

(2019) 11 CHH CK 0001
In the Chhattisgarh High Court
Case No : Writ Petition (PIL) No. 111 Of 2016

Abhishek Pandey

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 11-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 32, 226
High Court Of Chhattisgarh Rules, 2007 — Rule 81

Citation : (2019) 11 CHH CK 0001

Hon'ble Judges : P.R. Ramachandra Menon, J; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Rajni Soren, Shailendra Dubey, Avinash Singh, Abhishek Sinha

Final Decision : Dismissed

Judgement

Prateem Sahu , J

1. The Petitioner, who is a practising Advocate of this Court has filed this writ petition under the head of 'Public Interest Litigation' with following relief(s) :-

"10(i) Strike down Rule 81 of the High Court of Chhattisgarh Rules, 2007 as being violative of Article 14 of the Constitution of India;

10(ii) Strike down Rule 81 of the High Court of Chhattisgarh Rules, 2007 as being violative of the fundamental rights of the people of Chhattisgarh guaranteed under Part III of the Constitution of India;

10(iii) Pass any other order the Hon'ble Court may deem fit in the interest of justice."

2. The case of the Petitioner is that public interest litigations are being filed by way of letter petitions and also by filing a writ petition, but for filing of a writ petition in the nature of public interest litigation, there is a requirement under Rule 81 of the High Court of Chhattisgarh Rules, 2007 ('Rules of 2007', for short) for depositing an amount of Rs.5,000/- towards security at the time of filing of

the writ petition. Making it mandatory for the Petitioner filing public interest litigation for deposit of Rs.5,000/- is arbitrary because many of the public interest litigations could not see the doors of the Court only on account of heavy burden of security deposit of an amount of Rs.5,000/-as precondition for filing of the public interest litigation.

3. Ms. Rajni Soren, learned counsel appearing for the Petitioner submitted that public interest litigation is a mode of litigation to provide access to justice to poor, deprived, vulnerable, discriminated and marginalised sections of society. She further submitted that Rule 81 provided under the Rules of 2007 for mandatory deposit of Rs.5,000/- as security is discouraging the people of the State to approach High Court of Chhattisgarh by filing public interest litigation and thereby weaker section of society is being deprived of to get justice; requirement of security deposit of Rs.5,000/- under Rule 81 of the Rules of 2007 is also causing hindrance for people/citizens who wants to knock the doors of justice by raising the issues of public interest and importance. She further submitted that there is no requirement under the Rules of 2007 for depositing amount towards security in other nature of cases, therefore, it is discriminatory in nature. She also submitted that in Hon'ble Supreme Court and most of the High Courts, there is no provision for mandatory deposit of amount towards security. She also submitted that Rule 81 of the Rules of 2007 grants discretion to the Court to exempt/payment of security deposit, but no guidelines have been framed under the Rules of 2007 for exercising such discretion. She lastly submitted that Hon'ble Supreme Court had encouraged filing of public interest litigations to preserve and protect the fundamental rights of marginalised sections of society, but Rule 81 of the Rules of 2007 is violating fundamental rights.

4. Per contra, Mr. Shailendra Dubey, learned Additional Advocate General appearing for the State submitted that requirement of deposit of security amount of Rs.5,000/- at the time of presentation of public interest litigation is in no way in violation of Article 14 of the Constitution of India, but it ensures that the litigant approaching this Court under public interest litigation should approach with responsibility and does not misuse the jurisdiction of High Court under the garb of public interest litigation by filing frivolous litigation with vested interest. He further submitted that making rule for depositing a security amount under Rule 81 of the Rules of 2007 is one of the safeguards against filing of frivolous petitions, which do not come within the purview of public interest litigation.

5. Mr. Abhishek Sinha, learned counsel appearing for the High Court submitted that Rule 81 of the Rules of 2007 does not restrict any individual whose fundamental right is alleged to have been violated, nor it curtails and restricts a citizen from enforcing his fundamental right. He further submitted that Rule 81 of the Rules of 2007 has been enacted with an object to restrict and discourage frivolous public interest litigation and is a step to prevent and cure the abuse of jurisdiction of the Court under the public interest litigation. He further submitted

that in Rule 81, the Court has power to exempt and waive the requirement of deposit of security amount in genuine public interest litigations and no petition is dismissed summarily for non-deposit of security amount. He further submitted that other High Courts like Punjab & Haryana, Madhya Pradesh and Bombay, have provided a procedure for deposit of security amount in public interest litigations. He also submitted that in the instant public interest litigation, relief sought for is to struck down Rule 81 of the Rules of 2007, but there is no pleading challenging the competency of rule making authority or has not raised any ground with regard to repugnancy except violation of Article 14 of the Constitution of India and prays for dismissal of petition.

