleges for the

academic session 1994-95 on the sole basis of the C.E.T. The data obtained by the answering respondent No. 6 is being summarised hereunder for facility of reference :—

S. No.	Name of the College	Marks obtained in the CET of the last candidate admitted.	CET's merit position
1	2	3	4
1	Regional Engg. College Jalandhar.	121.00	2715
2	College of Engg. & Technology, Bhatinda	131.25	2180
3	Thapar Institute of Engg. Tech., Patiala	120.50	2761
4	Guru Nanak Dev Engg. College, Ludhiana	127.25	2402
5	Baba Banda Singh Engg. College, Fatehgarh Sahib.	123.50	2589

He has also claimed that his nomination preceded the selection and he had no option but to get admission on the basis of nomination.

Learned counsel appearing for respondent No. 33 has submitted that in the C.E.T. for the year 1994, his client had secured 119.2 marks and he was entitled to admission in the general category as no person higher in merit has claimed admission to the Engineering Course. He has also submitted that being the son of Inspector General of Police, he is also entitled to admission by way of nomination under the reserved category.

(35) The arguments addressed on behalf of respondent Nos. 6, 30 and 33 though look attractive but have no substance because they appear to have obtained admission under the orders of the Government upon the basis of policy/guidelines which stands already declared void. Merely because the aforesaid respondents feel that

they have a better merit or were entitled to get admission in the open merit under the general category would not warrant the dismissal of the writ petition against them. Their interest can be protected if found to have been violated by giving appropriate directions while granting relief in the writ petition.

(36) Nomination of respondent Nos. 34 to 38 has been tried to be justified on the ground that as they have got admission by way of nominations outside the State of Punjab and the policy under which they were nominated have not been specifically challenged, the writ petition so far as the aforesaid respondents are concerned is liable to be dismissed. The Government of India,—*vide* letter (Annexure R/35/2) have provided guidelines for allocation of seats in Engineering/Technical/Polytechnic Institutions for the year 1992-93 onwards. The aforesaid policy is intended to allocate seats for different States and Union Territories having no Engineering/Polytechnic Colleges or lacking facilities in the specified fields. The policy is intended to be utilised for a period of two years. It is not disputed that the Union Territory of Chandigarh and the State of Punjab have Engineering Colleges. Assuming that the policy was applicable, it specifically provided :—

> "Details about the seats allocated by this Ministry should be given,—*vide* publicity in the States/U.Ts. and applications should be invited from eligible candidates. The nomination of the candidates should be strictly made on the basis of the merit/marks obtained in the qualifying examination on the basis of written test/competitive entrance examination, as the case may be."

It is no where stated by the respondents that the above condition has been filled in the instant case. It is also admitted that the aforesaid seats which were intended to be filled up by nomination to the Engineering Colleges outside the State were never advertised and the persons desirous of seeking admission by way of nomination were not afforded opportunity to apply and seek admission.

(37) In C.W.P. No. 14390 of 1994 '*Parvindra Singh* v. *State of Haryana and others*' decided on 21st December, 1994, this Court considered the scope of the aforesaid policy (Annexure I/35/2) which was attached there as Annexure R/1, and held :

> "After hearing learned counsel for the parties and after going through the material on record and on the basis of the

admitted position which emerged during the course of hearing that there is breach of instructions contained in Annexure D/1 by respondents 1 to 3 as regards wide publicity and inviting the applications, we are of the opinion that the writ petition must succeed on this score alone. As indicated earlier, the Ministry of Human Resource and Development, in its letter dated June 1, 1994 (Annexure R/1) has unmistakably told the State Government Nominating Agency that the details about the seats allocated by the Ministry should be given wide publicity in the States/Union Territories and the applications should be invited from eligible candidates. There is patent breach of this mandatory condition which is contained in Annexure R/1. As stated earlier, learned Advocate General has fairly stated that no such publicity was given in the State nor the applications were invited but the learned Advocate General tried to draw support on the practice followed in the past for one decade. He urged that the same practice was followed in this year also. Be that as it may, if such an un-healthy practice was holding the field for all these years, that does not mean that the same be continued for this year as well as in future at the cost of meritorious students. All that we can say is that in the past no challenge whatsoever was made by any meritorious candidate which has given advantage and benefit to the candidates who came to be nominated irrespective of their merit. Once, it is held that there was no wide publicity given to Annexure R/1 and applications were not invited from eligible candidates it must follow that reasonable and equal opportunity was not given to the rightful candidates which is very basic fabric of rule of law and Articles 14 and 16 of the Constitution of India. Any breach, a patent breach, as is found in the present case, of Articles 14 and 16 of the Constitution of India cannot be sustained in the Court of law.

