
(2009) 03 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No. 2314 (W) of 2009

Amit Kumar Pan

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Citation : (2009) 03 CAL CK 0006

Hon'ble Judges : Surinder Singh Nijjar, C.J; Biswanath Somadder, J

Bench : Division Bench

Advocate : Debasish Kundu and Subrata Das, for the Appellant; Sandip Sriman, Suchitra Saha, Sharmila Basu Sandip Ghosh for Respondent Nos. 3-5 Sumit Talukdar, H.P. Chowdhury and T.K. Chowdhury for the Respondent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

The Judgment of the Court was as follows:

1. This writ petition has been filed by an Advocate who claims to be protesting against the high handedness, unlawful steps and actions of the authority concerned as regards public properties and/or public monies. The petitioner, in order to establish his locus-standi pleads as follows:

"1. Your petitioner states that your petitioner is a peace loving and law abiding citizen of India and resides permanently at the address given in the cause-title hereinabove.

2. Your petitioner states that your petitioner is a practicing Advocate in the Hon'ble High Court, Calcutta and your petitioner has joined in the Calcutta High Court Bar sometimes in 1985.

3. Your petitioner states that from his college days your petitioner likes to involve himself in various social works and till date your petitioner has taken active role at the time of natural calamity, sometimes in his individual capacity, sometimes

through Ram Krishna Mission Seva Pratisthan, Bharat Seva Sangha and other social organizations. Your petitioner is a social activists apart from his legal profession as also a Sports lover having various sports activities."

2. The petitioner also claims that recently he has come to know that the Managing Director of North Bengal State Transport Corporation (NBSTC in short), Coochbehar has published a tender notice in respect of land measuring about 2.95 acres situated at Tinbatti More, near Siliguri, District-Jalpaiguri, proposing to exploit the land for commercial development. The petitioner also claims that NBSTC has entered into three agreements dated 4th of February, 2008 with respondent No. 6 for undertaking Public Private Partnership Projects for commercial development of three plots mentioned in the agreement. Earlier, NBSTC had issued a tender notice on 9th of April, 2007 inviting applications for development of the land for commercial purposes. The agreements have been executed in favour of respondent No. 6 on the basis that the offer made by it is the only workable offer. The petitioner claims that the land is sought to be transferred to respondent No. 6 illegally and without following due procedure under the law. It is, therefore, absolutely illegal, arbitrary and detrimental to the interest of the public at large. Petitioner also claims that respondent No. 6 was the only participant in the tender in question so far as the land of MM Bus terminus is concerned. This land is being transferred to respondent No. 6 by the Chairman and Managing Director of NBSTC in order to earn unlawful gain. Therefore, the writ petition has been filed for a direction to the respondents to rescind or withdraw the agreements dated 4th of April, 2008.

3. Not being satisfied with the particulars given by the writ petitioner with regard to his locus-standi to maintain the present public interest litigation, we are prima facie of the opinion that it would be inappropriate for this Court to investigate the matter on merits.

4. Mr. Kundu, learned counsel appearing for the writ petitioner, however, vehemently argues that the writ petitioner has brought to the notice of this Court some glaring illegalities in the transfer of the public land to a private party. Such being the position, it would be appropriate for this Court to assess the relative merits of the case of the petitioner before the matter with regard to the locus-standi of the petitioner is investigated. In support of this submission, the learned counsel seeks to rely on two judgments of the Supreme Court in the cases of Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others, and M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, .

5. On the other hand, Mr. Srimani submits that the writ petition is wholly frivolous. It is motivated. The petitioner has been clearly set up by some unknown third parties, who may have been unsuccessful applicants in the tender process. Learned counsel made a pointed reference to the averments made in paragraph 29 of the writ petition and submitted that the actual motive for filing of the writ petition is merely to challenge the tender process. The land has been legally transferred to respondent No. 6 on the basis of Public Private Partnership

Projects for commercial development of the plots. The agreement clearly states that public notice inviting proposals for commercial development was issued on 9th of April, 2007. The proposal was submitted on 30th of May, 2007 and thereafter examined by the Technical Committee. On further examination of the financial bid it emerged that respondent No. 6 had made the only workable offer. Consequently, the letter of intent has been issued in favour of respondent No. 6 on 11th January, 2008. Respondent No. 6 had paid the entire Bid Money. Therefore, the claim made by the writ petitioner is without any basis. Learned counsel further submits that since the petitioner has failed to give any particulars of any previous causes espoused by the petitioner especially for the protection of the fundamental rights of the downtrodden and the deprived section of the population, the petitioner cannot possibly claim to be a person interested in espousing any public causes.

6. We have considered the submissions made by the learned counsel for the parties. By now the law is well settled that it is the bounden duty of the Court to satisfy itself about the bona fides of any litigation styled as "Public Interest Litigation". Repeatedly, the Supreme Court has highlighted the necessity of weeding out unscrupulous litigants who claim to move the Court by way of public interest litigation.

7. Mr. Kundu has placed strong reliance on paragraph 20 and 26 of the judgment of the Supreme Court in the case of M/s. Holicow Pictures Pvt. Ltd.(supra). In the aforesaid two paragraphs the Supreme Court observed as under:-

"20. The Court has to be satisfied about (a) the credential of the applicant; (b) the prima facie correctness of nature of information given by him; (c) the information being not vague or indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; (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 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.

