

(2003) 08 OHC CK 0053
In the Orissa High Court
Case No : Writ Petition (C) No. 2526 of 2003

Alok Kumar Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : AIR 2004 Ori 134 : (2003) OLR 645 Supp

Hon'ble Judges : P.K. Misra, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Bijoy Anand Mohanty and P.C. Rout, A.C. Swain and D.P. Dash, for the Appellant; P.R. Naik, Addl. S.C. (Central) for Opposite Party No. 1, P.N. Mohapatra, for Opposite Parties 2 and 3, S.C. Lal, S. Lal, S. Panda and S. Lal, for Opposite Party No. 4, for the Respondent

Judgement

1. This is a public interest petition filed under Article 226 of the Constitution by Shri Alok Kumar Das, a resident of Jhanjirmangala, Cuttack, who claims to be a socially spirited man.

2. The brief facts are that by an advertisement published in the Oriya daily newspaper in August, 2002, Bharat Sanchar Nigam Limited (for short, "the B.S.N.L.") invited sealed tenders from reputed organizations having at least two years experience in the sale of fast moving consumer goods (F.M.C.G.) items, electrical goods, I.T. products, computer hardware for appointment of dealers (for post-paid service) on Telecom District basis and distributors (for pre-paid service) on Telephone connection basis for B.S.N.L.'s Cellular Mobile Service. In response to the said advertisement, sixteen organizations submitted tenders for Bolangir Bhawanipatna territory. The tenders of fifteen organizations were rejected by the Tender Evaluation Committee nominated by the B.S.N.L. on the ground that they did not satisfy the eligibility conditions laid down in the advertisement. Opposite party No. 4 was the only tenderer found to be eligible by the Tender Evaluation Committee but Rs. 150/- for first activation and 8 per

cent as re-charge quoted by opposite party No. 4 in its tender were not accepted and instead, after negotiation with opposite party No. 4, the first activation charge of Rs. 95/- and re-charge of 6.5 per cent were accepted and opposite party No. 4 was selected and the agreement has been executed in favour of opposite party No. 4 Bolangir-Bhawanipatna Telephone District. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution with prayer to the Court to quash the entire tender process held for the Bolangir-Bhawanipatna territory and to cancel the agreement/contract in favour of opposite party No. 4 and to direct for fresh tenders in accordance with law.

3. The opposite parties have seriously contended that the petitioner has no locus standi to file this public interest petition. Mr. P. N. Mohapatra, learned counsel appearing for opposite parties 2 and 3 and, Mr. S. C. Lal, learned counsel appearing for opposite party No. 4 submitted that the petitioner is a resident of Jhanjirmangala in Cuttack town and he is in no way concerned with the Cellular Mobile Service in the Bolangir-Bhawanipatna territory. He is also not a tenderer for distributorship/dealership of the B. S. N. L. for Bolangir-Bhawanipatna territory. The writ petition also does not show the activities of public service undertaken by him in support of his claim that he is a public spirited person. According to Mr. Mohapatra and Mr. Lal, the petitioner has been set up by an unsuccessful tenderer for distributorship/dealership of the B. S. N. L. for Bolangir-Bhawanipatna territory and this Court should dismiss the writ petition at the threshold without going into the merits of the writ petition. Mr. Lal cited the decision of the Supreme Court in *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, in which the earlier observation of the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, that the High Court should do well to reject the petition of a busy body at the threshold itself, has been referred to. According to Mr. Mohapatra and Mr. Lal, since the petitioner does not have locus standi to file the present writ petition, the writ petition should be dismissed by this Court as an abuse of the process of the Court.

4. Mr. Bijay Anand Mohanty, learned counsel for the petitioner, on the other hand, submitted that the B. S. N. L. is a public sector undertaking wholly owned by the Government of India and is therefore "State" within the meaning of Article 12 of the Constitution of India and it is bound and governed by the rigorous standards of justice and fair play incorporated in Article 14 of the Constitution of India, but in this case, the B. S. N. L. has acted in arbitrary and unfair manner and has rejected the tenders of fifteen out of sixteen tenderers for the Bolangir-Bhawanipatna territory and has awarded the distributorship dealership to opposite party No. 4 who had quoted a commission which was one of the highest vis-a-vis other tenderers. Mr. Mohanty submitted that acceptance of tender of opposite party No. 4 would mean that the B. S. N. L. would pay out more to opposite party No. 4 by way of commission, etc. and would lose out financially. He argued that every citizen has a right to question such action and ensure that public funds are not depleted by dishonest actions of unscrupulous officials who by way of innovative means and in direct violation of the procedure laid down