(38) Mr. Balhara, however, during the course of arguments drew our attention to the decision of this Court in C.W.P. 11372 of 1994 *'Puneet Kaur Matteiwal* v. *State of Punjab and others'* decided on October 27, 1994. In that case the Court was called upon to consider the guidelines for nominations on the discretionary seats framed by the State of Punjab. In the context, while examining

those guidelines and after making reference to various decisions of Supreme Court as well as High Courts, this Court struck down the guidelines being arbitrary. The ratio of this decision, in our opinion, squarely applies to the facts of the present case notwithstanding the fact that no such guidelines or criteria was framed by the State of Haryana much less known to the public at large."

(39) The nominations of the aforesaid respondents to the Engineering Colleges outside the State and there are no exceptions and are liable to be set aside.

(40) Mr. A. C. Sharma, Advocate, appearing for respondent Nos. 4 to 9, has submitted that even if the nomination of his clients to the Engineering Colleges are held to be unconstitutional, they be permitted to continue with their studies on compassionate grounds. We do not find any reason to agree to such a prayer. To the same effect, arguments have been addressed on behalf of other respondents through their respective counsel. The learned counsel have alternatively prayed that in case the admission of the respondents by way of nomination is set aside they be permitted to continue with their studies because no one has preferred a claim for admission and that the respondents are continuing with their studies from last more than six months. It is further submitted that in case the respondents are not permitted to continue with their studies, the same would result in a great hardship to them at this stage. Reliance has been placed upon a judgment of the Supreme Court in *'Home Secretary, U.T. of Chandigarh* v. *Darshjit Singh Grewal and others* (12), and of this Court *in Thapar Institute of Engineering and Technology's case* (supra).

(41) As this petition has been treated as a petition in public interest, appropriate directions are required to be issued notwithstanding the fact that no specified individual has come before us for seeking relief of admission in place of respondents. Rule of Law is intended to be ensured in the democratic polity which is in existence in our society. Breach of faith in the Institutions of the States bestowed with the power and authority to confer largess is required to be remedied by providing and giving appropriate relief and directions. It is acknowledged that the courts cannot remain silent spectator to the gross illegalities committed by the executive. They are further constitutionally obliged to issue appropriate

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(12) 1993 (4) S.L.R. 556.

directions by which the glory and majesty of law is maintained and protected. It has been authoritatively held by the judicial pronouncements that in the professional colleges no admission can be made otherwise than on merit and no quota be reserved for any person, family or trust.

(42) The submission of the learned counsel for the respondents of allowing their clients to continue studies despite the quashing of nominations cannot be accepted particularly when the aforesaid seats have been carved out and illegally filled up by way of nominations. After going through the prospectus issued by the Institutions it transpires that no seat was reserved to be filled up by nomination except in the case of nominations being made outside the State or in the case of respondent No. 2 institute. When no seats were reserved to be filled up by nomination there is no question of allowing the illegal, unconstitutional and void admissions to be continued any further.

(43) The Information Brouchure-cum-Application Form circulated by the Guru Nanak Dev University, Amritsar, which conducted the C.E.T. for Dr. B. R. Ambedkar Regional Engineering College, Jalandhar, College of Engineering and Technology, Bathinda, College of Agricultural Engineering, Punjab Agricultural University, Ludhiana, Guru Nanak Dev University, Amritsar, Guru Nanak Dev Engineering College, Ludhiana, Punjabi University, Patiala, Thapar Institute of Engineering and Technology, Patiala and Baba Banda Singh Engineering College, Fatehgarh Sahib specified the number of seats and the criteria for eligiblity. A perusal of Item No. 25 of the Brouchure would show that in the category of reservations no provision has been made for filling up seat by nominations. Similar is the position disclosed by para 3.3 (1). Para 4.5 provides that out of 40 seats, reservation was made for scheduled castes upto 25 per cent for Backward Classes upto 5 per cent, for Outstanding Sportsmen upto 5 per cent, for Freedom Fighters and their dependents upto 2 per cent. for children of the inservice/ex-service Armed Forces/CRP/BSF/Officers/Officials (including officials who died during their service/ upto 2 per cent, for children of the families of the persons killed as a result of terrorist violence or during operation by security forces acting in aid of Civil power and children of innocent civilians who have sustained 100 per cent disability in terrorist violence or during operation by security forces acting in aid of civil powers upto 2 per cent and for children of persons killed/ 100 per cent physically disabled in November, 1984 riots and internal/ external migrants upto 2 per cent. The procedure for selection for