6. We have heard learned counsel appearing for the parties and perused the documents annexed in this petition.

7. Before dealing with the issue raised by the Petitioner in this petition, it will be beneficial to discuss as to how public interest litigation is evolved. Initially the concept of public interest litigation has been considered by Hon'ble Supreme Court in the matter of *The Mumbai Kamgar Sabha, Bombay v. M/s. Abdulbhai Faizullabhai and others* (1976) 3 SCC 832 by observing thus :-

"7.....Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical mis-descriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a part. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice. Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural short comings. Even Article 226, viewed in wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights, although the traditional view, backed by precedents has opted for the narrower alternative. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjectival law....."

8. The emergence of the concept of public interest litigation, in the Indian legal system has been succinctly explained by Hon'ble P.N. Bhagwati, J. (as he then was) in one of his articles contributed under the caption 'Social Action Litigation: The Indian Experience' thus :-

"The judiciary has to play a vital and important role not only in preventing and remedying abuse and misuse of power but also in eliminating exploitation and injustice. For this purpose it is necessary to make procedural innovations in order

to meet the challenges posed by this new role of an active and committed judiciary. The summit judiciary in India, keenly alive to its social responsibility and accountably to the people of the country, has liberated itself from the shackles of Western thought, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice for socially and economically disadvantaged groups.....

During the last four or five years however, judicial activism has opened up a new dimension for the judicial process and has given new hope to the justice starved millions of India.

(vide 'Role of the Judiciary in Plural Societies' published in 1987.)"

9. The Hon'ble Supreme Court in series of its judgments have discussed the importance of public interest litigation and also observed the change of approach and attitude of the litigants filing public interest litigation wherein in the garb of public interest litigation, the petitions are being filed to redress personal interest by misusing the jurisdiction of the High Courts under Article 226 of the Constitution of India and Supreme Court under Article 32 of the Constitution of India. The Hon'ble Supreme Court also issued guidelines and experienced the requirement of formulation of the rules by the Courts for dealing with the writ petition (public interest litigations).

10. The Hon'ble Supreme Court in the matter of State of Uttaranchal v. Balwant Singh Chaufal and Others (2010) 3 SCC 402 has considered the importance of public interest litigation and its developments due to passage of time wherein the jurisdiction of public interest litigation has been found to be misused by filing frivolous public interest litigation and the petition which do not satisfy the requirements of public interest litigation and held thus :-

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non- monetary directions by the courts.

144. In BALCO Employees' Union v. Union of India (2002) 2 SCC 333 , this Court recognized that there have been, in recent times, increasing instances of abuse of public interest litigation. Accordingly, the court has devised a number of strategies to ensure that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. Firstly, the Supreme Court has limited standing in PIL to individuals "acting bonafide." Secondly, the Supreme Court has sanctioned the imposition of "exemplary costs"

as a deterrent against frivolous and vexatious public interest litigations. Thirdly, the Supreme Court has instructed the High Courts to be more selective in entertaining the public interest litigations.

151. Similarly, in *Dattaraj Nathuji Thaware v. State of Maharashtra* (2005) 1 SCC 590 , the Supreme Court affirmed the High Court's monetary penalty against a member of the Bar for filing a frivolous and vexatious PIL petition. This Court found that the petition was nothing but a camouflage to foster personal dispute. Observing that no one should be permitted to bring disgrace to the noble profession, the Court concluded that the imposition of the penalty of Rs. 25,000 by the High Court was appropriate. Evidently, the Supreme Court has set clear precedent validating the imposition of monetary penalties against frivolous and vexatious PIL petitions, especially when filed by Advocates.

152. This Court, in the second category of cases, even passed harsher orders. In *Charan Lal Sahu v. Zail Singh* (1984) 1 SCC 390 , the Supreme Court observed that (SCC p. 400, para 17), "we would have been justified in passing a heavy order of costs against the two petitioners" for filing a "light-hearted and indifferent" PIL petition. However, to prevent "nipping in the bud a well-founded claim on a future occasion," the Court opted against imposing monetary costs on the petitioners." In that case, this Court concluded that the petition was careless, meaningless, clumsy and against public interest. Therefore, the Court ordered the Registry to initiate prosecution proceedings against the petitioner under the Contempt of Courts Act. Additionally, the court forbade the Registry from entertaining any future PIL petitions filed by the petitioner, who was an advocate in that case.

157. In *Holicow Pictures (P) Ltd. v. Prem Chandra Mishra* (2007) 14 SCC 281 , this Court observed as under *: (SCC pp. 287d-288a, para 10)

"10. '...12. It is depressing to note that on account of such trumped-up proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy, whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters -government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies,

meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system'."