26. It is true that in certain cases even though the Court comes to the conclusion that the writ petition was not in a public interest, yet if it finds that there is scope for dealing with the matter further in greater public interest, it can be done. This can be done by keeping the writ petitioner out of picture and appointing an amicus curiae. This can only be done in exceptional cases and not in a routine manner."

8. We are of the considered opinion that the petitioner has failed to satisfy the test laid down by the Supreme Court in the aforesaid judgment. The very first requirement, as enumerated by the Supreme Court in paragraph 20, is that the Court has to be satisfied about the credential of the applicant. It is only, thereafter, that the Court will examine the prima facie correctness or nature of the information given by him. Even then, the requirement is that the information should not be vague or indefinite. In the present case, the petitioner is not even certain about the nature of title of NBSTC in respect of the plots of land. The writ petition seems to be a general protest against the manner in which the NBSTC is functioning.

9. We are also of the opinion that the claim made by the petitioner would not fall within the ambit of the observations in paragraph 26 of the judgment given the scanty and indefinite nature of the material placed before the Court. Undoubtedly, it is true as pleaded by the learned counsel for the petitioner, that in case the Court is satisfied that the fundamental rights of any section of the population are being deliberately violated by the State, the Court would not be powerless to order further investigation.

10. In our opinion, in the present case, the petitioner has merely demonstrated the frustration of some invisible spirit behind the public interest litigation, who seems to have participated in the tender process and failed. The petitioner has failed to give any details in paragraphs 1, 2 and 3 of the writ petition with regard to the credentials of the writ petitioner, especially in relation to espousing the cause of any poor and deprived segment of the population.

11. In the case of M.S. Jayaraj (supra) the Supreme Court was considering the question of locus standi of the petitioner on the following facts:

"2. A bidder in auction for the privilege of vending foreign liquor within a circumscribed range was permitted by the Excise Commissioner to have his domain shifted to another range. On hearing the said news a hotelier who is doing business in the latter range was distressed and she quickly approached the High Court for thwarting the said move. At the first round the hotelier failed to checkmate the bidder as a Single Judge of the High Court declined to grant the relief prayed for by her. However, she succeeded on the second round, when a Division Bench of the High Court, on the appeal filed by her, quashed the order of the Excise Commissioner. This appeal by Special Leave is by the aforesaid bidder for restoration of the benefit which he secured from the Excise Commissioner."

12. It was argued on behalf of the appellant that the High Court ought not to have entertained the writ petition filed by the third respondent as she is a rival business woman who cannot have locus standi to file the petition. This submission was rejected by the Supreme Court with the observations that if the business of the third respondent is to be carried on in accordance with the Rules, such business cannot affect the business of the appellant. Therefore, the appellant would not be a rival trader or a rival business contender for the third

respondent. The Supreme Court came to the conclusion that the permission granted to the appellant to have his domain shifted from one range to another was totally forbidden under law and as such was without authority of law. Therefore, the Supreme Court observed as follows:

"13. In the light of the expanded concept of the locus standi and also 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, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits."

13. In our opinion, the facts and circumstances pleaded by the writ petitioner do not indicate that the action taken by the NBSTC is patently illegal or without any authority of law. The writ petition proceeds on the basis of assumptions, without any material in support. We are, therefore, unable to accept the submissions of Mr. Kundu that the claim made by the petitioner would fall within the aforesaid ratio of law laid down by the Supreme Court.

14. Repeatedly the Supreme Court has laid down the principles that have to be followed by the Court in entertaining public interest litigation. In paragraph 10 of the case of M/s. Holicow Pictures Pvt. Ltd. (supra) the Supreme Court observed as follows:-

"10. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or the latest trend "paise income litigation. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Court of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in The Janata Dal Vs. H.S. Chowdhary and Others, and Kazi Lhendup Dorji Vs. Central Bureau of

Investigation and Others, A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective (See The Ramjas Foundation and Others Vs. Union of India and Others, and K.R. Srinivas Vs. R.M. Premchand and Others,

15. The law is reiterated again and again in paragraphs 11, 12, 13, 14, 15 and 16 which we may reproduce as under:-

"11. It is necessary to take note of the meaning of expression "public interest litigation." In Stroud's Judicial Dictionary, Volume 4 (IV Edition), "Public Interest" is defined thus:

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

12. In Black's Law Dictionary (Sixth Edn.), "Public Interest" is defined as follows :

"Public Interest something in which the public or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government"

13. In Janta Dal case (supra) this Court considered the scope of public interest litigation. In para 52 of the said judgment after considering what is public interest has laid down as follows:-

"The expression "litigation" means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right of seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general in which the public or a class of community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

14. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:-

"Be that as it may, it is needless to emphasize that the requirement of locus-standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to primarily ascertained at the threshold."

15. In para 96 of the said judgment it has further been pointed out as follows:-

"While this Court has laid down a chain of notable decisions with al emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere

busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

16. In subsequent paras of the said judgment, it was observed as follows:-

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any public consideration. Similarly a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold."

16. It has become necessary to reproduce the aforesaid ratio of law to ensure that there is no ambiguity about the limits within which the public interest litigation can be entertained by the Courts. This is even more necessary especially since public interest litigation is generally granted priority over the other matters. Therefore, genuine litigants, seeking redressal of their genuine grievances are pushed behind needlessly by private interest litigation and motivated litigation, disguised as public interest litigation.

17. In view of the above, we find no merit in the writ petition. The writ petition is, accordingly, dismissed.

18. Xerox certified copy of this order, if applied for, be given to the learned counsel for the parties.