admission to the aforesaid reserved categories primarily envisages the appearance in the C.E.T. written examination. None of the respondents had applied or could be directed to be admitted in the Regional Engineering Colleges under the category of nominations. It is established that the nominations are over and above the intake capacity of the Engineering Colleges to which they have been admitted. The question of allowing such persons who have got admissions against non existent seats cannot be permitted. Permitting such students to continue with their studies would amount to perpetuating, licensing and authorising the illegalities committed by them in manoeuvring, managing and manipulating admissions by nominations. So far as the students admitted by nominations in Thapar Institute of Engineering and Technology, Patiala are concerned they too cannot be allowed in view of the Division Bench Judgment of this Court in *Thapar Institute of Engineering and Technology's case* (supra). For the same reasons, the students outside the State of Punjab cannot be permitted to continue with their studies particularly when none of them excepting respondent No. 35 has appeared in Court despite service by substituted means.

(44) Similar arguments were advanced by the students who had got admission by migration, by relying up the judgments of *Darshjit Singh's case* (supra) and *Thapar Institute of Engineering and Technology, Patiala's case* (supra) which upon consideration was rejected by the Court in L.P.A. No. 212 of 1994 '*Maharshi Dayanand University and anothers* v. *Nitasha Paul and others*' decided on 23rd February, 1995 it was held by this Court :

> "The learned counsel appearing for the candidates who managed to get admission by migration have argued that even if the writ petitions are accepted and the migration is held to be not legal, the order impugned should not be quashed as that would result in a great hardship to the students who have joined the new institution after migration, Reliance is placed upon the judgment of the Supreme Court in '*Darshjit Singh's case* (supra) and of the this Court in C.W.P. 1745 of 1992' *Thapar Institute of Engineering and Technology, Patiala* v. *State of Punjab*, decided on 2nd September, 1994. We are not impressed by this argument and cannot permit the illegality to be perpetuated or the successful candidates being conferred with any un-called for benefit in their favour. Once it is held that the migration has been procured by illegal means and in violation of not only the provisions of law but also the

Constitution, no leniency can be shown in favour of those who have obtained such uncalled for benefit in their favour. In the instant case, the successful candidates got admission in B.D.S. by migration with open eyes and the result regarding their fate was clearly written on the wall, Manipulative admissions, therefore, cannot be permitted to be continued particularly when the action of the respondents granting migration,—*vide* order dated 19th October, 1993 (Annexure P/4 so far as B.D.S. course is concerned was challenged in the Court within the days thereafter. The candidates who have succeeded in getting migration were not allowed to continue by any specific order of the Court. Similar is the case of the respondents who have been migrated in the M.B.B.S. Course. Reliance of the counsel for the respondents on *Darshjit Singh's case* (supra) is misplaced inasmuch as in that case the respondents had been granted admission by the court orders and that the candidates had been proved to have been studying in the institution for a period of over year. The Supreme Court observed, "we are constrained to add that it would have been more appropriate if the High Court had not directed the respondents to be admitted in the Chandigarh Engineering College by way of interm orders....." It was further observed, ".....even if the writ petition fails, the mis-chief of interim order-cannot be rectified with the lapse of time. This is precisely the situation confronting us". Such is not the situation in the case before us.

(45) The Division Bench of this Court in *"Thapar Institute of Engineering and Technology's case* (supra) also did not set aside the selection despite the dismissal of the writ petitions mainly on the ground that affected students had been granted admission on account of the Court orders and that they had been continuing studies for over a sufficient period of time. In that case, the Court directed". It is, however, observed that the students who were admitted on the basis of Court orders shall be permitted to continue with their studies and their admissions shall be regularised. "No migrated student has been allowed to continue the study on the basis of the Court orders in the instant case."

(46) In the instant case, the nomination of the respondents was challenged within a period of about two weeks upon getting information from the news report. Civil Writ Petition No. 12168 of 1994