158. The Court cautioned by observing that^{**}: (Holicow case (supra), SCC pp.288-89, para 10)

"10.'....13. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.....

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15. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. The Court has to strike a balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico though they have no interest of the public or even of their own to protect'."

11. Further, Hon'ble Supreme Court in the matter of Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan and Others (2014) 5 SCC 530 , held thus :-

"49. The concept of Public Interest Litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other downtrodden people. Through the Public Interest

Litigation, the cause of several people who are not able to approach the Court is espoused. In the guise of Public Interest Litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The Courts have to be very cautious and careful while entertaining Public Interest Litigation. The Judiciary should deal with the misuse of Public Interest Litigation with iron hand. If the Public Interest Litigation is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and down trodden will be defeated. The Courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of Public Interest Litigation, the Courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people, whose rights are adversely affected or at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum, instead of entertaining the writ petition filed as Public Interest Litigation."

12. Recently, Hon'ble Supreme Court in the matter of Subhash Chander Katyal v. Union of India and Others (2018) 12 SCC 731 had again considered misuse of jurisdiction of the Courts by filing frivolous public interest litigations and held thus :-

"5. Be it noted, despite expanded horizon, public interest litigation has its own limitations. Any litigant should not feel, when he files a public interest litigation that his hope and aspirations for anything and everything deserves to crystallise. He should not harbour the feelings that for any idea to be fructified, he can knock at the doors of this Court under Article 32 of the Constitution of India. The broad canvass that is sought to be painted in this petition, as it appears to us, does not come within the domain and sphere of the public interest litigation."

13. From the aforementioned verdicts of Hon'ble Supreme Court, it is apparent that the attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at time from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or for as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. Now a days many of the Petitioners filed public interest litigations pending to note pro bono publico, though they have no interest of the public or even of their own to protect. As held by Hon'ble Supreme Court that frivolous petitions are to be filtered out and heavy cost to be imposed on such kind of public interest litigations.

14. Considering the various judgments of Hon'ble Supreme Court and also taking into consideration the change of time and approach of litigants in filing the public interest litigations, framing of Rule 81 of the Rules of 2007 appears to be one of

the initial mode of curbing or curtailing of filing the frivolous public interest litigations before the Court of law. Rule 81 of the Rules of 2007 has inbuilt mechanism for seeking an exemption of depositing security amount of Rs.5,000/- by filing an appropriate application along with the Writ Petition (PIL). It is not that the genuine public interest litigation cannot be considered or heard by the Court without depositing of the security amount of Rs.5,000/-. This Court has continuously waived/exempted the requirement of depositing of Rs.5,000/- as security deposit in the petitions which raises the issue of public importance and litigations for public at large, who belongs to deprived and vulnerable sections of society and to assure them social and economic justice.

15. Framing of Rule 81 of the Rules of 2007 has been incorporated with an object to curb the filing of frivolous public interest litigations or petitions with oblique motive at the initial stage itself. There is no violation of any fundamental rights of the citizen as this Court is entertaining all the genuine public interest litigations by passing appropriate orders for exemption and waiver of depositing the security amount.

16. Non-framing of rules for depositing security amount by other High Courts itself will not make Rule 81 of the Rules of 2007 to be violative to Article 14 of the Constitution of India or fundamental rights. Though the chart prepared by learned counsel for the Petitioner showing number of public interest litigations filed in past years itself shows that filing of public interest litigation has gradually increased even after coming into force of Rule 81 of the Rules of 2007, which came into effect from December, 2007. The validity of rules cannot be tested on the ground of filing of number of petitions only as tried to be projected by the Petitioner. There may be several reasons for showing graph of public interest litigations up or down.

17. Whenever a public interest litigation is filed spousing a genuine cause or spousing the cause of the poor or downtrodden an application for exemption, this Court has been routinely exempting the Petitioners from giving a security deposit.

18. In view of aforementioned discussions, we are satisfied that Rule 81 has been incorporated under the Rules of 2007 with a purpose and object to be achieved that is to deter the Petitioners from filing the frivolous public interest litigation so as to save precious time of the Court, which can be utilised for deciding the genuine litigation. We do not find that Rule 81 of the Rules of 2007 is causing hindrance in any manner for the citizens/organisations of pro bono publico to approach this Court to knock the doors of justice for citizens incapable of seeking legal redressal. There is no violation of Article 14 of the Constitution of India or any of the fundamental rights enshrined under the Constitution of India.

19. In the result, the writ petition being devoid of any substance, is liable to be and is hereby dismissed.