reject all tenders except that of opposite party No. 4 and after considering only such single tender, enter into a fake negotiation with such single tenderer and award the distributorship to him. He further submitted that even on commercial considerations also, the petitioner has a direct interest in challenging such illegal action inasmuch as the tariff for mobile service of the B. S. N. L. in the State of Orissa is not districtwise but for the whole State and possibly for the whole country and every person in the State, rather the whole country, has interest in appointment of distributors who quote the lowest rates. In support of his submission that any member of the public can file a public interest petition, Mr. Mohanty cited the decisions of the Supreme Court in *S.P. Gupta Vs. President of India and Others*, ; *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, ;, *M.C. Mehta and Another Vs. Union of India (UOI) and Others*, ; *M.C. Mehta Vs. Union of India (UOI) and Others*, , *Pt. Parmanand Katara Vs. Union of India (UOI) and Others*, ;, *Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others*, ; *State of West Bengal Vs. Union of India and others*, ; *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, ; *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, ; *State of U.P. Vs. Uday Narayan and Another*, *K. P. Singh v. Union of India JT 2000 1 SC 588*, *State of Jammu and Kashmir Vs. Swami Sachchidanand S.C.S. Purnanad and Others*, and *News Item "Hindustan Times" A.Q.F.M. Yamuna Vs. Central Pollution Control Board and Another*,

5. In *M. S. Jayaraj v. Commissioner of Excise, Kerala* (supra) cited by both Mr. Mohanty, learned counsel for the petitioner and Mr. Lal, learned counsel for opposite party No. 4, the Supreme Court noticed the change from its earlier strict interpretation regarding locus standi to a much wider concept adopted in later years regarding a person's entitlement to move the High Court in its writs jurisdiction, In particular, the Supreme Court took note of its judgment in *Jasbhai Motibhai Desai v. Roshan Kumar* (supra) in which the Court categorized three categories of persons vis-a-vis locus standi (1) a person aggrieved (2) a stranger and (3) a busybody or a meddlesome interloper, and cautioned that the High Court should do well to reject the petition of a busybody at the threshold itself. The Supreme Court also took note of its later decision in *Chairman, Railway Board v. Mrs. Chandrima Das* (supra) in which it has held that there has been a spectacular expansion of the concept of locus standi and the concept is much wider and it takes in its stride anyone who is not a mere busybody. In the said decision of *M. S. Jayaraj v. Commissioner of Excise, Kerala*, the Supreme Court observed that in the light of the expanded concept of locus standi and in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, the Court did not wish to nip the motion out solely on the ground of locus standi. In view of this expanded concept of locus standi developed in the recent decisions of the Supreme Court, we were not inclined to dismiss this writ petition at its threshold.

6. Moreover, in a simple case the Court may be in a position to decide that the petitioner who has filed the writ petition has no interest at all or no sufficient

interest to file the writ petition at the first stage of the case and the Court may dismiss a public interest petition at its threshold. But in a more complex case, the Court may not be in a position to decide as to whether the person applying for judicial review has no interest at all or no sufficient interest to support the application at the first stage of the case and may be able to decide this question of interest or sufficient interest of the petitioner in the litigation at a later stage along with the merits of the case. In a decision of the House of Lords in *The Inland Revenue Commissioner v. National Federation of Self-Employed and Small Businesses Ltd.* case (1982) AC 617, Lord Wilberforce observed :

"I think that it is unfortunate that this course has been taken. There may be simple cases in which it can be seen at the earliest stage that the person applying for judicial review has no interest at all, or no sufficient interest to support the application : then it would be quite correct at the threshold to refuse him leave to apply. The right to do so is an important safeguard against the Courts being flooded and public bodies harassed by irresponsible applications. But in other cases this will not be so. In these it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers or duties, and to the breach of those said to have been committed. In other words, the question of sufficient interest cannot, in such cases, be considered in the abstract, or as an isolated point: it must be taken together with the legal and factual context. The rule requires sufficient interest in the matter to which the application relates....."