was filed in the Court on 5th September, 1994 which remained pending till 8th December, 1994. In the aforesaid petition the Court,—*vide* order dated 5th September, 1994 directed that no further nominations shall be made to any Engineering College in the State of Punjab. As details of the nominated candidates were not available, a direction was issued to the respondent-State to give details of the students admitted by way of nomination by the Punjab Government to the Engineering Colleges in the State and outside the State. After furnishing of the requisite information, the nominated candidates had been impleaded as party respondents in that case. Ultimately on 17th November, 1994, the aforesaid writ petition was adjourned to 8th December, 1994 for arguments after affording the respondents an opportunity to file replies, if they so desired. On 6th December, 1994, four adjournment slips were filed on behalf of the petitioner and some respondents and a mention was made before the Bench dealing with the case for adjournment of the case. However, in one of the adjournment slips it has been mentioned that the Division Bench hearing the case had observed that it would not be sitting on 9th December. 1994 and the case shall be taken up on 12th December. 1994. It appears that the petitioner in the case of Kamalpreet Grewal filed an affidavit stating therein that she had decided to abandon the idea of pursuing the writ petition in Engineering matter on account of delay caused in the disposal of the writ petition. It is worthwhile to mention that the aforesaid writ petition was taken up by another Bench on 8th December, 1994 when Shri B. S. Grewal. Advocate, father of the petitioner, appeared and filed an affidavit of his daughter stating therein that she was not interested in pursuing the writ petition and the same be dismissed as withdrawn. It is again worthwhile to mention that the said Shri B. S. Grewal had never appeared in the case earlier either as an arguing counsel or as an assisting counsel. The present writ petition is shown to have been drafted and signed on 9th December, 1994 and was put before the Bench for motion hearing on 13th December, 1994. The learned counsel appearing for the petitioners at that time submitted that the earlier writ petition filed against the nominations for engineering course had been got dismissed as withdrawn under the circumstances which were not free from doubt. While issuing notice of motion, we directed that the private respondents be restrained from continuing their studies in the Institutions to which they had been admitted on the basis of the nominations made by the State Government. However, the private respondents thereafter appeared in the Court and filed separate applications

seeking permission to pursue their studies and appear in the examination. The private respondents appearing in the Court were permitted to continue with their studies at their own risk and responsibility and subject to the result of the present writ petition. The narration of the facts noted herein above, would clearly show that the nomination of the respondents were challenged without any delay and the matter remained pending in the Court till 8th December, 1994 when the earlier writ petition was dismissed as withdrawn and immediately thereafter a new petition was filed. The respondents were allowed to continue with their studies at their own risk and responsibility and the action of the respondent-State was never condoned even for a day. The respondents in the instant case, appear to have delayed and prolonged the disposal of the writ petition on pretexts. The admission by nominations were obtained despite their being various judgments of this Court quashing the admission by nomination. The studies were continued by the private respondents despite the pendency of the writ petitions and specific orders of the Court to continue their studies at their risk and responsibility. Lengthy and protacted arguments on behalf of the respondents prolonged the disposal of the writ petition for about three weeks. The private respondents do not appear to have shown any *bona-fide* in the matter and left no stone unturned to resist the genuine claim projected in the writ petition on false pretexts and hyper technical pleas. The conduct adopted by the respondents in prolonging the litigation does not entitle them to any discretionary relief particularly when their admissions have been held to be not only illegal but unconstitutional and against the non-existent seats. The respondents who are proved to have secured admissions by nominations by having shelter under the void declared reservation policy, pursued their studies despite their being consistent view of this court regarding unconstitutionality of admissions under the impugned policy/ guidelines, manipulated to prolong their stay by adopting delaying tactics and despite being fully aware that the court had no option but to quash their nominations as and when the petition is disposed of. If the respondents with eyes open but closed doors of knowledge had manipulated admission by nominations, they cannot be rewarded for their mis-deeds by allowing them to continue with their studies despite quashing of nomination, as has been argued on their behalf.

(47) Under the circumstances, the writ petition is disposed of with the following directions :—

(a) That the nomination of all the private respondents No. 3 to 38 of the various Engineering courses is set aside ;

(b) That the seats held by all the respondents excepting respondent Nos. 6 to 30 shall be deemed to have been declared vacant with immediate effect ;

(c) That if the respondent-State decides to utilise the seats held by the private respondents in Engineering courses and now declared vacant, they shall divert all such seats to the open merit category seats and offer such seats to them in the order of their merit obtained in the competitive enterance examination within a period of two weeks ;

(d) That if no such option is exercised within the aforesaid period all such seats shall be deemed to have been declared non-existent ;

(e) That in case, the respondent-State intends to utilise these seats for the students in the open merit category, the cases of respondent Nos. 6 and 30 shall be considered for admission on the basis of their merit within the period of two weeks and if no such decision is taken within the time specified with respect to the aforesaid candidates, the seats held by them shall be deemed to have fallen vacant after the expiry of two weeks.

The petitioners are also held entitled to the payment of costs which are assessed at Rs. 5,000 to be paid by respondent No. 1.

J.S.T.

Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.

DR. HARBHAJAN SINGH,—*Petitioner.*

versus

STATE OF PUNJAB & OTHERS.—*Respondents.*

C.W.P. 13190 of 1994

10th October, 1994

Constitution of India, 1950—Arts. 226/227—Punjab Municipal Act (Act III of 1911)—Amending Act 11 of 1994—Section 25(3)—Empowers Vice-President to convene meeting in absence of President, if such requisition has been made by 1/5th members of the Committee—Any such meeting convened in absence of President is legal and valid.