Lord Diplock and Lord Scarman also agreed with the aforesaid observation of Lord Willberforce that the question of sufficient interest in more complex cases cannot be considered in abstract, or as an isolated point but must be taken together with the legal and factual context. .

7. Counter affidavits have been filed by the opposite parties and the records have been produced and we are now in a position to examine the question as to whether the petitioner has any interest at all or sufficient interest in this public interest litigation along with the merit of the case. The petitioner is a resident of Jhanjirmangala, Cuttack and he has interest rather sufficient interest that public sector undertakings such as the B. S. N. L. do not suffer financial loss in award of contracts and that if such financial loss is caused by any dishonesty or corruption punishable under the penal law of the country, criminal investigation be set into motion and the culprits booked for the offence. It has been settled by the Apex Court in the case of *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, that punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. In the present case, the petitioner has alleged in the petition that although sixteen tenderers submitted tenders for the

territory of Bolangir Bhawanipatna, the tenders of fifteen tenderers were rejected and the tender of opposite party No. 4 was only accepted for some extraneous reasons causing loss of revenue to the State. The petitioner has also prayed for a direction to enable the C. B. I. to investigate the matter regarding the scam and the financial loss caused by the public officials and their accomplice. In the counter affidavit filed on behalf of opposite parties 2 and 3, however, it is stated that the tenders of the fifteen tenderers were rejected by a Tender Evaluation Committee with two experts who were a professor of I. I. M., Calcutta and a Professor of XLRI, Jamshedpur, on the ground that the fifteen tenderers did not satisfy the eligibility conditions in the advertisement and the tender papers. In the said counter affidavit of opposite parties 2 and 3 it is further stated that after rejection of the tenders of the fifteen tenderers only opposite party No. 4 remained as the valid tenderer but the rates quoted by opposite party No. 4 were not accepted and negotiations were made with opposite party No. 4 and the first activation charge of Rs. 95/- and recharge of 6.5 per cent were accepted after such negotiation. It is further stated in the said counter affidavit of opposite parties 2 and 3 that the maximum rate was fixed at Rs. 150/- for first activation and the maximum rate for recharge was fixed at 15 per cent by the B. S. N. L. Head Office at New Delhi on All-India basis. It has been stated in the said counter affidavit of opposite parties 2 and 3 that since the negotiated rates were much less than the rates prescribed in the tender documents by the B. S. N. L. Head Office, there was no illegality on the part of the opposite parties. These averments in the counter affidavit would show that the rates that were finalized after negotiation with opposite party No. 4 were well within the norms prescribed by the B. S. N. L. on All-India basis and as such it is difficult to hold that financial loss or scam was caused by public officials. There are no materials before the Court for taking even a prima facie view that there has been any dishonest or corrupt conduct on the part of the officials of the B. S. N. L. or any member of the tender Evaluation Committee, For this reason, we are not inclined to direct an investigation by the C. B. I. as prayed for in the writ petition and the prayer in this petition in this regard is misconceived.

8. A further, grievance has been made in the writ petition that tenders of the fifteen tenderers have been arbitrarily and unfairly rejected by the authorities so as to deprive them of the opportunity of participating in the competition for distributorship of B. S. N. L. Mobile Service for Bolangir Bhawanipatna territory and accordingly a prayer has been made to cancel the agreement in favour of opposite party No. 4 and to direct fresh tender in accordance with law. We have grave doubts as to whether the petitioner who was a resident of Jhanjirmangala, Cuttack and had not submitted any tender for distributorship of B. S. N. L. Mobile Service for Bolangir-Bhawanipatna territory can be said to have sufficient interest to make this grievance before this Court so as to justify interference at his instance. It is for any of the fifteen tenderers whose tenders for Bolangir Bhawanipatna territory have been rejected to make a grievance that his tender has been rejected arbitrarily and unfairly so as to deprive the tenderer to

compete for the distributorship of B. S. N. L. Mobile Service for Bolangir-Bhawanipatna territory. As a matter of fact, one such tenderer, namely, M/s Bolangir Trading Company has filed a separate writ petition W. P. (C) No. 3592 of 2003 making this grievance and by a separate judgment delivered today we have allowed the said writ petition and directed fresh tender for the distributorship of the B. S. N. L. Mobile Service for Bolangir-Bhawanipatna territory.

9. With the aforesaid observations, this writ petition stands disposed of.